

Assessment of Arrests Resulting in a Release Without Charge (RWOC)
*(Referred to as “BPD Analysis of District Court Commissioner Arrest
Data Report” in the Updated Fourth Year Monitoring Plan)*
Baltimore Police Department
2nd Quarter, 2021

Overview

The Baltimore Police Department (BPD) is dedicated to upholding the Constitution and enforcing laws in a fair, impartial, and ethical manner. As part of this commitment, BPD conducts a quarterly analysis of arrests that resulted in subjects being released without charge (RWOC) by the State’s Attorney’s Office (SAO) after being transported to the Central Booking Intake Facility. In this analysis, BPD assesses the quality of those arrests, takes necessary corrective actions, and identifies opportunities to improve departmental performance.

If an arrest lacks Probable Cause (PC), it will be included in the list of RWOC dispositions. However, RWOC arrests also include all arrests in which the SAO has declined to prosecute. The SAO may decline to prosecute for many reasons, including prosecutorial discretion or if the SAO determined it was unable to prove the criminal charge(s) beyond a reasonable doubt, even if PC existed. In turn, this review encompasses an array of arrests declined for a variety of reasons.

This report is the 5th of continuous quarterly assessments on this topic. The review period is after the completion of agency-wide training on stops, searches and arrests (SSA) and the implementation of new and improved policy mandates that directly address many of the deficiencies identified in previous reports.

This report details the following elements of this review:

1. Methodology for this analysis;
2. Statistical analysis of RWOCs and any associated trends;
3. Case review findings regarding RWOCs demonstrating deficiencies;
4. Recommendations to address the findings of this report; and
5. Updates on recommendations from previous RWOC Assessments.

Key Findings

- This is the fifth quarterly RWOC report. Since the first report, which was for Q2 2020, the number of RWOCs has declined significantly both overall and as a percentage of arrests.
- Maryland Department of Public Safety and Correctional Services (DPSCS) reported 2756 adult arrests by BPD in Q2 2021. The SAO released a total of 22 of those arrestees without charge, which represents 0.8% of the total BPD adult arrests.
- The two main reasons identified by the SAO for the 22 RWOC arrests were “Elements of the crime not readily provable (45%)” and “Prosecutorial Discretion (50%).”

- The primary charge of the RWOCs was “Narcotics Violation” (63%).
- The two districts with the most RWOCs were the Southwest (5) and Western (4) Districts. This reflects a continuing downward trend. In the last quarter, Q1 2021, the districts with the most RWOCs during an assessment period, the Southwest and the Northeast Districts, had 13, which was far lower than the districts with the most RWOCs in the first three assessment periods. The Northeast District, which had a disproportionately high number of RWOCs in the first four assessment periods, again had a much lower number of RWOCs in this assessment period—only one, down from 13 in Q1 2021, 32 in Q4 2020, 49 in Q3 2020, and 33 in Q2 2020. This accelerates a trend that began in Q1 2021 following the remedial actions recommended in the Q3 and Q4 2020 reports.
- BPD reviewed 14 of the 22 RWOCs—all 11 RWOCs for “Elements of the crime not readily provable” and “Nexus Issue,” and three (or 27%) of the RWOCs based on “Prosecutorial Discretion” (more than the required 10%)—and found “Valid PC and Adequate Reporting” for all 14. There were no patterns in RWOCs for officers, and no officer had multiple RWOCs during this assessment period.

Methodology

To conduct this assessment, BPD obtains a list of arrests from the SAO that concluded with releasing the suspect without charges. Upon receipt of the list of RWOC arrests, the Inspections Unit separates RWOC arrests which the SAO categorized as “Prosecutorial Discretion,” because these may represent policy decisions by the SAO rather than legal issues with the arrest.¹ To ensure that there were no legal or BPD policy issues, BPD randomly reviews 10% of these arrests per month.² Within the 10%, arrests for “lesser offenses”³ are prioritized. Additionally, BPD reviews all RWOC arrests that the SAO categorized for a reason other than prosecutorial discretion. Every case review will include an analysis of reports associated with the arrest and BWC footage, if applicable, to determine if the arrest was made in accordance with appropriate legal standards. In order to assess patterns in arrest practices, demographics of the subjects and officers will be added to the SAO’s RWOC list, as well as shifts, units and/or the correct districts or assignments of the arresting officer.⁴

BPD will focus its review on PC determinations and other important legal standards that may lead to developing PC for arrests. Following this review, BPD will take any appropriate action,

¹ For example, SAO may opt not to prosecute certain crimes due to policy decisions made about misdemeanor Marijuana Possession and other crimes during the Covid-19 pandemic.

² The methodology for review of “prosecutorial discretion” arrests was updated prior to the initiation of the Q3 2020 RWOC review. The Q2 2020 report contained methodology that reviewed 50% of “prosecutorial discretion” RWOCs.

³ “Lesser Offenses” include crimes such as disorderly conduct, trespassing, or obstructing/hindering.

⁴ A redacted version of the SAO’s RWOC spreadsheet will be released along with this report.

which may include training or other corrective action for the involved officer(s) and/or referring incident(s) to the Public Integrity Bureau for administrative or criminal investigation.

Statistical Analysis

In the second quarter of 2021 (Q2), the Maryland Department of Public Safety and Correctional Services (DPSCS) reported 2756 adult arrests by the BPD.⁵ The SAO determined a total of 22 arrests⁶ as RWOCs during this time period, down 66% from 64 the previous quarter and down 86% from 161 in the first completed quarterly RWOC assessment from Q2 2020. 22 RWOCs represent 0.8% of the total BPD adult arrests during this time period. This is down from 2.3% in Q1 2021. The SAO categorized the 22 RWOCs for Q2 as follows:

SAO Reason for RWOC	Count	% of Total
4th Amendment Violation	0	0%
Elements of the crime not readily provable	10	45%
Nexus Issue	1	5%
Prosecutorial Discretion	11	50%
Total	22	

Table 1. SAO Reasons for RWOCs in Q2 2021.

The number of RWOCs compared to total BPD arrests is visualized in Chart 1:

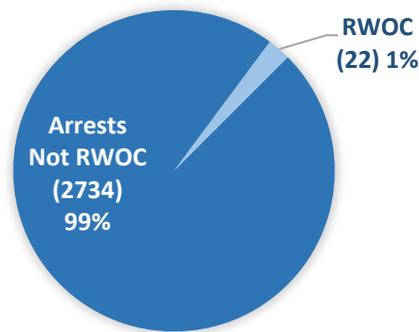


Chart 1. Percentage of Total Arrests RWOC by SAO.

⁵ Juvenile arrests in Baltimore are processed by a separate system, and the SAO does not generate a list of juveniles released without charges.

⁶ There were an additional two RWOCs from non-BPD police agencies, and one case categorized as RWOC in error.

The primary charge for the 22 RWOCs are listed in Table 2:⁷

Charge	Count
Narcotics Violation	12
Firearm Violation	6
Assault	2
Theft including Car Theft	2
Total	22

Table 2. Primary criminal charges for each RWOC in Q2 2021.

Distribution of RWOCs by Command

Table 3 below shows the distribution of Q2 RWOCs by command. There is variance between the commands, with the Southwest Districts each having 5 and many districts having one. All districts and the Mobile Metro Unit (MMU) have at least one. These statistics and the accompanying case review details will be provided to the relevant commands for further analysis and discussion with their units regarding enforcement decisions and report writing.

Command	# of RWOCs	% of Total
Southwest	5	23%
Central	4	18%
Western	4	18%
Southern	2	9%
MMU	2	9%
Northeast	1	5%
Northern	1	5%
Southeast	1	5%
Northwest	1	5%
Eastern	1	5%
Total	22	

Table 3. RWOC Distribution by Command in Q2 2021, Sorted for Frequency.

Distribution of RWOCs by District for Q2, Q3, Q4 of 2020, and Q1, Q2 of 2021.

Table 4, below, shows the aggregate totals for over a year's worth of RWOC data from Q2, Q3, and Q4 of 2020, along with Q1 and Q2 of 2021, by command:

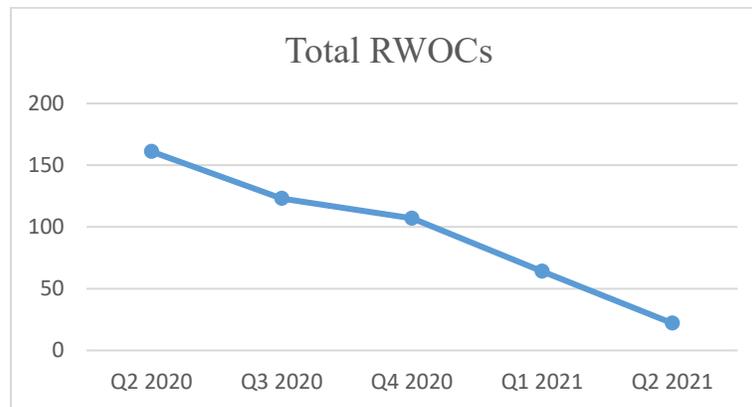
⁷ Arrestees were often charged with multiple crimes. This chart lists the most significant charge for each RWOC. Those arrested for both Firearms and Narcotics are categorized solely as Firearms.

Command	# of RWOCs	% of Total
Northeast	128	28%
Central	68	15%
Southern	61	13%
Southeast	50	11%
Southwest	53	12%
Northern	32	7%
Western	34	7%
Eastern	17	4%
Northwest	14	3%
MMU	9	2%
MFF	6	1%
ACS	2	0%
RATT	2	0%
SWAT	1	0%
Grand Total	477	

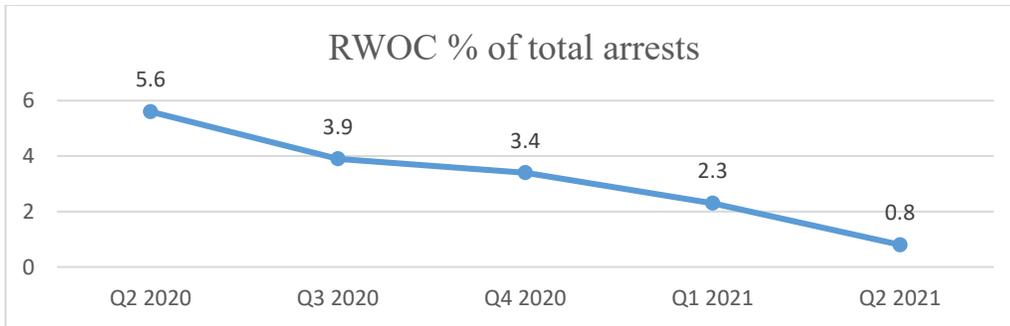
Table 4. Q2, Q3, Q4 of 2020, and Q1, Q2 of 2021 RWOC Distribution by Command, Sorted for Frequency

Trends over the five quarters

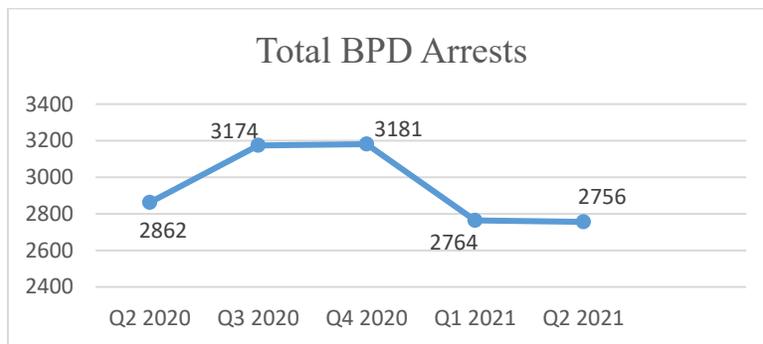
The following graphs represent the trends over the past five quarters of total RWOCs (Graph 1), RWOC percentage of total arrests (Graph 2), and Total BPD arrests (Graph 3).



Graph 1. Total RWOCs over past five quarters



Graph 2. RWOC percentage of total arrests over past year



Graph 3. Total BPD arrests over past year

Distribution of RWOCs by District and Shift in Q2 2021

Table 5 below depicts a breakdown of RWOCs by district and shift for the quarter. This table includes the 18 RWOCs resulting from district personnel and does not include the four RWOC arrests by specialized units. The tour of duty for A shift is 11 p.m. to 7 a.m., B shift is 7 a.m. to 3 p.m., and C shift is 3 p.m. to 11 p.m. Districts also deploy District Action Teams (DAT) for proactive enforcement. DATs accounted for 44% of the total, followed by the evening shift (C-shift), which accounted for 39%. No shift/unit had more than two RWOCs in Q2.

District	A	B	C	DAT	District Total
Northeast		1			1
Central ⁸			1	1	2
Southern			1	1	2
Northern			1		1
Southwest	2		2	1	5
Southeast				1	1
Western			2	2	4
Eastern				1	1
Northwest				1	1
Shift/Unit Total	2	1	7	8	18

Table 5. Distribution of RWOCs by District and Shift in Q2 2021.

Figure 1 visualizes this data:

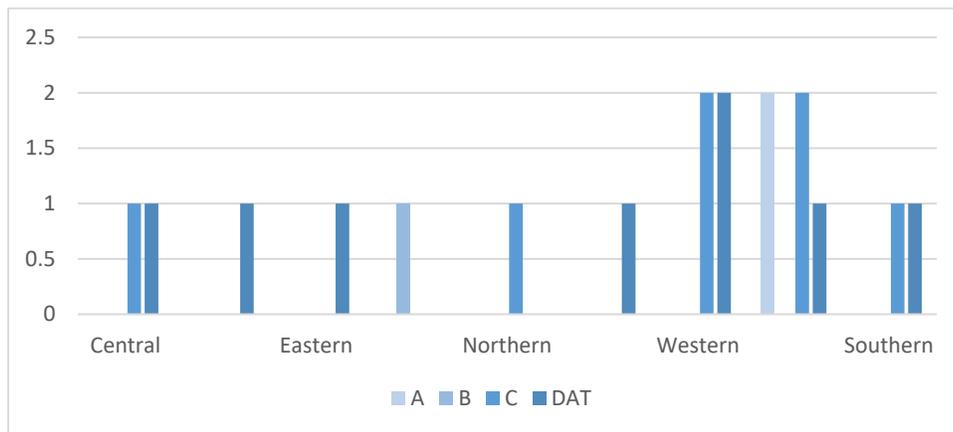


Figure 1. RWOCs by District and Shift in Q2 2021.

The variance between shifts and units significantly decreased in Q2, compared to past quarters. Most shifts had no RWOCs in Q2. The highest amount of RWOCs on any shift or unit was two. Past variances have been in double digits.

⁸ The Central District commands the Market Unit which had one RWOC. Their District Detective Unit (DDU) also had one RWOC in Q2.

Figure 2, below, visualizes this cumulative RWOC trends for the past five quarters:

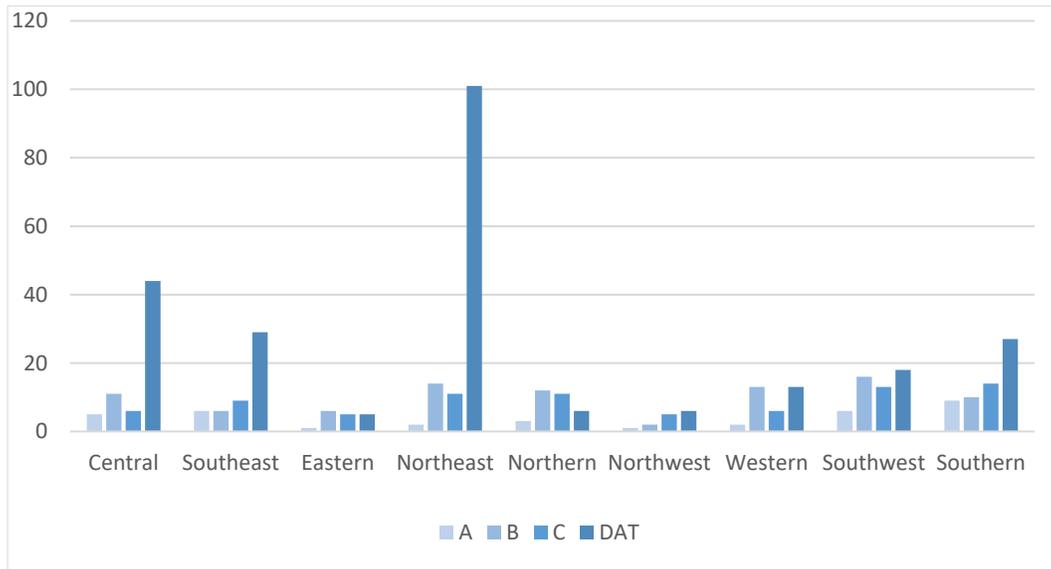


Figure 2. 2020 Q2, Q3, Q4, and 2021 Q1, Q2 RWOCs by District and Shift

RWOCs account for 0.8% of total arrests, and BPD’s Operations Bureau should use this report and supporting data to determine if there is a need to alter enforcement strategies. The Operations Bureau should attempt to identify other potential areas of operational improvement and effective resource deployment.

RWOCs Analyzed

In order for an arrest to be legal, there needs to be at least Reasonable Articulable Suspicion (RAS) for the stop and Probable Cause (PC) for the arrest. BPD initiates its review process with a list of RWOCs, including a reason for the RWOC from the SAO. BPD then analyzes the RWOCs and provides a conclusion as to whether probable cause was established. BPD also reviews the reports from all RWOC arrests to determine whether they comply with BPD policy by accurately articulating the facts that support probable cause.

In total, BPD reviewed 14 RWOCs for Q2 2021, including all 11 RWOCs for reasons other than Prosecutorial Discretion, as well as 3 Prosecutorial Discretion cases (27% of the total of 11).⁹ The results of the review are detailed below.

⁹ 3 cases is slightly more than 10% of 11 because the Inspection Unit selected cases as monthly reports arrived from the SAO throughout the quarter and rounded up each time, in addition to the “lesser offenses.”

RWOCs Indicating a Lack of PC/RAS or Poor Reporting

BPD determined that all 14 reviewed cases had valid PC for arrest and satisfactorily written reports. Table 6 below represents the findings:

Review Result	Count	% of Total
Lacked PC for Arrest	0	0%
Valid PC but Poor Reporting	0	0%
Valid PC and Adequate Reporting	14	100%
Total	14	

Table 6. Results of RWOC Review in Q2 2021.

Distribution of Problematic RWOCs by Original SAO Reason for RWOC

Table 7 shows BPD’s conclusions on problematic RWOCs on the left and the original reason for the RWOCs from the SAO on the right in the aggregate across Q2, Q3, Q4 of 2020 and Q1 and Q2 2021:

BPD Review Result	SAO Reason	Count
Lacked PC / RAS for Arrest (10)	4th Amendment Violation	3 ¹⁰
	Elements of crime not readily provable	5
	Prosecutorial Discretion	2
Valid PC but Poor Reporting (11)	Elements of crime not readily provable	7
	Prosecutorial Discretion	4
Total		21

Table 7. 2020 Q2, Q3, Q4, and 2021 Q1, Q2 Distribution of Problematic RWOCs by Original SAO Reason.

Table 8 summarizes the aggregate distribution of problematic RWOCs across Q2, Q3, Q4 2020 and Q1 and Q2 2021:

¹⁰ BPD has never found a RWOC arrest that the SAO has determined to be a “4th Amendment Violation” to have had probable cause. In other words, BPD has never found a “4th Amendment Violation” RWOC arrest not to be a 4th Amendment violation. Conversely, BPD has found certain “Elements of crime not readily provable” and “Prosecutorial Discretion” RWOC arrests to have lacked probable cause and thus to have been 4th Amendment violations.

Command	Lacked PC for Arrest	PC but Poor Reporting	Total
Southeast	4	1	5
Central	1	3	4
Northeast	2	2	4
Northern	2		2
Education and Training		1	1
Eastern	1		1
Southern		2	2
Southwest		1	1
Western		1	1
Total	10	11	21

Table 8. 2020 Q2, Q3, Q4 and 2021 Q1, Q2 Distribution of Problematic RWOCs by District.

Distribution of RWOCs by Officer

There were no patterns in the problematic RWOCs for officers and no officer had multiple RWOCs during the Q2 assessment period. This is a significant decrease from Q1 2021, in which 15 officers had multiple RWOCs, and Q4 2020, in which 24 officers had multiple RWOCs. It is the first time since the quarterly assessments began in Q2 2020 that no officer had multiple RWOCs.

Recommendations¹¹

Operations Bureau:

1. Operations Bureau should use this report and supporting data to determine if there is a need to alter enforcement strategies. The Operations Bureau should attempt to identify other potential areas of operational improvement and effective resource deployment.

Updates on Recommendations from Previous Reports

This section provides a summary of actions taken by the BPD in response to the recommendations in earlier reports. It specifically addresses the recommendations outlined in the Q4 2020 report.¹² The next published quarterly RWOC report is expected to cover Q1 2021¹³ recommendations, since its recommendations have deadlines which have not yet passed.

A copy of the Q4 2020 RWOC report was distributed amongst command members. BPD's Operations Bureau took steps to ensure that officers have appropriate guidance in regard to cases which the SAO will decline to prosecute. Specifically, in April 2020, soon after the COVID-19 pandemic began, the Operations Bureau distributed a memo establishing modified enforcement procedures for certain crimes. In April 2021, the Operations Bureau updated this memo, refining the modified enforcement procedures to reflect minor changes in SAO enforcement policies.

The Northeast District reviewed the operational priorities of their DAT unit and continued the same strategy outlined in their response to the Q3 2020 RWOC report. This included ensuring all narcotics violation reports are reviewed by Northeast Command to help immediately address potential deficiencies in policy compliance. Northeast Command also assigned a separate sergeant to provide direct supervision over each District Action Team (DAT) squad. The strategy has had the desired result of less RWOCs and more arrests of known or suspected violent offenders in designated high violence areas.

The Northeast DAT is now more directly focused on violent individuals, rather than on drug activity generally. They currently work in concert with the district's Intelligence Officer and directly with the community. In addition to responding to community complaints, the DAT unit utilizes confidential informants. The emphasis on violence, coupled with a dedicated DAT supervisor and command level review of all drug arrests, minimizes arrests that lead to possible RWOCs. Northeast Command reported that DAT members understand the focus of reducing crime through the targeting of violent offenders and that DAT members receive daily feedback and guidance from their respective supervisors about expectations and goals. The Operations Bureau

¹¹ The Compliance Bureau will monitor the progress of approved recommendations through a "Recommendation Tracker" mechanism, which will provide due dates to the responsible BPD entity along with mandates of written documentation certifying completion.

¹² The Q4 2020 report was filed April 19, 2021.

¹³ The Q1 2021 report was filed September 3, 2021.

agrees with this strategy and monitors productivity of the unit through daily updates and reporting of notable incidents.

Prior to the end of December 2020, the Education and Training Section completed SSA training for all sworn BPD members, in accordance with updated BPD policy. This training included a two day in-person course in addition to mandatory eLearning. The updated policy was fully implemented in February 2021, following completion of the training. Additionally, SSA supervisor e-learning began on June 18, 2021. It reinforces all the concepts taught during in-person SSA training.

Delivery of recommended remedial training for the six BPD members identified in the Q3 2020 report was completed in April and May of 2021.

This remedial training included Fourth Amendment training and report writing with emphasis on proper documentation of the elements of a crime.

Delivery of remedial training for the BPD member identified in the Q4 2020 report, related to proper report writing and documenting the elements of a crime, was completed October 7, 2021.

Appendix A

See the below spreadsheet detailing the case review findings.

Date	Time	Arrestee Gender	Arrestee Race	Primary Charge	SAO Reason for RWOC	Officer Gender	Officer Race	Unit	Shift	Unit/Shift	District/Division	District of Occurrence	BPD Findings	Analyzed ?
4/1/2021	1935	M	B	PWID CDS, Possession Ammunition	Prosecutorial Discretion	M	W	DAT	C	DAT	Southeast	Eastern		NO
4/3/2021	1704	M	B	Possession CDS	Prosecutorial Discretion	M	W	Patrol	C	C	Western	Western		NO
4/3/2021	2045	M	B	Possession CDS	Prosecutorial Discretion	M	B	Patrol	C	C	Northern	Northern		NO
4/5/2021	1406	M	B	PWID CDS	Prosecutorial Discretion	M	W	DAT	B	DAT	Southwest	Southwest		NO
4/6/2021	1024	M	B	Practicing Pharmacy w/o a license, Possession CDS	Prosecutorial Discretion	M	H	Market unit	B		Central	Central		NO
4/8/2021	2113	M	B	Distribution CDS	Prosecutorial Discretion	M	W	DAT	C	DAT	Southern	Southwest	Valid PC	YES
4/10/2021	1134	M	B	PWID CDS	Prosecutorial Discretion	F	B	Patrol	B	B	Northeast	Northeast		NO
4/10/2021	2245	M	B	HGV	Elements of the Crime Not Readily Provable.	M	W	DAT	C	DAT	Northwest	Northwest	Valid PC	YES
4/19/2021	2050	M	B	Assault 2	Elements of the Crime Not Readily Provable.	M	B	Patrol	C	C	Southwest	Southwest	Valid PC	YES
4/21/2021	1408	M	B	HGV, PWID CDS	Elements of the Crime Not Readily Provable.	M	B	MMU	B		SOS	Western	Valid PC	YES
4/27/2021	2305	M	W	Possession CDS	Prosecutorial Discretion	F	W	Patrol	A	A	Southwest	Southwest		NO
5/3/2021	1220	M	B	Hangun Violation	Elements of the Crime Not Readily Provable.	M	B	DDU	B		Central	Central	Valid PC	YES
5/10/2021	2007	F	B	Handgun Possession Charges	Elements of the Crime Not Readily Provable.	M	B	DAT	C	DAT	Western	Southwest	Valid PC	YES
5/20/2021	621	M	B	Handgun DT, PWID CDS et al	Nexus Issue	M	W	DAT	C	DAT	Eastern	Southwest	Valid PC	YES
5/27/2021	1615	M	B	PWID CDS	Prosecutorial Discretion	M	W	Patrol	C	C	Southern	Southern	Valid PC	YES
6/5/2021	530	F	B	Handgun	Elements of the Crime Not Readily Provable.	M	B	Patrol	A	A	Southwest	Southwest	Valid PC	YES
6/14/2021	1550	M	W	Theft	Elements of the Crime Not Readily Provable.	M	W	Patrol	C	C	Central	Central	Valid PC	YES
6/17/2021	650	M	B	PWID CDS	Elements of the Crime Not Readily Provable.	M	W	DAT	A	DAT	Central	Central	Valid PC	YES
6/22/2021	1930	F	B	Car Theft	Elements of the Crime Not Readily Provable.	F	B	MMU	C		sos	Southwest	Valid PC	YES
6/24/2021	1832	M	B	PWID CDS	Prosecutorial Discretion	M	W	Patrol	C	C	Western	Western	Valid PC	YES
6/30/2021	1600	M	B	Assault 2	Elements of the Crime Not Readily Provable.	M	H	Patrol	C	C	Southwest	Southwest	Valid PC	YES
6/30/2021	445	M	B	Possession CDS	Prosecutorial Discretion	M	W	DAT	A	DAT	Western	Southwest		NO