



Use of Force 2020

January 1, 2020 to December 31, 2020



“Our Fourth Amendment jurisprudence has long recognized that the right to make an arrest or an investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.”

**U.S. Supreme Court, *Graham v. Connor*
490 U.S. 386, 396 (1989)**

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Executive Summary

Use of Force 2020

Summary

The frequency in reporting use of force for the year 2020 is 0.10% of CAD. Use of force to CAD ratio was consistently 0.16% from 2012 – 2014, but has declined over the last few years. The use of force to arrest ratio in 2014 was 2.44% and declined to 2.00% in 2015. The 2016 use of force to arrest ratio was 1.97% and 2.52% in 2017. The 2018 use of force to arrest ratio was 2.42%, down to 2.35% in 2019 and still declining to 2.09% in 2020.

The Baton Rouge Police Department arrest data is comparable and matches expectations with the national arrest data available through the FBI. There does not appear to be any racial or gender bias in the use of force data within the Baton Rouge Police Department.

Recommendations

The following are the recommendations of this study.

1. Continue to utilize the use of force reporting system. Several issues were identified over the 2019 reporting period. The remaining issues are how to address the traceability of reports, efficient data entry and how to address the CALEA guidelines regarding the displaying of firearms.
2. Ensure that training needs are identified and documented. This information is the basis for justifying and adjusting some of our in-service training programs.
3. Continue the current initial and in-service training. This is the only means on assuring our long-term compliance with the standards set forth in the general orders.
4. Ensure that current policy and practice on the use of TASER type devices coincide.
5. Continue the periodic analysis as required.
6. A change in the “Response to Resistive Behavior” form to add all elements needed for a proper and complete analysis.

Use of Force

Literature and Overview

The use of force by officers in the Baton Rouge Police Department falls under the 4th Amendment’s search and seizure clause. The amendment states, *“The right of the people to be secure...against unreasonable searches and seizures shall not be violated.”* When using force to subdue or restrain a person, an officer must be aware of this *“unreasonable search and seizure”* clause. Because this right is in the Constitution, persons may file suit under 42 U.S.C. 1983 when they feel that this right has been denied. The issue was even more clearly defined in two cases brought before the Supreme Court, Johnson vs. Glick (1973) and Graham vs. Connor (1989). In the first case, the level of force had to “shock the conscience” by its maliciousness and extent of injury. The second case relaxed the Glick standard by establishing the “reasonable force” standard. Recently, the reasonable force standard adopted by the court in Graham vs. Conner was addressed again in Saucier vs. Katz (2001). In a more recent and not so obvious case where the officer was in direct danger, Kisela vs. Hughes (2018) ruled in favor of the officer for shooting a woman who was threatening her roommate with a knife. Unless an officer complies with the reasonable force standard, he will not be entitled to the defense of qualified immunity. The reasonable force standard is also set forth in the Louisiana Code and memorialized by the Louisiana Supreme Court in Mathieu vs. Imperial Toy (1994).

Quoting from “*Police Use of Nondeadly Force to Arrest*” by John C. Hall (Law enforcement Bulletin 10/97) the following is stated:

“The Fourth Amendment standard of “reasonableness” is not conducive to “precise definition or mechanical applications,” but “requires careful attention to the facts and circumstances of each particular case,” as viewed “...from the perspective of a reasonable officer at the scene, rather than the 20/20 vision of hindsight...” Moreover, allowances must be made for the fact that officers “...are often forced to make split second judgments in circumstances that are tense, uncertain, and rapidly evolving about the amount of force that is necessary in a particular situation.”

“Among the ‘totality of circumstances’ that may govern the reasonableness of using a particular level of force, the Supreme Court has emphasized (1) the severity of the crime; (2) whether the suspect poses an immediate threat to safety of the officers or others; and (3) whether the suspect is actively resisting arrest or attempting to evade arrest by flight.”

The “reasonableness” standard enhances the public’s ability to bring lawsuits against the Baton Rouge Police Department and its officers, and as such, requires an analysis of the department’s use of force. In addition to reducing the risk of lawsuits, studying the department’s use of force enhances professional and safe interaction with the public, allows trends in the use of force to be identified, and encourages modification in training to address issues identified by the study.

This study will address several topics:

- Policies and Training
- Reporting requirements
- Frequency of use of force
- Demographics of general, contact, arrestee and suspect populations
- Possible bias in the use of force

The data used for this study came from the Use of Force database maintained by the CSRD. The data was collected from response to resistive behavior forms submitted by various divisions of the department. In 2018, 278 “Response to Resistive Behavior” reports were filed involving 248 unique incidents.

This study will not attempt to address the issue of the use of excessive force or using legitimate force excessively. The study will only examine broader issues that describe the systems related to the use of force. Internal Affairs and the administrative systems of the Baton Rouge Police Department better address individual performance.

Definitions, Policies, and Training

The use of force is best defined by the IACP as “...that amount of effort required by police to compel compliance from an unwilling subject.” The key phrase is “unwilling subject,” eliminating the routine handling of a compliant subject. The definition of excessive force is further defined by the IACP as “...the application of an amount and/or frequency of force greater than that required to compel compliance from a willing or unwilling subject.”

The Baton Rouge Police Department has two policies that address the use of force. The first is General Order 131, “Use of Deadly Force.” In it, deadly force is defined “...as that level of force, which a reasonable and prudent person would consider likely to cause death or great bodily harm.” (BRPD G.O. 131.II) The policy further defines the circumstances under which deadly force can be employed as the following:

“The officer shall employ deadly force only in defense of their own lives or in defense of the life of another person. It is essential that the officer reasonably believes that he or some other person is in immediate and apparent danger of suffering death or great bodily harm and that the use of deadly force is the only prudent preventative measure available to him.” (BRPD G.O. 131.III.B)

The policy also places the following constraints on the use of deadly force:

“Deadly force shall not be justified merely in the protection of property nor in the prevention of escape by a prisoner or felon, unless the standard set forth above is met.” (BRPD G.O. 131.III.C)

The second policy is General Order 135 and governs non-lethal force. While the policy does not formally define non-lethal force, the implication is that it is a level of force that a reasonable and prudent person would consider less likely to cause death or great bodily harm. Under this policy, the use of non-lethal force “...is limited to situations involving resistance to arrest, defense against physical assault or to perform official duties, and that only that force which is reasonable and necessary may be used to achieve these objectives.” The policy further defines a continuum for the application of force as follows (from least to greatest force):

- Officer Presence
- Verbal Warning
- Verbal Command
- Hands On
- Aerosol Subject Restraint – Commonly known as “pepper spray”
- TASER – Electro muscular disruptor
- Intermediate Weapons – Weapons such as batons that are normally used to deliver less than lethal force, but may be used to deliver lethal force if the situation warrants.
- Deadly force

It is important to note that the mere placement of handcuffs on a subject does not require a use of force report unless they are used to exert pressure to maintain control of a resistant subject (Known as an iron wristlock and/or an iron wristlock takedown).

General Order 135 defines the escalating levels of subject resistance as follows:

- Psychological intimidation – Threatening, non-verbal body language
- Verbal non-compliance – Verbal responses that indicate an unwillingness to comply with officer’s commands of arrest or a direct verbal threat to the officer.
- Passive resistance – Passive physical actions (demonstrator resistance, going limp, etc.)
- Defensive resistance – Pulling away or fleeing on foot without harming the officer.
- Active Aggression—Physical actions of assault
- Deadly force assault—Deadly force encounters that are likely to result in death or great bodily harm.

Many training documents display the force continuum next to the levels of resistance. Displaying the levels in this manner implies that each level of resistance must be met with the corresponding and equal level of force. Even if the diagrams indicated that one level of force above the level of resistance could be used, it would still appear that a step-by-step progression is required. Using a circle to display the levels of force with the officer in the center would be more consistent with our actual practice (see illustration below).



It is our practice to respond to resistance with the level of force required to overcome such resistance and to maintain control of the situation. This allows an officer meeting resistance to enter the force continuum at any level the officer reasonably and prudently believes is necessary up to and including deadly force. It also allows the officer to adjust the level of force as the perceived level of risk increases or decreases and to skip levels of force if the situation dictates.

Those examining the level of force used must keep in mind the multiple factors affecting the decision to use force and to what extent. Environmental conditions, the physical condition of the officer and suspect, and the physiological and psychological effects of prolonged struggles are, but a few examples of the factors that affect an officer's decision to use force as well as influence how that force is escalated and de-escalated during the encounter. Great care should be used in deciding if and when the use of force has become excessive. As stated earlier, monitoring possible excessive use of force is not within the scope of this analysis and will not be addressed in this study.

Reporting requirements

When force is used on an unwilling subject, a "Response to Resistive Behavior" report form should be completed under General Orders 131 and 135. This form is eventually forwarded to the Crime Statistics and Research Division (CSRD), where the information is entered into a database for analysis. This analysis, under GO135, was originally to be conducted by the Training Services Division. It is now the responsibility of the Crime Statisticians.

Frequency in the use of force

The frequency of the use of force by Baton Rouge Police Department officers is the first factor to be examined. In the "Use of Force Study" conducted in 2002 by Darryl Armentor, a study done by Croft and Austin (1985) was cited as providing a valid estimate of the percentage of calls for service (CAD) that resulted in the use of force. The figure they developed was 0.19% of calls for service resulted in the use of force. The "2001 Police Use of Force in America" study by the IACP placed the percentage at 0.0361%. We do not recommend the IACP study due to concerns with the methodology and a lack of reporting agencies similar in size to the Baton Rouge Police Department.

In 2020, there were 203,894 calls received by the Baton Rouge Police Department. During that same period, the Internal Affairs Division received 206 “Response to Resistive Behavior” reports. Therefore, the percentage is:

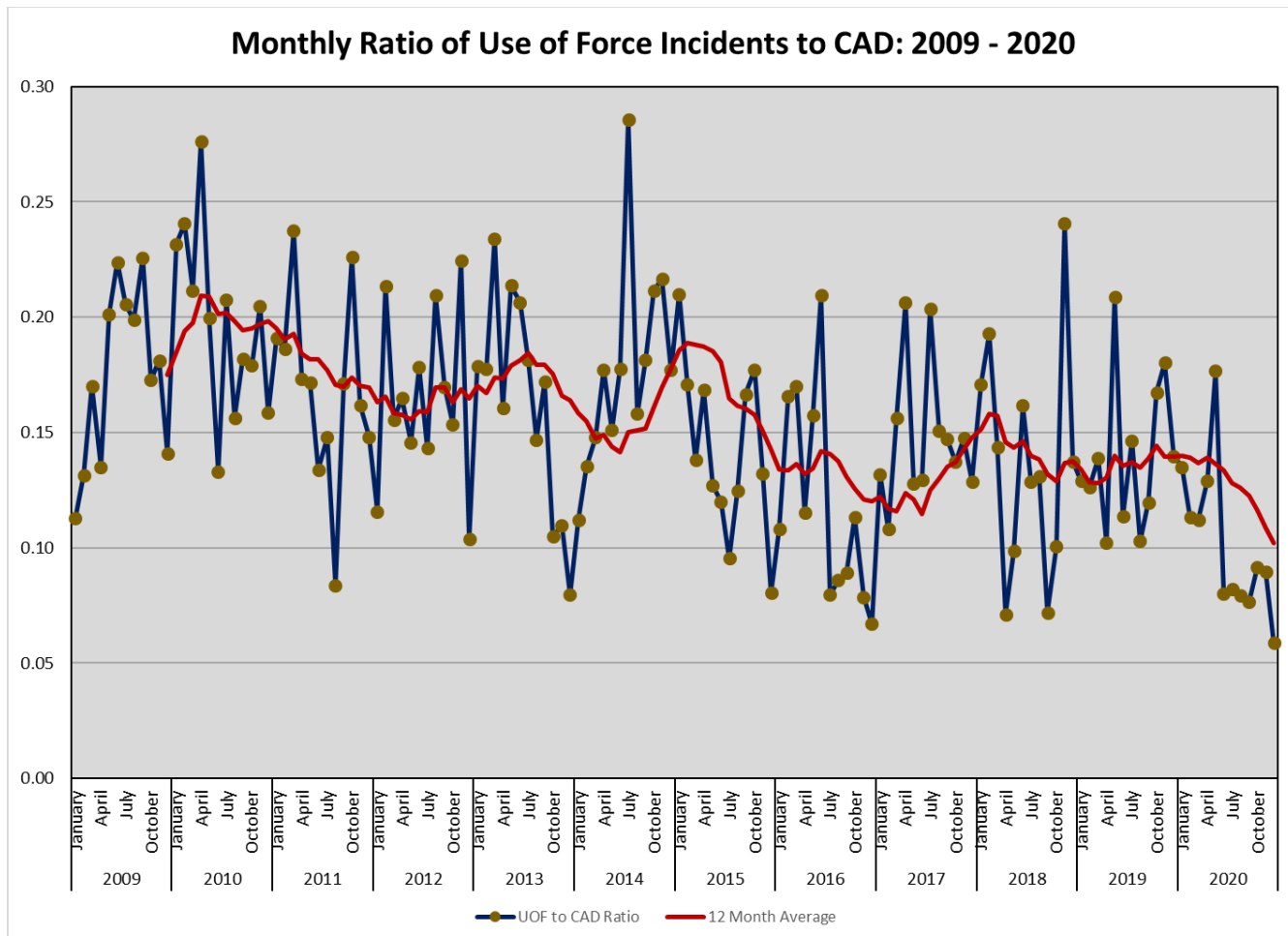
$$206/203,894 * 100 = 0.10\% \text{ of CAD}$$

This result is around the same of studies for 2015 and slightly under the outcome for 2017 of the use of force by the Baton Rouge Police Department, but below prior years (2012-2014). For the Baton Rouge Police Department, the previous three studies found that the average ratio of use of force incidents to CAD calls was 0.14%. While some year to year variation is to be expected, the long term trend for the UOF-CAD ratio has been slightly downward. Comparable cities when considering population are Seattle, New Orleans and Minneapolis. Our current use of force to CAD ratio continues to be lower than all three cities.

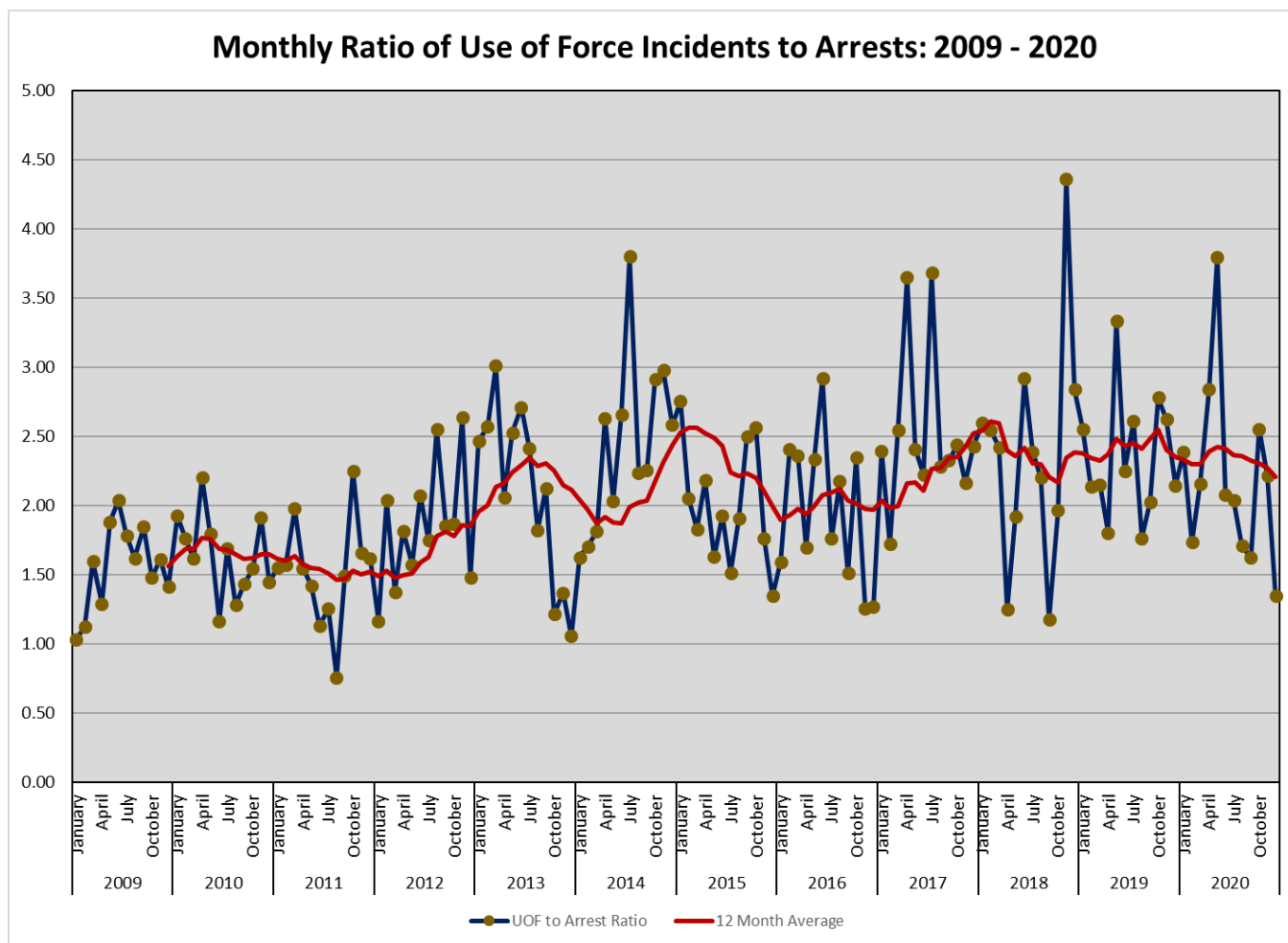
The following table summarizes various studies and comparable findings:

Use of Force to CAD Comparisons		
Source	Year	UOF/CAD Percentage
ICMA		0.09%
Croft and Austin	1985	0.19%
Seattle	2010	0.18%
Seattle	2014-2016	0.39%
Seattle	2017	0.30%
Seattle	2018	0.48%
Seattle	2019	0.32%
Seattle	2020	0.41%
New Orleans	2014	0.09%
New Orleans	2015	0.17%
New Orleans	2016	0.39%
New Orleans	2017	0.35%
New Orleans	2018	0.24%
New Orleans	2019	0.18%
New Orleans	2020	0.19%
Minneapolis	2016	0.27%
Minneapolis	2017	0.22%
Minneapolis	2018	0.23%
Minneapolis	2019	0.26%
Minneapolis	2020	0.45%
BRPD	2009	0.20%
BRPD	2010	0.20%
BRPD	2011	0.17%
BRPD	2012	0.16%
BRPD	2013	0.16%
BRPD	2014	0.16%
BRPD	2015	0.14%
BRPD	2016	0.12%
BRPD	2017	0.15%
BRPD	2018	0.14%
BRPD	2019	0.14%
BRPD	2020	0.10%

The Baton Rouge Police Department responded to 203,894 calls for service in 2020. As shown below, the recent Response to Resistive Behavior incidents to calls for service (CAD) ratio 12 month trend line has been trending upward for the year 2019, but has turned downward for 2020. In 2017, we began counting all use of force incidents and not just unique files. There appears to have been issues over the previous years with the use of force reporting system, but it is unknown if this is a data entry issue, under reporting, or a change in how the department’s officers are using force.

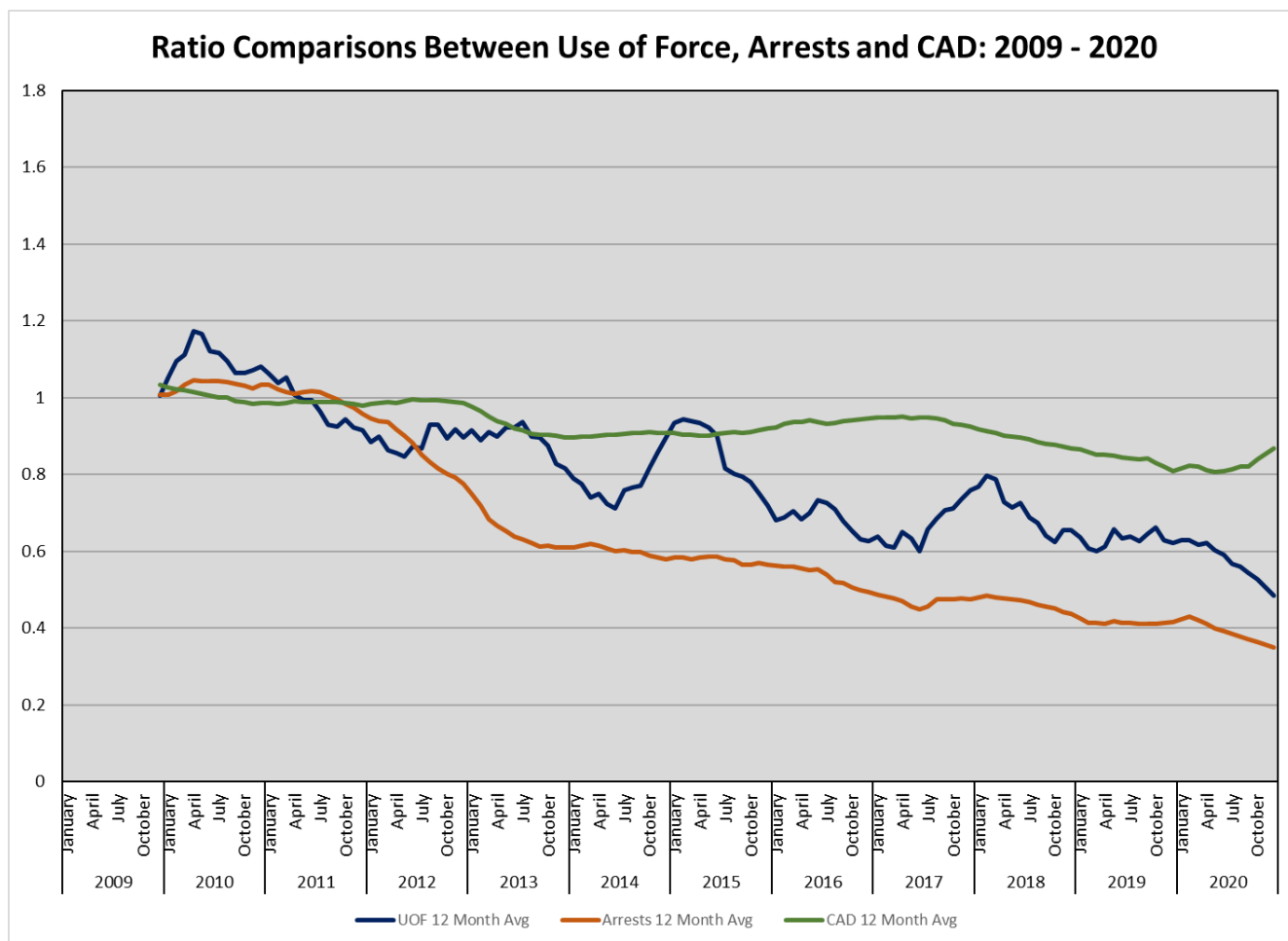


Because the level of criminal activity varies from month to month and we know that the number of arrests track closely the number of files issued, the number of incidents in which there was a use of force was tracked as a percentage of the number of arrests made. This removes some of the seasonal variation from the raw number of files. The chart below tracks the number of incidents as a percentage of all arrests.



The decrease in late 2013 into early 2014 was attributed to a previously known data entry and form issue. The trend chart indicates that we have another decreasing pattern of reported use of force beginning in late 2014 and continuing thru 2015. The trend turned upward at the beginning of 2016, but turned back downward at the latter part of that year. Beginning in 2017, the trend turned upward. This can be attributed to the fact that we began counting all use of force incidents and not just unique files. From the beginning of 2018 up until approximately November, the trend was turning back downward. At the end of 2018, there was an uptick in the trend line. This upward trend continued into 2019, but turned back downward in 2020. There have been inconsistencies over the years with the reporting system and data entry process. We are in the process of trying to correct these issues for a more consistent and efficient analysis.

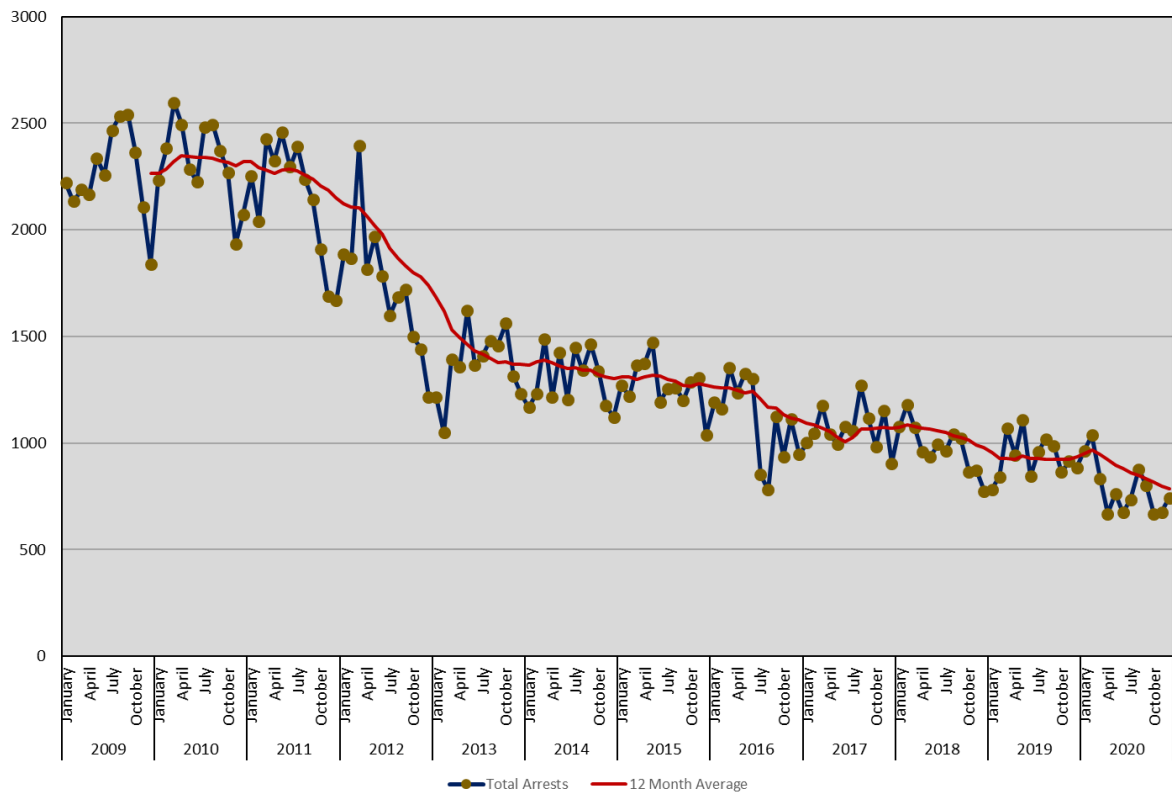
The chart below represents a comparison of ratios using monthly use of force incidents, arrests and CAD calls. Averages from 2009-2011 are used as a baseline for these comparisons. Despite the inconsistencies and the increase in use of force incidents in 2017 as compared to 2016, the count of reports is still down 54.33% from 2009. Arrests have continued to decline over the years (from 2009, -65.23%). CAD has continued to decline over the last few years and is down 15.95% from 2009.



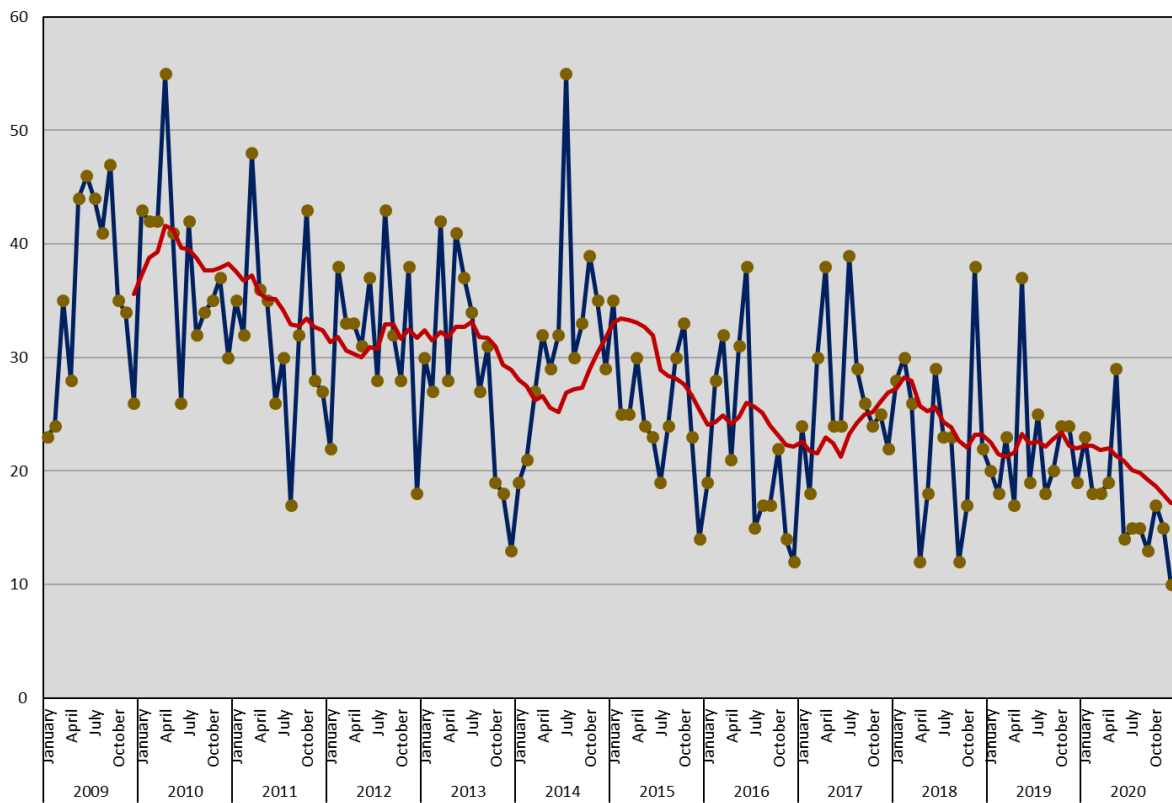
The monthly arrest data and count of use of force files are shown below. The arrest trend started flattening out around mid-2013, but turned slightly downward shortly after. A heavier downward trend began after July 2016. The officer-involved shooting resulting in the death of Alton Sterling that occurred on 7/5/2016 was a big factor in the decrease of arrests. Additionally, the officer-involved shooting that resulted in the fatality of three law enforcement officers that occurred on 7/17/16 contributed to the decline in arrests. Our department was more focused on maintaining control versus arrests. At the beginning of 2017, the arrest trend continued to decline and flattened out towards the end of the year. Since the beginning of 2018, we have seen a downward turn in the number of arrests. In 2019, arrests began flattening out, but turned downward again in 2020.

The monthly use of force incident trend remained on a downward trend from 2009 – mid 2014, increased periodically through mid-2015, but turned back downward until 2017. In 2017 the trend rose again, but has gone back down for the year 2018. In 2019, the trend turned slightly upward, but has been declining since the beginning of 2020.

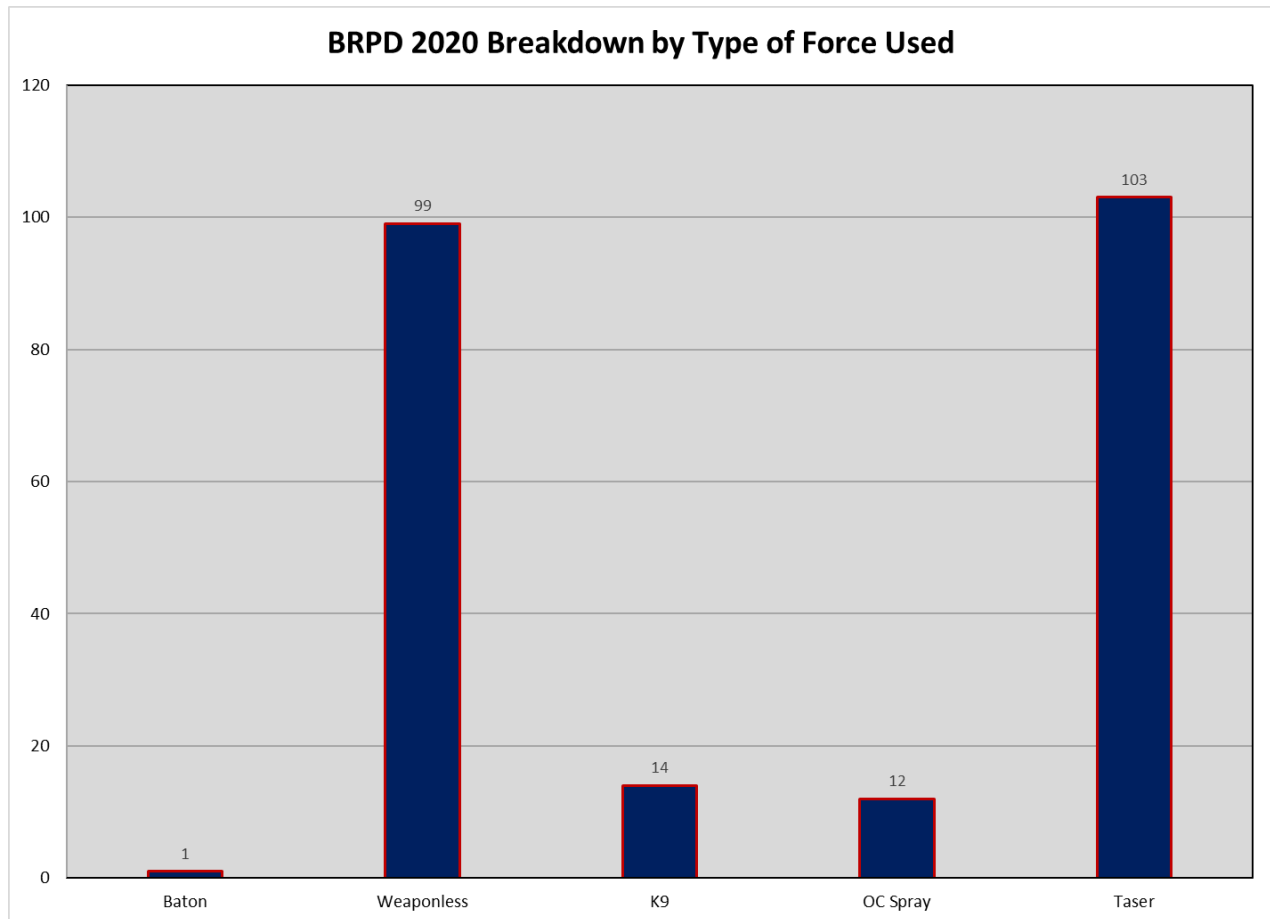
Total UCR Custodial Arrests: 2009 - 2020



Monthly Use of Force Incidents: 2009 - 2020



The table below depicts the breakdown of the types of use of forces used by the Baton Rouge Police Department in 2020. The most frequent types of force used were EWC/taser (45%) and weaponless tactics (43.2%). These two types of force were followed by the use of K9 dogs (6.1%).



Demographics

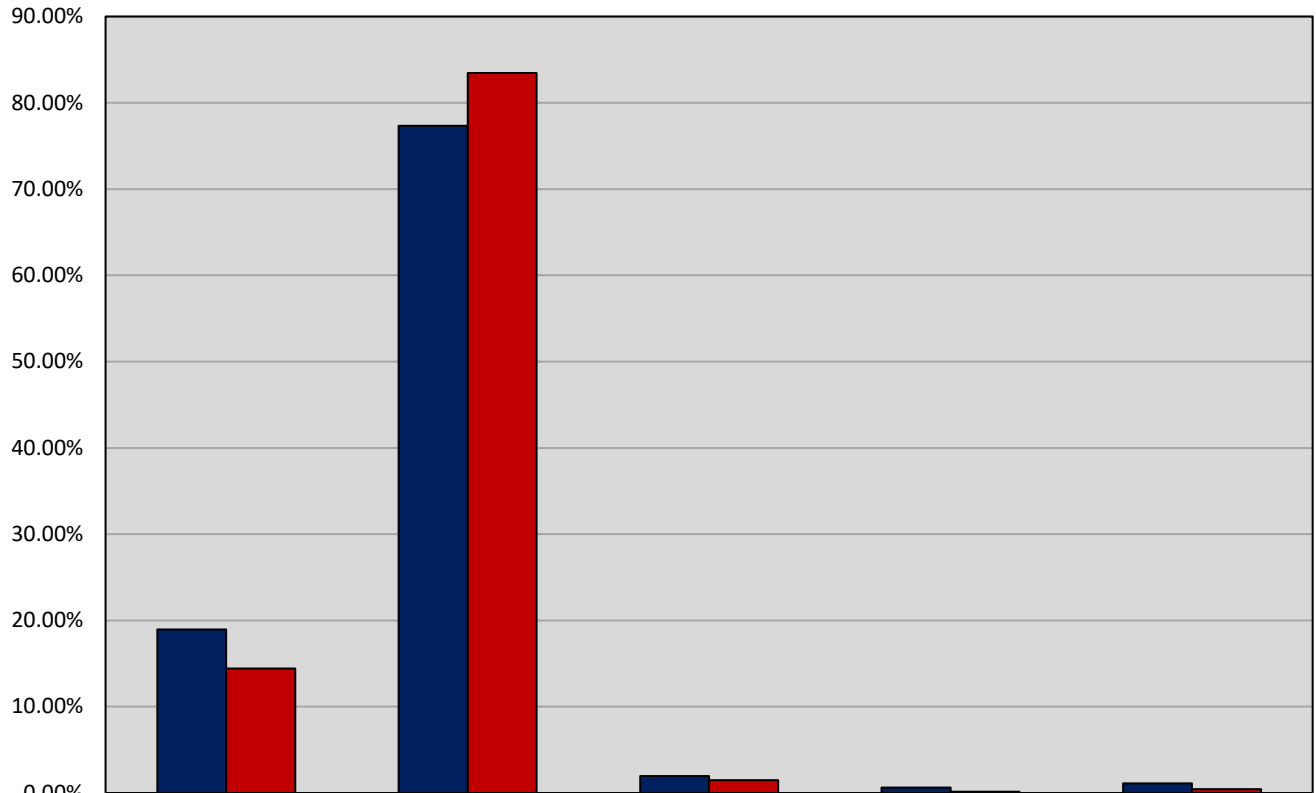
2020 Demographic Comparisons				
Race/Gender	Parish	City	Suspect/Arrestee	All Contacts
White				
Female	105566	45529	204	985
% Female	49.12%	50.39%	32.13%	41.75%
Male	109361	44819	431	1374
% Male	50.88%	49.61%	67.87%	58.25%
Total	214927	90348	635	2359
Black or African American				
Female	92268	67083	1018	4529
% Female	46.25%	53.60%	27.75%	47.05%
Male	107237	58072	2651	5097
% Male	53.75%	46.40%	72.25%	52.95%
Total	199505	125155	3669	9626
Hispanic or Latino				
Female	9263	3301	10	85
% Female	56.92%	43.13%	15.15%	34.98%
Male	7011	4352	56	158
% Male	43.08%	56.87%	84.85%	65.02%
Total	16274	7653	66	243
Asian				
Female	6295	3557	2	25
% Female	50.90%	47.34%	28.57%	30.86%
Male	6072	3957	5	56
% Male	49.10%	52.66%	71.43%	69.14%
Total	12367	7514	7	81
Some Other Race				
Female	3913	1111	4	19
% Female	62.09%	37.60%	21.05%	13.87%
Male	2389	1844	15	118
% Male	37.91%	62.40%	78.95%	86.13%
Total	6302	2955	19	137

2020 BRPD Suspect/Arrestee Demographics					
Race	Female	Male	Total	F %	M%
Asian	2	5	7	28.57%	71.43%
Black	1018	2651	3669	27.75%	72.25%
Hispanic	10	56	66	15.15%	84.85%
Indian	0	0	0	-	-
Middle Eastern	3	11	14	21.43%	78.57%
Other	1	4	5	20.00%	80.00%
White	204	431	635	32.13%	67.87%
Grand Total	1238	3158	4396	28.16%	71.84%

2020 BRPD All Contacts Demographics					
Race	Female	Male	Total	F %	M%
Asian	25	56	81	30.86%	69.14%
Black	4529	5097	9626	47.05%	52.95%
Hispanic	85	158	243	34.98%	65.02%
Indian	1	3	4	25.00%	75.00%
Middle Eastern	9	86	95	9.47%	90.53%
Other	9	29	38	23.68%	76.32%
White	985	1374	2359	41.75%	58.25%
Grand Total	5643	6803	12446	45.34%	54.66%

Due to the amount of data, these demographic studies are done based on a sample of the yearly data taken from April, August and December. Within this data, we have looked at “all contacts,” being defined as a citizen that has come in contact with the Baton Rouge Police Department (BRPD), despite their role in the report. We have also reviewed this data for those who are specifically categorized as “suspects” or “arrestees,” being defined as those suspected or responsible for the crime in the report and who are subsequently charged/arrested/booked. The city of Baton Rouge has approximately 229,493 citizens (approximately 48% female, 52% male). For consistency purposes, US Census Bureau data is utilized. According to the table above, the BRPD suspect/arrestee data shows that 28.16% are female and 71.84% are male. The number of citizens that BRPD comes in contact with are 45.34% female and 54.66% male. Of those that BRPD comes in contact with, majority are African American (77.34%), with White contacts coming in second at 18.95%. Of those that are suspects/arrestees by BRPD, majority are African American (83.46%), with White suspects/arrestees coming in second at 14.44%. Below is a table depicting the racial breakdown of those that have come in contact, whether arrested or not, with BRPD.

BRPD Interaction with Citizens by Race for 2020



	White	Black or African American	Hispanic or Latino	Asian	Some Other Race
■ All Contacts	18.95%	77.34%	1.95%	0.65%	1.10%
■ Susp and Arr	14.44%	83.46%	1.50%	0.16%	0.43%

2019 UCR National Arrest Data					
	Number of Persons Arrested			Percent	
	Total	Female	Male	Female	Male
Total	6,917,552	1,905,292	5,012,260	27.50%	72.50%
Violent Crime	359,092	75,625	283,467	21.10%	78.90%
Property Crime	788,636	297,005	491,631	37.70%	62.30%

The data in the table above confirms that the ratio of arrests by gender of 28.16% female and 71.84% male is consistent with the national averages for the last complete year available (2019) through the FBI (Table 42).

2019 UCR National Arrest Data							
	Number of Persons Arrested				Percent		
	Total	White/Cauc	Black/Af Am	Other	White/Cauc	Black/Af Am	Other
Total	6,816,975	4,729,290	1,815,144	272,541	69.40%	26.60%	4.00%
Violent Crime	355,244	209,848	129,346	16,050	59.10%	36.40%	4.50%
Property Crime	775,091	517,502	231,087	26,502	66.80%	29.80%	3.40%

The data in the chart above shows that, while the “other” race category (0.43%) remains consistent with the national averages, the ratio of arrests by race of 14.44% White and 83.46% Black are inconsistent with the national averages for the last complete year available (2019) through the FBI (Table 43).

Results of 2020 UOF study

- The “Response to Resistive Behavior” form does not include all the data elements required under the CALEA standard. This renders a proper analysis difficult.
- BRPD is in process of implementing a new policy for documenting the displaying of weapons. The displaying of a weapon will be documented in RMS365 under the use of force section.
- There does not appear to be any racial or gender bias in the use of force within the Baton Rouge Police Department. However, the Department recognizes that there is a disproportionate number of contacts and arrests made among African Americans and requires further examination. As part of the Collective Healing Grant, the Department of Justice has provided technical assistance and training to the Baton Rouge Police Department in Procedural Justice Policing and there are trained personnel in place to teach the Procedural Justice course. This has been included as part of the curriculum in the police academy and courses are scheduled throughout the year to make sure all officers complete the course.
- The current level of reporting of force used does not appear consistent with studies prior to 2012.
- There are issues with our Use Of Force/Response to Resistive Behavior form process:
 - The data entry process has changed – Internal Affairs now enters the data into a new system and the raw data is no longer available to the Statisticians for analysis.
 - The form is lacking information needed for a proper analysis.
 - Possible failure to report and create a use of force form by officers
 - Possible under reporting of “hands on” force