CITY OF BERKELEY

POLICE REVIEW COMMISSION

2019 ANNUAL REPORT

CITY OF BERKELEY
POLICE REVIEW COMMISSION

Commissioners - 2019

George Perezvelez, **Chair**
Gwen Allamby, **Vice-Chair**
Kitty Calavita
Michael Chang
Juliet Leftwich
Elisa Mikiten
Nathan Mizell
Ismail Ramsey

LaMonte Earnest (4-29 through 12-12-19)
Sahana Matthews (through 9-3-19)
Andrea Prichett (through 4-29-19)
Terry Roberts (through 8-15-19)
Michael Sherman (through 1-8-19)
Ari Yampolsky (through 4-16-19)

Mayor

Jesse Arreguin

Councilmembers

Rashi Kesarwani (District 1)
Cheryl Davila (District 2)
Benjamen Bartlett (District 3)
Kate Harrison (District 4)
Sophie Hahn (District 5)
Susan Wengraf (District 6)
Rigel Robinson (District 7)
Lori Droste (District 8)

City Manager

Dee Williams-Ridley

Deputy City Managers

Paul Buddenhagen
David A. White

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To the City and Community of Berkeley:

The Berkeley Police Review Commission would like to present its 2019 Statistical Report. 2019 was a policy-immersed year for the Commission. The Commission created several subcommittees, such as the Lexipol Policies Subcommittee, which was formed to consider a revision of all General Orders. The subcommittee started the review of all 100 plus operational policies impacting the Police Department and the community. Of particular note, the subcommittee tackled the continued implementation of the Body Worn Camera, Surveillance Technology and Impartial Policing policies as well as all Mutual Aid Pact agreements. The Commission also created a separate Use of Force Policy subcommittee to ensure a more thorough review of that matter.

In addition, the Commission continued the work of the subcommittee charged with reviewing the 1973 enabling ordinance and made recommendations to the City Council on a prospective 2020 ballot measure to update the ordinance. This subcommittee was integral in reviewing all the agreements with the Police Department and the Union as well as re-assessing the parameters of oversight within the city of Berkeley. Of note were the revisions associated with the standard of proof, increased investigation timelines and recommendations on discipline. The Commission would like to thank Mayor Jesse Arreguin for his leadership on this effort and steadfast commitment to the work of oversight.

The Commission participated in the Regional NACOLE conference in Oakland where the Chair gave the closing remarks. The commission also participated in the annual conference in Detroit Michigan. The Chair was the shepherd of a panel on Body-worn Cameras and Law Enforcement Oversight: "Three Case Studies on Accessibility, Implementation, and Implications for the Field."

The commissioners finalized a process for acknowledging officers and other BPD staff for outstanding recognition beyond the call of duty. The Commission also finalized internal regulations centered on streamlining the election process and engaged in the implementation and review of documents released under the passage of SB-1421. The Commission would like to thank California Senator Nancy Skinner for her commitment to transparency.

Professional training was conducted on policies related to the Use of Force, De-escalation Techniques and Mental Health Response Teams. The Commission continued its participation in the annual National Night Out program and Juneteenth celebration. The Chair attended the International Association of Chiefs of Police conference in Chicago. The Commission would like to thank Chief Andrew Greenwood and the department for their continued commitment to training.

Police oversight is driven by a commitment to transparency, accountability and public safety. During 2019, the Commission continued to strengthen its working relationship with the Berkeley Police Department and conducted its work in a manner that best meet the needs and interests of the Citizens of Berkeley.

On behalf of the PRC, I would like to thank the Berkeley chapters of the ACLU and NAACP as well as the myriad of Berkeley residents and activists for their support and advocacy. I would also like to thank the Berkeley Police Department for its tireless efforts to keep our Community safe.

Respectfully,

George Perezvelez
Police Review Commission
Chair 2019

Police Review Commission (PRC)

July 8, 2020

Dee Williams-Ridley
City Manager
2180 Milvia Street
Berkeley, CA 94704

Dear Ms. Williams-Ridley,

I am pleased to present to you the 2019 Annual Report for the Police Review Commission. The purpose of this report, provided in accordance with the PRC's enabling ordinance (Ord. No. 4644-N.S.), is to furnish statistical data regarding the number of complaints received, their general characteristics, and manner of conclusion.

For cases that have proceeded to Board of Inquiry Hearings, the data also includes the number of hearings, the various categories of allegations heard, and whether the allegations against an officer were sustained, not sustained, unfounded, or exonerated. This report also contains data on the ethnicity, gender and ages of complainants, as well as comparisons to statistics from the previous four years.

Finally, this report describes the other work the Police Review Commission and staff took on in 2019. The full Commission and a subcommittee devoted substantial time to reviewing the Police Department's conversion of its general orders and other directives into the Lexipol policy system, work that started in 2018 and will continue into 2020. The Commission began an inquiry into the practices of asking detainees about their probation and parole status and of searching those on probation or parole. And, the Commission completed its review of the policy governing the use of body-worn cameras.

As you know, staff devoted considerable time working on responses to Public Records Act requests for records newly releasable under SB 1421. And, staff helped plan and execute a highly successful regional conference of the National Association for Civilian Oversight of Law Enforcement.

Respectfully submitted,

Katherine J. Lee
Police Review Commission Officer

2019 PRC ANNUAL REPORT
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I. EXECUTIVE SUMMARY 2019

Meetings

In 2019, the Commission held 50 regular and subcommittee meetings, and Board of Inquiry hearings. By comparison, 53 such proceedings were held in 2018.

Complaints

The Commission received 17 individual complaints and 2 policy complaints in 2019. In 2018, the Commission received 13 individual complaints and no policy complaints.

Complainants

The demographic distribution of individual complainants in 2019 was: 10 females, 8 males, 1 transgender; 7 Caucasians, 6 Blacks, 2 Hispanics, and 4 multi-ethnic or other race. Complainants ranged from 19 to 76 years of age.

Board of Inquiry (BOI) Proceedings

The Commission held 3 BOI proceedings (2 hearings and 1 complaint dismissal) in which a panel of commissioners considers allegations against police officers. One finding of police misconduct was sustained, on an allegation of discourtesy, out of 10 total allegations.

***Caloca* Appeals**

Subject officers may seek review of a BOI "sustained" finding through a *Caloca* appeal. In 2019, one sustained finding was appealed; it was upheld following a hearing.

Policy Review Highlights

A PRC subcommittee recommended and sent to the Commission for its review new proposed ways to approach detainees in asking their probation or parole status, and limitations on searching those on probation or parole

The Commission recommended, and the Police Department adopted, a policy to protect sex workers who are witness to or a victim of violent crime.

The Commission continued to review the conversion of BPD General Orders to the Lexipol policy system, a standardized format that allows for tailoring to an agency's specific needs.

Staff Work

PRC staff spent considerable time identifying records responsive to requests for police personnel records that were formerly confidential but are now disclosable under a new law.

Staff worked with the BART police oversight agency and the National Association for Civilian Oversight of Law Enforcement to co-host a Regional Conference in May, which drew almost 300 attendees.

Berkeley Police Department
At the end of 2019, BPD had 169 sworn police officers and received 76,489 calls for service. (This figure includes phone calls to BPD requesting service, calls resulting from an officer personally observing a situation requiring service, and direct contacts to BPD by a person requesting help).

II. INTRODUCTION

Berkeley's Police Review Commission (PRC) was established by voter initiative in 1973. As one of the oldest civilian oversight agencies in the nation and the first one authorized to conduct investigations, the PRC continues to be an important model and source of information for oversight bodies across the United States.

III. MISSION STATEMENT

The mission of the Police Review Commission is to provide for community participation in setting and reviewing police department policies, practices, and procedures, and to provide a means for prompt, impartial, and fair investigation of complaints brought by individuals against the Berkeley Police Department.

IV. STAFF

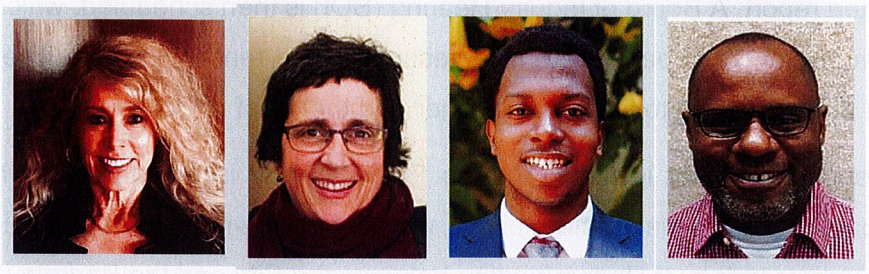
The PRC Office is a division of the City Manager's Office with a staff of three:

- **The PRC Officer** administers the daily operations of the PRC office, supervises staff, oversees complaint investigations, and serves as Secretary to the Commission. As Secretary, the PRC Officer staffs commission meetings and provides managerial support in the execution of PRC policies and procedures.
- **The PRC Investigator** conducts in-depth investigations of civilian complaints against members of the Berkley Police Department, assists with special projects, and periodically serves as Acting Commission Secretary.
- **The Office Specialist III** manages the front office, provides administrative support to the PRC Officer and Investigator, prepares and maintains PRC records, and compiles statistics.

Maritza Martinez, Office Specialist III (joined staff in March 2001);
Byron Norris, PRC Investigator (joined staff in October 2009);
Katherine Lee, PRC Officer (joined staff in January 2014).

V. COMMISSIONERS

Nine Berkeley residents are appointed by the Mayor and members of the City Council to serve on the PRC. These Commissioners represent diverse backgrounds and viewpoints and therefore provide invaluable community perspectives. The Commission generally meets twice a month. Individual commissioners also attend subcommittee meetings and Board of Inquiry Hearings throughout the year. The Commissioners devote considerable volunteer time and effort toward fulfilling their duties.



Commissioners as of the end of 2019:

Top Row -- **Chair George Perezvelez, Vice-Chair Gwen Allamby, Kitty Calavita, Michael Chang.**

Middle Row – **Juliet Leftwich, Elisa Mikiten, Nathan Mizell, Ismail Ramsey.**

Other Commissioners who served in 2019:

Bottom Row – **LaMonte Earnest, Sahana Matthews, Andrea Prichett, Terry Roberts, Michael Sherman, Ari Yampolsky.**

VI. COMPLAINTS

1. INDIVIDUAL COMPLAINTS - Investigation

A complaint consists of one or more claims of alleged misconduct against one or more individual BPD officers. Timely-filed[1] complaints are investigated and prepared for hearing or, if the complainant and subject officer agree, referred for mediation. In some instances, cases are referred to the Commission for administrative closure. Cases may be submitted for closure for reasons such as: the complaint does not allege misconduct on its face or is frivolous; the investigative deadlines are not met; the complainant fails to cooperate; the complainant requests closure.

In cases where an investigation is completed, the PRC investigator interviews the complainant, subject officer, and witnesses; collects other evidence; and prepares a written report. A Board of Inquiry Hearing (BOI) is then scheduled, which consists of three Commissioners impaneled to hear testimony and render findings. The findings from the BOI are forwarded to the City Manager and the Chief of Police.

When a complaint is filed with the PRC, a copy is forwarded to the Berkeley Police Department's Internal Affairs Bureau, which conducts its own, separate investigation. Under the Memorandum of Understanding between the City and the Berkeley Police Association, any discipline that involves a loss or reduction of pay or discharge must occur within 120 days of the incident giving rise to the disciplinary action or the date the City had knowledge of the incident. While the PRC does not impose or recommend discipline, the City Manager and Chief of Police may consider the PRC's BOI findings when considering discipline, if the findings are issued in time to meet the 120-day deadline.

Separate from the disciplinary process, subject officers can appeal PRC sustained allegations, which are heard by the state Office of Administrative Hearings. (See page 19.)

The standard of proof – the amount of evidence required at a BOI to sustain an allegation – is "clear and convincing evidence." This standard is higher than a preponderance of the evidence but lower than beyond a reasonable doubt. The four categories of findings are:

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[1] Complaints must be filed within 90 calendar days of the alleged misconduct, unless a complainant is incapacitated or otherwise prevented from filing a complaint. A complaint filed between 91 and 180 calendar days of the alleged misconduct can be accepted as a late-file if at least 6 Commissioners find, by clear and convincing evidence, good cause for the complainant's failure to timely file.

1. ***Sustained***: the alleged act did occur, and was not justified;
2. ***Not Sustained***: the evidence fails to support the allegation, however it has not been proven false;
3. ***Unfounded***: the alleged act did not occur; and
4. ***Exonerated***: the alleged act did occur but was lawful, justified and proper.

Complainant Advocates. Since the fall of 2017, students at UC Berkeley Law School have, through the Berkeley Police Review Project, assisted people who file individual complaints with the PRC and desire representation throughout the process. These services are provided free of charge. Law students have since helped several complainants prepare for their cases. Because subject officers are usually represented at hearings, the Commission believes that complainants feel less intimidated and better prepared having an advocate assist them before and during the hearing.

MEDIATION – an alternative to investigation

After an individual files a complaint, he or she may opt for mediation. This will go forward if the officer who is the subject of the complaint agrees. Mediations are conducted by an independent, professional mediator. A mediation gives both the complainant and the subject officer the opportunity to speak and respond to each other in a respectful environment. At the conclusion of mediation, the complaint is closed and the Commission is notified. Once mediation is completed and the complaint closed, the complainant cannot opt for an investigation.

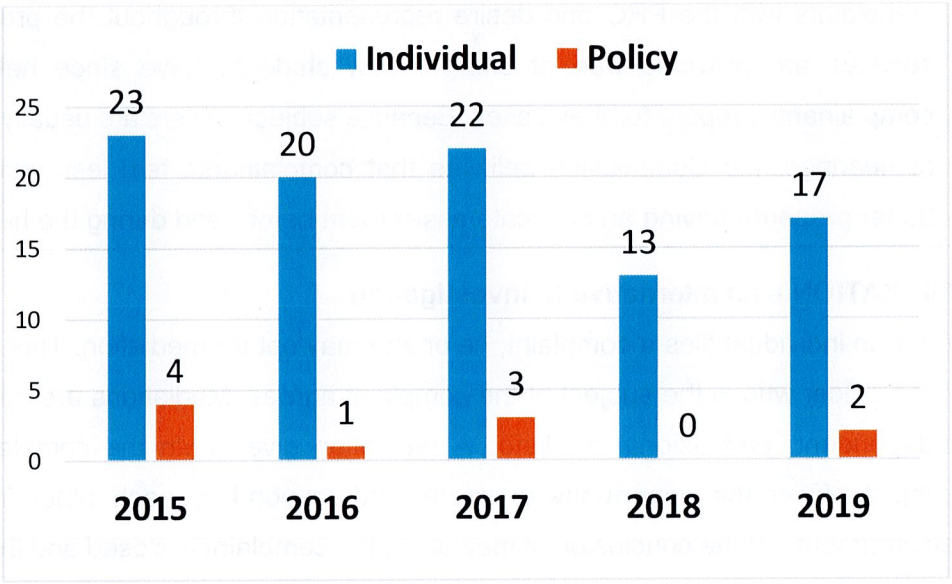
2. POLICY COMPLAINTS

A policy complaint is a request from a member of the public to the Commission to review a particular BPD policy, practice, or procedure, because the complainant believes that the policy could be improved or should be revised. Complaints or concerns about BPD policies are presented by staff to the full commission at a regular meeting. The Commission may conduct its own review; form a subcommittee to review the policy, or ask staff to conduct an investigation or take other action, and present a report at a future meeting. After conducting its own review, or receiving a report from a subcommittee or staff, the PRC may close the complaint without further action or recommend changes in policy, practice or procedures to the BPD and the City Manager.

VII. STATISTICS 2015 - 2019

1. COMPLAINTS RECEIVED

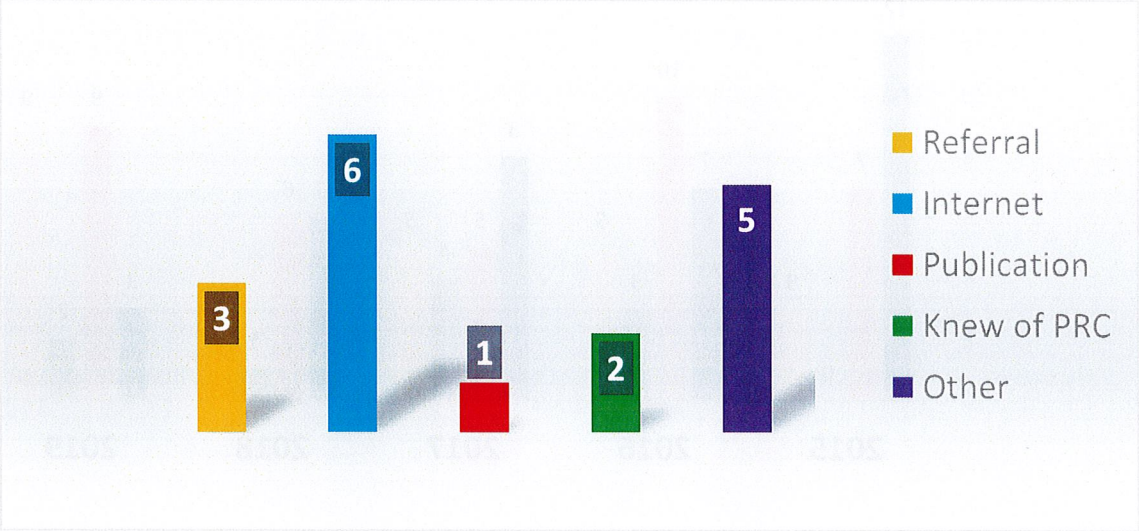
In 2019, the PRC received a total of 19 complaints, of which 17 were individual complaints and 2 were policy complaints. The average number of complaints filed yearly over the past five years is 21.



COMPLAINTS RECEIVED	2015	2016	2017	2018	2019
Individual	23	20	22	13	17
Policy	4	1	3	0	2
Total	**27**	**21**	**25**	**13**	**19**

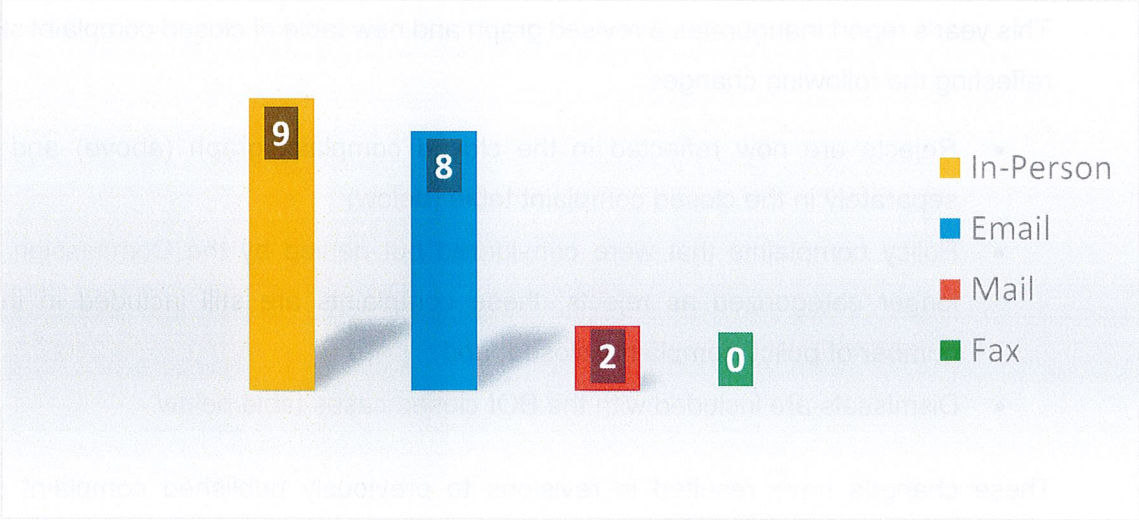
How Complainants in 2019 Heard About the PRC

On the complaint forms, complainants are asked to check a box stating how they learned about the Police Review Commission. Seventeen of the 19 complainants in 2019 responded.

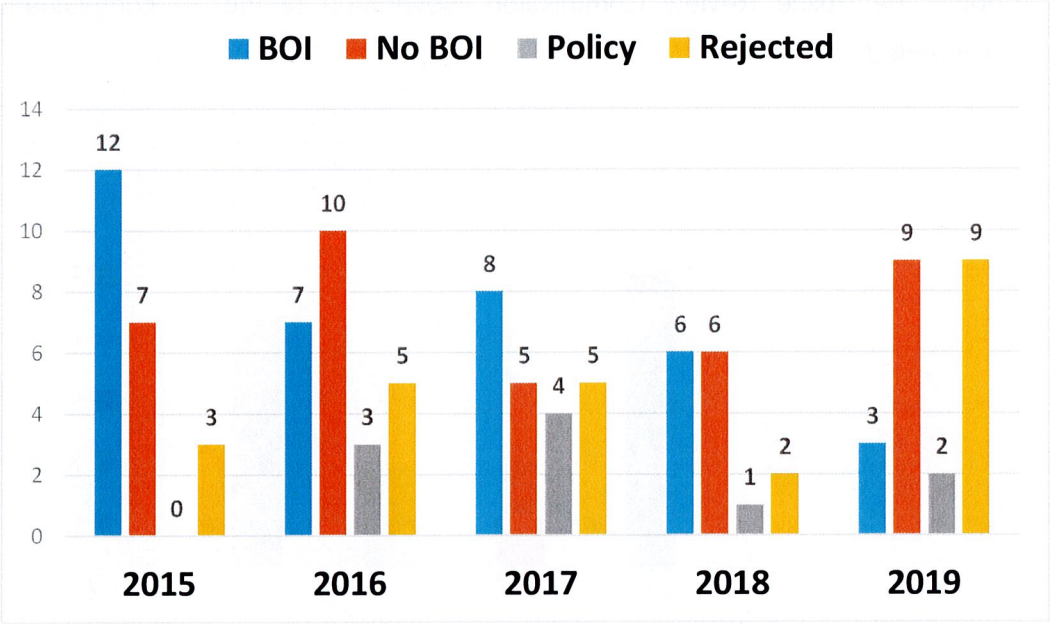


How Complainants Filed with the PRC in 2019

Persons may file individual and policy complaints by e-mail, U.S. mail, fax, or in person at our offices.



2. COMPLAINTS CLOSED



Complaints are closed as a result of a *Board of Inquiry (BOI)*, *administrative closure,* or as a *reject.* [2] PRC staff will reject individual or policy complaints that do not meet the minimum filing requirements of a valid complaint. For example, the person filing an individual complaint was not the aggrieved party, or the policy complaint failed to identify a police policy or practice necessitating a Commission review. In 2019, the PRC experienced a higher than usual number of rejects.

This year's report inaugurates a revised graph and new table of closed complaint statistics reflecting the following changes:

- Rejects are now reflected in the closed complaint graph (above) and shown separately in the closed complaint table (below);
- Policy complaints that were considered but denied by the Commission are no longer categorized as rejects; these complaints are still included in the total number of policy complaints closed; and
- Dismissals are included with the BOI closed cases table below.

These changes have resulted in revisions to previously published complaint closure statistics for years 2015 to 2018.

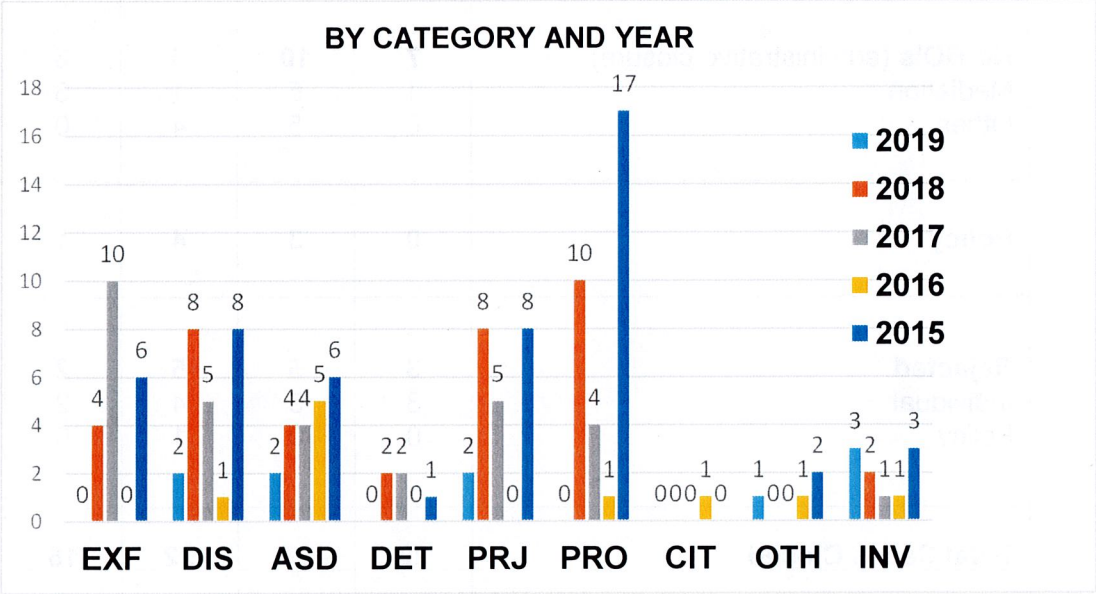
[2] Note that a complaint is not necessarily closed in the same year that it is received.

COMPLAINTS CLOSED	2015	2016	2017	2018	2019
BOIs	**12**	**7**	**8**	**6**	**3**
Hearings	8	5	8	5	2
Dismissals (failure to appear)	4	2	0	1	1
No BOIs (administrative closure)	**7**	**10**	**5**	**6**	**9**
Mediation	1	5	1	6	3
Other	6	5	4	0	6
Policy	**0**	**3**	**4**	**1**	**2**
Rejected	**3**	**5**	**5**	**2**	**9**
Individual	3	5	4	2	9
Policy	0	0	1	0	0
Total Cases Closed	**22**	**25**	**22**	**15**	**23**

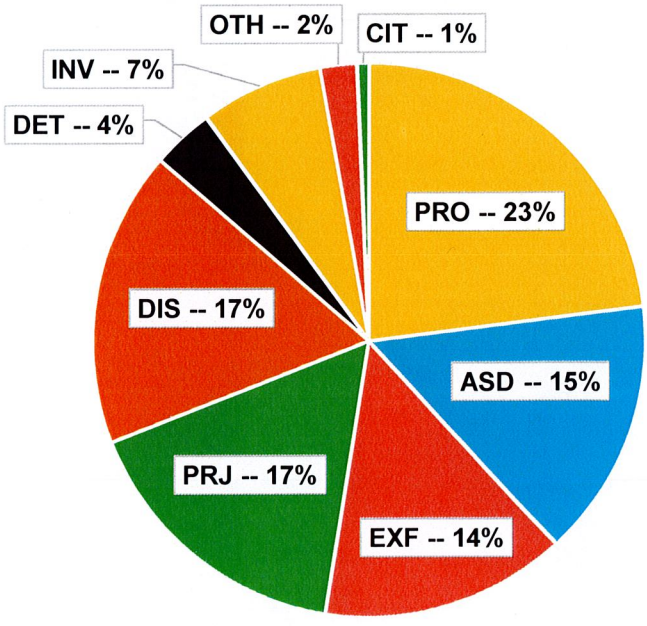
3. ALLEGATIONS HEARD AT BOARDS OF INQUIRY

Allegation categories:

EXF=Excessive Force
DIS=Discourtesy
ASD=Improper Arrest, Search, Seizure, or Stop/Detention
DET=Improper Detention Procedures
PRJ=Discrimination
PRO=Improper Police Procedures
CIT=Improper Citation or Tow
OTH=Other (see p. 13 for examples)
INV=Improper Investigation
HAR=Harassment (no allegations heard 2015 – 2019)



BY PERCENTAGE, for the years 2015-2019 combined



4. FINDINGS ON ALLEGATIONS HEARD AT BOARDS OF INQUIRY

In 2019, a Board of Inquiry hearing was convened in three cases to make findings on allegations. One hearing did not go forward, however, as the complainant failed to appear. The PRC Regulations require dismissal in such situations (which is distinct from a Summary Dismissal of an allegation).

Ten allegations were decided in the remaining two cases. Whether separate types of allegations are lodged against one officer in the same case, or one type of allegation is made against multiple officers, each allegation against each officer is counted individually. For example, if an allegation of discourtesy is made against three officers, the statistics will reflect three separate allegations for that case.

Of the 10 allegations considered in 2019, 1 was sustained, none were not sustained or exonerated, 5 were unfounded, and 4 were summary dismissals. A Summary Dismissal occurs when the BOI determines an allegation is wholly without merit.

For the Board of Inquiry to make a finding, a majority (at least two of the three commissioners on the BOI) must agree on the same finding.

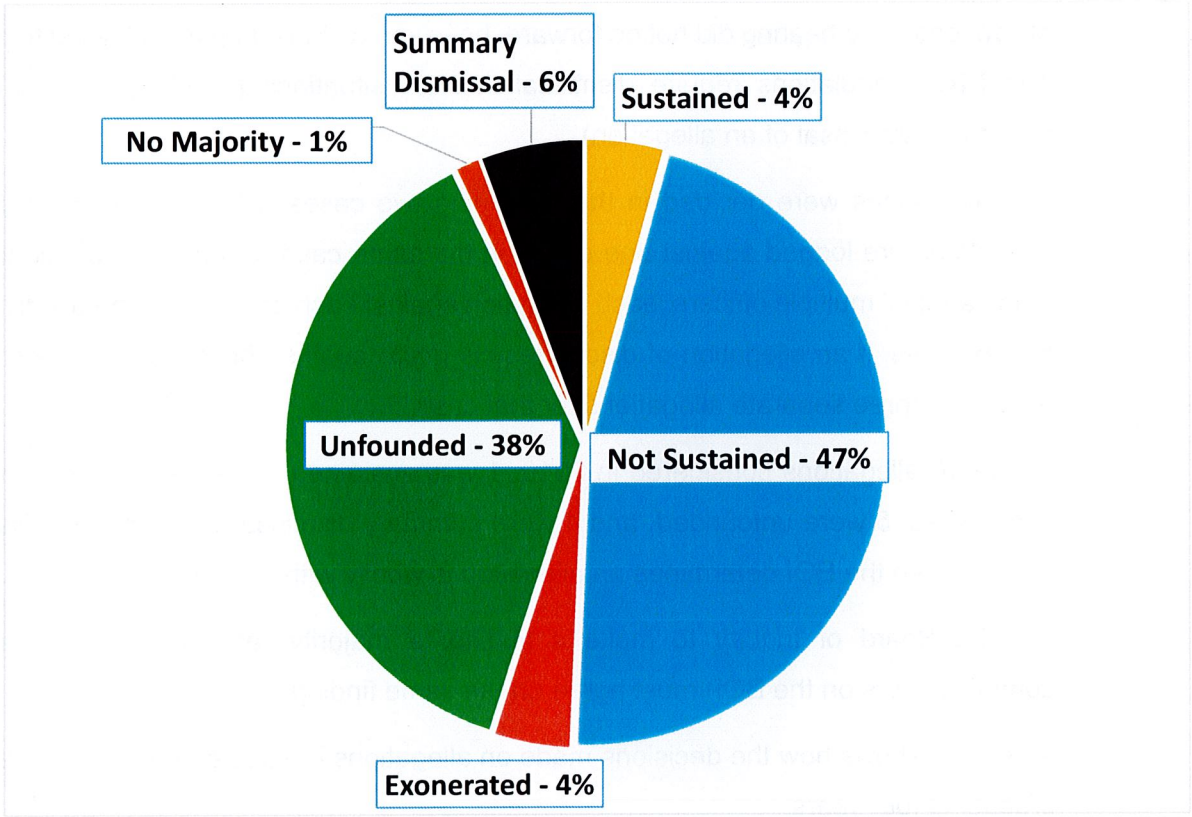
This table shows how the decisions made on allegations in 2019 compare to those of the preceding four years.

Finding Categories	2015	2016	2017	2018	2019
Sustained	1	2	0	2	1
Not Sustained	24	3	15	23	0
Exonerated	2	1	3	0	0
Unfounded	22	2	11	13	5
Summary Dismissal	0	2	2	0	4
No Majority Vote[3]	2	0	0	0	0
Total	**51**	**10**	**31**	**38**	**10**

[3] A "No Majority Vote" in 2015 occurred when each of the three commissioners voted differently. When there is no majority finding in a case, the matter is essentially dropped.

BOARD OF INQUIRY FINDINGS

(Percentage by category, for the years 2015 – 2019 combined)



RATES OF "SUSTAINED" FINDINGS 2015 – 2019

The percentage of allegations sustained of the total number of allegations heard at a Board of Inquiry Hearing for 2015-2019 are shown on this table.* No allegations were sustained in 2017.

2019	1 of 10 allegations sustained	10%
2018	2 of 38 allegations sustained	5%
2017	0 of 31 allegations sustained	0%
2016	2 of 10 allegations sustained	20%
2015	1 of 51 allegations sustained	2%

DECISIONS ISSUED WITHIN 120 DAYS OF THE COMPLAINT

Of the two cases in which a BOI hearing was convened in 2019, findings were issued within 120 days of the complaint date in one of them. In the other case, the hearing was continued at the complainant's request, and that delay meant the findings could not be issued within 120 days.

5. FINDINGS ON ALLEGATIONS HEARD AT BOARDS OF INQUIRY

(Detailed by finding and type of allegation)

Board of Inquiry Hearings 2019											2 Cases
Categories	**EXF**	**DIS**	**ASD**	**DET**	**PRJ**	**HAR**	**PRO**	**CIT**	**OTH**	**INV**	**Totals**
Sustained	0	1	0	0	0	0	0	0	0	0	**1**
Not Sustained	0	0	0	0	0	0	0	0	0	0	**0**
Exonerated	0	0	0	0	0	0	0	0	0	0	**0**
Unfounded	0	1	0	0	0	0	0	0	1	3	**5**
Summarily Dism.	0	0	2	0	2	0	0	0	0	0	**4**
Totals	**0**	**2**	**2**	**0**	**2**	**0**	**0**	**0**	**1**	**3**	**10**

Board of Inquiry Hearings 2018											6 Cases
Categories	**EXF**	**DIS**	**ASD**	**DET**	**PRJ**	**HAR**	**PRO**	**CIT**	**OTH**	**INV**	**Totals**
Sustained	0	1	0	0	0	0	1	0	0	0	**2**
Not Sustained	4	7	1	0	2	0	7	0	0	2	**23**
Exonerated	0	0	0	0	0	0	0	0	0	0	**0**
Unfounded	0	0	3	2	6	0	2	0	0	0	**13**
Totals	**4**	**8**	**4**	**2**	**8**	**0**	**10**	**0**	**0**	**2**	**38**

Board of Inquiry Hearings 2017											8 Cases
Categories	**EXF**	**DIS**	**ASD**	**DET**	**PRJ**	**HAR**	**PRO**	**CIT**	**OTH**	**INV**	**TOTALS**
Sustained	0	0	0	0	0	0	0	0	0	0	**0**
Not Sustained	5	1	1	0	3	0	4	0	0	1	**15**
Exonerated	0	2	0	1	0	0	0	0	0	0	**3**
Unfounded	3	2	3	1	2	0	0	0	0	0	**11**
Summarily Dism.	2	0	0	0	0	0	0	0	0	0	**2**
Totals	**10**	**5**	**4**	**2**	**5**	**0**	**4**	**0**	**0**	**1**	**31**

(See next page for explanation of allegation categories.)

Board of Inquiry Hearings 2016											5 Cases
Categories	**EXF**	**DIS**	**ASD**	**DET**	**PRJ**	**HAR**	**PRO**	**CIT**	**OTH**	**INV**	**TOTALS**
Sustained	0	0	1	0	0	0	0	0	0	1	**2**
Not Sustained	0	0	2	0	0	0	0	0	1	0	**3**
Exonerated	0	0	0	0	0	0	1	0	0	0	**1**
Unfounded	0	1	0	0	0	0	0	1	0	0	**2**
Summarily Dism.	0	0	2	0	0	0	0	0	0	0	**2**
Totals	**0**	**1**	**5**	**0**	**0**	**0**	**1**	**1**	**1**	**1**	**10**

Board of Inquiry Hearings 2015											8 Cases
Categories	**EXF**	**DIS**	**ASD**	**DET**	**PRJ**	**HAR**	**PRO**	**CIT**	**OTH**	**INV**	**TOTALS**
Sustained	0	1	0	0	0	0	0	0	0	0	**1**
Not Sustained	1	6	0	0	2	0	13	0	0	2	**24**
Exonerated	0	0	1	0	0	0	1	0	0	0	**2**
Unfounded	5	1	5	0	6	0	3	0	1	1	**22**
No Majority Vote	0	0	0	1	0	0	0	0	1	0	**2**
Totals	**6**	**8**	**6**	**1**	**8**	**0**	**17**	**0**	**2**	**3**	**51**

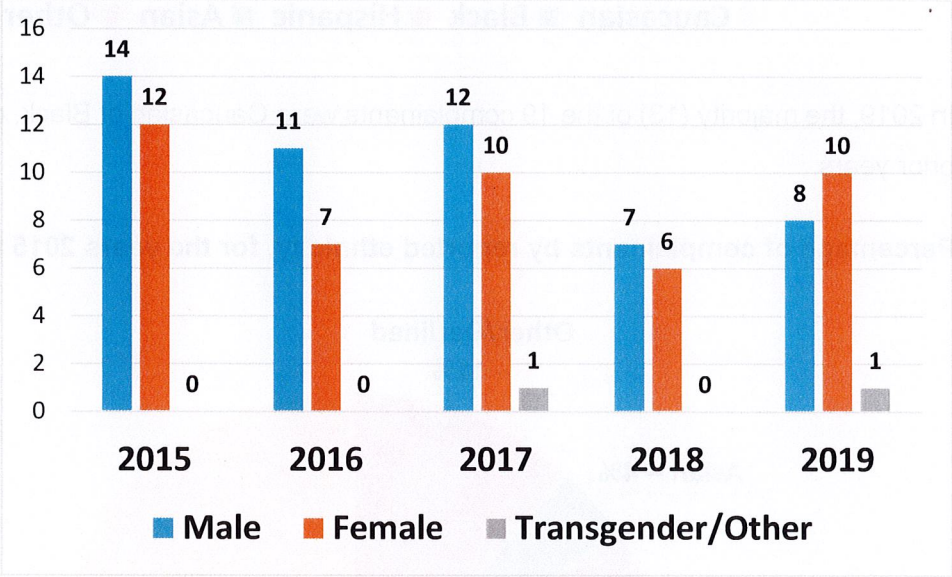
Allegation Categories
EXF=Excessive Force
DIS=Discourtesy
ASD=Improper Arrest, Search, Seizure, or Stop/Detention
DET=Improper Detention Procedures
PRJ=Discrimination
HAR=Harassment
PRO=Improper Police Procedures
CIT=Improper Citation or Tow
OTH=Other (includes Abuse of Discretion, Breach of Confidentiality, Failure to Identify Oneself, Lack of Discretion, Threat, Abuse of Authority, and Retaliation)
INV=Improper Investigation

6. COMPLAINANT DEMOGRAPHICS

Those who file individual complaints and policy complaints are asked to report their ethnicity, gender, and age, so that the PRC can track this information for statistical purposes. These statistics reflect demographic information when provided by the complainant.

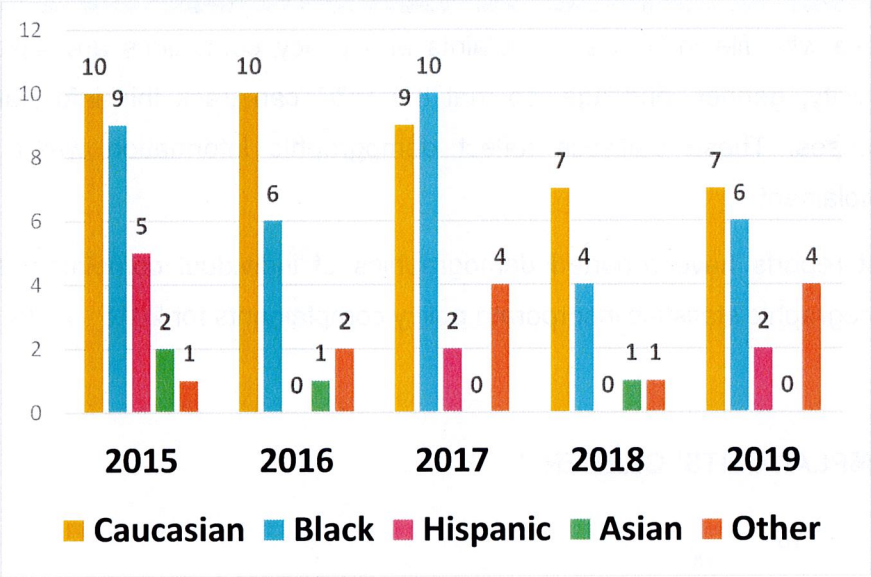
Past reports have reported demographics of individual complainants only; this year, demographic statistics incorporate policy complainants for 2015 - 2019.

COMPLAINANTS' GENDER



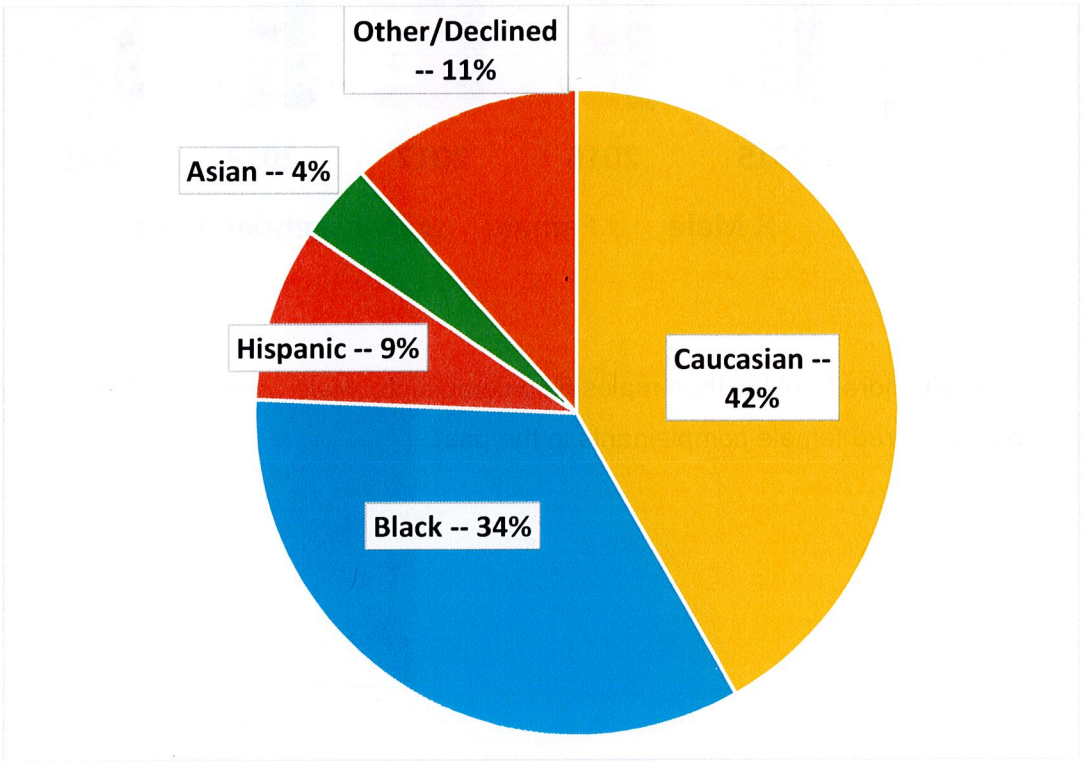
In 2019, more females than males filed complaints. Male complainants have consistently outnumbered female complainants in the past.

COMPLAINANTS' ETHNICITY



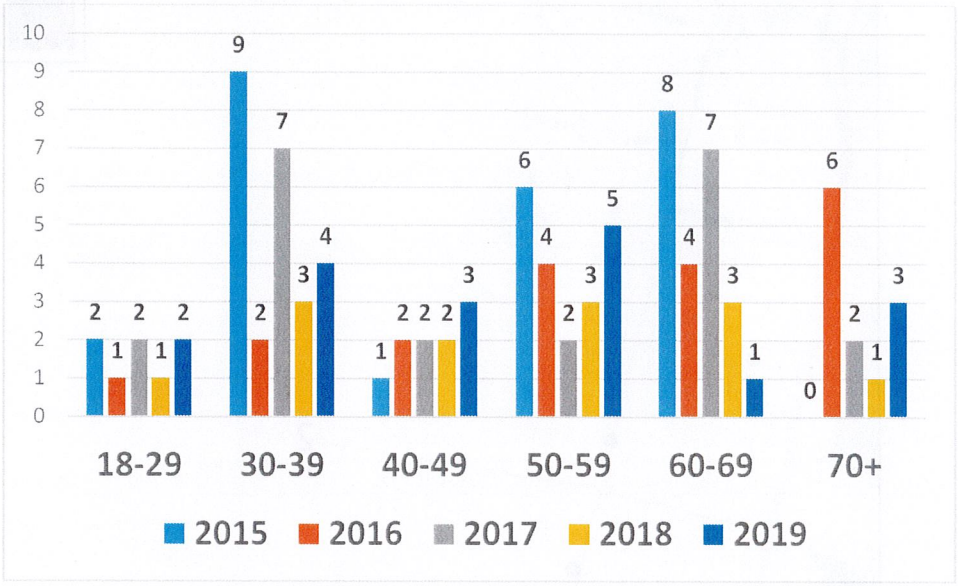
In 2019, the majority (13) of the 19 complainants were Caucasian or Black, consistent with prior years.

Percentage of complainants by reported ethnicity, for the years 2015 to 2019 combined.

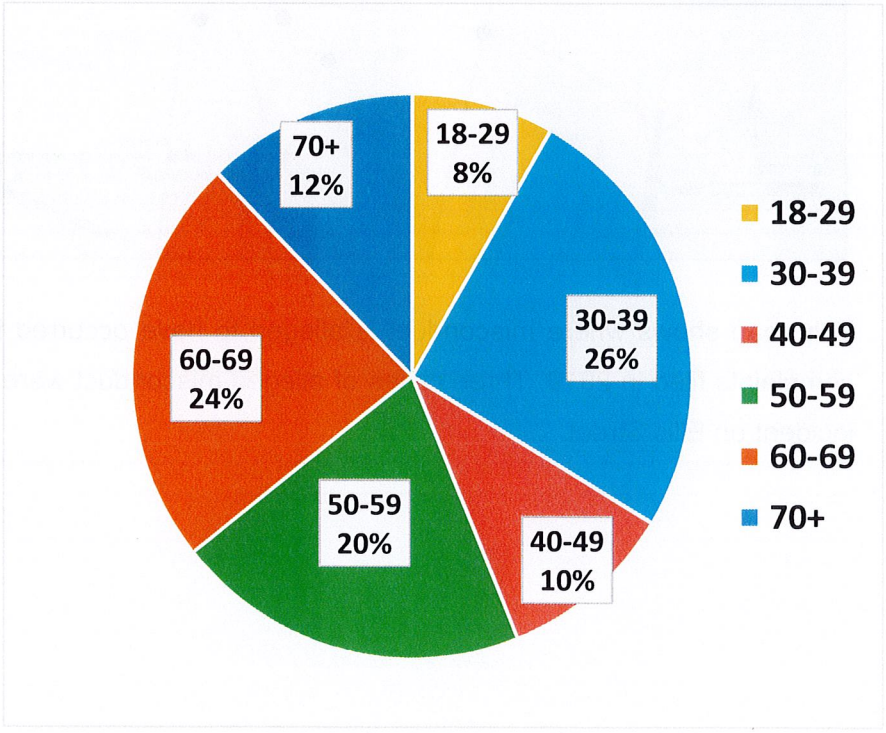


COMPLAINANTS BY AGE GROUP

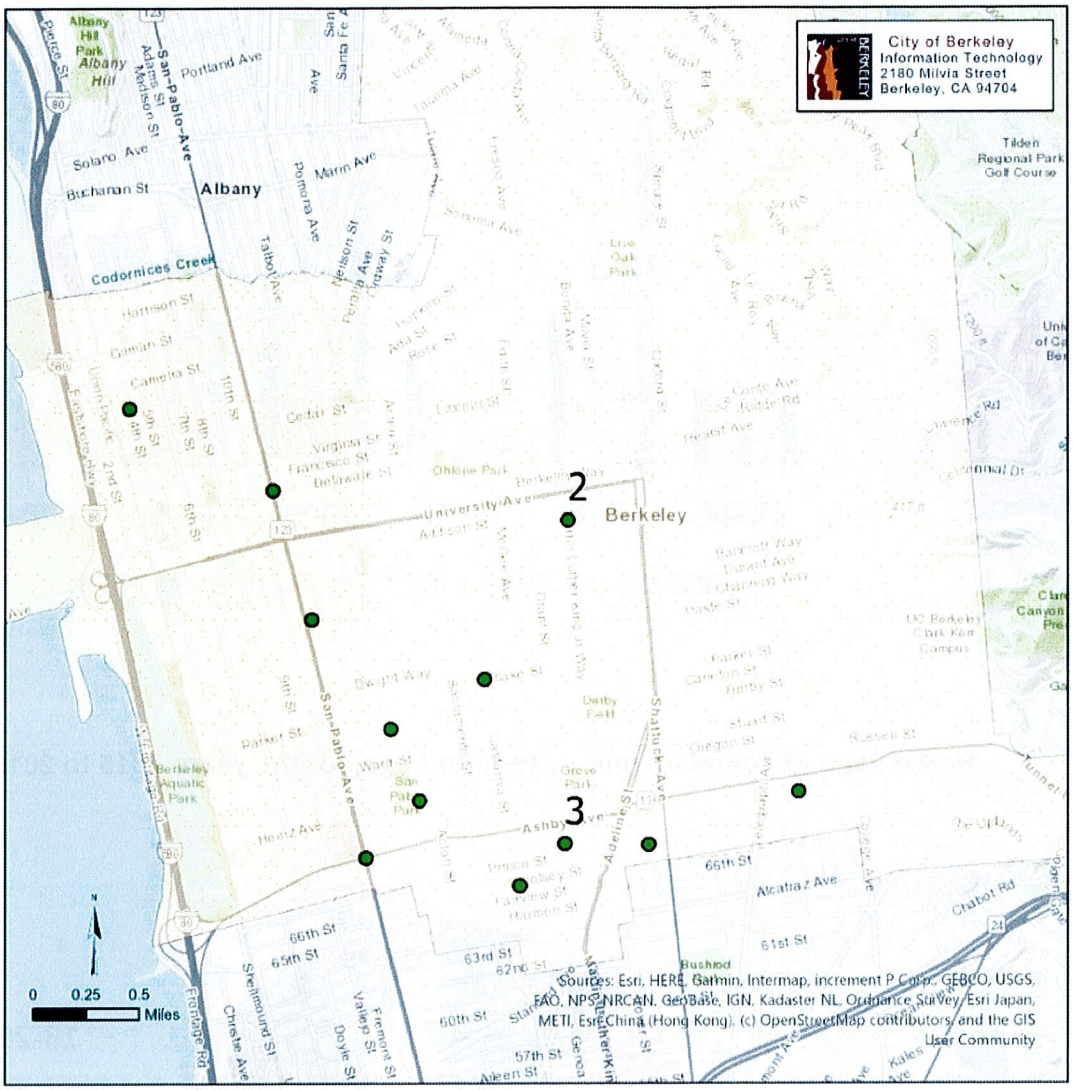
Of the 19 people who filed complaints in 2019, one did not report their age.



Percentage of complainants by reported age, for the years 2015 to 2019 combined.



7. INCIDENT LOCATION MAP FOR 2019



This map shows where misconduct is alleged to have occurred for the individual complaints filed in 2019. Three cases of alleged misconduct were filed for a single incident on Ellis Street.

8. APPEALS OF BOARD OF INQUIRY FINDINGS - *CALOCA*

Police officers can appeal findings of misconduct that are sustained at a Board of Inquiry Hearing. These are referred to as *Caloca* appeals, in reference to the court cases that established the officers' right to appeal.[4]

In the *Caloca* appeal process, an administrative law judge (ALJ) from the State Office of Administrative Hearings conducts an *"independent re-examination"* of the decision. The PRC must prove, by clear and convincing evidence, that the sustained finding should be upheld.

One *Caloca* appeal was filed in 2019, and it was heard and decided that year. In that case, the ALJ upheld the PRC's sustained finding.

This table shows the outcome of appeals decided each year from 2015 to 2019.

Year	PRC Sustained Findings Appealed	*Caloca* Ruling
2019	(1 case) 1 allegation	1 allegation upheld (*Sustained)*
2018	(1 case) 1 allegation	1 allegation overturned (*Unfounded*)
2017	(1 case) 1 allegation	1 allegation upheld *(Sustained)*
2016	(1 case) 1 allegation	1 allegation upheld *(Sustained)*
2015	(1 case) 1 allegation	1 allegation overturned *(Not Sustained)*

[4] See *Caloca v. County of San Diego* (1999) 72 Cal.App.4th 1209 and *Caloca v. County of San Diego* (2002) 102 Cal.App.4th 433.

VIII. POLICY REVIEW, TRAINING, OUTREACH, AND OTHER WORK

1. POLICY REVIEW by full Commission

A policy review is an examination by the commission of a particular BPD policy to determine whether the department has faithfully executed the policy or whether to recommend changes to the policy. Policy reviews are initiated by one of three ways: a member of the public files a PRC Policy Complaint; the City Council refers a policy issue to the Commission; or the Commission on its own initiative votes to conduct a policy review.

Police Review Commission in Session

Body-Worn Camera Policy

The BPD began using body-worn cameras (BWCs) in October 2018, and a policy for their use was issued shortly before then. The PRC's review of that policy concluded and its recommendations were forwarded to the Police Chief in March 2019.

In 2019, PRC staff had its first opportunity to review footage from body-worn cameras as part of its complaint investigations, and Commissioners had their first chance to view BWC footage at Board of Inquiry hearings. Staff and Commissioners believe that their understanding of police officers' interactions with complainants is greatly enhanced by watching BWC video.

Surveillance Technology Use & Community Safety Ordinance

The aim of the Surveillance Technology Use & Community Safety Ordinance is to provide public discussions of potential intrusions into civil liberties and privacy rights implicated by using a particular surveillance technology, to ensure that any such intrusions are outweighed by the benefits of that technology. The City Council adopted this ordinance in 2018 based on a PRC proposal and, in late 2019, the City Manager made her first report to the Council under the Ordinance. In advance of the City Manager's report, the Police Chief sent acquisition and use policies for three surveillance technologies (body-worn cameras, automated license plate readers, and GPS trackers) to the PRC for review. The PRC reviewed the three surveillance technologies with the balancing test in mind and submitted its input to the Council.

Fair & Impartial Policing

Addressing apparent race-based disparities in policing outcomes continues to be a focus of the PRC. In November, Mayor Arreguin established a Working Group on Fair & Impartial Policing, naming a variety of stakeholders, including community members, academics, and police department personnel, to the body. PRC Commissioners Calavita, Mizell, and Ramsey were appointed to this working group, and Commissioner Ramsey was selected to be its chairperson. This group is tasked with analyzing relevant information and developing a departmental action plan to address disparities in police stops, searches, use of force, and yield rate from stops, and to build a foundation for a subsequent community process to build trust between Berkeley Police and the community. The working group plans to complete its work in 2020.

Spit Hoods

A BPD policy that received particular scrutiny was Policy 302, Handcuffing and Restraints, as some argued that the provision for using spit hoods should be banned as unnecessary and inhumane. The PRC recommended a policy allowing the use of spit hoods, with some modifications, while also endorsing the BPD's commitment to crisis intervention training (CIT) and de-escalation tactics, and use other methods of restraint when possible. The City Council was asked to weigh in on the use of spit hoods, but could not agree on a policy change. The BPD issued Policy 302 with the PRC's recommendations.

2. POLICY REVIEW by Subcommittees

Ad-hoc (temporary) subcommittees are established as needed to address BPD policy issues and policy complaints by members of the community, and to research and provide recommendations to the full Commission pertaining to other police-related issues or to respond to referrals from the City Council.

Each subcommittee is comprised of two to four commissioners, appointed by the PRC Chairperson. The PRC Ordinance allows for members of the general public to serve on subcommittees. Representatives from the Berkeley Police Department often attend PRC subcommittee meetings. The following subcommittees were active in 2019:

Lexipol Policies

Commissioners Perezvelez (Chair), Ramsey, Yampolsky, Mikiten

This subcommittee began its work in mid-2018, and in 2019 met 17 times to continue its sizeable task of reviewing the BPD's operational and administrative policies, rules, and procedures, as they are transitioned from General Orders, Police Regulations, and Training and Information Bulletins to the Lexipol policy format. Lexipol policies are standardized to ensure adherence with state law and best practices, but also allow for tailoring to local agency needs and standards.

The subcommittee is reviewing the converted policies by comparing them to the former policies and probing BPD staff, present at all subcommittee meetings, about new policies or substantive policy changes. Groups of policies approved by the subcommittee are periodically brought to the full Commission for further review and approval. From 2018 through 2019, the Commission had considered nearly 100 policies. The Lexipol Subcommittee's work will proceed well into 2020.

Probation & Parole Searches

Commissioners Calavita (Chair), Allamby, Roberts

This group was established to study two issues: whether detainees should be asked, as a routine matter, whether they are on probation or parole; and whether non-consent searches should be performed on all probationers and parolees. These are two of several areas for policy change that have been identified as necessary for fair and impartial policing.

The subcommittee's examination into the issues included review of practices in, and hearing directly from, other jurisdictions, especially the city of Oakland, which had recently revised its policies in these areas. The group's recommendations on the issue of asking

the probation or parole question, and on when non-consent searches could be conducted on probationers and parolees, were approved by the full Commission late in 2019. The search issue was passed with the stipulation that it would consider revisions from the BPD, to be submitted in 2020.

Prioritizing Safety for Sex Workers

Commissioners Ramsey (Chair), Calavita, Matthews
Public member Julie Leftwich

This subcommittee was formed in late 2018 to consider a policy to protect sex workers from arrest for certain offenses, so they can feel safe reporting that they are the victim of or witness to a sexual assault or other violent crime. The subcommittee's proposed policy (incorporated into Policy 318 on Victim and Witness Assistance) was approved with minor changes by the full Commission in late March 2019, and adopted by the BPD within ten days.

MOU Compendium Subcommittee
(Formerly Mutual Aid Pacts Subcommittee)

Commissioners Perezvelez (Chair), Allamby, Mikiten

The Commission forms a subcommittee each year to review BPD's mutual aid agreements and memoranda of understanding with other law enforcement agencies and organizations (referred to as the "MOU Compendium"). By ordinance, the BPD must submit this compendium to the City Council annually for review and approval. Of the dozens of agreements submitted by the BPD each year, the PRC generally focuses on the new or revised agreements, and selects others of particular interest.

The MOU Compendium Subcommittee met twice in 2019, and was on hiatus the remainder of the year awaiting information from the Police Department. Due to the press of other priorities, the BPD did not bring the MOU compendium to the City Council in 2019.

3. TRAINING AND OUTREACH

- The PRC Officer, the PRC Investigator, Chair Perezvelez, and Commissioner Mizell attended the **25th Annual NACOLE Conference** in Detroit in September. The National Association for Civilian Oversight of Law Enforcement is a network of agencies and individuals working to establish and improve oversight of law enforcement in the U.S. The conference gives PRC staff and commissioners the opportunity to attend training sessions and educational workshops, and to meet and compare notes with other oversight practitioners from around the country and the Bay Area about common and unique challenges of police oversight in their communities. As one of the oldest law enforcement

oversight agencies in the country, the PRC was featured in a commemorative booklet NACOLE published to recognize its 25 years of existence.

Chair Perezvelez at NACOLE Regional Conference

- PRC staff, along with their counterparts at the BART Independent Police Auditor's Office and NACOLE organized a **Regional NACOLE Training and Networking** event. This day-long affair, held in May in Oakland, attracted nearly 300 attendees, consisting of oversight agency staff, board and commission members – including several PRC members – legislators, academics, lawyers, law enforcement personnel and other interested community members. Most participants came from the Bay Area but others traveled from further around the state, and from Oregon, Washington, and Colorado. The day's sessions covered oversight of county jails, navigating California's new transparency laws, and best practices in oversight.

- At the Berkeley Police Chief's invitation, Chair Perezvelez joined him and other members of his staff in attending the annual conference of the **International Association of Chiefs of Police** in Chicago, in October. The Chair took advantage of the dozens of educational and training opportunities by attending 18 sessions in 3-1/2 days.

- The Police Department's response to those suffering from **mental health emergencies** has been a topic of concern to the PRC, as such calls represent a growing portion of the BPD's caseload. To better understand the City's response to such emergencies, staff from the Mental Health Division and the Police Department attended a

Commission meeting to make a presentation about the BPD's crisis intervention training, and about the protocols, staffing, and funding of both agencies.

- In October, BPD Sergeant Spencer Fomby and Lieutenant Joe Okies conducted a presentation for the PRC on the Department's **Special Response Team**. Commissioners learned about the history and structure of this team; the specialized tactical training that officers undergo; its various mission types; and real-life examples of the team's response in high-risk incidents.

- Several Commissioners staffed a table at the **Berkeley Juneteenth Festival** in June, to publicize the work of the Police Review Commission and the services available to members of the public. The Chair attended local **National Night Out** events in August, an evening of neighborhood bonding and crime prevention awareness.

4. OTHER WORK

Commission Restructuring – Charter Amendment

In 2018, the Police Review Commission submitted to the City Council a proposed amendment to the City Charter that would significantly strengthen the oversight body's powers and broaden its authority. The Council modified the proposal and directed the City Manager to commence meet-and-confer proceedings with affected unions. Those proceedings continued throughout 2019 with the expectation of concluding in 2020.

Police Department Commendations

The PRC regularly reviews letters of commendation of employees of the Police Department from both members of the public and fellow departmental employees. In recognition of the numerous examples of exemplary service to the community, the Commission extended its own appreciation and commendations to more than 150 sworn officers and civilian staff of the BPD in 2019.

SB 1421 Responses

A groundbreaking state law known as Senate Bill 1421 went into effect on January 1, 2019, allowing certain law enforcement personnel records – previously confidential – to be made public. The four categories of records now releasable in response to Public Records Act requests are those related to incidents where: 1) a law enforcement officer discharged a firearm at a person; 2) a law enforcement officer's use of force resulted in death or great bodily injury; 3) a sustained finding was made of sexual assault by a law enforcement officer; and 4) a sustained finding was made of a law enforcement officer's

dishonesty in the reporting, investigation, or prosecution of a crime or of misconduct of another law enforcement officer.

The Commission, the BPD, and other City departments were immediately met with requests for records in all categories. PRC staff was part of a multi-departmental team to ensure proper implementation of the law, and to coordinate and prioritize responses. After devoting considerable resources early in the year to timely respond to requests for the most recent records, research into past complaints continued at a more modest pace. The drop in number of complaints filed toward the end of the year allowed PRC staff to perform this work, saving the City the expense of hiring outside resources.

Guiding Principles

The Commission enacted a set of "Guiding Principles," in order to strengthen its relationship with the Police Department and the Berkeley Police Association. Among other things, it calls for seeking input from and the Department and the Union when discussing policies and practices, attending community events sponsored by the BPD, and collaborating with the BPD in interactions with the City Council and City Manager on matters related to staffing, equipment, and community outreach.

Informal Complaints

The Commission also adopted procedures for handling informal complaints, defined as complaints alleging misconduct against specific police officers that are not filed on the PRC complaint form. These complaints were formerly included in public agenda packets as communications until the PRC was advised that the privacy rights of police officers required even informal complaints against named officers had to be handled confidentially, in closed session.

IX. 2019 MEETINGS & HEARINGS

Type of Meeting or Hearing	Number
Regular PRC Meetings	19*
Boards of Inquiry (BOI)	3
Lexipol Policies	17
MOU Compendium	2
Probation & Parole Searches	8
Safety for Sex Workers	1
TOTAL	**50**

* The PRC's regular meeting of October 9, 2019, was canceled due to an anticipated public safety power shut-off.

2019 MEETING & HEARING DATES

January

9	Regular Meeting
14	Lexipol Policies
23	Regular Meeting

February

13	Lexipol Policies
13	Regular Meeting
27	Regular Meeting

March

6	MOU Compendium
8	BOI, Complaint #2446
13	MOU Compendium
13	Safety for Sex Workers
13	Regular Meeting
27	Lexipol Policies
27	Regular Meeting

April

1	BOI, Complaint #2449
10	Regular Meeting
24	Regular Meeting

May

1	Lexipol Policies
8	Lexipol Policies
8	Regular Meeting
14	BOI, Complaint #2448
22	Lexipol Policies
22	Regular Meeting

June

10	Probation & Parole Searches
12	Lexipol Policies
12	Regular Meeting
18	Probation & Parole Searches
18	Lexipol Policies
26	Regular Meeting

July

10	Lexipol Policies
10	Regular Meeting
11	Probation & Parole Searches
18	Probation & Parole Searches
18	Lexipol Policies
24	Lexipol Policies
24	Regular Meeting

August

7	Lexipol Policies
14	Probation & Parole Searches

September

3	Probation & Parole Searches
4	Lexipol Policies
4	Regular Meeting
18	Regular Meeting

October

8	Probation & Parole Searches
9	Lexipol Policies
22	Probation & Parole Searches
23	Lexipol Policies
23	Regular Meeting

November

13	Lexipol Policies
13	Regular Meeting

December

11	Lexipol Policies
11	Regular Meeting