

Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
REGULAR MEETING
AGENDA**

**Thursday, October 13, 2016
7:00 P.M.**

South Berkeley Senior Center
2939 Ellis Street, Berkeley

- 1. CALL TO ORDER & ROLL CALL**
- 2. APPROVAL OF AGENDA**
- 3. PUBLIC COMMENT**
(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers. They may comment on items on the agenda or any matter within the PRC's jurisdiction at this time.)
- 4. APPROVAL OF MINUTES**
Regular Meeting of September 21, 2016
- 5. CHAIR'S REPORT**
Reports on NACOLE conference and meeting with Sacramento representatives; other items.
- 6. OFFICER'S REPORT**
Status of complaints; reports on NACOLE conference and meeting with Sacramento representatives; other items.
- 7. CHIEF OF POLICE'S REPORT**
Crime, budget, staffing, training updates, and other items.
- 8. OLD BUSINESS (discussion & action)**
 - a. Status of General Order W-1, Right to Watch.
 - b. Review draft of response to City Manager's September 12, 2016 letter regarding the standard of proof used in BOI hearings.
 - c. Policy regarding publication of communications from the public to the PRC.
From: PRC Officer
 - d. Review of BPD marijuana enforcement report.
From: Commissioner Bernstein

- e. Decide whether to accept policy complaint #2406; if accepted, decide how to proceed.
From: PRC Officer
- f. Review draft letter regarding City Manager's excusal of officer from appearing at a Board of Inquiry
(To be delivered.)
- g. Commission's list of tasks and prioritization.
From: PRC Officer.

9. NEW BUSINESS (discussion & action)

- a. Certificate of appreciation for former Chief Meehan
From: Commission
- b. Proposed changes to Standing Rules regarding procedures for election of PRC Chair and Vice-Chair
From: Commissioner Perezvelez

10. SUBCOMMITTEE REPORTS AND RECOMMENDATIONS (discussion & action)

- a. General Orders C-64, etc. Subcommittee
Schedule next meeting date or consider dissolving.
- b. Fair & Impartial Policing Subcommittee
Update; schedule next meeting date.
- c. Mutual Aid Pacts Subcommittee
Update; schedule next meeting date.
- d. Media Credentialing Subcommittee
Update; schedule next meeting date.
- e. Surveillance and Community Safety Ordinance Subcommittee
Update; schedule next meeting date.
- f. Outreach Subcommittee
Consider additional appointment; schedule meeting date.

11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

Attached.

12. PUBLIC COMMENT

(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on items on the agenda at this time.)

Closed Session

Pursuant to the Court's order in *Berkeley Police Association v. City of Berkeley, et al.*, Alameda County Superior Court Case No. 2002 057569, the PRC will recess into closed session to discuss and take action on the following matters:

13. REVIEW DRAFT LETTER REGARDING CITY MANAGER'S EXCUSAL OF OFFICER FROM APPEARING AT A BOARD OF INQUIRY

14. VOTE ON ADMINISTRATIVE CLOSURE OF COMPLAINT
Case #2395

15. REVIEW OF CALOCA DECISION
Complaint #2380 (*Decision and brief to be distributed during closed session.*)

End of Closed Session

16. ANNOUNCEMENT OF CLOSED SESSION VOTE

17. ADJOURNMENT

Communications Disclaimer

Communications to the Police Review Commission, like all communications to Berkeley boards, commissions or committees, are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the PRC Secretary. If you do not want your contact information included in the public record, do not include that information in your communication. Please contact the PRC Secretary for further information.

 Communication Access Information (A.R.1.12)

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

SB 343 Disclaimer

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Police Review Commission, located at 1947 Center Street, 1st floor, during regular business hours.

Contact the Police Review Commission at (510) 981-4950 or prc@cityofberkeley.info.

PRC REGULAR MEETING ATTACHMENTS

October 13, 2016

MINUTES

September 21, 2016 Regular Meeting Page 7

AGENDA-RELATED

Item 8.b – Memo from City Manager dated September 12, 2016 re Standard of Proof; Letter from PRC to City Manager dated April 19, 2016. Page 13

Item 8.b – Draft Letter to City Manager regarding Standard of Proof for review. Page 17

Item 8.d – Semi-Annual Report of Marijuana Enforcement Activity during the period of January 1 through June 30, 2016; demographic breakdown. Page 19

Item 8.d – Semi Annual Report of Marijuana Enforcement Activity during the period of July 1 – December 31, 2013; and BPD response to PRC request for additional information. Page 25

Item 8.e– Policy Complaint #2406. Page 33

Item 8.g – PRC Priority List updated 10-6-2016. Page 39

Item 8.g – Prioritization of PRC requests to BPD updated 10-6-2016 Page 41

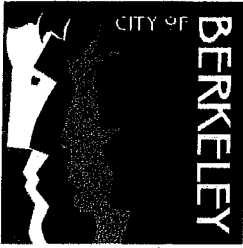
Item 8.g – PRC Subcommittees List updated 10-6-2016. Page 43

Item 9.c – Proposed PRC yearly Chair and Vice-Chair elections process. Page 45

COMMUNICATIONS

Study: Civilian Oversight of Law Enforcement. A Review of the Strengths and Weaknesses of Various Models. Page 47

Email from a citizen dated September 19, 2016 re positive feedback. Page 65



Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
REGULAR MEETING
MINUTES
(unapproved)**

**Wednesday, September 21, 2016
7:00 P.M.**

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. CALL TO ORDER & ROLL CALL BY CHAIR PEREZVELEZ AT 7:05 P.M.

- Present: Commissioner George Perezvelez (Chair)
Commissioner Terry Roberts (Vice Chair)
Commissioner Alison Bernstein
Commissioner Kimberly DaSilva
Commissioner Jerry Javier
Commissioner George Lippman (left 9:50 p.m.)
Commissioner Michael Sherman
Commissioner Kad Smith
Commissioner Ari Yampolsky (arrived 7:16 p.m.)
- Absent: None
- PRC Staff: Katherine J. Lee, PRC Officer
- BPD Staff: Acting Chief Andy Greenwood (left 8:07 p.m.), Capt. Dave Frankel (left 8:07 p.m.), Sgt. Ben Cardoza, Sgt. Sean Ross

2. APPROVAL OF AGENDA

The agenda was approved by general consent.

A moment of silence was observed for Terence Crutcher and Keith Lamont Scott, two lives lost to violence at the hands of police.

3. PUBLIC COMMENT

There were two speakers.

4. APPROVAL OF MINUTES

**Motion to approve Regular Meeting Minutes of September 14, 2016
Moved/Seconded (Bernstein/Roberts) Motion Carried**

Ayes: Bernstein, DaSilva, Javier, Lippman, Perezvelez, Roberts, Sherman, and Smith

Noes: None

Abstain: None

Absent: Yampolsky

5. CHAIR'S REPORT

- The Chair acknowledged the resignation of Chief Meehan, announced this morning, and reported he had spoken to several media outlets that requested comment.
- Wording for a certificate of appreciation to the Chief will be agendized for the next meeting.
- PRC Officer, Investigator, and Chair attending NACOLE conference Sept. 24 – 29.

6. PRC OFFICER'S REPORT

- No meeting next week; next meeting Thursday, October 13; after that October 26.
- Two complaints have been closed as mediation has been completed.
- PRC Officer and Investigator will be at NACOLE and out of office next Monday through Thursday; back in office Friday, Sept. 30. Ms. Martinez will be in office all week.
- PRC Officer and Chair will be meeting this Friday with various folks from Sacramento, who are seeking information about other oversight agencies in an effort to strengthen their existing model.

7. CHIEF OF POLICE'S REPORT

The Acting Chief reported:

- Currently 170 sworn; 10 are in academy and 3 in FTO. Recruiting for 7 academy spots late Dec./early Jan.
- In 2 weeks will be training on revised General Order C-64 -- all-day for 40 officers. Will include policy, tactics, and post-incident review.
- Currently 3 officers attending a train the trainer course on principled policing; they will return with tools to design an 8-hour course on procedural justice & police legitimacy. Hope to be on cutting edge of where profession is going on such issues.

Questions:

- How do you recruit such that you succeed at having a diverse dept.? Chief: Prefer if someone from Professional Standards Division talked about that at a future meeting. (PRC Officer to coordinate.)
- Welcome to Fair & Impartial Policing Subcommittee and farewell; who will replace you? Chief: Lt. Rico Rolleri will be Acting Capt. for Professional Standards.
- The 2 – 3 things you think you need to focus on? Chief: Vital to focus on staffing and short-term planning. Important to continue on path described yesterday [at F&IP Subcomm.], e.g., principled policing training. Immediate need to ensure dept. is on a steady course. Then develop 60- to 90-day plan. Overriding message is we're excellent people in an excellent and very capable dept. Calm steady move forward.
- PRC met with Chief & BPD last week on body-worn camera policy; important to continue discussion. Chief: Agree it's a high priority.

-- Beat analysis? Chief: Though move to 14 beats based on earnest, good-faith efforts, has resulted in some unintended consequences, including officers driving further and making more trips back to station to write reports. Looking at 16 beats as a possible solution.

-- Promotions to captain in light of Capt. Frankel retirement? Chief: Promotion will be drawn from the current captain's list. Currently, Lt. Kevin Schofield is Acting Capt. for Operations until Capt. Louis returns in a couple weeks.

8. 2015 CRIME REPORT

Acting Chief Greenwood and Capt. Frankel presented the 2015 mid-year crime report, and answered questions from Commissioners.

9. NEW BUSINESS (discussion and action)

- a. Review draft of response to City Manager's September 12, 2016 letter regarding the standard of proof used in BOI hearings.

Following discussion, this item was continued to the next meeting.

- b. Appointment of commissioner and public members to the Subcommittee on Surveillance and Community Safety Ordinance.

The Chair appointed Commissioners Yampolsky and Javier, to join Commissioners DaSilva and Bernstein on this Subcommittee.

After hearing Tracy Rosenberg and Brian Hofer speak about their experience on the subject matter and interest in serving, the Chair appointed them as public members of this subcommittee.

- c. Consideration of recommendations from General Orders C-64, etc. Subcommittee: i) Revised General Order C-64 (Crowd Management and Control); and ii) Commander's Guide to Crowd Management and Crowd Control.

Motion to approve and forward to the BPD proposed changes to General Order C-64 as agreed upon in the Subcommittee, conditioned upon review and approval of the Commander's Guide. The Commission notes its disappointment in the Department's delay in providing them with a draft of the Commander's Guide.

Moved/Seconded (Bernstein/Roberts) **Motion Carried**

Ayes: Bernstein, DaSilva, Javier, Perezvelez, Roberts, Sherman, Smith, and Yampolsky.

Noes: Lippman

Abstain: None

Absent: None

- d. Policy regarding publication of communications from the public to the PRC.
Item postponed to the next meeting.
- e. Review of BPD marijuana enforcement report.
Item postponed to the next meeting.
- f. Outreach: consider ways to effectively reach target audience, including possible formation of subcommittee.

Motion to create an outreach committee to explore ways to effectively reach their target audience.

Moved/Seconded (Bernstein/Smith) **Motion Carried**

Ayes: Bernstein, DaSilva, Javier, Lippman, Perezvelez, Roberts, Sherman, Smith, and Yampolsky.

Noes: None

Abstain: None

Absent: None

The Chair appointed Commissioner Bernstein and Commissioner Smith to this Subcommittee, with the possibility of a third appointment if another commissioner is interested.

- g. Decide whether to accept policy complaint #2406; if accepted, decide how to proceed.
Item postponed to the next meeting.
- h. Commission's list of tasks and prioritization.
Item postponed to the next meeting.

10. NEW BUSINESS (discussion & action)

- a. Evaluation and discussion of BPD's use and reliance on CalGang database in light of recent report from the state auditor.
Item postponed to the next meeting.
- b. BPD's role in prevention of underage drinking.
Item postponed to the next meeting.

11. SUBCOMMITTEE REPORTS AND RECOMMENDATIONS (discussion & action)

- a. General Orders C-64, etc. Subcommittee
No report.
- b. Fair & Impartial Policing Subcommittee
No report. Next meeting October 3, 2016.
- c. Mutual Aid Pacts Subcommittee
Subcommittee met this evening at 5:30 p.m.
- d. Media Credentialing Subcommittee
First meeting date to be coordinated by PRC Officer.

12. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

Attached.

13. PUBLIC COMMENT

There were no speakers.

Closed Session

Pursuant to the Court's order in *Berkeley Police Association v. City of Berkeley, et al.*, Alameda County Superior Court Case No. 2002 057569, the PRC will recess into closed session to discuss and take action on the following matters:

14. VOTE ON WHETHER TO CONSIDER A COMPLAINT AS FILED LATE AND, IF SO, WHETHER TO ACCEPT IT

Complaint #2404

Motion to reject the complaint as a late-file because the complainant did not show good cause for filing late.

Moved/Seconded (Bernstein/Perezvelez) **Motion Carried**

Ayes: Bernstein, DaSilva, Javier, Perezvelez, Roberts, Sherman, Smith, and Yampolsky.

Noes: None

Abstain: None

Absent: Lippman

15. INQUIRY TO CITY MANAGER REGARDING EXCUSING A SUBJECT OFFICER FROM APPEARING AT A BOI

Motion to write a letter to the City Manager, City Council, and City Clerk; draft to be prepared by the Chair for consideration at the next meeting.

Moved/Seconded (Bernstein/Perezvelez) **Motion Carried**

Ayes: Bernstein, DaSilva, Javier, Perezvelez, Roberts, Sherman, Smith, and Yampolsky.

Noes: None

Abstain: None

Absent: Lippman

16. REVIEW OF CALOCA DECISION

Complaint #2380.

Item postponed to the next meeting.

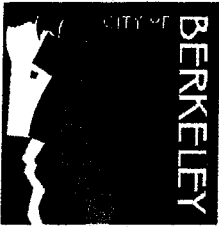
End of Closed Session

17. ANNOUNCEMENT OF CLOSED SESSION VOTE

The Commission's vote to reject Complaint #2404 was announced.

18. ADJOURNMENT

By general consent, the meeting was adjourned at 10:15 p.m.



Office of the City Manager

MEMORANDUM

Date: September 12, 2016

To: Katherine J. Lee, Police Review Commission Officer

CC: George Perezvelez, Chair, Police Review Commission

From: *DWR* Dee Williams-Ridley, City Manager

Subject: Standard of Proof

I received a letter from the Police Review Commission (PRC) Chair George Perezvelez requesting that I explain my reasons for not implementing the change to the burden of proof proposed by the PRC. Mr. Perezvelez stated that the PRC had decided to amend the standard of proof from the "clear and convincing evidence" standard to a lower "preponderance of the evidence" standard. He noted that on two occasions, the PRC unanimously approved the shift to the preponderance standard, after careful consideration of the policy issues and an investigation of the established best practices. He further stated that the PRC's enabling ordinance specifically empowers the PRC to "adopt rules and regulations and develop such procedures for its own activities and investigations as may be necessary." (BMC 3.32.090.E)

On August 1, 2016, I met with you, Mr. Perezvelez and Terry Roberts, along with the Police Chief and Assistant City Attorney, to discuss this letter amongst with other topics. While the issue of meet and confer was not mentioned in Mr. Perezvelez's letter, we discussed this requirement during our meeting, and the group expressed that it would be helpful for me to share with the PRC an explanation of the meet and confer process and how it impacted the proposal to change the standard of proof.

It is important to recognize the long-established role that the meet and confer process has in the adoption of changes to the PRC's Regulations. The City Manager is obligated, consistent with state law and the provisions of the Memorandum of Agreement with the Berkeley Police Association (BPA), upon request of the union, to meet and confer with representatives of the BPA and endeavor to reach agreement on the practical consequences "**of any changes** in wages, hours and **other terms and conditions** of employees represented by the Association." Meet and confer continues until management and labor either reach an agreement or reach impasse. "Impasse"

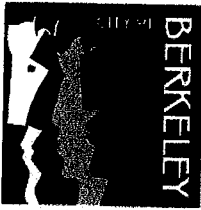
Katherine J. Lee, PRC
September 12, 2016
Page 2 Re: Standard of Proof

means that the City and the BPA have a dispute over matters within the scope of representation and have reached a point in meeting and negotiating over the dispute at which their differences in positions are **so substantial or prolonged** that future meetings would be futile. Impasse is only reached after multiple meetings and extensive effort on both sides to reach an agreement.

To choose to go down this path on a matter likely to lead to impasse, I need to weigh and balance the benefit to the City in pushing forward an attempt to implement a change against the impact reaching impasse would have on the City, including staff morale and the ongoing relationship with the represented employees and association leadership. I do not take these matters lightly and recognize the thought and deliberation that the PRC has put into making this proposal. However, I ultimately must make the decision that is in the overall best interests of the City.

The change proposed to the standard of proof in the PRC's Regulations was identified as a change that required engaging in the meet and confer process. The standard of proof, clear and convincing evidence, has been the standard used by the PRC for more than 30 years. I cannot discuss the specific details of the meet and confer discussions in this or any other matter as the process is confidential. I can confirm that it was clear going into negotiations that the BPA was not in agreement with the proposed change to the standard of proof. It is also my understanding that this is not the first time the topic of changing the standard of proof has come up as a topic of meet and confer, and has been identified as a non-negotiable issue.

As I am ultimately responsible for ensuring that the City has a productive working relationship with all of our represented employees, I need to make critical decisions about which issues I will pursue further and which I will take off the table for that particular meet and confer process. Considering that 44 policy changes to the PRC Regulations were ultimately agreed to at the conclusion of the meet and confer process and have now been implemented, I believe that the process was an overall success.



Police Review Commission (PRC)

April 19, 2016

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

Re: Standard of Proof in Police Review Commission Board of Inquiry Proceedings

Dear Ms. Williams-Ridley,

The members of the Police Review Commission are concerned that the PRC's decision to amend the standard of proof to preponderance of the evidence in our Regulations for Handling Complaints Against Members of the Police Department was not implemented. The PRC has twice unanimously approved the shift to a preponderance of the evidence standard. These votes both came after careful consideration of the policy issues implicated by the differing standards of proof, as well as an investigation of the established best practices of civilian review boards.

As you are aware, the PRC's enabling ordinance empowers the PRC "To adopt rules and regulations and develop such procedures for its own activities and investigations as may be necessary . . ." (B.M.C. sec. 3.32.090.E) and it is in accord with that directive that the PRC undertook its analysis and deliberations.

We would appreciate you explaining to us your reasons for not implementing the change we adopted to the standard of proof. We are amenable to either a written response, and to meeting in person with representatives from the commission to further discuss this issue.

Thank you in advance,

George Perezvelez
Chairperson
Police Review Commission

cc: PRC Commissioners

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e-mail: prc@cityofberkeley.info website: www.cityofberkeley.info/prc/

DRAFT

Dear Ms. Williams-Ridley,

Thank you for your response of September 12, 2016, to our inquiry regarding your decision during the meet and confer process to abandon the PRC's amendment to the standard of proof used in our Board of Inquiry. Although we appreciate you taking the time to respond, there are a number of things in your response that we find deeply troubling. We are concerned that the current policies and practices of the City Manager's office are a grave disservice to the spirit and letter of the PRC enabling ordinance, and greatly impede our ability to operate as an independent, fact-finding body.

As you are undoubtedly aware, Section 10, subsection (f) of the 1973 PRC enabling ordinance states

The Commission established by this Ordinance shall have the following powers and duties:

- ...
- f) to adopt rules and regulations and develop such procedures for its own activities and investigations as may be necessary and to publish and file same with the office of the City Clerk, and to do such other things not forbidden by law which are consistent with a broad interpretation of this Ordinance and its general purposes

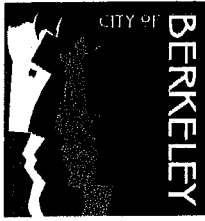
Contrary to your assertion, we are not familiar with there being a "long established" practice of changes to the PRC's regulations being subject to meet and confer. Indeed, we believe that prior proposed changes to our regulations – which did not include amendments to the standard of proof – were implemented without meet and confer. Moreover, it is not clear to us how every proposed change to PRC regulations would properly be subject to meet and confer under the applicable law. For your administration to so hold, without reservation, seems to us to directly contradict the will of the voters as expressed in the above noted section of the Ordinance.

If, however, your administration intends to subject every change in the PRC regulations to meet and confer, it is imperative that when you "weigh and balance the benefit to the City" you include in that calculus the impact on the independent civilian oversight system in Berkeley of allowing the BPA to hold absolute veto power over the PRC's internal regulations. We are alarmed by the real damage your current policy of subjecting changes to the PRC's internal operations to approval by the BPA will do to the independence of the PRC.

Although it is true that the other proposed changes to our internal operations were not vetoed by the BPA, you fail to note that almost all of those had previously been vetted and approved by the union during the year-long subcommittee process. It does not seem to us a mark of the success of the meet and confer process that it took over two years to get the BPA to sign off on changes to the regulations that they had already informally agreed to.

Finally, your letter fails to acknowledge the significant policy reasons that underscore the need for the change in the standard of proof. The PRC has repeatedly explained how the use of the clear and convincing standard is both inconsistent with the standard used across California, and indeed the country, when evaluating allegations of misconduct by governmental employees. We have also pointed out the inherent unworkability of having a single arbiter balance and consider fact-finding of the same incident from two different bodies –Internal Affairs and the PRC - when each employs a different standards of proof. And finally, and most importantly, you fail to explain why the City should continue to insist that the PRC employ a standard that as a policy matter gives more weight and importance to police officers' job security than to addressing the alleged wrong suffered by a member of the community.

The PRC passed this change because we believed it was vital to our ability to carry out our mandate. Your response fails to address these concerns.



Office of the City Manager

July 26, 2016

To: Honorable Mayor and City Council members
From: *Dee* Dee Williams-Ridley, City Manager
Subject: Semi-Annual Report of Marijuana Enforcement Activity

The table below is a compilation of the marijuana enforcement activity which occurred in the City of Berkeley, or was engaged in by Berkeley officers in other cities, during the period of January 1, 2016 through June 30, 2016.

The specific Health and Safety Code sections related to marijuana which were charged are defined in the following table:

11357(a) HS	Possession of concentrated cannabis (hashish)
11357(b) HS	Possession of not more than an ounce of marijuana
11357(c) HS	Possession of over one ounce of marijuana
11357(d) HS	Adult Possession on school grounds during school activity
11357(e) HS	Minor possessing marijuana on school grounds during school activity.
11358 HS	Cultivation of marijuana
11359 HS	Possession of marijuana or hashish for sale
11360 HS	Sales of marijuana or hashish
11361 HS	Inducing a minor to sell or use marijuana

The following information is provided in compliance with BMC 12.224.070.

July 26, 2016

Re: Semi-Annual Report of Marijuana Enforcement Activity

<u>Case/Citation Number</u>	<u>Date</u>	<u>Statute</u>	
2016-00000187	1/1/2016	11359	
49912	1/9/2016	11357 (B)	
50091	1/9/2016	11357 (B)	
2016-00001955	1/11/2016	11359	
2016-00002840	1/15/2016	11359	
2016-00002840	1/15/2016	11359	
50263	1/24/2016	11357 (B)	
49986	1/24/2016	11357 (B)	
50122	1/29/2016	11357 (B)	
50074	1/30/2016	11357 (A)	
2016-00006466	2/2/2016	11357 (A)	
2016-00006552	2/2/2016	11360 (A)	11359
2016-00006563	2/2/2016	11359	
2016-00006569	2/2/2016	11360 (A)	11359
2016-00006609	2/2/2016	11357 (A)	
50176	2/2/2016	11357 (B)	
2016-00009609	2/17/2016	11360 (A)	11359
2016-00011864	2/28/2016	11359	
2016-00013351	3/6/2016	11357 (B)	
2016-00013469	3/7/2016	11359	
2016-00013927	3/9/2016	11359	
2016-00015100	3/15/2016	11357 (A)	
2016-00016007	3/18/2016	11359	
2016-00016052	3/18/2016	11359	
2016-00016108	3/20/2016	11359	
50869	3/21/2016	11357 (B)	
2016-00017901	3/28/2016	11359	
2016-00019322	4/3/2016	11360 (A)	11359
2016-00019532	4/4/2016	11357 (A)	
2016-00019551	4/5/2016	11357 (A)	
2016-00020473	4/8/2016	11359	
2016-00020709	4/9/2016	11357 (A)	
2016-00021576	4/13/2016	11357 (B)	
2016-00023318	4/21/2016	11357 (A)	
51375	4/22/2016	11357 (B)	
51369	4/23/2016	11357 (B)	
51732	4/27/2016	11357 (B)	
2016-00025896	5/2/2016	11357 (B)	
2016-00026329	5/4/2016	11357 (A)	
51767	5/4/2016	11357 (B)	
2016-00026719	5/6/2016	11359	
2016-00026723	5/6/2016	11360 (A)	11359

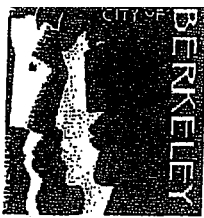
<u>Case/Citation Number</u>	<u>Date</u>	<u>Statute</u>
2016-00026727	5/6/2016	11360 (A) 11359
51774	5/6/2016	11357 (B)
2016-00026996	5/7/2016	11359
51878	5/10/2016	11357 (B)
51797	5/12/2016	11357 (B)
2016-00028471	5/14/2016	11357 (A)
2016-00028542	5/15/2016	11360 (A) 11359
2016-00029227	5/18/2016	11359
2016-00029442	5/19/2016	11360 (A) 11359
2016-00029445	5/19/2016	11360 (A) 11359
2016-00032614	6/3/2016	11359
2016-00033018	6/4/2016	11357 (C) 11357 (A)
2016-00033461	6/6/2016	11357 (A)
2016-00034088	6/9/2016	11360 (A) 11357 (B)
2016-00034088	6/9/2016	11357 (B)
2016-00034100	6/9/2016	11357 (B)
2016-00034173	6/9/2016	11357 (A)

cc: Police Review Commission
Zach Cowan, Interim Deputy City Manager / City Attorney
Mark Numainville, City Clerk
Ann-Marie Hogan, City Auditor
Michael K. Meehan, Chief of Police
Matthai Chakko, Public Information Officer

Demographic data for Jan-Jun 2016 activity

<u>Case/Citation Number</u>	<u>Date</u>	<u>HS Code Statute(s)</u>	<u>Arrestee Race</u>	<u>Gender</u>	<u>Age</u>
2016-00000187	01/01/2016	11359	Hispanic	Male	27
49912	01/09/2016	11357 (B)	White	Male	26
50091	01/09/2016	11357 (B)	White	Male	26
2016-00001955	01/11/2016	11359	Black	Male	17
2016-00002840	01/15/2016	11359	Black	Male	18
2016-00002840	01/15/2016	11359	Asian	Male	20
2016-00002840	01/15/2016	11359	Black	Male	20
49986	01/24/2016	11357 (B)	White	Male	21
50263	01/24/2016	11357 (B)	Black	Male	25
50122	01/29/2016	11357 (B)	Hispanic	Male	18
50074	01/30/2016	11357 (A)	White	Male	37
2016-00006466	02/02/2016	11357 (A)	Black	Male	34
2016-00006552	02/02/2016	11360 (A) 11359	White	Male	35
2016-00006563	02/02/2016	11359	White	Female	20
2016-00006569	02/02/2016	11360 (A) 11359	White	Male	26
2016-00006609	02/02/2016	11357 (A)	White	Male	25
50176	02/02/2016	11357 (B)	White	Male	33
2016-00009609	02/17/2016	11360 (A) 11359	Black	Male	55
2016-00009609	02/17/2016	11360 (A) 11359	Black	Male	25
2016-00009609	02/17/2016	11359	Black	Male	55
2016-00009609	02/17/2016	11359	Black	Male	25
2016-00011864	02/28/2016	11359	Other	Female	21
2016-00013351	03/06/2016	11357 (B)	White	Male	22
2016-00013469	03/07/2016	11359	Black	Male	19
2016-00013927	03/09/2016	11359	White	Male	51
2016-00015100	03/15/2016	11357 (A)	White	Female	40
2016-00016007	03/18/2016	11359	Black	Male	22
2016-00016052	03/18/2016	11359	White	Male	20
2016-00016108	03/20/2016	11359	Black	Male	35
50869	03/21/2016	11357 (B)	White	Male	49
2016-00017901	03/28/2016	11359	Black	Male	22
2016-00019322	04/03/2016	11360 (A) 11359	White	Male	41
2016-00019532	04/04/2016	11357 (A)	White	Male	64
2016-00019551	04/05/2016	11357 (A)	White	Male	30
2016-00020473	04/08/2016	11359	Black	Male	37
2016-00020709	04/09/2016	11357 (A)	White	Male	20
2016-00021576	04/13/2016	11357 (B)	White	Male	51
2016-00023318	04/21/2016	11357 (A)	White	Male	67
51375	04/22/2016	11357 (B)	Black	Male	21
51369	04/23/2016	11357 (B)	Black	Male	21
51732	04/27/2016	11357 (B)	Black	Male	46
2016-00025896	05/02/2016	11357 (B)	White	Male	53
2016-00026329	05/04/2016	11357 (A)	Asian	Male	31
51767	05/04/2016	11357 (B)	Black	Male	37
2016-00026719	05/06/2016	11359	Black	Male	29

2016-00026723	05/06/2016	11360 (A) 11359	Black	Male	20
2016-00026723	05/06/2016	11360 (A) 11359	Black	Male	18
2016-00026723	05/06/2016	11359	Black	Male	20
2016-00026723	05/06/2016	11359	Black	Male	18
2016-00026727	05/06/2016	11360 (A) 11359	Black	Male	18
2016-00026727	05/06/2016	11359	White	Male	21
2016-00026727	05/06/2016	11359	Black	Male	18
51774	05/06/2016	11357 (B)	White	Male	34
2016-00026996	05/07/2016	11359	White	Male	34
51878	05/10/2016	11357 (B)	Hispanic	Male	25
51797	05/12/2016	11357 (B)	Hispanic	Male	33
2016-00028471	05/14/2016	11357 (A)	Other	Male	20
2016-00028542	05/15/2016	11360 (A) 11359	Asian	Male	26
2016-00028542	05/15/2016	11360 (A) 11359	Asian	Male	22
2016-00028542	05/15/2016	11360 (A) 11359	Asian	Male	21
2016-00028542	05/15/2016	11360 (A) 11359	Other	Male	18
2016-00028542	05/15/2016	11359	Asian	Male	26
2016-00028542	05/15/2016	11359	Asian	Male	22
2016-00028542	05/15/2016	11359	Asian	Male	21
2016-00028542	05/15/2016	11359	Other	Male	18
2016-00029227	05/18/2016	11359	Hispanic	Male	48
2016-00029442	05/19/2016	11360 (A) 11359	Black	Male	18
2016-00029445	05/19/2016	11360 (A) 11359	White	Male	16
52519	05/28/2016	11357 (B)	Hispanic	Male	20
52520	05/28/2016	11357 (B)	Hispanic	Male	15
2016-00032614	06/03/2016	11359	Black	Male	25
2016-00033018	06/04/2016	11357 (C) 11357 (A)	White	Male	63
2016-00033461	06/06/2016	11357 (A)	White	Male	24
2016-00034088	06/09/2016	11360 (A) 11357 (B)	Black	Male	21
2016-00034088	06/09/2016	11357 (B)	Black	Female	32
2016-00034100	06/09/2016	11357 (B)	Black	Female	17
2016-00034173	06/09/2016	11357 (A)	White	Male	53
52389	06/24/2016	11357 (B)	White	Male	39



Office of the City Manager

COMMUNICATION No. 1741

January 21, 2014

To: Honorable Mayor and City Councilmembers

From: Christine Daniel, City Manager *CD*

Subject: Semi-Annual Report of Marijuana Enforcement Activity

The table below is a compilation of the marijuana enforcement activity which occurred in the City of Berkeley, or was engaged in by Berkeley officers in other cities, during the period of July 1, 2013 through December 31, 2013.

The specific Health and Safety Code sections related to marijuana which were charged are defined in the following table:

11357(a) HS	Possession of concentrated cannabis (hashish)
11357(b) HS	Possession of not more than an ounce of marijuana
11357(c) HS	Possession of over one ounce of marijuana
11357(d) HS	Adult Possession on school grounds during school activity
11357(e) HS	Minor possessing marijuana on school grounds during school activity.
11358 HS	Cultivation of marijuana
11359 HS	Possession of marijuana or hashish for sale
11360 HS	Sales of marijuana or hashish
11361 HS	Inducing a minor to sell or use marijuana

The following information is provided in compliance with BMC 12.224.070.

<u>Ticket / Case Number</u>	<u>Date</u>	<u>Statute</u>
Case #2013-00037389	7/2/2013	11360 (a); 11359
Ticket #29000	7/6/2013	11357 (b)
Ticket #29002	7/6/2013	11357 (b)
Case #2013-00039133	7/10/2013	11357 (b)
Ticket #29227	7/10/2013	11357 (a)
Ticket #28792	7/11/2013	11357 (b)
Ticket #29228	7/11/2013	11357 (a)
Case #2013-00040302	7/15/2013	11359
Case #2013-00040380	7/16/2013	11359

<u>Ticket / Case Number</u>	<u>Date</u>	<u>Statute</u>
Ticket #29059	7/20/2013	11357 (a)
Case #2013-00042102	7/24/2013	11359
Ticket #28679	7/24/2013	11357 (b)
Case #2013-00042334	7/25/2013	11359
Ticket #28674	7/26/2013	11357 (b)
Ticket #28675	7/26/2013	11357 (a)
Ticket #28576	7/28/2013	11357 (b)
Ticket #28587	7/28/2013	11357 (b)
Ticket #29500	7/31/2013	11357 (a)
Case #2013-00043923	8/2/2013	11357 (a)
Ticket #29502	8/2/2013	11357 (a)
Ticket #29498	8/3/2013	11357 (a)
Case #2013-00045230	8/8/2013	11359
Ticket #29520	8/10/2013	11357 (a)
Ticket #29918	8/14/2013	11357 (a)
Case #2013-00047557	8/19/2013	11359
Case #2013-00047836	8/20/2013	11357 (b)
Ticket #29920	8/21/2013	11357 (a)
Case #2013-00048129	8/22/2013	11359
Case #2013-00049064	8/26/2013	11359
Case #2013-00049883	8/29/2013	11359
Case #2013-00051308	9/4/2013	11359
Case #2013-00051983	9/7/2013	11357 (b)
Case #2013-00052008	9/7/2013	11357 (b)
Case #2013-00052064	9/8/2013	11359
Case #2013-00052218	9/8/2013	11359
Case #2013-00053074	9/12/2013	11359
Ticket #29953	9/13/2013	11357 (a)
Case #2013-00054901	9/20/2013	11359
Case #2013-00055753	9/24/2013	11357 (a); 11359
Case #2013-00055753	9/24/2013	11357 (a); 11359
Case #2013-00056168	9/26/2013	11357 (b)
Case #2013-00056449	9/27/2013	11357 (a)
Case #2013-00056727	9/29/2013	11357 (b); 11357 (a)
Case #2013-00056818	9/29/2013	11357 (a)
Ticket #30356	9/30/2013	11357 (a)
Case #2013-00057236	10/1/2013	11357 (a)
Case #2013-00058270	10/5/2013	11359; 11358
Ticket #30573	10/6/2013	11357 (a)
Ticket #30507	10/7/2013	11357 (a)

<u>Ticket / Case Number</u>	<u>Date</u>	<u>Statute</u>
Ticket #30674	10/10/2013	11357 (b)
Case #2013-00059571	10/11/2013	11359
Case #2013-00060396	10/15/2013	11359; 11358
Case #2013-00060888	10/17/2013	11359
Case #2013-00061143	10/18/2013	11359
Case #2013-00062092	10/23/2013	11359
Case #2013-00064476	11/3/2013	11359
Case #2013-00064716	11/4/2013	11357 (b)
Case #2013-00065278	11/7/2013	11359
Case #2013-00066233	11/12/2013	11357 (a)
Case #2013-00068579	11/23/2013	11359
Case #2013-00070333	12/3/2013	11360 (a); 11359
Case #2013-00070333	12/3/2013	11360 (a); 11359
Case #2013-00074008	12/21/2013	11359
Case #2013-00075349	12/29/2013	11357 (a)
Case #2013-00075380	12/29/2013	11357 (c)
Case #2013-00075453	12/30/2013	11359

cc: Police Review Commission
William Rogers, Deputy City Manager
Mark Numainville, City Clerk
Ann-Marie Hogan, City Auditor
Michael K. Meehan, Chief of Police
Matthai Chakko, Public Information Officer

PRC Additional Information Request; Semi-Annual Marijuana Report

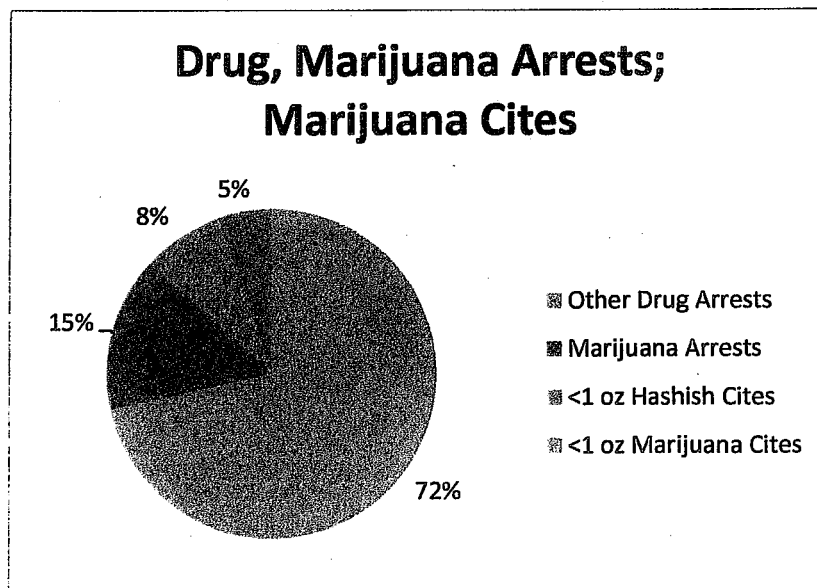
Semi-annually the Berkeley Police Department prepares a report that documents the total number of arrests and citations related to marijuana enforcement. In that report we specifically document those arrests and citations that document the following Health and Safety code sections:

- 11357(a) – Possession of Concentrated cannabis.
- 11357(b) – Possession of not more than an ounce of marijuana.
- 11357(c) – Possession of over one ounce of marijuana.
- 11357(d) – Adult possession on school grounds during school activity.
- 11357(e) – Minor possessing marijuana on school grounds during school activity.
- 11358 - Cultivation of marijuana.
- 11359 - Possession of marijuana or hashish for sale.
- 11360 - Sales of marijuana or hashish.
- 11361 - Inducing a minor to sell or use marijuana.

In the PRC meeting on April 9, 2014 the PRC requested additional information regarding the Berkeley Police Department’s enforcement of marijuana laws. Below are information requests posed by Commissioner Sherman, in his April 18, 2014 letter to Chief Meehan. Our responses appear after each question below.

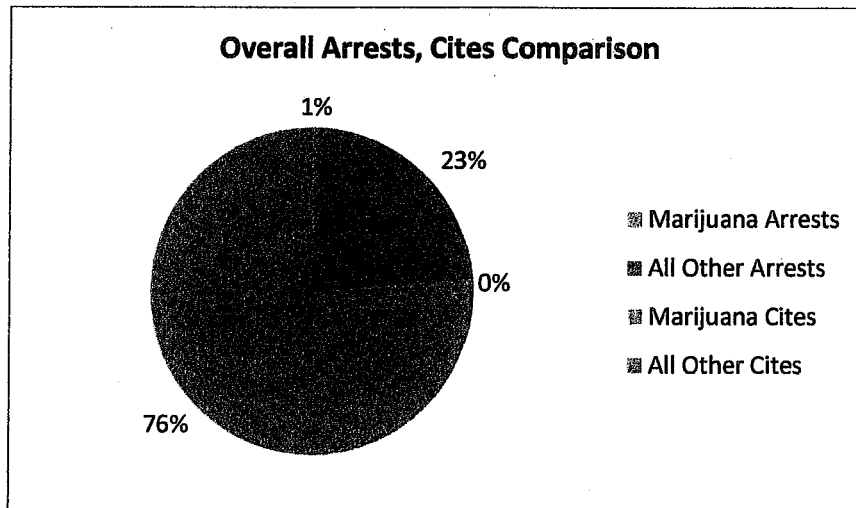
1. The total number of Narcotics arrests within the six month time period reflected in the report (July 1 – December 31, 2013).

Response: Our records show 284 total narcotics arrests during that period. Included in that total are 38 citations for either <1 oz. hashish or <1 oz. marijuana, 43 arrests for other marijuana offenses (e.g. possession for sale) and 203 arrests for other drugs.

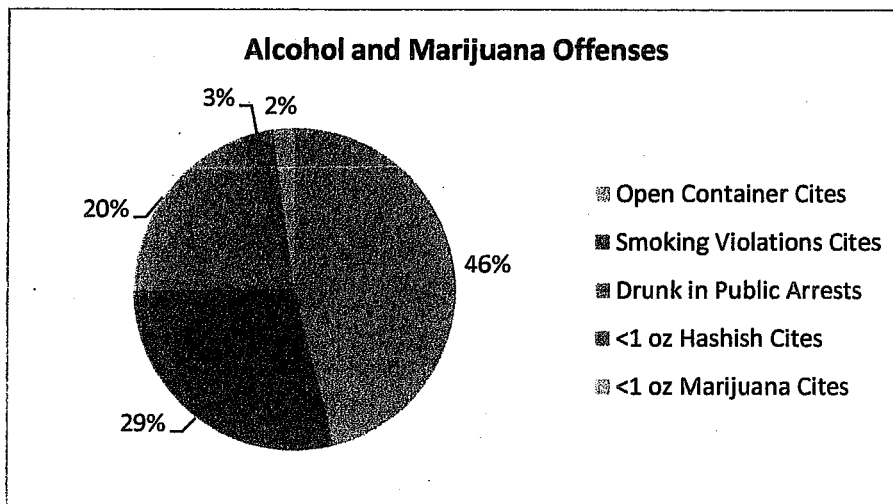


It may be helpful to consider the number of marijuana arrests and citations, compared with other arrests and citations during the same period. Our records show 4,610 citations issued. Of those, twenty three (.5%) were issued for <1oz of hashish, and fifteen (.3%) were issued for <1oz of marijuana. Therefore, of 4610 citations issued for the period, thirty eight (.8%) were marijuana cites.

Our records show 1,432 arrests made during the period. Of those, forty three (3 %) arrests were made for marijuana offenses. The chart below illustrates all citations and arrests, and breaks out marijuana related arrests and citations.



It may also be helpful to compare the number of citations and arrests related to alcohol, as compared to marijuana. The following chart shows 321 Open Container cites, 201 Tobacco cites, 138 "Drunk in Public" arrests, twenty three <1 oz hashish cites, and fifteen <1oz marijuana cites.



2. The total number of arrests involving only marijuana related offenses. For each of these arrests, the quantity of marijuana seized as noted in the police report.

Response: There were 20 cases that document charges for marijuana-*only* related offenses (Arrests only, not citations). Other than those statutes delineated in the semi-annual report, included are cases that also documented associated offenses of 1203.2 PC (Probation violation), 11364.1 H&S (Possession of drug paraphernalia), 647(f) PC (Public intoxication) and warrant arrests. See the attached spreadsheet for the list of these cases and the quantity of marijuana seized as noted in the police report. There are multiple lines in many cases representing multiple pieces of marijuana evidence associated with that case.

3. For each of the arrests involving only marijuana related offenses, the total number that were referred for prosecution to the District Attorneys' office, the outcome of each of these cases, and the total weight of marijuana in each case as identified by the criminalist.

Response: All 20 of the cases that involved arrests for only marijuana related offenses were referred to the District Attorney's office for prosecution. Thirteen were charged or resulted in probation revocation. Seven were not charged, or are unknown dispositions. Alameda County crime lab outcomes are not maintained directly in our records system's fields, and would therefore require case-by-case research.

4. For all arrests involving violations of Health and Safety Code section 11357(b), possession of less than an ounce of marijuana, a copy of the police report, redacted to exclude the name of the arrestee and the arresting officers.

Response: 11357 (b) offenses are typically documented through an infraction citation, without a formal report. Only two cases with narrative were located; both involved the arrests of juveniles.

5. The total number of arrests involving marijuana related offenses and additional offenses, with a listing of the additional charges.

Response: There were 28 cases that document the arrest of subjects for marijuana offenses as well as other crimes.ⁱⁱ

ⁱ The other drug-related offenses for which arrests were made are as follows:

- 11350(a) H&S - Possession of a narcotic / controlled substance.
- 11351 H&S - Possess or purchase for sale narcotics / controlled substance.
- 11351.5 H&S - Possess or purchase for sale cocaine base.
- 11352 H&S - Transport for sale a narcotic / controlled substance.
- 11366 H&S - Keep a place to sell a narcotic / controlled substance.
- 11370.1(a) H&S - Possess a controlled substance while armed.
- 11370.2(a)H&S - Enhancement of prison terms for prior drug convictions.
- 11375(b) H&S - Possess for sale / sell controlled substance.
- 11377(a) H&S - Possess a controlled substance.
- 11378 H&S - Possess a controlled substance for sale.
- 11379.6(a) H&S - Manufacture etc. a controlled substance.
- 4060 B&P - Possess a controlled substance without a prescription.

ⁱⁱ Other associated offenses included:

- 484e(d) PC - Use an access card without consent.
- 530.5(a) PC - Identity theft.
- 13.52.010 BMC - Trespassing.
- 148(a) PC - Obstruct or resist a police officer.
- 166(a) PC - Contempt of court.
- 11350(a) - Possession of a narcotic / controlled substance.
- 647(f) PC - Public intoxication.
- 381 PC - Possession of toluene.
- 3056 PC - Parole violation.
- 30305 PC - Prohibited person own or possess ammunition.
- 29900(a)PC - Illegally possess a firearm with a prior violent offense.
- 29800(a)PC - Felon or addict possess a firearm.
- 186.22(a)PC - Participate in a criminal street gang.
- 186.22(b)PC - Participate in a criminal street gang with other conviction.
- 1203.2 PC - Probation violation.
- 25850(a)PC - Carry a loaded firearm in public.
- 12022(a)(1) PC - Armed with a firearm in the commission of a felony.
- 1203.073(b)(5)PC- Possess over 14.25 grams of crack for sale.
- 22210 PC - Possession of a billy, blackjack, sandbag, sap or loaded cane.
- 11370.1(a) H&S - Possession of a controlled substance while armed with a firearm.
- 11351.5 H&S - Possession or purchase for sale cocaine base.
- 148.9(a) PC - False identification to police officers.
- 11364.1 H&S - Possession of drug paraphernalia.
- 11377(a) H&S - Possession of a controlled substance.
- 11378 H&S - Possession of a controlled substance for sale.
- 484e(c) PC - Sell, transfer, receive etc. access cards with the intent to defraud.
- 245(a)(1) PC - Assault with a deadly weapon other than a firearm.
- 242 PC - Battery.
- 211 PC - Robbery.
- 417(a)(1) PC - Exhibit a deadly weapon other than a firearm.
- 12022.1 PC - Felony committed while on bail.
- 496(a) PC - Possession of stolen property.
- 30605 PC - Possession of an assault weapon.
- 23900 PC - Tamper with the identification marks on a firearm.
- 273a(b) PC - Willful cruelty to a child causing injury or death.
- 11370.2(a) H&S - Enhancement for prior drug convictions.
- 33210 PC - Possess or sell a short barreled shotgun or rifle.
- 3455 PC - Violation of Post Release Community Supervision. (PRCS – prison realignment from AB 109)
- 21310 PC - Carry a concealed dirk or dagger.



POLICY COMPLAINT FORM

Police Review Commission (PRC)
 1947 Center Street, 1st Floor, Berkeley, CA 94704
 Website: www.ci.berkeley.ca.us/prc/
 E-mail: prc@ci.berkeley.ca.us
 Phone: (510) 981-4950 TDD: (510) 981-6903 Fax: (510) 981-4955

Date Received:

2466
 Received by PRC
 PRC CASE #
 AUG 30 2016

1 Name of Complainant: Keenley James Pieper
Last First Middle

Mailing Address: 1725 Wesley Ave. El Cerrito CA 94530
Street City State Zip

Primary Phone: (510) 926-9233 Alt Phone: () _____

E-mail address: jkeenley@gmail.com

Occupation: Attorney Gender: M Age: 34

Ethnicity: Asian Black/African-American Caucasian
 Latino/Hispanic Multiethnic: _____ Other: _____

COPY

2 Identify the Berkeley Police Department (BPD) policy or practice you consider to be improper or would like the Commission to review.

Please see attached description of incident and policy concerns.

3 Location of Incident (if applicable) San Pablo Ave between Cedar and Virginia

Date & Time of Incident (if applicable) August 19, 2016 at approximately 10:30 PM

Provide a factual description of the incident that forms the basis of your complaint. Be specific and include what transpired, and how the incident ended.

Please see attached description of incident.

4

What changes to BPD policy, practice, or procedure do you propose?

Please see attached information.

5

Use this space for any additional information you wish to provide about your complaint. (Or, attach relevant documentation you believe will be useful to the Commission in evaluating your complaint.)

Please see attached document.

6

CERTIFICATION

I hereby certify that, to the best of my knowledge, the statements made on this complaint are true.

Jan P. [Signature]
Signature of Complainant

8-29-16
Date

7

How did you hear about Berkeley's Police Review Commission?

- Internet
Publication:
Referral:
Other:

Attachment to Policy Complaint Form 4-22-16

Complainant: James Keenley

Date of Incident: August 19, 2016

2. Improper Practice: Conducting search of vehicle and person based on smell of marijuana when the driver and sole occupant of the vehicle produced prima facie evidence of being an authorized medical user and was stopped in a dragnet sobriety checkpoint.

3. Description of Incident: At approximately 10:30 PM on August 19, 2016, I was driving home from my office in west Berkeley (I own a Berkeley-based law firm) to my home in El Cerrito. I was taking Cedar across town to avoid the traffic on Interstate 80 and was caught up in a sobriety checkpoint on San Pablo avenue. Upon being detained at the checkpoint, I presented my driver's license to the officer at my vehicle. The officer was a male, [REDACTED] I did not get the officer's name. He shined his flashlight in my face, and his first question to me was hostile: "How much marijuana is in the car?" I asked him what he meant by that, and he said "I smell marijuana coming from the car, how much marijuana is in the car?" I answered that I had some marijuana in the car, that I was not sure of the exact amount, but that I had medical authorization to possess the marijuana. The officer asked me to provide him with my medical card, which I did. The card has my photograph on it, is issued by my physician, and contains information on the card as to how to confirm the recommendation both online and by telephone.

The officer instructed me to pull over onto Virginia and then proceeded to pepper me with questions about the last time I consumed marijuana, whether I had any weapons or other drugs in the car or on my person, whether I had been drinking, and so forth. I explained to the officer that the marijuana was in a closed container in the back of the car and that I was unsure of the total amount but that it was approximately one-half of an ounce. The officer then stated that he was going to have me exit the vehicle and that he was going to search my person and my car and that following the search I would be required to complete field sobriety testing. I asked the officer "Do I have to consent to this search?" and the officer replied "You have to consent, medical marijuana is not a defense to being searched."

I exited the car, I was frisked, my pockets were emptied, and then my car (a 2015 Honda Odyssey minivan) was searched extensively. The officer located the marijuana exactly where I told him it would be. He did not find any contraband of any kind, because there was none. After finishing his search, the officer returned my license and medical cannabis card and allowed me to proceed on my way home without citation or further incident. Despite his prior statements to the contrary, the officer did not conduct any sobriety testing of any kind. When handing back my identification, the officer stated that the smell of marijuana was probable cause for him to search for other drugs or weapons.

4. Proposed Change to Berkeley Police Department Procedures:

I propose that Berkeley police officers should not search the persons or vehicles of persons in possession of marijuana where those persons are able to establish prima facie evidence that they are authorized medical users under the Compassionate Use Act of 1996, Cal. Health & Safety Code § 11362.5, especially when the person is initially detained in a dragnet stop.

I understand that as a matter of constitutional law, the Fourth Amendment has been interpreted to permit the search that was conducted in this instance. I also understand that the officer was not required by law to investigate my medical authorization in field, and could have issued a citation for possession or even made an arrest. I believe that those actions would have violated existing Berkeley Police Department policies, but if that is not the case I urge the department to adopt policies against such practices.

However, notwithstanding the current state of Fourth Amendment case law, the Berkeley Police Department should adopt more progressive, safe, and humane policies with regard to invasive police searches. This was a dragnet search: I was not initially detained based on any suspected violation of the law, I was detained for no reason other than that I was driving eastbound on Cedar at 10:30 PM on August 19, 2016. I concede that the officer did smell marijuana in the car because there was marijuana in the car. Note that the location of this dragnet was only seven blocks from Berkeley's biggest medical marijuana dispensary—the Berkeley Patients Group--where some of the marijuana in my possession was purchased. It is no doubt the case that many people drive up and down San Pablo in legal possession of marijuana.

While there was fresh marijuana in the car, there was no burnt marijuana or any other evidence that I had been using marijuana at any time proximate to driving home from my office. As noted I do not believe that the officer had any doubts about my sobriety at the time of my detention because he did not administer any sobriety testing of any kind. I was up front with the officer about my possession, the location of it, and my legal authorization to possess it. The marijuana itself was stored in a location not accessible from the driver's seat where I was sitting. I provided documentation showing that my possession of the marijuana was legal, and that documentation provided further means for the officer to investigate if he had any doubts as to the legitimacy of my physician's recommendation.

Nonetheless, I was subject to an invasive and, frankly, humiliating search on a public street in the community where I live and work, on my way home from a late night at the office. Citizens who are engaged in legal activity and detained without any probable cause whatsoever should not be subject to invasive searches simply because they are legally in possession of marijuana. The officer had no probable cause whatsoever to believe that I had any other drugs, illegal weapons, or other contraband in my car or on my person.

5. Other Information

In addition to the formal search policy, I have concerns about the officer's personal behavior during this encounter and the Berkeley Police Department's use of dragnet searches generally.

While generally professional, I found the officer's initial question--"How much marijuana is in the car?"—unreasonably hostile. The officer and I at that point hadn't exchanged any conversation, and his first question was a confrontational one that presumed I was engaged in a criminal activity. This may be a useful tactic for catching people off guard, but it is a terrible way to build positive and productive relationships with the community and it needlessly escalates what was at that point an ordinary and calm interaction. I suggest that officers who suspect that someone is in possession of marijuana simply ask "Do you have any marijuana on your person or in the car?" Should be easy to do, since this is how normal people have conversations.

I also found the officer's ex post justification for the search—that he had probable cause to search for other drugs or weapons—completely ridiculous and insulting. I am an attorney, I know a few things about a probable cause, and while I concede that for purposes of the Fourth Amendment the case law establishes that the officer did have probable cause to search for evidence of sales, the smell of marijuana and my free acknowledgement that I had it in my car, combined with my presentation of a medical cannabis authorization card, does not give rise to any reasonable suspicion that I was in possession of contraband or engaged in any other criminal activity.

Finally, as a Berkeley business owner and a former resident of the city who frequently patronizes Berkeley businesses and partakes in Berkeley's community life in various ways, I am strongly opposed to the use of sobriety checkpoints and any and all other types of dragnet searches. These procedures have been shown to be rather ineffective at reducing drunk driving, and they do not make me feel any safer. To the contrary, the presence of such searches makes me feel unsafe, it makes me feel that I am vulnerable to random search by the police despite being a law abiding citizen, simply because I tend to work late and thus I am out driving at the time that these sorts of dragnets are conducted. Further, the use of dragnet searches is so contrary to our fundamental sense of liberty—the basic idea that a citizen should not be subject to random search and seizure by the state—that it shocks me that a famously progressive and high-minded city like Berkeley would ever deploy them.

Finally, my personal observation during the time that I was detained at the dragnet was that every single other driver who was pulled over for further questioning and sobriety testing was a Hispanic male. Obviously, I was only present for a small portion of the dragnet, but it seems to me highly probable these types of searches are more likely to produce racially biased law enforcement because rather than relying on observation of suspected illegal activity, the officers conducting dragnets are required to use their judgment as to the sobriety of a large number of individuals who pass before them in a small amount of time, and in so doing their subconscious racial biases are more likely to affect their judgment.

PRC Priority List

Updated October 6, 2016

Top Priorities	Notes
Revision of General Orders, incl. C-64, U-2, M-2	Subcommittee recommendations to be considered by full Commission 9.21.16.
Body-worn camera policy	PRC and BPD met 9.14.16 to see if policy differences can be reconciled. Next meeting TBD.
Fair and Impartial Policing (includes policy review re race designation on traffic citations)	Subcommittee active.
Standard of proof in BOI hearings	On 9.14.16, authorized designated commissioner to draft letter to Council. On 10.13.16 agenda.
CM excusing officer from BOI hearing	Draft letter on 10.13.16 agenda.
City Council directive of 1.26.16 to work with BPD on recommendations from reports re response to Dec. 2014 protests.	Items not referred to General Orders or Media Credentialing Subcommittees to be agendized for 10.13.16 meeting.
Develop Ordinance on Surveillance and Community Safety	Subcommittee formed 9.14.16.
Outreach – to explore effective ways of reaching target audience	Subcommittee formed 9.21.16.
Mutual Aid Pacts – annual review	Subcommittee active.
Media credentialing policy	Subcommittee reactivated September 2016.

Pending Items	
McKinley Ave. Staging – policy review	BPD to present revised G.O. U-4, Unusual Occurrences. (Per 4.13.16 meeting)
G.O. W-1: Right to Watch	Request to BPD 3.31.16 to adopt SFPD's G.O. 5.07.
Investigation into BPD response on Dec. 7 & 8, 2014	1) Letter to Chief with inquiries sent 8.22.16; 2) 2 issues referred to G.O. C-64 etc. Subcommittee.
Policy review re Smoking Control Ordinance	On 7.15.15, PRC authorized further action as memorialized in 8.7.15 letter from PRC Officer to Chief expressing concerns and making requests.

PRC Priority List

Updated October 6, 2016

Pending items	
G.O. M-3: Monthly Management and Annual Reports	7.18.16 letter to CM and Chief re why reports not generated. CM on 8.1.16 said Chief to respond. 9.14.16 authorized request to Chief for his recommendations to M-3 in line with current IT and data tracking, for complying with reporting requirements to CM.

Remaining items	
Commissioner training on law and police procedures	Tactical de-escalation training presented 8.10.16. Additional training?
BPD acquisition of non-military armored vehicle	To be agendized.
Policy review of citations to bicyclists running red lights	(A. Bernstein would like to add "Idaho stop" issue.)
How to read CAD reports	PRC Officer item.
Achieving agreement with BPD regarding consultation on all new and changes to G.O.s	
BPD budget review	
BPD preparedness and capacity	Comm. Roberts' item.

Pending from staff	
Review of BOI procedures and underlying authority (Copley Press, PSOBRA, BPA v. COB, etc.)	Staff's memo on significant laws and court cases affecting powers and scope of PRC distributed 10.6.16.
Obtain findings reports from other oversight agencies	Staff work completed and to be distributed.

Prioritization of PRC requests to BPD

Date/form of request	Request	Status/Notes
GROUP I		
1.26.16 Council action	Council directive to PRC and BPD to work on recommendations following review of December 6, 2014 response	Most are being handled in G.O. C-64 etc. Subcommittee
12.9.15 oral	Center for Policing Equity analysis of stop data – when?	As of Sept. 2016, still unknown
3.31.16 letter	Consider adopting SFPD G.O. 5.07, Rights of Onlookers, as the BPD's Right to Watch G.O.	9.14.16 Chief said on his desk.
7.18.16 letter	General Order M-3, BPD reports to City Manager et al.: 1) Urge reporting to occur; 2) Discuss at meeting with CM 8.1.16	2) Discussed with Chief/CM: Chief to reply. (per 9.14 PRC action, further request to Chief forthcoming)
GROUP II		
12.9.15 oral	Analysis of new beat plan – when?	At 12.9.15 meeting, Chief said would be another 4 – 6 months.
1.5.16 letter	3 new ordinances to “improve conditions on community sidewalks”: any plan to issue G.O., T&I Bulletin, or Captain’s Instructions?	
4.13.16 meeting	Provide Revised G.O. U-4, Unusual Occurrences, for review.	
8.22.16 letter	Respond to questions regarding BPD response on Dec. 7-8, 2014	
GROUP III		
8.27.15 letter	Smoking Ordinance/dissemination of info to officers re new ordinances.	At 12.9.15 meeting, PRC did not include in top 10 priorities.
1.13.16 oral	Cost analysis to carry out recommendations in Dec. 2014 post-incident review?	

**POLICE REVIEW COMMISSION
SUBCOMMITTEES LIST
Updated 10-5-16**

Subcommittee	Commissioners	Chair	BPD Reps / Others
Body-worn & Dash Cameras Formed 12-9-15	Javier Lippman Roberts Yampolsky	Lippman	Lt. David Reece Sgt. Joseph Okies
General Orders on Crowd Control C-64, U-2, M-2 Formed 1-13-16	Bernstein Lippman Perezvelez	Bernstein	Capt. Dave Frankel Lt. Michael Durbin
Fair & Impartial Policing Formed 1-13-16	Javier Lippman Roberts Smith <i>Public members:</i> Christina Murphy Paul Kealoha-Blake Elliot Halpern	Lippman	Acting Capt. Rico Rolleri
Media Credentialing Formed 1-13-16	Perezvelez Sherman Smith		
Mutual Aid Pacts Re-formed 7-13-16	Bernstein DaSilva Sherman		Capt. _____
Surveillance and Community Safety Ordinance Formation begun 9-14-16	Bernstein DaSilva Javier Yampolsky <i>Public members:</i> Tracy Rosenberg Ben Hofer		
Outreach Committee Formed 9-21-16	Bernstein DaSilva		

Proposed PRC yearly Chair and Vice-Chair elections process

1. Yearly elections to the leadership of PRC will be placed on the agenda in order to give ample notice to the members of the commission interested in running for the office of Chair and Vice-Chair and the public at large. The election item will be placed at the end of the new business section of the regular agenda.
2. The election of the Chair will take place before the election of the Vice-Chair. This will allow the runner up for Chair the opportunity to run for Vice-Chair of the commission if he or she desires.
3. All nominations for Chair and Vice-Chair must be made by another member of the commission and not by the member interested in the position. All nominations must carry a second in order to proceed. All votes must be done by roll call in order to ensure proper recording of the votes, except that, if a seconded motion for only one member of the commission is made, the procedure described in section 4 below may be followed.
4. If there is only one member of the commission nominated, with a second, for either the position of Chair and Vice-Chair, and after the stipulated above process of a motion takes place, the current Chair of the commission will ask for a passage of the motion by acclamation.
5. If more than one member is nominated, with a second, for Chair or Vice-Chair, each nominated commissioner will be given two (2) minutes to express to all other commissioners and the public the reason(s) why they are seeking elevation to a leadership position. This process is optional.
6. After all the interested commissioners have given their speeches, commissioners will be allowed to ask questions of each candidate. This process will be followed for both the Chair and Vice-Chair positions.
7. The secretary of the PRC will record the maker and the second of the nomination motion as well as the total votes and results per office.
8. If there exists a tie between any and all members seeking the office of Chair or Vice-Chair, the current Chair will entertain a motion for additional candidates. If no other candidates are identified for either office, the chair will call for a re-nomination process and a vote. The two (2) minute speeches will not be repeated during this process.
9. If no winner is identified for the office of Chair or Vice-Chair after both steps in section 8 have been taken, the commission may choose by means of the motion process to:
 - a. Postpone the election of Chair and/or Vice-Chair until the next meeting as a new agenda item and bound by the nomination and election process, or

b. Continue with the process of electing the Vice-Chair if the unresolved tie is during the election of the Chair. Once the Vice-Chair is elected, a commissioner may move to either:

i. re-engage in the election of the Chair, or

ii. make the Vice-Chair acting chair until the next meeting.

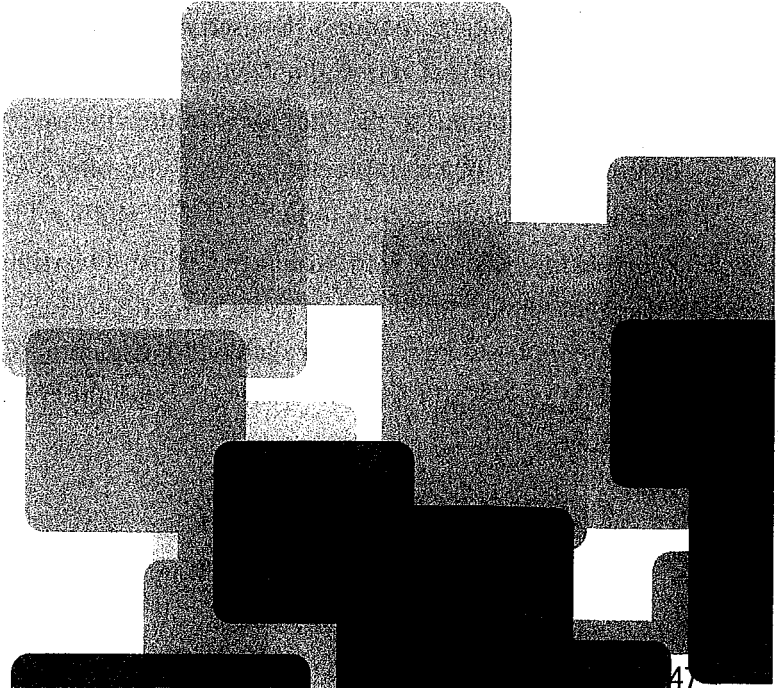
10. As is tradition in the PRC, the current Chair and Vice-Chair will continue their responsibilities until the end of the meeting in which elections are held. Both members will be given two (2) minutes to address the commissioners and the public after the election process takes place.



CIVILIAN OVERSIGHT OF LAW ENFORCEMENT

A REVIEW OF THE STRENGTHS AND
WEAKNESSES OF VARIOUS MODELS

Joseph De Angelis | Richard Rosenthal | Brian Buchner



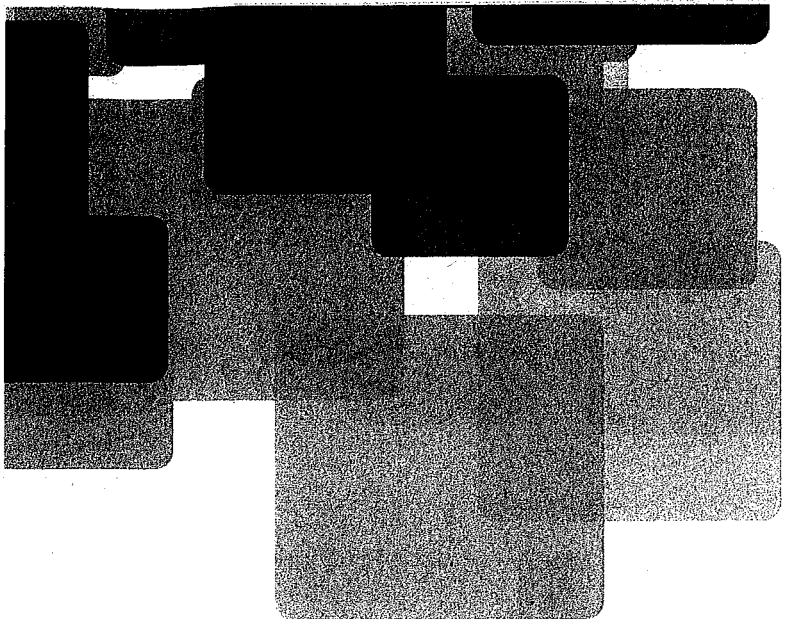


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Introduction and Overview

Over the last several decades, issues of trust and accountability have moved to the forefront of community-police relations, and a great deal of scholarship has been devoted to enhancing police performance including strengthening police accountability and oversight functions. During this same period, the creation of organizational mechanisms for reviewing and improving officer conduct has also increased (Walker 2001; Ferdik et al. 2013; Alpert et al. 2016).

One such mechanism for increasing accountability is civilian oversight of law enforcement. Sometimes referred to as *citizen oversight*, *civilian review*, *external review* and *citizen review boards* (Alpert et al. 2016), this accountability tool utilizes citizens (non-sworn officers) to review police conduct. In some jurisdictions, this is accomplished by allowing oversight practitioners (both paid and volunteer) to review, audit or monitor complaint investigations conducted by police internal affairs investigators. In other jurisdictions, this is done by allowing civilians to conduct independent investigations of allegations of misconduct against sworn officers. Civilian oversight can also be accomplished through the creation of mechanisms to authorize review and comment on police policies, practices, training and systemic conduct. Some oversight mechanisms involve a combination of systemic analysis and complaint handling or review.

Figure 1: Five Common Goals of Civilian Oversight Programs*



*Based on data collected from 97 civilian oversight programs

The goal of this publication is to provide an overview of civilian oversight models and a discussion of the strengths and challenges of each model. This report draws from available research as well as data collected from 97 police oversight agencies. This report is designed to help local policy makers, police executives and members of the local community explore key issues that can accompany the implementation and sustainability of civilian oversight of law enforcement at the municipal and county levels.

This report:

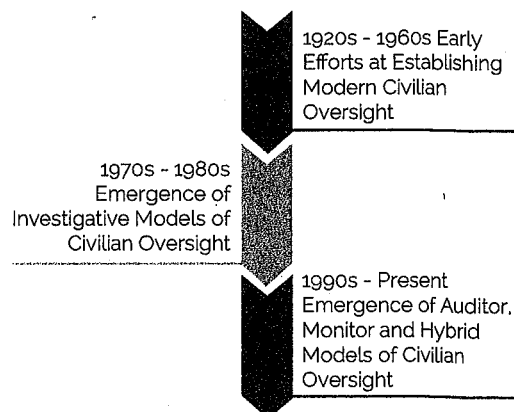
1. Provides a brief history of civilian oversight
2. Reviews contemporary models of civilian oversight
3. Details three different models of oversight: investigation-focused models, review-focused models and auditor/monitor-focused models
4. Presents considerations for implementing or reforming a civilian oversight program

Brief History of Civilian Oversight

The history of civilian oversight in the United States can be broken down into several distinct waves of development (Walker 2001; 2006).¹

¹ See Walker's (2001; 2006) work for a more detailed historical review of the key stages in the development of civilian oversight. Bobb (2003), Ferdik et al. (2013) and Alpert et al. (2016) also provide useful historical descriptions of the evolution of civilian oversight in the United States.

Figure 2: Waves of Development of Civilian Oversight in the United States



Early Efforts at Establishing Civilian Oversight, 1920s-1960s.

Modern forms of civilian oversight began to emerge in several large cities in the middle of the 20th century. These early agencies were organized around volunteer review boards that played a role in receiving complaints and reviewing completed internal police investigations of community complaints filed against officers (Hudson 1971; Terrill 1988; Walker 2001; Walker 2006). Early review boards were implemented in Washington, D.C., Philadelphia and New York City. Overall, these early efforts shared several key, common characteristics. First, the implementation of each of these oversight mechanisms in the middle of the 20th century was strongly influenced by the early civil rights movement and local crises resulting from police uses of force in communities of color (Walker 2001). Second, these early oversight agencies were designed around a civilian review board model—that is, they were largely composed of volunteer members with relatively little expertise in police issues, had small or non-existent budgets and little staff support (Jones 1994; Walker 2001). Third, these agencies all encountered significant resistance from police unions, local politicians and policy makers, which ultimately resulted in their dissolution (Bayley 1991; Walker 2001; Walker 2006).

Emergence of Investigative Models of Civilian Oversight, 1970s-1980s.

Although all of the oversight agencies implemented during the first wave ultimately failed, a second wave of development began in the late 1960s and carried through to the 1980s (Walker 2001; Walker 2006; Alpert et al. 2016). Oversight agencies implemented in the second wave had enhanced resources, greater durability and expanded organizational authority (Walker 2006). For example, a number of oversight agencies created in the second wave were granted the power to conduct investigations that were entirely independent of the police. In Berkeley, California in 1973, a city ordinance created the Police Review Commission (PRC) and granted it the ability to independently investigate complaints filed by members of the public against police officers (Walker 2001). Nearly ten years later, in 1982, an amendment to the City Charter

created the Office of Citizen Complaints in San Francisco, California. The Office of Citizen Complaints completely replaced the police internal affairs function in relation to citizen complaints and was granted the authority to both receive and investigate all citizen complaints (the police department continued to investigate internally-generated complaints against officers) (Walker 2001; Ferdik et al. 2013). Many of the agencies created in this second wave of development are still in operation today.

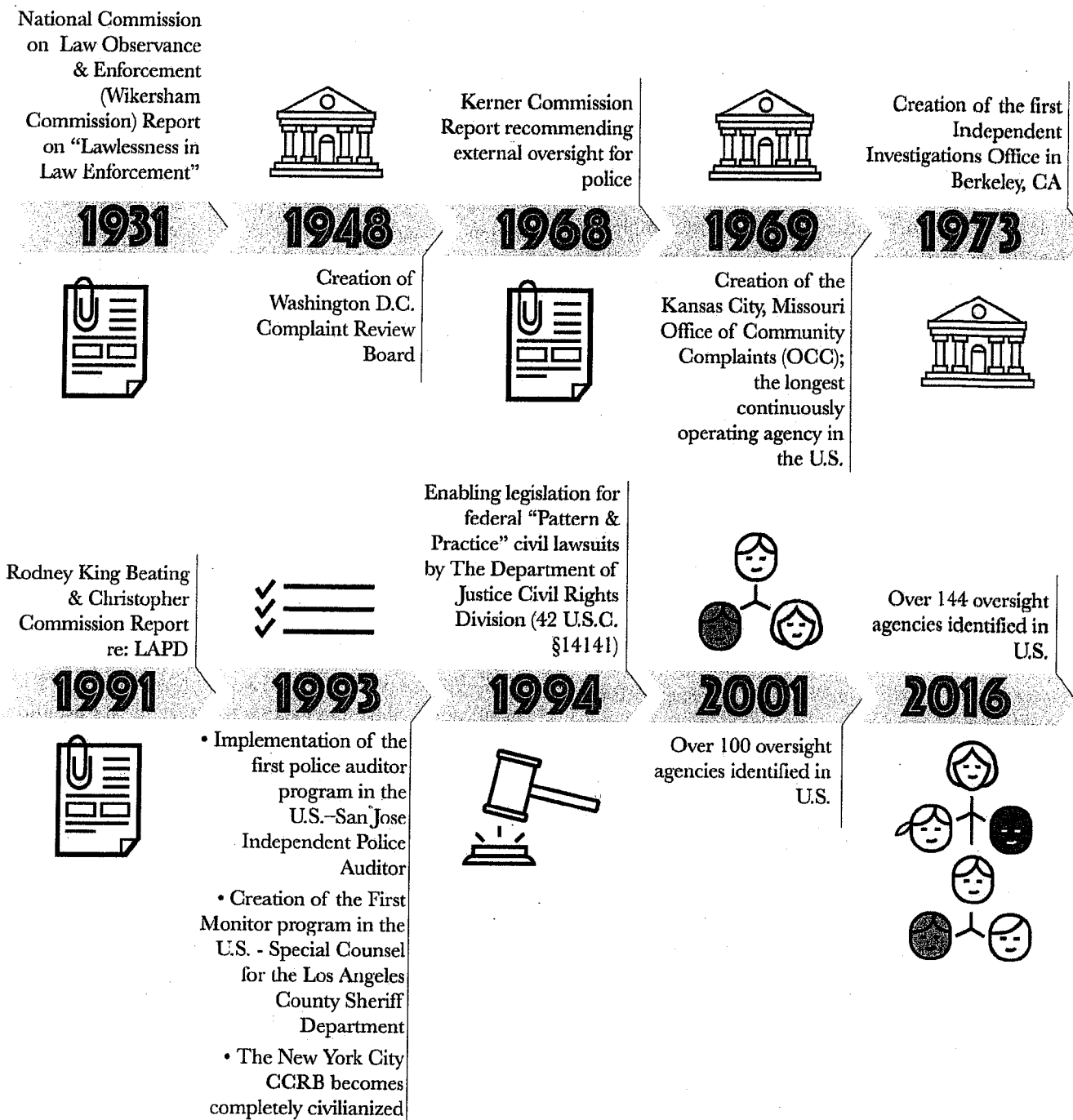
Emergence of Auditor, Monitor and Hybrid Models of Civilian Oversight, 1990s-Present.

A third wave of development began in the 1990s and continues even today. During this period there was a rapid expansion of the number of police oversight agencies in the United States. If the first wave of oversight agencies was marked by review boards, and the second wave was characterized by the development of fully independent investigative oversight agencies, the third wave saw the emergence of a new model of oversight—the auditor/monitor model (Bobb 2003; Walker 2006). The first auditor-focused oversight agency was implemented in 1993 in San Jose, California and was followed a short time later by the Seattle Police Auditor (Walker 2006; Ferdik et al. 2013).

Unlike earlier models of oversight that tended to focus on either reviewing or investigating individual complaints, these auditor/monitor agencies had the mandate to examine systemic patterns in complaints, critical incidents, or other types of police officer conduct. These auditor/monitor agencies were granted the authority to conduct broad evaluations so they could offer data-driven recommendations for improving police policies, practices and training (Walker and Archbold 2014).

By the late 1990s and early 2000s, the United States also began to see the development of a new generation of hybridized forms of civilian oversight, which often emerged as replacements for earlier civilian review boards. For example, the Independent Police Review Division (IPR) was implemented in Portland, Oregon in 2001 and was consciously designed to draw its organizational structure from different models of oversight (c.f. Office of the City Auditor 2001). Similar hybridized auditor/monitor oversight agencies were also implemented in other large cities, including Denver (2005) and New Orleans (2009).

Figure 3. Civilian Oversight Evolution



Contemporary Models of Civilian Oversight

While almost no two civilian oversight agencies in the U.S. are identical, the literature offers several initial observations about characteristics of contemporary forms of civilian oversight. These include:

- *High Variability in Organizational Structure.* There is currently a tremendous amount of variation in the structure of different oversight agencies (Walker and Kreisel 1996; Walker 2001; Bobb 2003; Alpert et al. 2016). Some agencies are operated almost completely by a small number of community volunteers while others have a large number of paid professional staff. Some oversight agencies have no operating budget while other agencies have multi-million-dollar budgets.
- *Wide Differences in Organizational Authority.* There is substantial variation in the role that oversight agencies play in relation to the intake of complaints, the relationship they have to the complaint investigation process, their level of access to police records, whether they can make recommendations as to findings and discipline, their ability to make policy recommendations and a long list of other characteristics (Walker and Kreisel 1996; Walker 2001; Bobb 2003; Alpert et al. 2016).
- *Organizational “Hybrids” are Common.* While early forms of oversight tended to operate as “citizen review boards,” and focused on reviewing and commenting on completed internal affairs investigations, many contemporary oversight agencies combine different organizational forms and types of organizational authority in relatively complex ways (Walker 2001; Finn 2001; Attard and Olson 2013; Alpert et al. 2016).

Classifying Contemporary Models of Civilian Oversight

Over the years, there have been multiple attempts to classify approaches to civilian oversight of law enforcement. The primary challenge in doing this is that almost no two civilian oversight agencies in the U.S. are identical. Each jurisdiction

has its own political, social and cultural tensions that influenced the development of each oversight entity’s legal authority and organizational structure, and practices vary widely (NACOLE 2015).

In the late 1990’s, Walker (2001) developed one of the earliest and most sophisticated classification systems for oversight.² Describing the different models as Class I, Class II, Class III and Class IV systems, Walker argued that models of oversight should be considered along a continuum that range from forms of oversight that are the most independent from police departments to oversight systems that are the least independent. He defined Class I systems as agencies that are independent of police departments and conduct fully independent investigations into allegations of officer misconduct. Class II systems review and comment on internal investigations conducted by the police. Class III systems function as appellate bodies, with complainants filing appeals with the oversight agency when they are dissatisfied with the outcomes on complaints investigated by local law enforcement. Class IV systems have the ability to audit, monitor or review the police/sheriff department’s complaint handling system. In addition to these classes, Walker also recognized that there are hybrid oversight agencies that did not fit easily within any of these categories (Walker 2001: 62).

Since Walker developed this classification scheme, a number of others attempts to update it have occurred. Ferdik, Alpert and Rojek (2013) adapted Walker’s (2001) classification schema to explore organizational variation in U.S. and Canadian oversight agencies. In 2005, the Police Assessment Resource Center (PARC) conducted a research project for the city of Eugene, Oregon to assist that city in determining an appropriate oversight model for the Eugene Police Department (PARC 2005). The research project created a three-part classification scheme: (1) *Review & Appellate models*, which are designed to review completed police internal investigations or hear appeals from the public on investigation findings; (2) *Investigative & Quality Assurance models*, which replace the police internal affairs process in whole or in part; and (3) *Evaluative and Performance-*

² A number of other academics and practitioners have recently developed classification schema that group police oversight agencies in slightly different ways (c.f. Prenzler and Ronken 2001; PARC 2005).

Based models, which adopt a holistic approach to evaluating patterns in police risk management, performance, operations or other organizational systems in order to promote systemic reform.

In another recent review of models of oversight, Attard and Olson (2013) revised Walker's oversight schema, and grouped oversight agencies based on their role in the complaint handling process, as well as by their organizational structure. Accordingly, they grouped oversight agencies into three categories: (1) *Investigative agencies* which conduct independent investigations of complaints filed against police officers; (2) *Auditing/monitoring agencies* that systematically review and examine police internal investigations and other law enforcement activity to make recommendations around policy and training; and (3) *Review boards and commissions*, which includes a diverse range of agencies headed by volunteer community members who may hold community forums, hear appeals or issue findings on investigations completed by paid staff (Attard and Olson 2013: 3-5).

This report adopts an oversight classification scheme that is a slightly revised version of Walker's (2001) and groups oversight agencies into three categories based on the core agency functions: (1) Investigation-focused; (2) Review-focused; and (3) Auditor/monitor-focused.

Three Categories of Civilian Oversight Models

Investigation-focused Model

Summary of Investigation-focused Agencies

Key Characteristics

1. Routinely conducts independent investigations of complaints against police officers
2. May replace or duplicate the police internal affairs process
3. Staffed by non-police, "civilian" investigators

Potential Key Strengths

1. May reduce bias in investigations into citizen complaints
2. Full-time civilian investigators may have highly specialized training

3. Civilian-led investigations may increase community trust in the investigations process

Potential Key Weaknesses

1. Most expensive and organizationally complex form of civilian oversight
2. Civilian investigators may face strong resistance from police personnel
3. Disillusionment among the public may develop overtime when community expectations for change are not met

The investigation-focused agency operates separately from the local police or sheriff's department. While the structure, resources and authority of these types of agencies can vary between jurisdictions, they are tied together by their ability to conduct independent investigations of allegations of misconduct against police officers. These oversight agencies may either completely replace the police internal affairs function or they may conduct investigations that supplant, parallel or duplicate the work of internal affairs (Finn 2001; PARC 2005).

San Francisco's Office of Citizen Complaints is one example of an entirely civilian governmental agency that is solely responsible for investigating complaints filed by community members against sworn members of the San Francisco Police Department (OCC 2016).

The organizational structure of investigative agencies can vary significantly. In some cases, an investigative agency may be governed by a volunteer board and supported by a professional staff of investigators. In small jurisdictions, an investigative agency may be staffed by a single investigator or consultant (Finn 2001; PARC 2005).

The available literature on investigation-focused agencies identifies a common set of organizational functions, including:

- Serving as the intake point for public complaints against police officers (Bobb 2003)
- Reviewing and classifying the nature of the complainants' allegations (King 2015)

- Conducting independent interviews of complainants, officers and witnesses (Attard and Olson 2013)
- Being staffed by non-police “civilian” investigators, although some agencies may employ retired or former police officers (Finn 2001)³
- Being headed by a community board or commission that may hold hearings, issue subpoenas or make findings on investigations conducted by professional non-police investigative staff (Attard and Olson 2013)

Table 1 provides examples of investigation-focused models in the United States.

Table 1: Examples of Investigation-focused Models in the U.S.

Agency	Jurisdiction	Website
Office of Citizen Complaints	San Francisco, CA	www.sfgov.org/occ
Office of Police Complaints	Washington, D.C.	www.policecomplaints.dc.gov
Citizen Complaint Review Board	New York, NY	www.nyc.gov/html/ccrb
Citizens’ Law Enforcement Review Board	San Diego County, CA	www.sandiegocounty.gov/clerb.html
Citizen Police Review Board & Office of Municipal Investigations	Pittsburgh, PA	www.cprbpg.org & www.pittsburghpa.gov/omi

Potential Strengths of the Investigation-focused Model

An investigation-focused agency with appropriately trained staff can complete thorough and impartial investigations (Prenzler and Ronken 2001; PARC 2005). Investigation-focused agencies are the most independent forms of

³ Some Canadian independent investigation agencies employ “seconded” officers who are currently serving police officers assigned as full-time investigators serving at the pleasure of the oversight agency director (e.g., the Alberta Serious Incident Response Team (ASIRT) and the Nova Scotia Serious Incident Response Team (SiRT)).

oversight (Walker 2001) and tend to have more resources and larger staffs than other types of oversight. Their investigators are also likely to have had highly specialized training and experience in relation to investigations, particularly as the organization matures. Thus, where investigation-focused agencies are sufficiently resourced, have well-trained, competent staff and are granted sufficient access to department personnel and records, they may be able to improve the quality of internal investigations. Even though this is a commonly identified strength of the investigation-focused oversight agency, more rigorous comparative research is needed on this issue.

A related potential strength of the investigation-focused model is its ability to increase public faith in the integrity of the investigations process, especially in the aftermath of significant public scandals involving the police. Available public opinion research demonstrates strong public support for the independent investigation of serious complaints against police officers (Prenzler 2016). Most investigation-focused agencies utilize civilian staff to conduct fact-finding investigations and operate a multi-member community board that may hold hearings, issue findings and/or make recommendations to the police department. As a result, this model may reassure a community that investigations are unbiased, thorough and that civilian perspectives are represented both within the complaint investigation process and upon review of completed investigations (PARC 2005).

Potential Limitations of the Investigation-focused Model

One potential limitation of the investigative model is the significant costs and resources necessary to conduct competent, timely investigations, including large staffing requirements and complex organizational issues that can accompany the implementation of a stand-alone investigative oversight agency. Full investigative agencies are more expensive than other models of oversight, largely due to the increased personnel costs that accompany the hiring of professional investigators (Finn 2001: vii).⁴

⁴ Although the cost of an investigation-focused oversight agency is by necessity higher than the other models of oversight, the higher cost could be mitigated by the savings realized from a reduction or the elimination of personnel needed to conduct police internal investigations.

Another potential weakness is that investigation-focused agencies tend to generate significant resistance from police unions and their allies (King 2015). Unions have routinely argued that civilian investigators do not have the technical background or professional experience to conduct competent investigations into allegations of officer misconduct (Prenzler and Ronken 2001; Walker 2001). Arguing that they will be biased against police officers, police unions have often opposed the implementation of full investigatory oversight agencies (King 2015).

As a result of police resistance and suspicion, civilian investigators may have trouble penetrating the defensive police subculture that can characterize police organizations (Prenzler and Ronken 2001; Livingston 2004). In some cases, officers who are distrustful of independent investigators may be less likely to be truthful and forthcoming during investigative interviews (Livingston 2004).

In addition, it can be argued that the use of former police officers or even civilian investigators who have not previously served as police officers may not eliminate pro-police bias in complaint investigations. Oversight investigators may harbor either pro-police bias or anti-police bias, depending on their own personal background and experiences.

Independent investigation-focused agencies in large cities have also been plagued with budgetary and personnel limitations that have resulted in untimely investigations. The New York City CCRB has often been criticized for lack of timely investigations as well as efforts taken by that agency to reduce its workload through re-allocation of resources (Clarke 2009).

Some researchers have argued that while the community may have great confidence in full investigative models initially, community confidence can wane over time if these models are perceived as not leading to the reforms promised during implementation (McDevitt et al. 2005: 5). For example, the public may expect that more citizen complaints will be sustained and stronger punishments imposed after full investigative oversight models are implemented. However, there is currently no systematic evidence to support this expectation, and it is currently unclear what impact full investigative models have on

patterns in findings and discipline for police officers alleged to have engaged in misconduct.

One final challenge associated with investigation-focused agencies is that they have the potential to undermine the responsibility of police chiefs and sheriffs to maintain discipline (McDonald 1981; Prenzler and Ronken 2001). That is, by removing the responsibility for investigating allegations of officer misconduct reported in citizen complaints, chiefs of police and sheriffs may be “let off the hook,” have less incentive to create robust internal accountability mechanisms and simply blame the external oversight agency when misconduct occurs (PARC 2005: 21)⁵. In addition, in police agencies where internal affairs units are reduced or eliminated, the opportunity for officers to obtain experience in conducting personnel investigations and recognizing the extent to which bad conduct can negatively affect the agency, becomes limited or nonexistent.

Review-focused Model

Summary of Review-focused Agencies

Key Characteristics

1. Often focus on reviewing the quality of completed police internal affairs investigations
2. May make recommendations to police executives regarding findings or request that further investigation be conducted
3. Commonly headed by a review board composed of citizen volunteers
4. May hold public meetings to collect community input and facilitate police-community communication

Potential Key Strengths

1. Ensures that the community has the ability to provide input into the complaint investigation process
2. Community review of complaint investigations may increase public trust in the process
3. Generally the least expensive form of oversight since it typically relies on the work of volunteers

⁵ It is important to note that most jurisdictions still grant the police chief or sheriff the final decision-making authority when it comes to findings and employee discipline.

Potential Key Weaknesses

1. May have limited authority and few organizational resources
2. Review board volunteers may have significantly less expertise in police issues and limited time to perform their work
3. May be less independent than other forms of oversight

Review-focused agencies examine the quality of internal investigations, primarily those conducted by internal affairs. Many review agencies take the form of volunteer review boards or commissions and are designed around the goal of providing community input into the internal investigations process (PARC 2005). Instead of conducting independent investigations, review-focused agencies may evaluate completed internal affairs investigations, hear appeals, hold public forums, make recommendations for further investigation or conduct community outreach (Attard and Olson 2013). As with investigation-focused agencies, review-focused agencies vary in their organizational structure and can perform a range of functions (Walker and Kreisel 1996; Prenzler and Ronken 2001; Walker 2001; Finn 2001; Bobb 2003; Attard and Olson 2013; Ferdik et al. 2013; Walker and Archbold 2014).

The available literature on review-focused agencies indicates they:

- Receive complaints from the community
- Review completed police investigations of externally-generated complaints
- Make recommendations to the police executive on individual investigations
- Hear appeals
- Gather, review and report on public concerns (Walker 2001; Finn 2001; Prenzler and Ronken 2001; Bobb 2003; PARC 2005; Attard and Olson 2013; Ferdik et al. 2013; King 2015; Alpert et al. 2016).

Table 2 provides examples of review-focused models in the United States.

Table 2: Examples of Review-focused Models in the U.S.

Agency	Jurisdiction	Website
Citizen's Police Review Board	Albany, NY	www.albanylaw.edu/cprb
Citizens' Police Complaint Board	Indianapolis, IN	www.indy.gov/egov/city/dps/cpco
Civilian Police Review Board	Urbana, IL	www.urbanaininois.us/boards/civilian-police-review-board
Citizen Review Committee	St. Petersburg, FL	www.stpete.org/boards_and_committees/civilian_police_review_committee
Citizens' Review Board on Police Practices	San Diego, CA	www.sandiego.gov/citizensreviewboard

Potential Strengths of the Review-focused Model

Some researchers argue that review boards and commissions may be perceived by the public as more representative of the community than programs that are staffed by full-time professionals (Finn 2001; Attard and Olson 2013). As such, community members may be more likely to perceive the review-focused model as supporting and protecting community interests (Walker 2001).

Beyond public perception, review-focused agencies have the benefit of allowing community representatives to bring an outsider's perspective to the complaint investigations process, which may help jurisdictions identify and correct deficiencies within individual complaint investigations (PARC 2005). Where review boards have a diversity of community representation, there may be a stronger motivation on the part of police investigators to ensure that not only is there no bias in the conduct of their investigations, but that any appearance of bias is also removed. With respect to the review of policy and officer conduct, review-focused agencies have the ability to identify deficiencies in policy or training as they apply to individual

cases being reviewed. A diverse board will have the ability to provide different perspectives on police policy and training and make recommendations for change that could result in improved police-community relations.

Finally, review focused agencies tend to be the least expensive form of oversight. They are often operated by volunteers and may have no stand-alone budget (PARC 2005). As a result, this type of oversight is popular in smaller jurisdictions that have limited resources.

Potential Limitations of the Review-focused Model

Review-focused agencies tend to have limited authority and, like investigation-focused agencies, typically focus on individual case investigations. As a result of such a reactive focus, their ability to promote large-scale systemic organizational change may be limited (Walker 2001; PARC 2005). Moreover, review-focused agencies may not have the authority to systemically evaluate police policies or procedures, make policy recommendations, or examine aggregate patterns in officer conduct (PARC 2005: 11).

Depending on the structure of the review agency, they may be less independent from the police than other oversight models. These types of oversight agencies may be more likely to report to the police chief, have a small or no stand-alone budget, have limited or no staff support and board members tend to be political or police chief appointees (Walker 2001; PARC 2005; Olson 2016). Moreover, they may have to rely on the police or sheriff's department for meeting space, administrative support and training. Since review-focused agencies do not always have the power to conduct independent investigations, they are also more likely to rely on the police or sheriff's department for information (McDevitt et al. 2005; Olson 2016).

Since review-focused agency board members are generally volunteers drawn from a range of professional backgrounds, they may have less expertise than paid professional oversight staff and have limited time to perform oversight functions. This aspect may reduce the efficiency of a jurisdiction's oversight function and lead to a shallow impact on the quality of internal investigations (Finn 2001; Olson 2016).

Auditor/Monitor-focused Model

Summary of Auditor/Monitor-focused Agencies

Key Characteristics

1. Often focuses on examining broad patterns in complaint investigations, including patterns in the quality of investigations, findings and discipline
2. Some auditors/monitors may actively participate in or monitor open internal investigations
3. Often seek to promote broad organizational change by conducting systematic reviews of police policies, practices or training and making recommendations for improvement

Potential Key Strengths

1. Often have more robust public reporting practices than other types of oversight
2. Generally less expensive than full investigative agencies, but more expensive than review-focused agencies
3. May be more effective at promoting long-term, systemic change in police departments

Potential Key Weaknesses

1. Auditor/monitor focus on examining broad patterns rather than individual cases may be treated with skepticism by some local rights activists
2. Significant expertise is required to conduct systematic policy evaluations. The hiring of staff without relevant experience may cause tension between the oversight agency and police officers
3. Most auditors/monitors can only make recommendations and cannot compel law enforcement agencies to make systemic changes

One of the newest forms of police oversight can be found in the auditor/monitor-focused model of oversight. Civilian oversight agencies that follow this model can also be referred to by several different names including police

monitor⁶ or inspector general. This model of civilian oversight began to develop in the 1990s and generally emerged as a type of political compromise to satisfy police and community concerns about bias and professionalism (Walker 2006; Walker and Archbold 2014: 180). While local community and civil rights activists tended to argue in favor of citizen review boards or full investigative models, police unions tended to be strongly opposed to those models. As a result, the auditor/monitor-focused model emerged partly as a mechanism for bridging the disparate goals held by the different stakeholders to the complaint process (Walker and Archbold 2014).

While there can be variation in the organizational structure of this type of civilian oversight, auditor/monitor agencies tend to focus on promoting large-scale, systemic reform of police organizations (PARC 2005). Accordingly, this type of organization tends to have a unique set of goals that distinguish it from investigation-focused and review-focused models of oversight (Walker 2001; Finn 2001; PARC 2005; Attard and Olson 2013; Ferdik et al. 2013; Walker and Archbold 2014).

The available literature on auditor/monitor-focused agencies identifies a core set of functions which include:

- Ensuring a jurisdiction’s processes for investigating allegations of misconduct are thorough, complete and fair
- Conducting evaluations of police policies, practices and training
- Participating in open internal affairs investigations
- Robust public reporting (Walker 2001; Finn 2001; Prenzler and Ronken 2001; Bobb 2003; PARC 2005; Attard and Olson 2013; Ferdik et al. 2013; King 2015; Alpert et al. 2016).

⁶ It is important to distinguish between court appointed monitors, who are limited term appointees charged with overseeing the implementation of a court-sanctioned reform agreement, and municipal or cozenly civilian monitors who are local oversight professionals or consultants employed by the local jurisdiction. For purposes of this report, the term monitor is used to refer to locally employed police monitors. The role of court-appointed monitors in promoting police reform is beyond the scope of this publication, but has been explored elsewhere (see Davis et al. 2002; Chanin 2015).

Table 3 provides examples of auditor/monitor-focused agencies in the United States.

Table 3: Examples of Auditor/Monitor-Focused Agencies

Agency	Jurisdiction	Website
Independent Police Auditor	San Jose, CA	www.sanjoseca.gov/ipa
Office of the Independent Monitor	Denver, CO	www.denvergov.org/oim
Independent Police Monitor	New Orleans, LA	www.nolaipm.gov
Los Angeles Board of Police Commissioners Office of the Inspector General	Los Angeles, CA	www.oig.lacity.org
Office of the Inspector General for the New York City Police Department	New York, NY	www.nyc.gov/oignypd

Potential Strengths of the Auditor/Monitor-focused Model

Since these agencies tend to focus on exploring patterns in complaints, auditor/monitor-focused models may have broader access to police and sheriff’s department records, case files and electronic databases than review-focused agencies (McDevitt et al. 2005; Olson and Attard 2016). While review-focused agencies tend to have only limited access to individual closed internal affairs files, auditor/monitors-focused models tend to be granted more expansive access to police department records (Walker and Archbold 2014). Moreover, auditor/monitor-focused agencies tend to be (or become) policing experts, have larger budgets and may have more extensive training than might be found in volunteer-based oversight agencies (McDevitt et al. 2005).

It is possible that the auditor/monitor-focused model may be more effective at promoting long-term, systemic change in police organizations, in part because they can focus on broader trends and patterns in complaints and make public recommendations for how the police department can improve (Walker and Archbold 2014). Unlike investigative agencies, auditor/monitor-focused models do not generally take the investigations process away from the police department, but instead use systematic evaluation and public reporting to ensure that policy makers and the local community knows whether the department is holding its officers accountable (PARC 2005). Auditor/monitor-focused agencies also have the ability to track whether police departments implement their recommendations and whether those changes have resulted in organizational improvements over time (PARC 2005; Walker and Archbold 2014).

Some scholars have argued that the independence of auditor/monitor agencies may increase their credibility with the public, leading to more effective public outreach (Walker and Archbold 2014: 183). The more robust public reporting authority and greater staffing resources may enhance the ability of auditor/monitor agencies to conduct effective community outreach when compared to review-focused agencies, which rely on community volunteers or even independent investigation agencies that focus on specific, individual complaints of misconduct.

Potential Limitations to the Auditor/Monitor-focused Model

Local civil rights or community activists may oppose this type of civilian oversight because they may view this model's reliance on full-time, paid staff with skepticism. Some community members and civil rights activists may be left dissatisfied, since they may desire that discipline be imposed in specific cases of officer misconduct versus the auditor/monitor agencies' focus on aggregate patterns in complaints and other metrics within law enforcement agencies (Walker and Archbold 2014). In fact, the very nature of the auditor/monitor-focused model concept may put the police auditor/monitor at odds with community demands or expectations in high profile and controversial cases. The concept behind the auditor/monitor model is that the office be fair, unbiased and evidence-based in

its decision-making (Walker and Archbold 2014). Such decision-making may result in criticism of the oversight agency by the community, the police or both.

In some cases, an auditor/monitor agency may choose to allow the police executive to take credit for a reform initiative, to maintain long-term relationships with police leadership. Such actions, while they may promote positive reform in a police organization, may result in a lack of understanding in the community as to the actual effectiveness of the oversight program.

Like other models of oversight, most auditor/monitor-focused agencies can only make recommendations and cannot compel law enforcement agencies to make changes (Walker and Archbold 2014: 195). In situations where the law enforcement agency regularly declines to accept recommendations or continues to engage in activities contrary to the expectations of certain members of the public, the oversight agency may be perceived as ineffective.

One final limitation is that the auditor/monitor-focused model is strongly dependent on the quality of the staff hired to do the work (Walker and Archbold 2014). Analyzing patterns in complaints, findings, discipline or conducting performance evaluations of other police policies and practices requires a high level of technical sophistication and training, as well as a commitment to objective, evidence-based evaluation. The hiring of staff without relevant experience or a commitment to objective, dispassionate evaluation methods may cause significant tension between the oversight agency and police executives, as well as with rank-and-file officers.

Table 4 summarizes the common characteristics and forms of authority for the three types of oversight models.

Table 4: Common Characteristics and Forms of Authority by Oversight Model

	Investigation-Focused Agencies	Review-Focused Agencies	Auditor/Monitor Agencies
Receive Community Complaints	Frequently	Frequently	Frequently
Decide How a Complaint will be Handled	Frequently	Rarely	Sometimes
Review Police Complaint Investigations (e.g., for thoroughness, completeness, accuracy)	Sometimes	Frequently	Frequently
Conduct Independent, Fact-Finding Investigations	Frequently	Rarely	Sometimes
Perform Data-Driven Policy Evaluations	Sometimes	Sometimes	Frequently
Recommend Findings on Investigations	Frequently	Sometimes	Frequently
Recommend Discipline to the Police Chief	Sometimes	Rarely	Sometimes
Attend Disciplinary Hearings	Sometimes	Rarely	Sometimes
Have a Board Composed of Community Members	Frequently	Frequently	Sometimes
Hear Appeals	Sometimes	Sometimes	Rarely
Have Paid Professional Staff	Frequently	Sometimes	Frequently
Staffing and Operational Costs	Most Expensive	Least Expensive	Intermediate Expense

Table notes: Based on data collected from 97 U.S. oversight agencies, 2016.

Considerations When Implementing or Reforming a Civilian Oversight Program

Over the past 30 years, local experimentation with different types of oversight models, to include hybridization of these different models, has resulted in a complex, heterogeneous organizational field. And while the data included in this report explores organizational variation across different oversight agencies, it does not answer two fundamental questions:

- Which forms of oversight are the most effective?
- Under what circumstances should a jurisdiction implement a review-focused model of oversight as opposed to an investigative or auditor/monitor-focused model?

Even though the question of what type of model constitutes a “best” form of oversight remains unanswered, much can be learned from patterns shown in this paper. In fact, the growing hybridization of police oversight and the blurring of the boundaries between different models of oversight carry an important lesson for local jurisdictions that are exploring whether to implement oversight or are considering revising their current oversight framework.

Jurisdictions Should Focus on the “Best-Fit” Rather Than the “Best Practices” When Considering How to Structure Civilian Oversight

A key lesson that can be learned from the history of oversight in the U.S. is that there is not necessarily any “best practice”

in the creation of a civilian oversight of law enforcement program. Rather, a jurisdiction should look for a “best-fit” model of oversight (Bobb 2003). Every jurisdiction has its own social, cultural and political issues, and every police agency has its own unique organizational history, traditions and sub-cultural characteristics. While some police agencies may be proficient at holding their officers to account with respect to certain types of conduct, other police agencies may struggle. Some large jurisdictions have ample financial resources to implement highly professionalized, organizationally complex forms of oversight while smaller jurisdictions may have far fewer resources with which to implement and sustain police oversight.

“Evidence that that any one civilian oversight approach or mechanism is more effective than another does not yet exist, although the role and authority of a civilian oversight function often grows over time to meet emerging community needs and expectations.” (Anderson et al. 2015: 3)

Given these differences between cities and counties in the U.S., it is likely that no single model of oversight is going to work for all jurisdictions. As a result, the best form of oversight for individual jurisdictions simply depends on the circumstances faced by the jurisdiction that is either creating or updating its oversight processes.

Oversight Should Employ the “Least Force” Necessary to Accomplish Its Goals

Even though law enforcement resistance to the concept of police oversight has diminished over time, it can still be argued that “the least intrusive means of oversight” (Bobb 2003) necessary to achieve police accountability is the best means of approaching the oversight function in the long-term. Just as the police are expected to only use that amount of force that is proportionate, necessary and reasonable to accomplish their task, so it can be argued that jurisdictions creating or reforming an oversight function should similarly accomplish the feat of ensuring police accountability (Bobb 2003). In other words, a jurisdiction seeking to create or update an oversight function should choose the least intrusive model of oversight necessary to accomplish the task. If the model chosen does not accomplish that objective, a more aggressive form of oversight would then be required. As such, it is impossible to suggest that

any one model of oversight is better than another. Each jurisdiction must evaluate its own police agency; its culture, its leadership, its overall current capacity to police itself and its future potential in that regard before choosing the most appropriate form of oversight that will have the highest likelihood of success over time.

A Number of Resources are Available to Jurisdictions Considering Implementing Oversight or Reforming Their Current Oversight Framework

One of the key challenges for local jurisdictions that are considering whether to implement oversight is to find examples of jurisdictions that have successfully implemented and sustained effective oversight agencies. It can also be difficult and resource intensive for local jurisdictions to collect examples of legal language, organizational procedures, and other “nuts-and-bolts” documents that they can use as models after they decide to implement oversight. Several relatively recent reports have sought to overcome these problems by providing detailed cases studies of existing oversight agencies (Finn 2001; PARC 2005; McDevitt et al. 2005; Attard and Olson 2013; Noe 2013; Olson 2016; PARC 2016). These reports contain key details about oversight agency powers, organizational, structure, funding and staffing and should be consulted by local jurisdictions who are considering oversight or interested in reforming their local oversight agency. A number of academic books also provide practical information about civilian oversight of law enforcement (Goldsmith and Lewis 2000; Walker 2001; Perino 2006; Walker and Archbold 2014; Prenzler and den Heyer 2016).

In addition, to help local jurisdictions gain access to examples of oversight policies, legal language and key organizational documents, the National Association for Civilian Oversight for Law Enforcement (NACOLE) has created a companion website to this report that includes up-to-date profiles for model police oversight agencies. This website’s toolkit includes examples of ordinance/charter language, oversight policies and procedures, annual reports, special topics reports, complaint forms, outreach brochures and other documents that can serve as examples for new oversight agencies. This website’s toolkit can be accessed by visiting: www.nacole.org/agency_profiles

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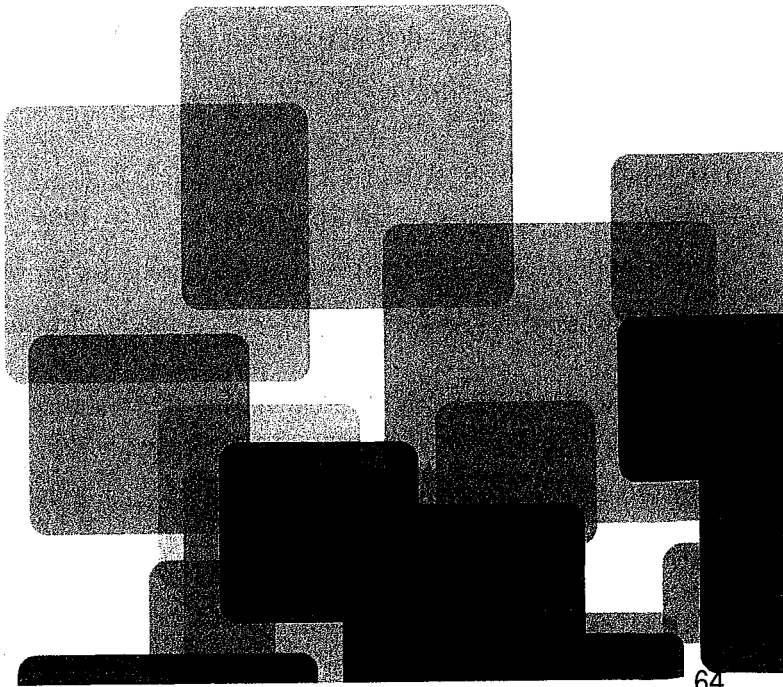
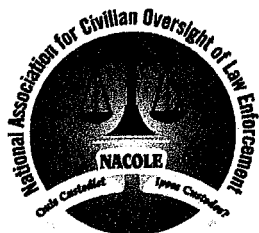
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Lee, Katherine

From: PRC (Police Review Commission)
Sent: Monday, September 19, 2016 8:27 AM
To: Lee, Katherine
Cc: Norris, Byron
Subject: FW: Positive feedback

-----Original Message-----

From: Shamala Carlson [mailto:shamcarlson@gmail.com]
Sent: Saturday, September 17, 2016 9:34 AM
To: PRC (Police Review Commission) <prcmailbox@ci.berkeley.ca.us>
Subject: Positive feedback

Hi,

I recently moved to Berkeley (one week ago) from San Jose, and prior to that Bangkok. I've been reading a lot of negative stories about cops lately but last night I witnessed an exchange that has made me feel very kindly disposed to Berkeley police.

There is a homeless black man who hangs out nearby, he displays a lot of overt schizophrenic behavior and some of it may appear scary but having spoken to him, I believe he is harmless and lonely.

So I was a bit worried last night when a police car pulled over and an officer went over to him. But the officer was so kind and compassionate speaking to him, that it brightened my day as well.

I'm sure you collect a lot of negative reviews, but I think it's important to praise the good as well. So please feel free to pass this on to the police department.

Have a great day!
Shamala Carlson

Sent from my iPad

