

**INTRADEPARTMENTAL CORRESPONDENCE**

November 22, 2022  
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**BPC#22-249**

**TO:** The Honorable Board of Police Commissioners

**FROM:** Inspector General, Police Commission

**SUBJECT:** BOARD OF RIGHTS REVIEW

**RECOMMENDED ACTION**

REVIEW and APPROVE the Office of the Inspector General's (OIG) report on the Los Angeles Police Department's Board of Rights (BOR) hearing process.

**DISCUSSION**

At the request of the Board of Police Commissioners (BOPC or Commission), the Office of the Inspector General conducted a qualitative analysis of the Board of Rights hearing process at the Los Angeles Police Department. For this report, the OIG conducted in-person observations as well as comprehensive transcript reviews of multiple BOR hearings. The OIG's analysis included both Traditional Boards – which have hearing panels comprised of two sworn officers and one civilian Hearing Examiner – and All-Civilian Boards – which have hearing panels comprised of three civilian Hearing Examiners and were enabled pursuant to a City Charter amendment that was enacted in 2019. In addition to the qualitative analysis of a selected sample of Board of Rights hearings, this report includes an update to the OIG's May 2021 quantitative look at BORs. Included in the second segment of the report is a comprehensive breakdown of BOR hearing data dating back to 2016.

Based on its review of BORs, the OIG identified some systemic areas of concern and developed some specific recommendations for improvement, as appropriate. I am available to provide any further information the Commission may require.



MARK P. SMITH  
Inspector General  
Police Commission

Attachment

# LOS ANGELES POLICE COMMISSION

## BOARD OF RIGHTS REVIEW



Conducted by the  
OFFICE OF THE INSPECTOR GENERAL

MARK P. SMITH

Inspector General

November 22, 2022

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## I. EXECUTIVE SUMMARY

At the request of the Board of Police Commissioners (BOPC), the Office of the Inspector General (OIG) conducted a qualitative analysis of the Board of Rights (BOR or Board) hearing process at the Los Angeles Police Department (LAPD or Department). For this report, the OIG conducted in-person observations as well as comprehensive transcript reviews of multiple BOR hearings. The OIG's analysis included both Traditional Boards – which have hearing panels comprised of two sworn officers and one civilian Hearing Examiner – and All-Civilian Boards – which have hearing panels comprised of three civilian Hearing Examiners and were enabled pursuant to a City Charter amendment that was enacted in 2019.

The OIG's primary focus was on a set of 21 BORs that it was able to analyze from start to finish, including nine transcript reviews and 12 in-person reviews, all of which took place between September 1, 2019 and December 15, 2021. This sample amounted to roughly one-quarter of all BORs reported by the Department as having been completed during that period of time. For each BOR hearing it reviewed, the OIG specifically looked at the following areas: (1) overall procedural efficiency of the hearing; (2) adherence to the rules and procedures established by the BOR Manual; (3) whether the complaint investigation information received by the Chief of Police (COP) differed from the evidence presented to the BOR panel of Hearing Examiners; and (4) whether the rationales proffered by Hearing Examiners for their adjudications, in both Traditional Panels and All-Civilian Panels, were supported by the evidence entered into the record during BOR hearings. The OIG also communicated with multiple members of the Department who have extensive first-hand knowledge of the BOR process, both historically and presently, in order to hear their perspective on the system's strengths and weaknesses. Similarly, the OIG interviewed some of the attorneys who regularly represent accused officers in BORs for the same purpose.

Based on what it learned from its analysis, the OIG identified a number of concerns with regard to how the current BOR system constricts the LAPD's crucial ability to hold its own officers accountable in response to misconduct. For example, disciplinary findings and decisions made by the Chief of Police regarding officers who fall under the Chief's command can be overruled by a BOR – and they frequently are. Sometimes, in cases involving the most egregious types of misconduct, this means that the Chief has no choice but to retain an officer whom the Chief has already determined is no longer fit to perform the essential duties of a peace officer and should be terminated from employment with the Department. Also, BOR hearings are considered *de novo* hearings despite the extensive layers of review and the protections afforded to every accused officer in each Department investigation, which is a prerequisite to any BOR. The *de novo* nature of a BOR hearing is another check on the Department's fundamental efforts toward holding its own officers accountable as contrasted with a hearing to determine whether or not the underlying Department investigation reached an appropriate conclusion. Thirdly, BOR hearings are generally closed to the public, with some exceptions, which means that any time a Board deviates from the Department in determining whether misconduct occurred or whether an officer should be terminated or otherwise disciplined, the reasoning for its decision to overrule the Department is largely shielded from public scrutiny.

In addition to these concerns, the OIG's extensive review of Boards of Rights revealed that licensed attorneys hired to defend an accused officer often enjoy a distinct advantage over their Department Advocate counterparts thanks to their more extensive litigation skills and experience. This advantage can have a meaningful impact on the outcome of some BOR hearings, particularly as the hearings have grown increasingly formal and legalistic over time. The issue is further exacerbated by the fact that the number of BORs appears to be on the rise, while the resources in the Department's Advocate Section remain roughly the same. Higher workloads for the members of that section's staff can make it more challenging for them to present the Department's position as effectively as possible to a BOR panel before it reaches its highly consequential findings. The OIG also recognizes that the BOR Manual, which delineates the rules and procedures governing the conduct of BOR hearings, has been allowed to fall substantially out of date, and that it must be kept current in order to help ensure that the BOR process remains a fair, balanced, and rigorous one that furthers the accountability of the Department to the public that it serves. To address these issues, the OIG's report includes recommendations for attorney representation of the Department during BOR hearings, reevaluation of the resources devoted to the Advocate Section, and regular reviews of the BOR Manual to ensure it remains current.

Finally, in addition to its qualitative analysis of a selected sample of Board of Rights hearings, this report includes an update to the OIG's May 2021 quantitative look at BORs. Included in the second segment of this report is a comprehensive breakdown of BOR hearing data dating back to 2016. What the data shows, among other things, is that the frequency of BOR findings overruling the COP's determination that an accused officer committed misconduct, reducing the level of discipline that the Chief sought to impose, or both, has been on the rise in recent years. In 2018, 51% of the BORs that were completed yielded such results; in 2019, that number rose to 55%; in 2020, it was 62%; and in 2021, 76% of closed BORs resulted in either a Not Guilty/No Penalty finding or a reduced penalty from the one sought by the COP. These rates were significantly higher for All-Civilian Panels than for Traditional Panels, once the former became an option available to accused officers in June 2019. In sum, data such as these underscore the concerns explored further in this report regarding the Department's critical ability to hold itself accountable to the public that it serves, and to do so appropriately and effectively via its internal disciplinary system.

## **II. BACKGROUND**

The focus of the OIG's current BOR review was on an in-depth analysis on the efficacy of the BOR process, including since the implementation of Los Angeles City Ordinance No. 186100 (the Ordinance), which codified revisions into the City Administrative Code pursuant to a voter-approved charter amendment and subsequent City Council action. Among other measures, the Ordinance provided sworn officers with the option of selecting a BOR panel composed of three civilian Hearing Examiners (an All-Civilian Panel) rather than the traditional panel composed of two sworn officers at the rank of Captain or above and one civilian Hearing Examiner (a Traditional Panel).

A. Section 1070 of the Los Angeles City Charter

Consistent with the California Public Safety Officer's Procedural Bill of Rights Act,<sup>1</sup> Section 1070 of the Los Angeles City Charter (Charter) establishes the LAPD's disciplinary procedures. Section 1070 applies only to LAPD peace officers who have completed their period of probation and grants all such officers (except for the Chief of Police) a property interest in their position and employment compensation. Section 1070(a) of the Charter states:

No [officer] shall be suspended, demoted in rank, suspended and demoted in rank, removed, or otherwise separated from the service of the department (other than by resignation), except for good and sufficient cause shown upon a finding of guilty of the specific charge or charges assigned as cause or causes after a full, fair, and impartial hearing before a Board of Rights, except as provided in subsections (b) and (i). No case of suspension with loss of pay shall be for a period exceeding 65 working days.

The Charter provides two paths by which an officer subject to discipline may have a hearing before a BOR: an automatic hearing if the penalty is removal (from employment), also known as a "Directed Board,"<sup>2</sup> or a hearing requested by an officer, also known as an "Opted Board,"<sup>3</sup> if the penalty is a suspension from 1 to 22 days and/or a demotion in civil service rank. Regarding the imposition of penalty, Section 1070(b) of the L.A. Charter states that:

In the event the member suspended and/or demoted in rank under this subsection files an application for a hearing by a Board of Rights as provided in this section, the suspension and/or demotion shall automatically be stayed pending hearing and decision by the Board of Rights. Provided, however, in the case of any member demoted in conjunction with a temporary relief from duty or cancellation of such relief from duty, the demotion shall not be stayed pending a hearing before and decision by a Board of Rights unless the accused specifically requests in the written application that the Board consider the demotion in conjunction with the appeal of the temporary relief from duty or cancellation of such relief from duty. In the event that the member fails to apply for a hearing within the period prescribed, the member shall be deemed to have waived a hearing, and the suspension and/or demotion shall remain effective unless the Chief of Police requires that a hearing be held.

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<sup>1</sup> CAL. GOV. CODE § 3300 et seq.

<sup>2</sup> L.A. CITY CHARTER, Art. X, §§ 1070(a), (b) (eff. 2000); See also *Perspectives on the Disciplinary System: Insights from the Men and Women of the LAPD*, Special Assistant for Constitutional Policing, Los Angeles Police Department, Nov. 13, 2014, pp. 12-13.

<sup>3</sup> L.A. CITY CHARTER, Art. X, §§ 1070(a), (b) (eff. 2000).

All BOR hearings are considered *de novo* hearings.<sup>4</sup> Accordingly, in both Directed and Opted hearings, the BOR panel makes a determination based on the evidence presented to it as to whether the accused officer is guilty of any count of misconduct charged against them. If it determines guilt on any count, the Board may prescribe a penalty ranging from an Official Reprimand<sup>5</sup> up to removal from employment. The COP must then impose the prescribed discipline or, at the COP's discretion, a less severe penalty; the COP may not impose a greater penalty than that prescribed by the Board.<sup>6</sup>

#### B. Section 22.290 of the Los Angeles Administrative Code

Beginning in 1992, all BOR panels were comprised of two sworn officers (at the rank of Captain or above) and one civilian.<sup>7</sup> In May 2017, voters approved Charter Amendment C (Measure C), which authorized the Los Angeles City Council to introduce the option of an All-Civilian BOR panel into disciplinary proceedings, if chosen by the accused officer. The Council then passed Ordinance No. 186100 on April 30, 2019, ultimately codifying the All-Civilian Panel option in the Los Angeles Administrative Code.

Section 22.290 of the Los Angeles Administrative Code established several rules for this new and optional BOR composition. It required the BOPC to maintain a pool of competent adult civilians to serve as possible members of each Board. Section 22.290 also directed that each All-Civilian Panel would be chosen by drawing the names of nine qualified individuals from the pool at random and then giving the Department and the accused officer the opportunity to strike three names each. The remaining three civilians would constitute the BOR panel. The option to have an All-Civilian Panel was not available with respect to any BOR initiated before June 13, 2019.<sup>8</sup> Finally, Section 22.290 prohibited its own repeal for two years after its adoption.<sup>9</sup>

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<sup>4</sup> *Id.*, at § 1070(f).

<sup>5</sup> An Official Reprimand is a disciplinary penalty that consists of a written reprimand being placed in the subject officer's personnel file.

<sup>6</sup> L.A. CITY CHARTER, Art. X, § 1070(p) (eff. 2000).

<sup>7</sup> The LAPD first instituted the BOR process in the 1930s, which transferred significant discretion related to disciplinary action for alleged police misconduct from the COP to the BOR. The original iteration of the Board included three Hearing Examiners who were all sworn police officers at the rank of Captain or above. In a municipal election held in June 1992, Los Angeles voters approved Charter Amendment F, which directed the City to implement a series of reforms recommended by the Christopher Commission to increase police accountability in the wake of the Rodney King incident. One of the reforms included modifying BOR hearings to include a civilian in place of one of the three sworn officers. See L.A. POLICE COMMISSION, OFF. OF THE INSPECTOR GENERAL, *Board of Rights Statistical Overview 2019-2020*, (May 11, 2021).

<sup>8</sup> L.A. CITY ADMINISTRATIVE CODE, Art. XII, § 22.290(d) (eff. June 13, 2019), states, "**No Retroactive Application.** This section shall not apply to any complaint that has been filed by the Chief of Police with the Board of Police Commissioners prior to the effective date [sic] this section."

<sup>9</sup> *Id.*, at (g).



### III. THE DISCIPLINARY PROCESS

The issuance of discipline to all Department members arising from a complaint of misconduct falls specifically within the Chief of Police's authority, with limited exceptions<sup>10</sup> such as complaints raised directly against the COP.<sup>11</sup> This authority includes discipline issued to officers involved in Categorical Use of Force (CUOF) incidents who were determined to have committed misconduct. While the BOPC reviews each CUOF incident and makes the determination as to whether or not the substantially involved officers' actions complied with Department policy, the authority to initiate discipline against any of those officers remains solely with the Chief. The COP's authority to discipline sworn members is, in turn, checked via the BOR process. The information below provides context regarding the evidence that is considered by the BOPC in adjudicating a CUOF, by the COP in issuing discipline against a sworn Department employee, and by a BOR in determining whether an accused officer committed misconduct and, if so, in determining an appropriate penalty. Following that is a discussion of the Department's Penalty Guide for Discipline and the role that it plays in the disciplinary process.

#### A. Categorical Uses of Force

##### 1. Information Provided to the Board of Police Commissioners

To carry out its adjudication of a CUOF incident, the BOPC is provided with a package of investigative and analytical materials and resources, which includes the following:

#### **Force Investigation Division's Investigation File**

Force Investigation Division (FID) is the specialized division within the LAPD's Professional Standards Bureau that is responsible for the investigation of CUOF incidents. Led by a Captain III, FID is comprised of multiple teams of experienced detectives, each supervised by a lieutenant, and has a 24/7 response capability. FID conducts both the criminal and administrative investigations of CUOF incidents, and the OIG oversees the overall process while simultaneously conducting its own independent review of each incident. In advance of its adjudication of a CUOF incident, the BOPC is provided with the completed FID investigation file, the contents of which typically include an investigative summary, interview transcripts, video and photographic evidence, and the results of forensic analyses.

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<sup>10</sup> L.A. CITY CHARTER, VOL. I, § 574(b) states that the Chief of Police, "shall have the authority to appoint, discharge, discipline, transfer and issue instructions to the employees of the department, other than the Secretary of the Board, the chief accounting employee of the department, the Inspector General of the Police Department and his or her staff, the Executive Director of the Board and his or her staff, all subject to the civil service provisions of the Charter[...]."

<sup>11</sup> See L.A. CITY CHARTER, VOL. I, § 571(b)(2) regarding the BOPC's authority to evaluate the Chief of Police annually; see L.A. CITY CHARTER, VOL. I, § 575 regarding the BOPC's authority to initiate a procedure to remove the Chief of Police from office.

### **Use of Force Review Board Evaluation**

Following FID's completion of an investigation of a CUOF investigation, the Department convenes a Use of Force Review Board (UOFRB) to evaluate the incident. The UOFRB is chaired by the Assistant Chief of Police over the Office of Support Services and includes command staff representatives from the Personnel and Training Bureau, the involved employee(s)' Office and Bureau of assignment, and a peer officer. An Assistant Inspector General is present to monitor the UOFRB proceedings, and subject matter experts from within LAPD are present to provide the UOFRB members with technical advice. Each UOFRB member is provided with a copy of FID's investigation, and FID detectives provide the UOFRB with a presentation and are available to answer any questions the members may have regarding the evidence in a case. The UOFRB evaluates the performance of involved officers in terms of their Tactics, Drawing/Exhibition of a Firearm, and Use of Force - categories the BOPC will ultimately employ in its adjudication of the case. Having completed its evaluation, the UOFRB documents its findings (including any minority opinions in cases where the UOFRB is not unanimous) for subsequent consideration by the COP and BOPC.

### **Chief of Police's Report**

The Chief issues a report to the BOPC for each CUOF case in advance of its adjudication. The COP report includes a summary of the facts of the case, a description of the analysis and recommendations of the Department's UOFRB, and the Chief's findings and associated rationales, which are based upon the Chief's own review of the incident.

### **Office of the Inspector General's Report**

The OIG issues a report to the BOPC for each CUOF case in advance of its adjudication. In addition to summarizing the facts of the case, as independently reviewed and evaluated by the OIG, the report summarizes the analysis and findings of the COP and provides the independent analysis and recommendations of the OIG. The OIG's report also evaluates the quality and thoroughness of FID's investigation and identifies any issues when warranted.

## **2. Closed Session Case Presentation and Adjudication**

The BOPC meets in closed session to adjudicate each case. During the closed session meeting, the BOPC is provided with a presentation of the case by FID detectives and has the opportunity to ask questions of the detectives. The BOPC is also presented with the work histories of the involved officers, including information regarding sustained and pending personnel complaints and prior use of force incidents. The COP and OIG are present in the closed session, as well as senior members of their respective staffs, to answer any questions the BOPC has regarding their analyses, recommendations, and related Department training and policy. Additionally, the Commission's Executive Director and an Assistant City Attorney are present to answer any procedural or legal questions the BOPC may have.

For each CUOF case it adjudicates, the BOPC determines, as applicable, whether the involved officers' Tactics, Drawing/Exhibition of a Firearm, and Use(s) of Force conformed to relevant Department training and policy. Additionally, in CUOF cases involving K-9 bites/contacts, or

in-custody deaths that occur in a police facility, the BOPC determines whether the involved officers' performance conformed with relevant K-9 or custody policies, respectively. In all of the cases it adjudicates, the BOPC issues a public report that details the basic facts of the case, the BOPC's findings with respect to each substantially involved officer (whether or not their actions conformed to applicable training and policy), and the reasoning behind their findings. These reports are published on the Department's website and are therefore available to the public indefinitely.

In the event that the BOPC makes a determination that an officer's performance violated policy, or that an officer's tactics unjustifiably and substantially deviated from approved Department tactical training, it is the responsibility of the COP to determine the course of remedial action to be taken. The Chief may: a) direct the officer to receive extensive retraining; b) issue the officer a Notice to Correct Deficiencies; and/or c) initiate a personnel complaint against the officer.

## B. Personnel Complaints

The disciplinary process begins with the initiation a complaint against an accused Department employee. "Complaints can arise in many ways; for example, they may be brought by a member of the public, by a Department employee, or may result from the filing of a lawsuit."<sup>12</sup> A complaint may then be classified as "Non-Disciplinary" or "Disciplinary" after a preliminary investigation by the accused officer's Commanding Officer. For a Non-Disciplinary classification, the complaint must meet the following criteria:

- The complaint, as stated, would not amount to the commission of a felony or misdemeanor crime;
- The complaint, as stated, may not result in discipline against the employee, or the complained of act or omission by the employee has no nexus to the employee's position with the Department;
- The complaint does not allege any of the following: Unauthorized force; discrimination of any kind; unlawful search and/or unlawful seizure of person or property; dishonesty; domestic violence; improper/illicit use of alcohol, narcotics, or drugs; sexual misconduct; theft, or retaliation/retribution against another employee;
- The complaint was not as a result of concerns arising out of a criminal prosecution, or, dismissal of California Penal Code Section 148 charges, or otherwise initiated by a judge or prosecutor acting in their official capacity;

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<sup>12</sup> POLICE COMMISSION ADVISORY COMMITTEE, BOARD OF POLICE COMM'RS., Police Commission Advisory Committee Comprehensive Review of the Legal Framework of the Department Disciplinary Process and Procedures 1 (May 6, 2021).

- The accused employee has no apparent pattern of similar behavior (should generally be limited to the past five years) for which he/she is accused; and,
- The complaint was not initiated in response to civil suits or claims for damages involving on-duty conduct and civil lawsuits regarding off-duty conduct required to be self-reported by employees.<sup>13</sup>

If a complaint can be clearly disproved during the preliminary investigation, the Commanding Officer may adjudicate the complaint as, “Demonstrably False.”<sup>14</sup> According to the Department Manual, an allegation is considered to be “clearly proven” as Demonstrably False under the following circumstances:

- The complainant is determined to be vexatious, i.e., the complainant demonstrates an irrational thought process and/or has established a pattern of making chronic or false complaints; or,
- Body-Worn Video (BWV) or Digital In-Car Video System (DICVS) footage, or other audio or video evidence captured the entire incident or citizen contact, and conclusively shows that the employee(s) did not commit the alleged misconduct or did not violate Department policy or procedures.<sup>15</sup>

If a complaint has not been mediated, handled through Alternative Complaint Resolution, determined to be Non-Disciplinary, or Demonstrably False, then the complaint is investigated as a Disciplinary complaint. Only Disciplinary complaints that are ultimately determined to be Sustained after an investigation are presented to the COP for a penalty recommendation.

#### 1. Information Presented to the Chief of Police

When a complaint rises to the level where the COP makes a penalty determination for a disciplinary matter, the accused officer’s Commanding Officer has reviewed a completed investigation conducted by either Internal Affairs Division or by the geographic area where the officer was assigned at the time of the complaint’s generation. Generally, all complaints contain statements (in written or digitally recorded form) from the complainant, witnesses, and the accused officer. Other evidence included in investigations ranges from physical evidence, such as an officer’s log, police records, or court documents, to digital evidence, such as body worn

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<sup>13</sup> L.A. POLICE DEP’T., DEP’T MANUAL VOL. 3 § 818 – NON-DISCIPLINARY COMPLAINTS (2nd Quarter) (2022).

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

video, digital in car video, surveillance videos and/or audio recordings.<sup>16</sup> In each investigation file, a discussion of the officer's work history, including previous complaints, is included at the end.

After a complaint investigation is completed, the complaint goes through several layers of review, and the finding is supported by a rationale written by an accused officer's Commanding Officer (usually the senior command-level employee), which is contained in a document called a "Letter of Transmittal," explaining whether the allegations of misconduct were or were not found to be supported by a preponderance of the gathered evidence. If the Commanding Officer sustains any allegation against the accused officer, the complaint is then reviewed by the geographic bureau that oversees the area, where a Deputy Chief may concur with the Commanding Officer's finding or may suggest a different finding via a written recommendation called a "Military Endorsement." A Military Endorsement is a document that is added to the investigation file outlining a Deputy Chief's rationale for a different finding or a greater or lesser penalty than the one submitted by the geographic area in a given complaint.

The entire investigation, along with the officer's personnel history, is then reviewed by Professional Standards Bureau (PSB), where staff assigned to Internal Affairs Division (Sergeants, Lieutenants, Detectives, and Captains) present the investigation to that division's Commanding Officer as well as the Deputy Chief of PSB. During this briefing, the heads of Internal Affairs Division (IAD) and PSB discuss whether they agree or disagree with findings from the geographic area/bureau and identify any inconsistencies to be resolved or any need for further investigation by the investigative division. They evaluate the strength of each investigation and the rationales for the findings crafted by an accused officer's Chain of Command, and they review the accused officer's complaint history to determine whether the recommended penalty is fair and equitable. Further, the Deputy Chief consults with the Officer-in-Charge of PSB's Review and Evaluation Section, who is generally a Detective III, to determine whether the recommended penalties fall within the Department's penalty guide and are consistent with similar penalties issued in response to similar misconduct committed by other officers with similar work histories. A representative from the OIG is generally in attendance at each of these meetings to help ensure that each investigation has been evaluated thoroughly and equitably.

Following the PSB/IAD discussion, Sustained complaints of misconduct and their associated recommended penalties – which may range from an Admonishment to a Directed Board of Rights with the intention of removal – are presented directly to the COP as well as various members of the Department's command staff.<sup>17</sup> These presentations generally occur on a weekly

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<sup>16</sup> See generally L.A. POLICE DEP'T., INTERNAL AFFAIRS GROUP, *Complaint Investigations: A Supervisor's Guide Vol. 2* (4th Ed.) (May 2015).

<sup>17</sup> Meetings are normally attended by the Assistant Chiefs from the Office of Operations, the Office of Special Operations, and the Office of Support Services, the Deputy Chief of the bureau where the accused officer is assigned, the Executive Director of the Office of Constitutional Policing and Policy, IAD's Captain III, and IAD staff who are presenting the Sustained complaints.

basis. A representative from the OIG is generally in attendance at each of these meetings to observe the presentation of the case, the ensuing discussion amongst the COP and the command staff who are present, and the COP's ultimate adjudication of the complaint, including the penalty issued in the case of a Sustained complaint. In reaching an adjudication, the COP has access to the entire investigation should the COP wish to review it; often, complaints are presented to the Chief by IAD personnel verbally with supporting video, audio, and/or physical evidence produced as appropriate. The accused employee's complaint history and Skelly Response<sup>18</sup> are also reviewed by the COP prior to the adjudication of the case.

### C. BOR Hearings

As noted above, while the issuance of discipline to Department employees falls specifically within the COP's authority, such authority is constrained by the BOR process, pursuant to the Los Angeles City Charter. The BOR has the ultimate authority to determine whether an officer should be terminated or otherwise disciplined. Whether an accused officer is directed to a BOR by the Chief or opts for a BOR at their own discretion, the hearing itself is a *de novo* proceeding during which the assigned Department Advocate must present evidence of the accused officer's misconduct to the BOR Hearing Examiners anew. In other words, the Department Advocate must present sufficient evidence to the BOR panel to prove to them, by a preponderance of that evidence, that the accused employee committed each count of misconduct charged against them. In presenting each case, the Department Advocate may decide to admit the same, more, or less information than what was presented directly to the Chief. As one example of additional information that may be presented to a panel of Hearing Examiners, Department Advocates in BORs often introduce subject matter experts to explain relevant Department policies and procedures and to testify about the seriousness of the charges facing the accused officer.

Unlike either the BOPC's closed session adjudication of a CUOF or the presentation of a Sustained complaint investigation to the COP for issuance of a disciplinary decision, during each BOR hearing the accused officer has an opportunity to present their defense to the panel of Hearing Examiners and may be represented for the duration of the hearing by private counsel, a Department Representative from the Officer Representation Section, or both. The Department and the accused officer may each call subject matter experts to testify during the hearing to help prove or disprove the allegations at issue, as well as character witnesses to help determine an appropriate penalty whenever a Guilty verdict has been reached. As independent, *de novo* fact finders, the Hearing Examiners may choose to ask questions and explore issues regarding the matter at hand that are different from the issues explored during the complaint investigation into the same matter. The Hearing Examiners are not given the Chain of Command's Letter of Transmittal to review, nor are they made aware of the COP's recommended penalty for the accused officer unless/until they reach a finding of Guilt against the officer.

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<sup>18</sup> A Skelly Response is an oral or written response by the accused employee to the authority imposing discipline as part of their due process rights prior to the imposition of any penalty. A Skelly Response affords an accused employee the opportunity to defend their own actions and/or to provide information as to why they believe they should not be subject to a penalty that is being recommended.

Similarly, in those BOR cases that started out procedurally with an Administrative Disapproval and/or Out of Policy finding made by the Board of Police Commissioners, followed by a formal complaint against the subject officer and discipline issued against that officer by the Chief of Police, the BOR panel is not required to give any weight to the BOPC's decisions or reasoning when making its own findings of innocence or guilt. The procedural history of such a case and the multiple layers of review it has already gone through – including by the Police Commission, which is the civilian head of the entire Department and also happens to be charged with appointing the pool of eligible BOR Hearing Examiners – might not be factored in any meaningful way into a BOR panel's evaluation of the case. While the Department and its position regarding the proper outcome of the case are actively represented in each BOR hearing, the BOPC and the findings it reached regarding the same case do not enjoy the same representation.

Should the Hearing Examiners find the accused officer Guilty of one or more allegations of misconduct, by a preponderance of the evidence presented to them during the hearing, the BOR panel then moves on to the penalty phase of the proceedings. It is during this phase that the Hearing Examiners review the accused officer's complaint and commendation history, work history, and the COP's recommended penalty. Character witnesses and subject matter experts from the Department's Risk Management and Legal Affairs Division may testify to help the Hearing Examiners determine whether or not there is reason to deviate from the COP's penalty recommendation as well as what penalties fall within the Department's Penalty Guide for Discipline with respect to the misconduct at issue.

Should the Hearing Examiners find the accused officer Not Guilty of any of the allegations raised against them, whatever penalty had previously been issued to the officer by the Chief of Police must essentially be vacated. As will be discussed in further detail in this report, the Chief has no authority to reinstate the originally-issued penalty, or any other penalty for that matter, in such cases. For those BOR cases that originated from an incident that was initially adjudicated by the BOPC, what this means is that the BOR panel can effectively overrule the decision of the BOPC that an officer's conduct did not comply with applicable policy and/or training, and it can choose to do so without giving any meaningful consideration to the reasoning behind the BOPC's decision.

#### D. Department Penalty Guide for Discipline

The Department's Sworn Penalty Guide for Personnel Complaints assists commanding officers in determining the appropriate level of discipline to recommend in the case of a Sustained complaint investigation, based upon the totality of circumstances. It aids the Department in enhancing consistency while determining appropriate and reasonable penalties, with ranges to account for misconduct with increasing levels of severity based on reoccurrences. The guide was most recently revised in September 2020.

The Department's Review and Evaluation Section categorizes misconduct into 42 allegation types, which cover a wide range of prohibited behaviors from Discourtesy to False Statements.<sup>19</sup> Each allegation may fall into a disciplinary range between "No Penalty or Admonishment" and "Board of Rights – Recommendation for Removal" depending on the seriousness of the offense. Although the Sworn Penalty Guide aims at ensuring both the reasonableness and the consistency of penalties ultimately issued by the COP, it often allows for very broad discretion in many instances. In other words, the lowest level of penalty (Admonishment), the highest level of penalty (Board of Rights – Recommendation for Removal), and all of the levels in between are indicated as appropriate for some misconduct allegation types.

The following legend details the range of penalties laid out in the Sworn Penalty Guide for Personnel Complaints:

<b>LEGEND</b>	
<b>A</b>	Sustained - No Penalty or Admonishment
<b>B</b>	Official Reprimand or Suspension of 1 to 5 days
<b>C</b>	Suspension of 6 to 10 days
<b>D</b>	Suspension of 11 to 15 days
<b>E</b>	Suspension of 16 to 22 days
<b>F</b>	Demotion; or both Suspension and Demotion
<b>BOR</b>	Board of Rights – Recommendation for Removal
<i>Note: Category "F" should be considered when the employee is in a civil service classification of detective, sergeant or above.</i>	

According to the Department, mitigating and aggravating factors in each case may also be considered prior to the final issuance of discipline against an officer, which could result in discipline that deviates to some degree from the level that otherwise would be issued under similar circumstances.<sup>20</sup> In extraordinary cases, the Sworn Penalty guide may be deviated from when thoughtful analysis leads commanding officers and/or a BOR to believe a penalty within the range of listed recommendations would be too severe or too lenient.<sup>21</sup> Deviations are intended to be the exception rather than the rule, and compelling justification for such exceptions must be provided in the rationale for the discipline.<sup>22</sup>

The Sworn Penalty Guide recommends that an adjudicator should consider the following factors when recommending disciplinary action:

<sup>19</sup> L.A. POLICE DEP'T., INTERNAL AFFAIRS DIVISION, *Allegation Types – Abbreviation* (April 14, 2019).

<sup>20</sup> L.A. POLICE DEP'T., OFF. OF THE CHIEF OF POLICE, Administrative Order No. 15 - Penalty Guide and Penalty Assessment Factors – Updated at 2 (Sept. 15, 2016)

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.



1. The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently reported.

For example: Can the accused continue to perform the essential functions of being a police officer, e.g., testify truthfully in a court of law without unnecessarily jeopardizing a criminal or Civil case?

2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position. The Department has greater expectations from supervisors and employees in advanced paygrade positions in terms of integrity and responsibility. Because they are held to a higher standard, more severe penalties may be appropriate. Commanding officers must also assess whether they can continue to perform at their current level.

Note: While demotions are a disciplinary penalty per the City Charter, downgrades and deselections are not. Punishment is not a factor in a downgrade or deselection. Downgrades and deselections are based on an employee's failure or inability to satisfactorily perform the duties of his/her advanced paygrade or bonus position. In some instances, a singular act (with or without a personnel complaint) may merit a reassignment to a lower paygrade position. When considering a downgrade or deselection, consult with Employee Relations Group.

3. The employee's past disciplinary record as indicated on his/her TEAMS Report filtered for "Disciplinary Review: Used for Complaint Investigations."
4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.
5. The effect of the offense on the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's work ability to perform assigned duties.
6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses.
7. Consistency of the penalty with the Department's Penalty Guide.
8. The impact of the offense on public trust and the Department's reputation.

9. The clarity with which the employee was on notice of any rules that were violated in committing the offense or had been warned about the conduct in question.
10. The potential for the employee's rehabilitation. Consider whether the employee has accepted responsibility for his/her actions, expressed remorse and/or restored confidence the conduct will not be repeated.
11. Mitigating circumstances surrounding the offense such as unusual job tensions, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter.
12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.<sup>23</sup>

#### IV. QUALITATIVE REVIEW METHODOLOGY

The OIG previously completed a statistical overview of BOR cases from June 2019 through December 2020 and presented its findings to the BOPC in a report dated May 11, 2021.<sup>24</sup> That statistical overview has been updated to include data from 2021 and can be found in the second segment of this report. This first segment of the report is focused on a qualitative analysis of the BOR process, particularly in light of the changes to that process implemented by City Ordinance No. 186100 in 2019. The goal of this qualitative review was to identify any areas in which the BOR process can be improved in furtherance of better serving all stakeholders who have a role in, or are otherwise affected by, that process. Among other things, it is critical that the Department's Boards of Rights afford due process to officers who are facing discipline and, simultaneously, yield accountability for officers who have committed misconduct.

First, the OIG met with various Department personnel whose assignments have afforded them extensive experience with the BOR process to hear their perspectives on the process and their recommendations, if they had any, for its improvement. Their observations and recommendations about the BOR hearings and the parties involved in the process are included below. The OIG then met with some of the attorneys who have represented accused officers in numerous BOR hearings to hear their perspective on the strengths and weaknesses of the process as well. Their input is also described below.

Additionally, the OIG conducted comprehensive reviews of 21 BOR hearings. Of those 21 reviews, nine involved the analysis of official transcripts from completed BOR hearings that took place between September 2019 and December 2020. The remaining 12 reviews involved in-

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<sup>23</sup> L.A. POLICE DEP'T., OFFICE OF THE CHIEF OF POLICE, *Administrative Order No. 15 - Penalty Guide and Penalty Assessment Factors – Updated* at pp. 2-5 (Sept. 15, 2016).

<sup>24</sup> OFF. OF THE INSPECTOR GEN. – L.A. POLICE COMMISSION, *Board of Rights Statistical Overview, 2019 – 2020* (May 11, 2021).

person observation of live BOR hearings, from beginning to end, over the course of several months in 2021; the OIG supplemented its in-person observations by obtaining and reviewing the transcripts for five of these hearings.<sup>25</sup> Seven of the 12 Board hearings the OIG's staff attended in-person were "Opted" Boards, meaning the accused officer in those cases invoked the right to have a BOR hearing after being issued discipline by the Chief of Police (Chief or COP). The remaining five Boards the OIG's staff attended in-person, as well as the nine BORs for which the OIG conducted a review based solely on transcripts, were all "Directed" Boards, meaning the COP ordered the accused officer to a BOR hearing to seek the officer's termination from employment with the Department.

Type of Review	Panel Type	Opted/Directed	Number of Boards
Transcript	Traditional	Directed	6
Transcript	All-Civilian	Directed	3
In-Person	Traditional	Directed	2
In-Person	All-Civilian	Opted	7
In-Person	All-Civilian	Directed	3
<b>TOTAL BOARDS</b>			21

For each BOR hearing it reviewed, the OIG specifically focused on the following areas: (1) overall procedural efficiency of the hearing; (2) adherence to the rules and procedures established by the BOR Manual; (3) whether the complaint investigation information received by the COP differed from the evidence presented to the BOR panel of Hearing Examiners; and (4) whether the rationales proffered by Hearing Examiners for their adjudications, in both Traditional Panels and All-Civilian Panels, were supported by the evidence entered into the record during BOR hearings.

#### **V. PERSPECTIVE OF DEPARTMENT PERSONNEL WHOSE WORK ASSIGNMENTS INCLUDE REGULAR INVOLVEMENT WITH BOARDS OF RIGHTS**

In general, Department personnel whose work assignments require direct and regular involvement with Boards of Rights expressed concerns that BOR hearings, particularly those helmed by All-Civilian Panels, had moved from informal administrative proceedings toward increasingly formal judicial proceedings. Citing more strict evidentiary standards and the application of a higher burden of proof than what is called for during a BOR hearing, Department personnel opined that non-attorney Department Advocates were frequently being put at a disadvantage in comparison to their attorney Defense Representative counterparts whenever disputes arose about these legal issues during a BOR hearing. They also felt that the increasingly formal nature of the proceedings has made BOR hearings more time-consuming and resource-consuming for the Department, which ultimately made it more difficult for the Department to effectively meet its responsibilities in these disciplinary proceedings. Further, Department

<sup>25</sup> The OIG sought to review the transcripts of each BOR panel it attended in-person. However, due to limited Department resources, transcripts for only five of the 12 hearings were available during the OIG's production of this report.

personnel stated that they felt that All-Civilian Panels were more likely to issue lenient penalties against accused officers. Such leniency, they believed, significantly undermines the COP's authority to impose discipline on his or her employees when warranted, leading to the erosion of public trust in the Department.<sup>26</sup>

#### A. Deviations from Standard BOR Protocols; Unduly Lenient Findings

Department personnel who spoke with the OIG expressed some general concerns about whether the All-Civilian Panels that were enabled by City Ordinance No. 186100 were deviating at times from the largely informal rules governing administrative BOR hearings, as referenced in the BOR Manual.<sup>27</sup> For instance, they felt that some All-Civilian Panels were too formal and moving towards more strict judicial proceedings by requiring written briefs by the parties on legal questions that arose during a given case. In one BOR hearing, for example, a Defense Representative for the accused officer submitted a motion to dismiss the entire hearing before the proceedings had begun, and the All-Civilian Panel requested that the Department submit a written brief in response to the motion. The BOR Manual does not require nor mention the submission of legal briefs by the parties during a BOR hearing, yet All-Civilian Panels have increasingly called for them in a move toward judicial formality, according to some in the Department.

Department personnel also indicated that in multiple instances, and in sharp contrast to Traditional Panels, All-Civilian Panels called on Department Advocates to present Subject Matter Experts (SMEs) to testify on the procedural history, development, and other aspects of particular LAPD policies and/or trainings in a manner requiring more detail than has been required in the past. Specifically, Department personnel stated that Traditional Panels, composed of two sworn Hearing Examiners at the rank of Captain or above, rarely required such a lengthy and meticulous explanation about the applicability of each allegation of misconduct because of the sworn panelists' familiarity with the discipline process arising out of their regular Departmental responsibilities. Department personnel also stated that, as compared to sworn employees of the LAPD, the community members who comprise All-Civilian BOR Panels generally have less training on Department policies and procedures, less experience in adjudicating discipline for members of a law enforcement agency, and a different understanding of the ramifications of retaining officers who have committed serious misconduct.

Department personnel who spoke with the OIG also stated that for those civilian Hearing Examiners who have presided over multiple BOR hearings, it should generally be unnecessary to engage in overly-intricate analyses of the procedural history of every policy and/or training that

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<sup>26</sup> The OIG notes that the opinions presented in this section of its report are attributable to only those Department employees with whom the OIG spoke while conducting research for the report. They do not necessarily reflect the opinions of other Department personnel, the Department's Advocate Section as a whole, or the Department as a whole.

<sup>27</sup> See, L.A. POLICE DEP'T., BOARD OF RIGHTS MANUAL, Introduction (12th ed. 2005) at 4, which says, "The [BOR] procedure is characterized by informality, freedom from arbitrary decisions, lack of equivocation, and the privilege to function without exactness and regularity."

is referenced by Department Advocates during a hearing, as opposed to focusing more on the facts at issue and applying the relevant policies to reach a determination as to whether misconduct occurred. The heightened formality that comes with the more intricate analysis of Department policies and procedures requested by All-Civilian Panels often resulted in substantial increases to the duration of hearings and caused some of them to go on far longer than necessary before reaching their conclusion, according to Department personnel. Such timing issues subsequently impacted other, forthcoming BOR cases that were yet to be scheduled, as the availability of Department Advocates as well as other parties involved in those forthcoming cases was limited due to the ongoing BOR cases.

Notably, Department personnel also felt that some All-Civilian Panels were imposing more stringent evidentiary standards and/or standards of proof on the Department as it presented its case than what is called for in a BOR. Regarding the admission of evidence in a BOR hearing, the BOR Manual states the following:

The hearing need not be conducted according to the technical rules of evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions.<sup>28</sup>

With respect to the burden of proof, Department personnel reported that All-Civilian Panels sometimes appeared to misunderstand the appropriate burden of proof (which the Department must meet for the BOR panel to reach a determination that the accused officer is guilty of engaging in misconduct), requiring a showing that misconduct occurred “beyond a reasonable doubt” rather than by a “preponderance of the evidence.” Pursuant to the Los Angeles City Charter, “[i]n Board of Rights proceedings, the Department shall have the burden of proving each charge, including those based on conduct punishable in whole or in part as a crime, by a preponderance of the evidence.”<sup>29</sup>

Another area of concern for some Department personnel was the perception that All-Civilian Panels granted continuances for themselves or Defense Representatives during hearings as a matter of course and without satisfying the requirement that such continuances be granted only after a showing of good cause. The Department BOR Manual specifically states the following:

Continuances may be granted for good cause to a time agreeable to both the Department Advocate and the accused. Except under unusual circumstances, hearings should not be continued for a time exceeding three (3) months from the date the accused was served with the verified written complaint.<sup>30</sup>

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<sup>28</sup> L.A. POLICE DEP’T., BOARD OF RIGHTS MANUAL, § 363.10 (12th ed. 2005) at 34.

<sup>29</sup> L.A. CITY CHARTER *supra* note 9 at § 1070(1).

<sup>30</sup> L.A. POLICE DEP’T. BOARD OF RIGHTS MANUAL *supra* note 27 § 336.60 at 32.

According to Department personnel, such continuances can create burdens on the staff of the Department's Advocate Section as well as on witnesses, victims, and the relatively small pool of hearing reporters who are available to transcribe the proceedings of a BOR hearing.<sup>31</sup> Of the 21 hearings reviewed by the OIG for this report, six of them saw continuances granted that resulted in the hearing concluding more than 25 days after it had begun. One of those six hearings was rescheduled twice and was not heard until more than a year had passed since the original start date.

Finally, all Department personnel with whom the OIG spoke while doing research for this report had concerns about whether All-Civilian Panels have been unduly lenient in their determinations of whether an accused officer is guilty of committing misconduct and, if so, what penalty should be imposed. Such leniency, opined Department staff, undermines the COP's authority to hold accountable those officers who commit misconduct and negatively impacts the community's trust of the Department insofar as it allows misconduct to occur without proportional consequences for those who engage in it. Department personnel informed the OIG that for one BOR hearing, the All-Civilian Panel appeared to testify on behalf of the accused, going so far as to provide defensive strategies and offering to take the accused out to coffee or tea, while on the record. Other Department personnel repeatedly referenced instances when the COP directed an officer to a BOR hearing in pursuit of termination for the offense of making false statements. Even when an All-Civilian Panel found such officers guilty of making false statements, they often reduced the COP's recommended penalty of removal to some number of suspension days. In practice, this meant that an officer whom the COP sought to terminate due to misconduct that was acknowledged by the BOR – one who could likely no longer perform some of the essential functions of a peace officer because of that same misconduct – would, ultimately, be retained and forced to be returned to duty in a position that minimized the chance of their veracity being called into question in the future.

## B. Resource and Training Issues

Other areas of concern expressed by Department personnel involved what they perceived to be a lack of sufficient resources dedicated to those employees responsible for advocating on behalf of the Department's position in a BOR hearing. According to Advocate Section, the Department began to see an increase in the number of BOR hearings starting in 2017, most notably with respect to Opted Boards. As shown in the OIG's BOR statistical overview update, 16 Opted Boards concluded during 2016, eight concluded in 2017, six concluded in 2018, 16 concluded in 2019, 13 concluded in 2020, and 17 such BOR hearings concluded in 2021. In comparison, 36 Directed Boards concluded in 2016, 19 concluded in 2017, 27 concluded in 2018, 26 concluded in 2019, 18 concluded in 2020, and 26 such BOR hearings concluded in 2021. Directed Boards have become primarily composed of All-Civilian Panels and Opted Boards have become almost exclusively composed of them.

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<sup>31</sup> The OIG requested transcripts for all 12 BOR hearings attended in-person by its staff. However, due to the shortage of hearing reporters and the significant duration of each BOR hearing, the Department was only able to make transcripts available for five of those hearings.

According to the Department's Professional Standards Bureau, in 2017, Advocate Section deployed 10 Sergeant IIs who are often tasked with advocating at BOR hearings, and five hearing reporters; in 2018, Advocate Section deployed six Sergeant IIs and maintained its five hearing reporters. In 2019, Advocate Section deployed seven Sergeant IIs and again maintained its five hearing reporters. In 2020, Advocate Section deployed six Sergeant IIs and five hearing reporters, and in 2021 it deployed five Sergeant IIs and four hearing reporters. In addition to their BOR cases, it was noted to the OIG that Department Advocates are simultaneously assigned multiple Administrative Appeals and Civil Service Hearings at which they must represent the Department's position as well.<sup>32</sup>

In general, Department personnel indicated that the Advocate Section had fewer advocates and support staff available to represent the Department in BOR cases even while the number of those cases was on the rise. This meant increased caseloads for each Department Advocate, less time available to the Department Advocates to prepare for each new BOR, and more frequent delays when attempting to coordinate the schedules of all the parties and witnesses involved in a given BOR hearing. Importantly, it also meant a lengthier disciplinary process despite the interest of the Department, the accused officer, and the public in having an efficient and expeditious one.

Department personnel also expressed that more thorough and structured training for Department Advocates is needed. Currently, Department Advocates receive only on-the-job training, yet they are regularly expected to advocate on the Department's behalf against attorneys with extensive employment litigation experience who are representing accused employees.<sup>33</sup> This set of circumstances can lead to a gap in the experience levels between Department Advocates and Defense Representatives with regard to effectively presenting a case in an administrative hearing, and all Department personnel with whom the OIG spoke asserted that more in-depth advocacy training would help to close that gap. It was suggested, for example, that Department Advocates would benefit from attending formal litigation training seminars to equip them with a skill set that Defense Representatives already possess.

Most of the Department personnel interviewed by the OIG also expressed the concern that many of the civilian Hearing Examiners who are empaneled to adjudicate BOR cases may lack a sufficiently meaningful understanding of the Department's policies and procedures needed to make judgments about an accused officer's conduct efficiently. Much like the feelings about enhanced training for Department Advocates, Department personnel felt that Hearing Examiners, too, should receive thorough and continual training on relevant facets of the Department and its policy manual. This is particularly important as some Department policies and procedures may

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<sup>32</sup> The BOR statistics discussed in this report do not account for Administrative Appeals of discipline, out-of-policy findings in Use of Force investigations and Vehicle Pursuit investigations, Liberty Interest Hearings, or Civil Service Hearings (appeals of discipline by civilian employees), all of which add to the work responsibilities of the Department's Advocate Section.

<sup>33</sup> Although some accused employees elect to have non-attorney representatives during their BOR hearings, the accused employees in 19 of the 21 hearings reviewed by the OIG were represented by attorneys.

evolve over time, while others will become obsolete and be replaced by brand new policies and procedures.

### C. Updated BOR Manual

All of the Department personnel interviewed by the OIG for this report discussed the desire for an updated BOR Manual that would better address evolving issues and achieve greater efficiencies within the BOR process. Suggestions along these lines included stricter limitations on when and how often continuances should be granted during a hearing, and clearer authority for the Chairperson of a Board panel to take action in response to efforts by any party to obstruct the efficient and orderly completion of a hearing. Also, some Department personnel suggested that the BOR Manual consider a more expedient process for selecting Hearing Examiners for an All-Civilian Panel. They felt that the current process, which involves randomly identifying nine available panelists from the pool of civilian Hearing Examiners before paring that group down to a final three, was both time-consuming and labor intensive,<sup>34</sup> and that it was particularly problematic with respect to BORs that are required to begin within 30 days of the decision to hold such a hearing.<sup>35</sup>

## VI. PERSPECTIVE OF ATTORNEYS WHO REGULARLY REPRESENT ACCUSED OFFICERS IN BOARDS OF RIGHTS

In order to hear perspectives from both sides of the structurally adversarial BOR process, the OIG also spoke with some of the attorneys contracted by the Los Angeles Police Protective League (League Attorneys) who regularly represent accused officers in Board hearings. The OIG sought to hear their thoughts on the BOR process as well, particularly since the option for an All-Civilian Panel was implemented.<sup>36</sup>

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<sup>34</sup> For an All-Civilian Panel, the panel of Hearing Examiners is chosen by drawing names of potential panelists from the overall pool of Hearing Examiners by lot (1, 2, 3, 4, 5, etc.); each person whose name is drawn is contacted until nine of them confirm their availability for the date(s) of the Board. None of the nine potential civilian panel members must be prejudiced or a material witness to the facts constituting the charges against the accused officer. Then, within one day of receipt of the list of nine names, and at a time designated by the Executive Assistant or their designee, the accused officer and the Department Advocate each take turns striking one name from the list, with the order of striking to be determined by a coin toss administered by the Executive Assistant or their designee. Once the strikes have pared the list down to three remaining names, those three individuals are appointed as the members of the Board.

<sup>35</sup> L.A. CITY CHARTER *supra* note 9 at § 1070(g) states that the initial meeting of a Board of Rights shall be held not less than 10 nor more than 30 days after the selection of the Board. This means the Board must start within 30 days unless the accused officer agrees to waive that time limitation.

<sup>36</sup> The OIG notes that the opinions presented in this section of its report are attributable to only those League Attorneys with whom the OIG spoke while conducting research for the report. They do not necessarily reflect the opinions of other League Attorneys, representatives of accused officers in BORs, or the LAPPL as a whole.



### A. Hearing Examiners

In general, the League Attorneys with whom the OIG spoke offered praise for the All-Civilian Panel option in the BOR process. They felt that civilian Hearing Examiners appeared to be able to learn about and apply Department policies and procedures quickly, and that the civilians have largely proven to be neutral individuals with a high-level of professional experience. The League Attorneys expressed the opinion that All-Civilian Panels were fair in their evaluation of evidence and that they rendered thoughtful penalties for accused officers, when warranted, free from outside influence. The only concern about civilian Hearing Examiners that was expressed by the League Attorneys who spoke with the OIG is that they often had other priorities outside of BOR hearings that sometimes made it difficult to schedule the hearings in a timely manner.

Regarding Traditional Panels, the League Attorneys felt that the COP had undue influence over the panels because each sworn panelist was under the Chief's chain of command and, therefore, not free to act autonomously during the BOR hearing. As such, the League Attorneys felt that Traditional Panels were hard-pressed to be fair and neutral adjudicators in BOR hearings. Despite these misgivings, one League Attorney stated that Traditional Panels were appropriate for BOR hearings that focused heavily on complex tactical issues or issues related to the use of force by an accused officer.

### B. The BOR Process

When asked for their impressions of the BOR process, the League Attorneys with whom the OIG spoke felt that it was being overused to some degree due to the COP's issuance of discipline that is too harsh in cases of minor misconduct, which thereby forces officers to exercise the option to appeal their discipline to a Board of Rights. The League Attorneys felt that greater consideration should be given to settlement agreements prior to the point in time when an officer's appeal to a BOR would become necessary. They also stated that many of the complaints being sustained against officers lacked sufficient evidence to support the COP's recommended penalty. One League Attorney recommended that there be a limitation on the types of cases that are eligible for opted BOR hearings; another recommended that staff from the City Attorney's Office be assigned to the Department's Advocate Section to give guidance in deciding which disciplinary cases should be settled and which should go forward to a BOR hearing. In addition to offering these concerns and suggestions, the League Attorneys expressed their overall approval of, and support for, the BOR process, especially when compared to the disciplinary processes of other law enforcement agencies.

### C. Training

The League Attorneys agreed that Hearing Examiners, both sworn and civilian, could benefit from enhanced training on Department policies and procedures. Further, one League Attorney opined that Department Advocates as well as other Defense Representatives could also benefit from litigation training. According to the League Attorney, such training would expedite lengthy BORs because the Hearing Examiners would already understand the relevant policies and

procedures at issue in the case before them, and the Advocates and Defense Representatives would waste less time on irrelevant legal issues.

## **VII. REVIEWS OF BOR HEARINGS**

The OIG reviewed 21 Board hearings from beginning to end, either by reading transcripts of the proceedings or attending hearings in-person (and, in some cases, doing both). As stated previously, nine were solely transcript reviews, all of which were Directed Boards. The OIG staff attended 12 BOR hearings in person, five of which were Directed Boards, and the remaining seven of which were Opted Boards. Eight of the 21 total Boards reviewed by the OIG were heard by Traditional Panels, and 13 were heard by All-Civilian Panels.<sup>37</sup> Five of the BOR hearings occurred prior to the implementation of Measure C, while the remaining 16 BOR hearings (13 All-Civilian Panels and three Traditional Panels) occurred after its implementation.

### **A. An Analysis of Directed BOR Hearings with Transcripts**

Within its overall review, one area of primary focus for the OIG was Directed Boards. By their nature, these hearings involve the most severe discipline that an officer may face, and the ultimate outcomes are therefore of heightened interest. The OIG conducted an in-depth review of all Directed Boards of Rights for which it obtained transcripts. This amounted to 10 Directed BOR hearings: six Traditional Panels and four All-Civilian Panels.

For its analysis, the OIG first reviewed the Department's complaint investigations into the accused officers – including all associated evidence, personnel files, and rationales – to determine whether the Commanding Officers' rationales, and ultimately the COP's disciplinary determinations, appeared to be supported by the evidence. Then the OIG reviewed the BOR transcripts to determine whether the Hearing Examiners' rationales for their adjudications were supported by the evidence presented at the BOR hearings. Next, the OIG compared the evidence contained within the complaint investigation that led to the accused officer being directed to a BOR with the evidence admitted into the BOR hearings themselves to determine whether there were factors not presented to the COP, such as character witnesses or a persuasive defense, that impacted the decisions made by Hearing Examiners. Finally, the OIG reviewed the penalties issued by the COP as well as those determined by the Hearing Examiners (for those BORs that reached the penalty phase) to see whether they fell within the parameters of the Department's Sworn Penalty Guide.

#### **1. Complaint Investigations Giving Rise to Directed BOR Hearings**

The Department's "Complaint Investigations: A Guide for Supervisors" serves as the Department's how-to guide for supervisors (Sergeants and Detectives and above) responsible for conducting investigations into complaints of misconduct. In the guide, supervisors are instructed

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<sup>37</sup> It is worth noting that because of the COVID-19 pandemic, the Los Angeles Police Commission could not hire new Hearing Examiners as prescribed by Measure C until after the OIG had completed its in-person review of the Board of Rights process. Thus, the BORs observed for this report all included Hearing Examiners from the Police Commission's list that existed prior to the implementation of Measure C.

to focus on two specific factors: identifying all parties involved,<sup>38</sup> and collecting and preserving key evidence (physical and digital).<sup>39</sup> Although each of the 10 complaint investigations that led to the Directed Boards reviewed by the OIG were unique, with their own respective investigative challenges, they all appeared to be conducted thoroughly, fairly, and in a way that would provide sufficient information to Commanding Officers – including the COP – to support their rationales for sustaining misconduct against an accused employee. This was the case whether the complaint investigation was conducted by the accused officer’s chain of command or by the Department’s Internal Affairs Division.

In every complaint investigation, Investigating Officers (I/Os) included statements from complainants, percipient witnesses, peace officers from outside law enforcement agencies, involved Department employees, and accused employees, as was applicable. With respect to physical and digital evidence, I/Os generally made thorough efforts to identify, gather, and include any relevant video and/or audio recordings, written documents, and other relevant photo or documentary evidence. Of note, these investigations generally did not include statements from subject matter experts or character witnesses as part of the investigative file. The focus of each investigation was on specific facts relevant to the allegations of misconduct at issue.

Once each investigation was completed, the accused employee’s Commanding Officer (C/O) appropriately documented information about prior misconduct on the part of the accused in order to identify any patterns of such misconduct and/or the inability to rehabilitate the accused. These additions were made as part of a “Letter of Transmittal” (LOT), in which an accused officer’s C/O provides a rationale in support of their findings based on the complaint investigation. For the complaints that resulted in the 10 Directed BORs examined by the OIG, none of the underlying investigations contained statements or interviews with relevant Department or outside subject matter experts. Every C/O included a discussion of the accused employee’s complaint history, if there were complaints with the same or similar allegations of misconduct, as part of the LOT. However, C/Os were less consistent with regard to providing information about commendations received by the accused officer, the work-ethic of the officer, and the officer’s character.

## 2. Basis for Hearing Examiners’ Adjudications in Directed BOR Hearings

As stated previously, BOR hearings are *de novo* hearings in which Department Advocates are tasked by the Department to prosecute cases against officers who have one or more Sustained allegations of misconduct against them and were either directed to a BOR by the COP, who intended to terminate their employment, or opted for a BOR to challenge the adjudication and discipline issued against them by the COP. While complaint investigations generally begin with an assigned investigator undertaking a fact-finding and evidence-gathering process, Department Advocates and Defense Representatives (whether attorneys or sworn Department employees) in

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<sup>38</sup> L.A. Police Dep’t., Internal Affairs Group, *Complaint Investigations: A Guide for Supervisors* 8 (2015 4th Ed. V.2) advises “supervisors to identify all parties involved; complainant, witnesses, accused, involved employees and supervisors.”

<sup>39</sup> *Id.*

BOR hearings present information to the panel of Hearing Examiners from the already-completed complaint investigation. Notably, they can also present new relevant evidence such as: subject matter experts, letters of support, evidence of rehabilitation, or anything that may be considered a mitigating or aggravating factor in the ultimate adjudication of the case. Additionally, the Hearing Examiners empaneled for any BOR are themselves permitted to subpoena and/or request witnesses to testify as part of the hearing. As previously discussed, BORs that reach a Guilty verdict on one or more counts against the accused officer may hear character witness testimony that informs the BOR panel's decision on an appropriate penalty. In all 10 of the Directed BORs that the OIG focused on for this section, the panel of Hearing Examiners found the accused officer Guilty of at least one of the counts of misconduct charged against them. However, while each of the 10 accused officers was directed to a BOR with the intent that they be removed from the Department, only three were issued a penalty of termination by a BOR (two of these BORs were comprised of a Traditional Panel, with the third comprised of an All-Civilian Panel).<sup>40</sup> For the remaining seven officers, their BORs (including four Traditional Panels and three All-Civilian Panels) instead determined that a penalty less severe than termination was more appropriate.

#### a) Command Staff as Character Witnesses

In the BORs that resulted in a penalty recommendation less severe than termination for the accused officer, it appeared that character witness testimony, particularly by Department command staff appearing on behalf of the accused, was often persuasive in affecting the outcome. In one case, for example, an employee was directed to a BOR by the COP after five allegations of misconduct were sustained against them: (1) while off-duty, operated a city-owned vehicle while under the influence of an alcoholic beverage, resulting in arrest; (2) while off-duty, failed to cooperate with on-duty personnel from an outside law enforcement agency during their arrest and booking; (3) failed to notify Department command of romantic relationship with Commanding Officer; (4) while on-duty, failed to document their start and end of watch; and (5) while on-duty, consumed alcoholic beverages. The accused officer pled Guilty to Counts 1 and 3, and Not Guilty to Counts 2, 4, and 5. Counts 2, 4, and 5 were therefore heard by the BOR, which was comprised of a Traditional Panel.

At the conclusion of the BOR, by a vote of 2-1 (with one sworn and one civilian Hearing Examiner in the majority, and the remaining sworn Hearing Examiner in the minority), the

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<sup>40</sup> One of these three officers, whose BOR was comprised of a Traditional Panel, successfully challenged their termination in court and obtained a Writ of Mandate forcing the Department to cancel the officer's termination. The court also ruled that the accused should only have been found Guilty on one count against them, thereby forcing the BOR to reconvene and reassess the penalty it felt was appropriate. The BOR ultimately landed on a penalty of 10-suspension days without pay.

Another of these three officers, whose BOR was comprised of a Traditional Panel, was issued a split decision by the BOR with regard to the appropriate penalty. The two sworn Hearing Examiners on the panel agreed with the COP that termination was warranted; the civilian hearing examiner, however, issued a minority opinion stating that a 22-day suspension without pay was more appropriate. When the COP received the BOR's findings, the COP concurred with the minority opinion and imposed 22-suspension days without pay instead of termination.

accused officer was found Not Guilty as to Counts 2 and 5, and Guilty as to Count 4 (in addition to Counts 1 and 3). With regard to Count 4, the BOR panel felt that the accused officer had admitted to it during the course of the hearing and had done so to a degree that supported a Guilty finding. With regard to Count 2, the BOR panel felt that the accused officer's level of intoxication during this incident negated the potential that the officer had intentionally failed to be cooperative with the outside law enforcement agency. With regard to Count 5, the BOR based its decision largely on the testimony of a Subject Matter Expert from whom the BOR panel had requested, and received, testimony. That testimony helped to convince the BOR panel that the accused officer was not actually on-duty at the time of the alleged misconduct and, therefore, was Not Guilty of consuming alcohol while on-duty.

During the penalty phase of the BOR, the attorney representing the accused employee called on one of the employee's former C/Os to testify as a character witness. The C/O, a Captain III at the Department whom the BOR panel identified as being a respected authority, stated that the accused officer had been selected to work sensitive assignments with extraordinary results. The C/O further testified that, notwithstanding the accused officer's alcoholism, the officer would continue to be an asset to the Department. Taking account of that piece of testimony, the BOR panel concluded, by a 2-1 majority, that the accused officer should be issued a 65-day suspension without pay, a demotion in rank, and an alcohol use contract, all instead of being terminated. The minority opinion favored removal from the Department (in agreement with the COP) based on the fact that the accused's behavior demonstrated an extreme lack of good judgment, especially given that the accused held a supervisory rank, and further given the fact that the accused had engaged in similar conduct in the past.<sup>41</sup>

In sum, the BOR took a different perspective than that of the Department with regard to whether the accused officer could be held accountable for the lack of cooperation with another law enforcement agency due to the accused's state of intoxication, leading it to disagree with the Sustained finding for Count 2; the BOR requested and heard expert testimony that was not part of the Department's investigation, leading it to a different conclusion from that of the Department for Count 5; and the BOR found it compelling to hear character witness testimony, which was not part of the complaint investigation that was presented to the COP, in support of the accused officer's ability to continue being an asset to the Department, leading it to conclude that a lesser penalty than termination was appropriate (for the three counts of misconduct that it adjudicated as Guilty).

In another case that was directed to a BOR by the COP, the accused employee was captured on surveillance video vandalizing and causing substantial damage to the vehicle of a neighbor who lived in the same condominium complex as the accused. The officer's chain-of-command sustained one count of "Unbecoming Conduct - Criminal" against the officer, based on the investigation of a complaint about this matter that was filed by the neighbor, and recommended that the officer's employment with the Department be terminated. The Department's investigation into the incident included the Department's investigative report, felony complaint

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<sup>41</sup> The accused employee had a prior Sustained complaint for similar misconduct involving alcohol and was issued a 15-day suspension without pay.

and arrest warrants for the accused officer, bail receipts, security footage, insurance claims, and receipts showing that the officer ultimately reimbursed the neighbor for the damage to the vehicle. Based on the investigation, the COP agreed with the chain-of-command's Sustained finding as well as its penalty recommendation; the COP directed the accused officer to a BOR hearing.

The Board, comprised of a Traditional Panel, heard and reviewed all of the evidence gathered in the Department's complaint investigation, as well as the testimony of three character witnesses who appeared on behalf of the accused officer. One character witness held the rank of Captain, one held the rank of Lieutenant, and the last was a peer of the accused who held the rank of Police Officer. The BOR panel weighed the testimony of the Captain heavily in determining that the behavior of the accused officer during this incident was out of character and an aberration. The Hearing Examiners noted that there had been no recurrence of such behavior on the part of the accused officer since the incident, that the officer showed remorse, and that the neighbor whose car was damaged was satisfied with the restitution paid by the officer. Based on the same set of evidence as was gathered for the Department's investigation, in addition to character witness testimony from an authoritative source indicating that this misconduct was abnormal for the accused officer, the Hearing Examiners unanimously concluded that a penalty of 22-suspension days without pay was more appropriate than termination from employment.

#### b) Past Incidences of Post-Traumatic Stress

In two of the Directed BOR hearings reviewed by the OIG, one of which was a Traditional Panel and the other an All-Civilian Panel, the Hearing Examiners took into account the accused officers' past experience with post-traumatic stress when reaching their disciplinary findings, both of which were lesser penalties than termination from employment. In one BOR, the accused officer became involved in a traffic collision with a parked vehicle while off-duty. The officer's blood alcohol content was nearly three-times the applicable legal limit for operating a vehicle, and the officer was subsequently arrested for Driving Under the Influence. The Department framed one allegation of misconduct against the officer: (1) that while off-duty, the officer operated a motor vehicle while under the influence of an alcoholic beverage, which resulted in a traffic collision. The accused officer's area command sustained the allegation and recommended a penalty of 20 suspension days without pay. Of note, the officer had a prior Sustained alcohol-related complaint that was similar in nature to this one.

The officer's assigned bureau agreed with sustaining the complaint but recommended that the Chief direct the officer to a BOR instead of issuing the officer a 20-day suspension. The COP agreed with the bureau's recommendation and directed the officer to a BOR with the intention of terminating the officer's employment. The Traditional Panel that heard the case unanimously found the accused officer Guilty but determined that a 20-day suspension without pay was a more appropriate penalty than termination.

During the BOR, the accused officer submitted into evidence the following documents, none of which were included as part of the Department's complaint investigation that was presented to the COP prior to his adjudication of the case: a letter from the LAPD's Behavioral Science

Services; the officer's Alcoholics Anonymous sign-in sheet; the officer's Veterans Affairs (V.A.) certificate; a letter from the V.A.; and a record of the officer's college enrollment. During the penalty phase of the BOR, after having been unanimously found Guilty of the sole charge at issue, the officer testified on their own behalf about their alcoholism and how it was borne from post-traumatic stress disorder that the V.A. was ill-equipped to handle. In rendering its decision of 20-suspension days without pay, the unanimous Traditional Panel specifically took into account the alcohol treatment that the officer had described when testifying, the officer's years of service to the Department, and the officer's prior military service.

In another BOR, composed of an All-Civilian Panel, the accused officer was detained and released by an outside law enforcement agency as part of a battery investigation while off-duty at a hotel outside the City of Los Angeles. The officer had punched a person, causing a laceration to the person's eye. Facing criminal charges, the officer accepted a plea deal of diversion. The accused officer failed to notify a Department supervisor about this incident, as required; rather the Department was contacted by the outside law enforcement agency. At the time of this incident, the accused officer already had another BOR pending that also stemmed from an arrest for battery; as a result of that BOR, the officer was downgraded in rank (from Police Officer III to Police Officer II) and moved out of a specialized assignment, and they entered into a one-year alcohol contract with the Department.

In the complaint underlying the BOR reviewed by the OIG, the Department framed three allegations of misconduct against the accused officer: (1) Unbecoming Conduct – Criminal; (2) Unbecoming Conduct – Criminal; and (3) Neglect of Duty – Non-Supervisory Duties. The officer's chain-of-command sustained all three allegations and recommended a penalty of a BOR with the intent to terminate the officer's employment with the Department. The COP agreed with this recommendation and directed the accused officer to a BOR hearing. The officer pled Guilty to all three Counts. Rather than determining that the officer should be terminated, however, the BOR panel concluded that the officer should be required to attend a specific number of Alcoholics Anonymous sessions, and that any penalty in addition to that requirement should be held in abeyance.

During the penalty phase of the hearing, the accused officer presented three character witnesses to speak on the accused officer's behalf – a detective, a sergeant, and a retired Department detective, all of whom spoke highly of the officer. The majority of the BOR panel opined that the accused officer's status as a combat veteran helped to make the officer worthy of being retained by the Department and being given another opportunity. They had learned during the BOR hearing that the officer nearly died while in combat, and they felt that the officer's post-traumatic stress disorder and use of alcohol were causes for the officer's violent actions on the day of the incident. Based on this reasoning, as well as the testimony of the character witnesses, the Hearing Examiners were persuaded to find that a focus on addressing the officer's alcohol use was the appropriate response to the officer's misconduct.

c) Preponderance of Evidence Not Met by Department for All Counts of Misconduct at Issue

As noted previously, the OIG found in its review of select Directed BOR cases that the Department's investigations into the underlying complaints appeared to be thorough and sufficient to justify the findings arrived at by the COP regarding the accused officer's conduct. However, several BOR panels found one or more of the allegations that had been sustained by the Department against accused officers to not be proven by a preponderance of the evidence during the BOR hearing, thereby leading them to reach findings of Not Guilty for those specific charges. With fewer Counts having been adjudicated as Guilty against an accused officer in a BOR hearing than allegations having been sustained against that officer by the Department as a result of its complaint investigation, a BOR panel was more likely to determine that a penalty less than termination was appropriate.

In one such BOR hearing, for instance, the accused employee was directed to a BOR hearing by the COP, who intended to terminate the employee, after the Department sustained six allegations of misconduct against the employee: (1) Domestic Altercation, (2) Unbecoming Conduct – Encounter with On-Duty Law Enforcement Personnel, (3) Neglect of Duty – Non-Supervisory Duties, (4) Unbecoming Conduct – Criminal, (5) Improper Remark, and (6) Domestic Incident. The All-Civilian Panel that heard the case found the officer to be Guilty as to Counts 1-3 and 5, and Not Guilty as to Counts 4 and 6. The panel recommended a penalty of 20 suspension days without pay instead of termination from employment.

The complaint investigation that led to the directed BOR hearing revealed that the accused officer, while at home and off-duty, was involved in an argument with a person who shared a child with the officer. That person called 9-1-1 during the argument, prompting a response to the officer's residence from an outside law enforcement agency. The 9-1-1 caller told the responding officers that a physical altercation took place between them and the accused employee, who left the scene prior to the arrival of the outside agency's officers. When those officers called the accused employee requesting an interview for their investigation, the employee declined to participate due to being too tired. The outside agency's officers then contacted the accused employee's LAPD supervisor, who subsequently ordered the employee to cooperate with the outside agency. The accused officer complied and contacted the outside agency. Based on the outside agency's investigation into the incident, the accused officer was charged with the misdemeanor crime of Domestic Battery.<sup>42</sup>

During the Department's administrative investigation into the incident, the accused officer admitted to arguing with the person with whom the accused officer shared a child. The officer further admitted to forcing the door of the residence open in order to get inside, using an ethnic slur to refer to the other person involved in the argument, taking that person's cell phone away from them, and failing to cooperate with the outside law enforcement agency's criminal investigation of the incident. Also, during the investigation, the person with whom the accused officer was arguing recanted their statement that a physical altercation involving the accused

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<sup>42</sup> In the criminal case, the accused officer entered a plea of No Contest to the lesser charge of Disturbing the Peace.



officer had occurred; rather, the person with whom the officer had an altercation told the Department's I/O that the altercation which occurred was verbal only.

Despite this recantation by the person with whom the accused officer was arguing, the Department identified a consistency between the statement the person made to the outside law enforcement agency regarding a physical altercation occurring and the corresponding log entry that was created as a result of the call to 9-1-1, which indicated that a struggle occurred before the call was disconnected. Given the corroboration of these two pieces of evidence, the Department believed it was more likely than not that the statement about a physical altercation taking place was true. Based on this belief, as well as the credibility issues surrounding the accused officer for failing to notify a supervisor of the incident, and for being uncooperative with the outside law enforcement agency, the COP directed the accused officer to a BOR.

During the BOR hearing, the All-Civilian Panel determined that there was insufficient evidence to prove that a physical altercation had occurred during this incident. The panel based this determination on the fact that the person who initially indicated that a physical altercation had occurred recanted their statement, as well as on the testimony of that person during the BOR hearing denying that any physical altercation had taken place. The Department presented a subject matter expert to the BOR panel, who testified about what causes some victims of domestic violence to recant statements they have made about what happened to them. However, the Hearing Examiners still concluded that the burden of proof had not been met with respect to the Count of a Domestic Altercation against the accused officer.

Furthermore, the All-Civilian Panel requested that the COP reframe the Count of Domestic Altercation against the accused employee to one of Domestic Incident, indicating that the Department could prove by a preponderance of the evidence that an incident occurred, though not an altercation. According to the Sworn Penalty Guide, the penalty for a Domestic Altercation (as a first offense) ranges from 16 suspension days to a Directed BOR, while the penalty for a Domestic Incident (as a first offense) ranges from an Official Reprimand to 15 suspension days and may also include a demotion in rank. The COP did amend the Count of Domestic Altercation to one of Domestic Incident, at which time the accused officer pled Guilty to Counts 1, 3, and 5; the BOR also reached a finding of Guilty with respect to Count 2, as previously indicated.

As a result of all of this, the BOR determined that the appropriate penalty for the four Counts of misconduct that were proven against the accused officer was a 20-day suspension without pay, and not termination from employment with the Department as the COP had previously determined based on the six allegations of misconduct that were sustained as part of the Department's administrative complaint investigation into this matter.

### 3. Penalties Determined by BOR Panels are Within the Parameters of the Sworn Penalty Guide

In all of the Directed BOR hearings that were reviewed by the OIG, penalty findings made by both All-Civilian Panels and Traditional Panels fell within the parameters outlined in the

Department's Sworn Penalty Guide. As stated above, the Sworn Penalty Guide provides a broad penalty range for many different types of misconduct, from an Official Reprimand through a BOR. Board of Rights panels also maintain broad discretion on penalties, regardless of the suggested range noted in the Sworn Penalty Guide, as they may agree with the COP's intended outcome of termination from employment or issue discipline no greater than an Official Reprimand of the accused officer.<sup>43</sup> Once a BOR panel has made its determination about the appropriate level of discipline against an officer who has committed misconduct, the COP may impose that level of discipline or a lower level, but the COP may not impose any higher level of discipline.

#### B. Department Advocates and Defense Representatives

In 19 of the 21 Boards of Rights reviewed by the OIG, the accused employees were represented by licensed attorneys; in the other two cases, Department representatives – other sworn personnel – were chosen by the accused officer to represent them. In its examination of BOR cases, the OIG felt that there were situations when the attorneys representing accused officers argued their position more persuasively than the Department Advocates; in some of those instances, the superior litigation techniques of the attorneys who were representing officers appeared to have had a material impact on one or more aspects of the overall case.

The OIG frequently observed Defense Representatives present their cases, make arguments, and raise objections more coherently and succinctly than their Department Advocate counterparts. In doing so, their positions often seemed to be more persuasive and agreeable to the BOR panel than that of the Department. This dynamic was observed even in some cases with more experienced Department Advocates, as the Defense Representatives in those cases explained issues and elicited compelling testimony from witnesses more quickly and clearly than the Advocates did. It was not uncommon for one or more Hearing Examiners on a BOR panel to initiate their own questioning of a witness when the Department Advocate struggled to establish a particular set of facts or a clear chain of events during a given case.

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<sup>43</sup> L.A. CITY CHARTER, Art. X, § 1070(n) (eff. 2000) –

**Finding and Decision.** The Board of Rights shall at the conclusion of the hearing make findings of guilty or not guilty on each charge, which findings shall be based only upon the evidence presented at the hearing. If the accused is found not guilty, the Board shall order the member's restoration to duty without loss of pay and without prejudice, and the order shall be self-executing and immediately effective. If the accused is found guilty, the Board of Rights shall prescribe its penalty by written order of:

- (1) suspension for a definite period not exceeding 65 working days with total loss of pay, and with or without reprimand; or
- (2) demotion in rank, with or without suspension or reprimand or both; or
- (3) reprimand without further penalty; or
- (4) removal. [...]

In one instance, a Department Advocate seeking to introduce evidence of the accused officer's prior acts (which were relevant to the present charges) correctly cited the section of the BOR Manual authorizing the Board to accept such evidence. The Defense Representative representing the accused employee argued against the admission of the evidence, citing a section of the BOR Manual that was not controlling on the issue. The Department Advocate suggested that the BOR panel, which was a Traditional Panel, consult the City Attorney to assist them in properly resolving the dispute about whether the evidence could be introduced. The panel declined to do so and ultimately agreed with the Defense Representative's argument. This meant that key evidence was excluded despite its admissibility pursuant to the BOR Manual.

In another BOR case, which was heard by an All-Civilian Panel, the hearing had been going on for two days when a continuance of approximately one month was granted. As the parties all returned to resume the hearing at the end of the continuance, the Department Advocate did not object to allowing the Defense Representative to give a summary of what had occurred during the first two days of the hearing in order to refresh the recollection of all the parties involved – including the All-Civilian Panel. This decision by the Department Advocate allowed the opposing counsel to reframe the issues pending in the case in a light more favorable to the accused officer, without an alternative narrative being presented on behalf of the Department.

The final observations of note made by the OIG with regard to Department Advocates and Defense Representatives arose from cases that were not part of the sample of 21 completed BORs which were the focus of this segment of the OIG's report. In its overall efforts to closely study multiple BOR cases from start to finish, and in light of the fact that it is difficult to accurately predict when any single newly-initiated BOR will reach its conclusion – especially during the COVID-19 pandemic – the OIG attended portions of multiple BOR hearings in addition to the 21 completed cases identified as its sample. In two of these additional BORs, the OIG observed that the accused officer's Defense Representative took extended amounts of time during the hearing to repeat arguments on issues that had already been resolved or that could have been resolved with only minimal discussion. The extra time spent on these issues led to the hearings unnecessarily taking longer than they had been scheduled for and, in one case, created substantial difficulty when all of the involved parties attempted to find a new date on which they could continue the hearing.

The OIG felt that conduct described above was unduly disruptive, and that such conduct on the part of any party in a BOR hearing could be addressed by BOR panels more effectively exercising their authority to limit unwarranted delays and/or redundant discussions. The Chairperson of a BOR, specifically, has a responsibility to control the conduct of the hearing; and a majority of the panelists on a BOR has the authority to remove persons from the hearing who interfere with that control or who otherwise obstruct the conduct of the hearing.<sup>44</sup> Although the removal of an

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<sup>44</sup> L.A. POLICE DEP'T., BOARD OF RIGHTS MANUAL *supra* note 27 at § 120.80 lists "Control of Hearing" among the duties that shall be performed by a Chairperson of a BOR panel. It states that the Chairperson of the Board, "[c]ontrols the conduct of the hearing and may expel any disorderly persons. With the concurrence of a majority of the Board, may remove and bar the return of persons from the hearing who interfere with the control of the hearing. This includes defense and Department representatives who, after having been warned, obstruct the conduct of the hearing.

individual is, and should remain, an extreme measure, the legitimate threat of doing so, in addition to the more constant authority to ensure the continuing progress of the hearing, are things that Chairpersons should remain acutely aware of whenever substantial delays of one form or another arise during a BOR hearing.

### C. Hearing Examiners

The OIG observed Hearing Examiners in both Traditional and All-Civilian Panels to be focused and engaged while their hearings were in session. Many Hearing Examiners directly asked relevant and informative questions of witnesses who testified before them, and they generally avoided distractions that were not germane to the cases that they were hearing. The OIG did observe one instance where an All-Civilian Panel offered effusive praise, on the record, toward an accused officer because of their military background. While the BOR Manual does not specifically prohibit Hearing Examiners from praising an accused employee, the compliments that were made in this instance did not appear to relate in any way to the case being heard by the All-Civilian Panel. In one other BOR, the Hearing Examiners on an All-Civilian Panel were observed making inappropriate and offensive remarks to each other, off the record, about multiple elected government officials that clearly had nothing whatsoever to do with the BOR case being heard.<sup>45,46</sup>

During many of its in-person observations, the OIG also noted that All-Civilian Panels often sustained multiple evidentiary objections raised by Defense Representatives (such objections included “foundation,” “hearsay,” “speculation,” etc.). In response, Department Advocates usually did not challenge the validity of the objection and simply withdrew the question that gave rise to it. Generally, it appeared that All-Civilian Panels were at times focused as much on the applicability of various evidentiary rules as they were on the relevant evidence<sup>47</sup> being presented during the fact-finding portion of a hearing.

### D. Timeliness of BOR Hearings

One issue included in the OIG’s review of BOR cases was whether the hearings were being conducted in a timely manner, including in light of scheduling challenges for all involved parties as well as continuances granted during the course of the hearing. Although BOR panel members are provided transcripts from the hearing, upon request, in order to refresh their recollection after a long break in the proceedings, such lengthy breaks can interfere with the effective presentation

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‘Obstruct’ does not mean merely to cause delay due to motions, objections, or legal arguments, but means to block or prevent the continuing progress of the hearing,” at 7-8.

<sup>45</sup> As previously noted, the OIG observed parts of numerous BORs that were not included in its sample of 21 completed cases. This case was one not included in the OIG’s sample.

<sup>46</sup> Both instances of concerning conduct on the part of Hearing Examiners were brought to the attention of the Executive Director of the Board of Police Commissioners by OIG staff.

<sup>47</sup> L.A. POLICE DEP’T., BOARD OF RIGHTS MANUAL *supra* note 27 § 363.20 at 34. Evidence is relevant when it has a tendency in reason to prove or disprove disputed fact that is of consequence to the determination of the action.

of a case against, or in defense of, the accused officer; they can also impact both the memory and the availability of witnesses in a given case, and they can potentially lead to resource issues for Department Advocates, as delays in one case affect the scheduling of other cases in a “snowball” effect.

In the OIG’s sample of completed cases, continuances were granted in six BOR hearings, one of which, helmed by a Traditional Panel, was continued for more than three months;<sup>48</sup> the other five BOR hearings had delays ranging from 28 to 40 days between the last scheduled hearing date and the continued date. Four of these hearings involved Traditional Panels, while the remaining two involved All-Civilian Panels. The OIG noted that there did not appear to be any excessive or unwarranted delays in these or the other cases it reviewed. Some cases were naturally more complex than others, requiring more in-depth and lengthy presentations of evidence, witness testimony, etc. Other cases involved minor scheduling delays of the type that are reasonably expected to occur when gathering multiple parties together. In the one BOR that was continued for more than three months, the delays appeared to be a direct result of difficulties navigating the scheduling of a meeting during the COVID-19 pandemic. As such, none of the cases in the OIG’s sample appeared to involve improper or disruptive delays of the type that negatively impacted the overall hearing.

Even so, the prevention of excessive or undue continuances is clearly a worthwhile goal, given that such continuances have the potential to give an advantage to one party in a BOR hearing over the other. The frequent granting of continuances during BORs also reflects an inadequate understanding of the priority that must be given to the expeditious completion of these highly consequential hearings within the Department’s overall disciplinary framework. It would be prudent in the future to conduct a quantitative review of continuances granted during BORs to see on a broader scale whether they are an area of concern and, if so, whether there are any relevant trends in the granting of continuances that warrant remedial action.

## **VIII. OIG CONCLUSIONS AND RECOMMENDATIONS**

The OIG’s review of the BOR process led to the identification of a number of concerns, most notably of a systemic or structural nature, with respect to maintaining effective accountability on the part of the Department. Acknowledging that the authority to address these concerns may reside in a variety of places, such as the Los Angeles City Charter, the California Penal Code, relevant case law, etc., they are discussed below along with some specific recommendations that may be followed by the Department for improving the fairness, accountability, and efficiency of the BOR process as it currently stands.

### **OIG Conclusions**

In the view of the OIG, a police department’s ability to effectively police itself, including via the issuance of appropriate discipline to its employees when warranted, is critical to the overall

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<sup>48</sup> Specifically, with regard to continuances, the BOR Manual indicates a strong preference for avoiding those lasting longer than 3 months. See L.A. POLICE DEP’T., BOARD OF RIGHTS MANUAL *supra* note 27 § 336.60 at 32-33.

health and success of that department. Given difficulties in evaluating the actions of officers as they face dynamic, and sometimes life-threatening, challenges, as well as the difficulty for any organization as complex as a large police department to eliminate all partiality as it looks inwardly at itself, effective and independent oversight – which comes in a variety of forms including, though not limited to, the OIG – is necessary to help ensure that police departments are indeed policing themselves effectively and that they course-correct whenever they are not. The BOR system as it presently stands constrains the Department’s crucial ability to effectively police itself.

#### A. Outsized Authority of BORs Within the LAPD’s Disciplinary Framework

Disciplinary findings and decisions that are the responsibility of the Chief of Police can be partially or wholly vacated by a BOR, without any opportunity for recourse. The OIG acknowledges the serious and consequential nature of the Chief’s responsibilities for: sustaining allegations of misconduct against Department officers when a preponderance of evidence supports those allegations; issuing appropriate discipline based on factors including the egregiousness of the offense and the previous disciplinary history of the subject officer; and meting out discipline fairly, impartially, and consistently across the entire Department. A Chief who falls short when it comes to any of these weighty responsibilities should themselves be held to account for those shortfalls. However, a system that allows for the outright and unchallengeable overruling of a Chief’s disciplinary decisions detracts from the Department’s appropriate efforts in furtherance of internal accountability.

The same concern arises with respect to the Board of Rights process when considering cases that arrive there after already having undergone the scrutiny of a review and an adjudication by the Board of Police Commissioners, which is the civilian head of the entire Department. Reviews of cases by the BOPC are extremely deliberative and comprehensive, and they are conducted with the benefit of recommendations from both the Chief of Police (based on a thorough investigation by a specialized, well-trained team of Department detectives) and the Office of the Inspector General (based on its start-to-finish monitoring of the Department’s investigation). Despite all of these layers of assessment of an incident, and of whether the involved officers adhered to Department training and policy, the BOPC’s findings can be entirely overruled by a panel of BOR Hearing Examiners in much the same way as the Chief’s disciplinary decisions can be overruled.

Using Directed BORs as an example that is particularly consequential, should the Department’s complaint investigation process lead the Chief of Police to conclude that an officer’s conduct was so egregious as to warrant termination from employment, the BOR has the unchecked authority to deny the termination and to keep the officer employed with the Department – under the command of the Chief who sought termination – and to issue a lesser penalty (or none at all) instead. The Chief is therefore forced to retain an employee whom the Chief feels is unworthy of being an LAPD officer and is without any opportunity for recourse. The OIG believes that this outcome reflects an imbalance of power between the COP and the BOR that significantly undermines the ability of the Department to police itself.

Furthermore, some officers who have been found Guilty during a Directed BOR of committing egregious misconduct, but who have not been terminated from employment by the BOR, may no longer be able to effectively perform some of the basic responsibilities of a police officer due to their Guilty finding. If such an officer was found to be Guilty of making false statements, for instance, the Chief of Police would not only be forced to retain the officer as an employee but might also feel forced to find a work assignment for the employee that would not run the risk of requiring them to testify in court, where their veracity could be called into question based on their disciplinary history. This outcome is an even more stark illustration of the incongruity that exists when the final discipline determination lies with a BOR panel, above the discretion of the Chief, even though it is the Chief who is ultimately responsible for dealing with an officer whose law enforcement capabilities may effectively be limited in some substantial way.

#### B. BORs Should Not Be *De Novo* Hearings

As has been detailed earlier in this report, Boards of Rights necessarily take place only after numerous internal Department investigative and review processes have been completed and have led the Chief of Police to determine that the subject officer committed some form of misconduct that warrants some measure of discipline: the allegation against the accused officer is investigated by either the officer's division or by Internal Affairs Division; the accused officer has the right to a representative of their choice during any questioning that is part of the investigation; the investigation goes through multiple layers of review in order to ensure that its findings are justified, including the accused officer's Commanding Officer, the accused officer's assigned Bureau, Professional Standards Bureau, and, ultimately, the Chief of Police; the accused officer has a right to a meeting with the COP (a Skelly meeting), prior to the issuance of any discipline, during which they may respond directly to the allegations raised against them, explain what happened during the incident that led to the allegations, and present any mitigating factors for the COP to consider. The levels of administrative review increase further, and do so substantially, in the subset of BOR cases arising from a Sustained misconduct finding following a Categorical Use of Force adjudication by the Board of Police Commissioners.

Furthermore, the OIG has unfettered access to all complaint investigation files as it monitors both the overall complaint process as well as selected cases for impartiality and thoroughness on the part of the Department; it also has access to all Categorical Use of Force investigations and closely monitors each one from start through completion. The OIG attends internal Department briefings on the status of in-progress misconduct investigations and offers guidance as appropriate. Similarly, the OIG, which has access to the disciplinary history of every Department officer, attends the Chief of Police's disciplinary signing meetings to monitor them for impartiality, consistency/fairness across the entire Department, and any deviations from the Sworn Penalty Guide. Should the OIG form the opinion that the COP is issuing discipline that is either too lenient or too harsh, whether in an individual case or in the aggregate over time, this may be communicated directly to the Chief for consideration. If the OIG feels it is warranted, this opinion may also become the subject of a formal report to the Board of Police Commissioners, to whom the Chief reports.

Given the rigorous and methodical route that every complaint of misconduct must take prior to becoming the subject of a Board of Rights hearing, including multiple layers of review and oversight along the way, it is concerning that such hearings are considered to be *de novo*, requiring them to essentially discount everything that has been learned and concluded about the underlying matter unless and until it is re-presented again directly to the panel of Hearing Examiners. It would seem a more balanced approach to have each BOR focus on determining whether or not the Department's already-completed investigation and adjudication process (including the disciplinary decision of the COP) were conducted impartially, whether they were sufficiently comprehensive, and whether they reached a justifiable outcome based on the evidence. The Department's representatives would be responsible for presenting the findings and discipline that were ultimately reached by the Chief of Police in the matter at hand, including the justification underlying them, while the burden of proving that the Department reached the wrong finding against the accused officer, and/or that the discipline issued to the officer was not appropriate, would lie with the officer. Such a framework would keep the Board of Rights in a position to guard against a Chief who seeks to use the discipline system in a biased way against an officer while also giving due consideration to the Chief's authority and responsibility to hold all LAPD officers accountable whenever the Department's intensive complaint investigation system has led to the conclusion that they committed some form of misconduct.

### C. The BOR Process Should Be More Transparent

Each of the concerns outlined above are notably deepened by the fact that BOR hearings are closed to the public (barring a waiver from the accused officer). As the disciplinary discretion exercised by the Chief of Police is being subjected to a *de novo* review before a BOR panel, the elements which make up that review — or, in other words, the reasoning ultimately relied upon in reaching a decision whether to affirm or to deviate from the Chief's decisions regarding a Department officer under the Chief's command — are most often shielded from public scrutiny. Whether a BOR panel upholds or overturns a specific finding in a hearing, it does not seem unreasonable for the public to want to know how the panel arrived at its decision.

In looking at Boards of Rights held after the implementation of Los Angeles City Ordinance No. 186100 in 2019 and completed by the end of 2021, the OIG notes that the overwhelming majority of them (69%) either reduced the penalty that had been issued to the accused officer by the Chief of Police or determined that there should be no penalty implemented at all. Less than one-third of those BORs (30%) concurred with whatever penalty was arrived at by the COP, and one of them (1%) determined that the penalty against the accused officer should be higher than that issued by the Chief. Separating those hearings into Traditional BORs and All-Civilian BORs, the OIG notes that the former reduced the Chief's penalty or found that no penalty at all was appropriate in 50% of cases, while the latter did so 77% of the time. Stated conversely, half of the Traditional BORs concurred with (and, in one instance, decided to raise) the level of discipline issued by the COP, while less than a quarter (23%) of All-Civilian BORs did so.

On balance, it is clear that the BOR process most often results in a lower level of discipline for the accused employee than that desired by the Chief of Police, despite the extensive investigation and internal reviews of the underlying matter, the accused officer's opportunity to present their



side of the story, and the presence of independent oversight that ultimately informed the Chief's decision. These lowered levels of discipline are even more frequent outcomes in the case of All-Civilian BORs as opposed to Traditional ones. Given such a high rate of reductions in the discipline being issued by the Department as it, importantly, seeks to effectively police itself, it seems appropriate for the public that is served by the Department to receive more information than it currently does about the reasoning behind the reductions. The need for greater transparency in the BOR process may be particularly acute in Directed BORs, when a panel of Hearing Examiners decides whether or not to deviate from the Chief of Police's assessment that an officer's conduct was so egregious as to warrant termination from employment.

The Department ultimately serves the public, which has a fundamental interest in knowing that officers who have been wrongfully disciplined are duly exonerated while officers who have committed the most serious categories of misconduct are duly removed. The limited transparency of the BOR process as it currently stands works against that interest.

#### D. Enhanced Training for Civilian Hearing Examiners

A program of recurrent and comprehensive training for all civilian Hearing Examiners may help to address some of the concerns identified in the OIG's report. Although new civilian Hearing Examiners undergo an onboarding training when they are first appointed to their positions, they represent a wide variety of backgrounds and levels of experience in adjudicating employee discipline matters – particularly in a law enforcement setting. They also may often go for long periods of time between BORs on which they are empaneled. They therefore would be well-served by receiving refresher trainings on things like the administrative rules governing BORs as set out in the BOR Manual, the Department policies that are most frequently at issue during a BOR hearing, or the impact on both the Department and the accused employee of the findings that hearing examiners are called upon to make. Further, civilian Hearing Examiners should also receive training on any and all updates to Department policies and practices that may potentially be of relevance in a hearing. Finally, whenever challenging and/or novel procedural questions or issues arise during one BOR, all civilian Hearing Examiners should receive training about what the issue was and how to most appropriately respond should similar circumstances arise during a future BOR hearing. Ensuring that all civilian Hearing Examiners have the training they need to perform their roles as knowledgeably and effectively as possible supports the principles of fairness, accountability, and efficiency within the BOR process.

The OIG also feels that it would be worthwhile for Hearing Examiner trainings to unequivocally reinforce the importance of BOR panelists maintaining impartiality throughout every aspect of a case that is before them. Any favoritism shown to one party, or even the mere appearance of it, on the part of a BOR panelist can have a disastrous impact on the legitimacy of a process that is tremendously consequential to numerous stakeholders, including the public, the accused officer, the Department, etc. Although this issue might not be one that arises with great frequency, even a single instance of it would be one too many. Partiality on the part of Hearing Examiners must be avoided at all costs, which is why reinforcing this principle during Hearing Examiners' training would be advisable.

### E. Enhanced Access to Objective Legal Guidance for BOR Panels

In its review of the BOR process for this report, it became apparent to the OIG that many hearings seem to trend toward a higher level of quasi-judicial formality, at least in some respects, than toward a more informal level of administrative hearing.<sup>49</sup> For example, it was not unusual for a BOR panel to wrestle with a ruling on an objection raised by one of the parties in the hearing, to request written briefs supplementing the verbal arguments asserted about a particular matter, or to debate an interpretation of the BOR Manual. The OIG further notes, anecdotally, that BORs in the past rarely involved licensed attorneys as representatives for accused officers; rather, that role was generally filled by other, non-attorney employees of the Department. At present, the opposite is true, as it is only the rare exception when accused officer is not represented by an attorney during the proceedings. In certain instances, the OIG felt that Hearing Examiners tended to defer to the accused officer's Defense Representative whenever more formal quasi-judicial questions arose, as that person may have been the only licensed attorney in the hearing room, or at least the only one with relevant litigation experience. This dynamic obviously raises impartiality concerns.

Currently, Deputy City Attorneys are on-call to answer questions from BOR Panels, though they are not required to be physically present at a BOR hearing.<sup>50</sup> In light of the increased quasi-judicial formality of BORs, it may prove beneficial for BOR Panels to have an objective legal advisor, assigned solely to assist the members of the panel, physically present at all times throughout the duration of each hearing. Such access to non-partisan legal guidance may be even more important given the increased number of civilian Hearing Examiners, with varied backgrounds and levels of experience in adjudicating disciplinary matters, who will potentially be empaneled on BORs pursuant to the implementation of Measure C.

### **OIG Recommendations**

#### A. Attorney Representation of the Department in BOR Hearings

The Department should consider engaging attorneys to represent its position in BOR proceedings, either on a regular or an ad hoc basis. Having licensed attorneys act on the Department's behalf should help even out the imbalances currently seen in some proceedings when attorneys representing that accused officer argue a case against non-lawyer Department Advocates. Deputy City Attorneys, qualified private counsel, or a combination of both are all viable potential considerations for such representation.

Attorney representation of the Department at BORs could potentially take many different forms. As one example, and in recognition of the specialized knowledge and considerable experience of Department Advocates – which should not be overlooked – attorneys representing the

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<sup>49</sup> See, L.A. POLICE DEP'T., BOARD OF RIGHTS MANUAL, Introduction (12th ed. 2005) at 4, which says, "The [BOR] procedure is characterized by informality, freedom from arbitrary decisions, lack of equivocation, and the privilege to function without exactness and regularity."

<sup>50</sup> L.A. POLICE DEP'T., BOARD OF RIGHTS MANUAL *supra* note 27 §120.60 at 8.

Department could work collaboratively with the advocates on all BOR cases in a way that blends the attorneys' litigation skills with the advocates' knowledge of LAPD policies, practices, and training, as well as the Internal Affairs process, the Department's discipline matrix, relevant historical precedents analogous to the case at hand, etc. As another example, Deputy City Attorneys and/or private counsel could be assigned to present the Department's case at all Directed Boards, while Department Advocates would continue to handle all Opted Boards. Whatever the particular arrangement might be, attorney representation of the Department at BORs will enhance the fairness and accountability of the overall process.

#### B. Ensure Sufficient Resources Are Devoted to Advocate Section

The number of BORs initiated each year appears to be on the rise since 2017, with the exception of a small-but-significant slowdown in 2020 and 2021 that may be a result of the COVID-19 pandemic. As of this report's completion, 2022 is on pace to see the highest number of BORs initiated in at least seven years. Despite this, the Department indicated that there has not been a proportional increase in the number of Department Advocates or support staff assigned to the Department's Advocate Section. A shortage of court reporters to transcribe hearings, a lack of civilian employees to perform administrative functions for the Advocates (such as scheduling hearings, printing materials, etc.), and overburdened Department Advocates who represent the Department's position in BOR hearings, Administrative Appeals, and Civil Service Hearings, have all made it more challenging for Department Advocates to do their jobs successfully. Additionally, without enough court reporters or Department Advocates available to handle the current load of BOR cases, hearings are sometimes unnecessarily prolonged because of scheduling conflicts. As such, the Department should consider reevaluating the size of its Advocate Section staff to ensure it is continuously maintained at a level that is best equipped to meet its responsibilities as effectively and efficiently as possible.

Additionally, ensuring that Department Advocates are given effective training on the skills they need to successfully represent the Department during a BOR hearing is critical to keeping the adversarial nature of such hearings fair and balanced. Training on persuasive litigation and legal advocacy skills, for instance, is important for helping Department Advocates match their Defense Representative counterparts, nearly all of whom are licensed attorneys. The Department should evaluate the type and amount of training that is required for its Advocates in order to ensure it is sufficiently comprehensive to allow them to meet their responsibilities as effectively as possible. The BOR process often represents the final stage in the Department's efforts to hold its own officers accountable when it has determined that they have committed misconduct; it is important to make sure that the Department's representatives have the proper resources and training to navigate this final stage successfully.

#### C. Ensure That the BOR Manual Is Kept Up to Date

The Board of Rights Manual, which has not been updated since 2005, is currently undergoing a set of revisions that have been worked on for a substantial amount of time. Needed updates and revisions to this manual must be completed in a more timely fashion in the future so that the manual remains, at all times, a useful resource encompassing the current rules and procedures

governing the BOR process. As such, the Department should review the Board of Rights Manual every two years to determine whether any changes are warranted. All updates made by the Department should be presented to the Board of Police Commissioners for review and filing.

## **BOARD OF RIGHTS STATISTICAL OVERVIEW, 2019-2021**

### **I. INTRODUCTION**

In 2021, the Office of the Inspector General (OIG) conducted an analysis of the Board of Rights (BOR or Board) process at the Los Angeles Police Department (LAPD or Department). The focus of the review was to provide a statistical overview of the BOR process since the implementation of Los Angeles City Ordinance No. 186100, which codified revisions into the City Administrative Code pursuant to a voter-approved charter amendment and subsequent City Council action. This current report is an updated overview of these statistics. In total, the OIG requested and obtained Department data regarding 90 BOR hearings held between the implementation of the Ordinance by the Department in June 2019 through the end of December 2021. This included 64 All-Civilian Panels and 26 Traditional Panels. The data analyzed included information about the composition of each Board, the type of hearing, the type and disposition of each allegation addressed, and the penalty (if any) recommended by the Board.

For the period reviewed, the OIG found that in Directed BORs, Traditional Panels appeared substantially more likely than All-Civilian Panels – with 50 vs. 32 percent, respectively – to agree with a recommendation by the Chief of Police (Chief or COP) that the subject officer should be removed from employment. All-Civilian Panels, on the other hand, were much more likely to recommend a lesser penalty. This dynamic was also seen for Opted BORs, with Traditional Panels (38 percent) more likely than All-Civilian Panels (11 percent) to arrive at the same penalty recommendation as the COP. In contrast, All-Civilian Panels in these BORs were more likely to recommend less discipline or no discipline at all.

The OIG also reviewed historical data going back to 2016 for the purposes of comparison, as well as information on BOR cases that were pending or otherwise not completed.

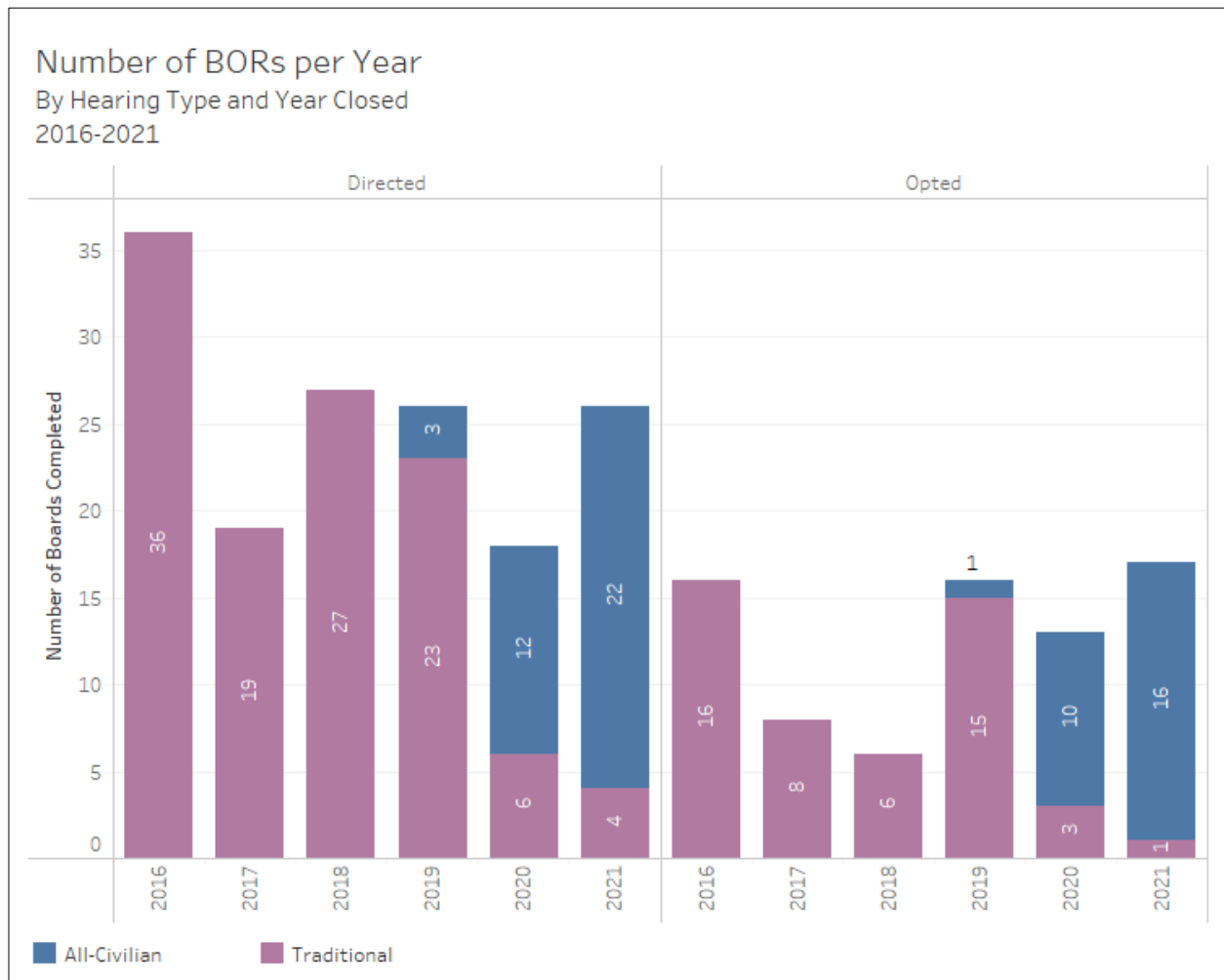
### **II. BOARDS OF RIGHTS OVER TIME**

#### **A. Number of BORs Completed by Year and Panel Type**

To get a picture of BORs over time, the OIG obtained a list from the Department of all hearings completed during the six-year period between 2016 and 2021.<sup>51</sup> The chart below shows the number of BORs completed during each year, including the type of hearing (Directed or Opted) and the type of panel (Traditional or All-Civilian).

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<sup>51</sup> Based on the date of the COP's final decision regarding discipline, as represented on Form 1.73, "Decision of the Board of Rights and Execution of the Order."



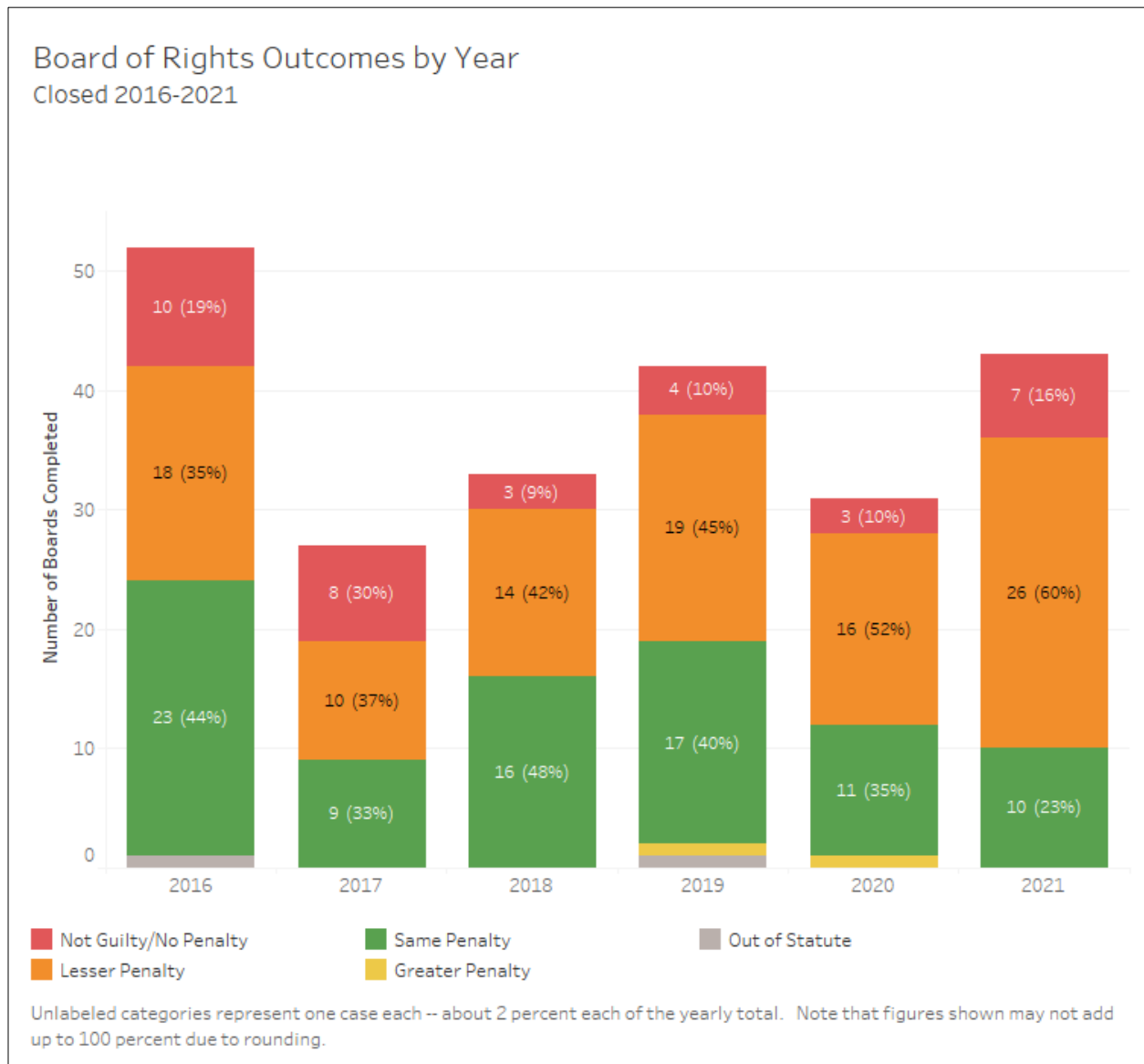
While the first All-Civilian Panels were held in late 2019, the majority of them took place in 2020 and 2021; they made up the majority of all hearings from those years. It should be noted that, due to delays in scheduling the hearings, not all BORs held in 2020 were eligible for All-Civilian Panels. In total, of the BORs closed in 2020, about two-thirds – 22 of 31 – were heard by All-Civilian Panels. This number increased in 2021, when about 88 percent—38 out of 43—were heard by All-Civilian Panels.

The chart also shows fluctuations in the overall number of BORs per year. Most noticeably, the number of Directed BORs fell significantly in 2020, which was the likely the result of a number of hearings being postponed due to the COVID-19 pandemic. With respect to Opted BORs, the OIG notes that there was a notable jump in the overall number of such hearings in 2019, 2020 and 2021, with six completed in 2018, 16 completed in 2019, 13 completed in 2020, and 17 completed in 2021.

## B. BOR Outcomes Completed by Year

The OIG also looked at BOR outcomes – specifically, the extent to which a panel’s findings and/or disciplinary recommendation differed from the initial findings and recommendation by the COP – by year completed. To accomplish this, the OIG categorized each outcome of a BOR into one of the following:

- Not Guilty/No Penalty: The panel found the accused officer Not Guilty on all counts referred to it, resulting in no disciplinary penalty.
- Lesser Penalty: The panel made a penalty recommendation that was less than that originally recommended by the COP. In some of these cases, the panel also found the officer Not Guilty on some of the counts that were referred to it.
- Same Penalty: The panel made a penalty recommendation that was the same as that of the COP. In some of these cases, the panel also found the officer Not Guilty on some of the counts that were referred to it.
- Greater Penalty: The panel made a penalty recommendation that was greater than that of the COP. This category includes one Opted Board in 2019 that was combined with a Directed Board for the same officer, resulting in a recommendation for the officer’s removal.
- Out of Statute: The panel determined that the decision to impose discipline did not fall within the statutory period set by California State law.



As shown above, BOR outcomes have fluctuated over the past six years, with the clearest pattern arising between 2018 and 2021. During that period, the proportions of cases resulting in no penalty or a lesser penalty increased each year, while the number of cases resulting in the same penalty decreased.

### C. Outcomes by Hearing Type

The chart below breaks BOR outcomes down further by hearing type. As shown, a lower proportion of Directed BORs that closed in 2020 and 2021 resulted in the Same Penalty – in this case, removal from employment – than in 2018 and 2019. None of the 2020 Directed cases resulted in a Not Guilty finding, which continued a downward trend from approximately a quarter of such cases in 2016-2017 and an average of 4 percent of such cases in 2018-2019. However, in 2021, this proportion increased to 12 percent.



With respect to Opted BORs, the OIG’s year-to-year comparison found consistently high levels of cases resulting in a Lesser Penalty – ranging from 63 to 71 percent. While this proportion dropped to 38 percent in 2020, it increased to 71 percent in 2021. In contrast, the proportion of BORs resulting in a Not Guilty finding fluctuated significantly over the six-year period. The OIG also found that 2020 had the highest proportion of cases – 39 percent – where the BOR recommendation was for the Same Penalty or a Greater Penalty as compared to that of the COP. Prior to 2020, this proportion ranged from 0 to 25 percent and in 2021, it fell to 6 percent.

Type	Board Outcome	2016		2017		2018		2019		2020		2021		Gr Total	
		#	%	#	%	#	%	#	%	#	%	#	%	#	%
Directed	Not Guilty/No Penalty	9	25%	5	26%	1	4%	2	8%			3	12%	20	13%
	Lesser Penalty	7	19%	5	26%	10	37%	9	35%	11	61%	14	54%	56	37%
	Same Penalty	19	53%	9	47%	16	59%	15	58%	7	39%	9	35%	75	49%
	Out of Statute	1	3%											1	1%
	Total	36	100%	19	100%	27	100%	26	100%	18	100%	26	100%	152	100%
Opted	Not Guilty/No Penalty	1	6%	3	38%	2	33%	2	13%	3	23%	4	24%	15	20%
	Lesser Penalty	11	69%	5	63%	4	67%	10	63%	5	38%	12	71%	47	62%
	Same Penalty	4	25%					2	13%	4	31%	1	6%	11	14%
	Out of Statute							1	6%					1	1%
	Greater Penalty							1	6%	1	8%			2	3%
Total	16	100%	8	100%	6	100%	16	100%	13	100%	17	100%	76	100%	
<b>Total</b>		52	100%	27	100%	33	100%	42	100%	31	100%	43	100%	228	100%

Figures shown may not add up to 100 percent due to rounding.

The next chart compares BOR outcomes based on whether the hearing took place before or after Ordinance No. 186100 became effective in June 2019, and it includes both Traditional and All-Civilian Panels.<sup>52</sup> As shown, the proportion of Directed Boards resulting in the Same Penalty – removal – or a Not Guilty finding was reduced for cases heard after the Ordinance became effective, and Directed Boards resulting in a Lesser Penalty were somewhat increased. The OIG also noted that panels in Directed Boards were comparatively more likely to recommend a Lesser Penalty over a Not Guilty finding after the Ordinance went into effect. For Opted BORs, on the other hand, panels completed post-ordinance were slightly more likely to recommend the Same Penalty post-ordinance, and slightly less likely to recommend a Lesser Penalty.

<sup>52</sup> Includes all BOR hearings where the BOR’s finding was finalized by the COP from 2016 through 2021. Note that 74 of the 90 BOR hearings that took place following the effective date of Ordinance No. 186100 (June 23, 2019) were actually eligible to empanel an All-Civilian Panel. In the remaining 16 cases, the complaint that initiated the BOR hearing had been filed with the BOPC prior to the Ordinance’s effective date; those 16 cases, therefore, had Traditional Panels.

Board of Rights Outcomes by Time Period							
Hearings Held Before and After Ordinance Became Effective							
Closed between 2016 and 2021							
Type	Board Outcome	Pre-Ordinance		Post-Ordinance		Grand Total	
		#	%	#	%	#	%
Directed	Not Guilty/No Penalty	15	15%	5	9%	20	13%
	Lesser Penalty	27	28%	29	53%	56	37%
	Same Penalty	54	56%	21	38%	75	49%
	Out of Statute	1	1%			1	1%
	Total	97	100%	55	100%	152	100%
Opted	Not Guilty/No Penalty	8	20%	7	20%	15	20%
	Lesser Penalty	26	63%	21	60%	47	62%
	Same Penalty	5	12%	6	17%	11	14%
	Greater Penalty	1	2%	1	3%	2	3%
	Out of Statute	1	2%			1	1%
	Total	41	100%	35	100%	76	100%
Grand Total		138	100%	90	100%	228	100%

Figures shown may not add up to 100 percent due to rounding.

### III. COMPARISON OF CIVILIAN AND TRADITIONAL BOARDS

#### A. BOR Selections by Panel Type

To get a sense of how many officers facing discipline were selecting All-Civilian Panels over Traditional Panels, the OIG looked at all BORs for which a selection between the two types of panels was eligible to be made, from the effective date of the Ordinance through the end of 2021.<sup>53</sup> This included 127 instances where the COP directed officers to a BOR, and an additional 89 instances where officers opted to go to a BOR after they were served with discipline by the COP. Out of these 216 cases, the chart below shows that officers selected All-Civilian Panels 88 percent of the time. This rate was roughly the same for both Directed and Opted BORs, in which All-Civilian Panels were chosen about 86 and 90 percent of the time, respectively.

<sup>53</sup> The Ordinance states that it “shall not apply to any complaint that has been filed by the Chief of Police with the Board of Police Commissioners prior to the effective date [of] this section.” As such, the OIG considers a complaint “eligible” for an All-Civilian Panel if it was filed with the BOPC after June 23, 2019.

Board Selection by Status Eligible BORs Initiated Through 2021							
BOR Type	BOR Status	All-Civilian		Traditional		Grand Total	
		# Eligible Cases	% Eligible Cases	# Eligible Cases	% Eligible Cases	# Eligible Cases	% Eligible Cases
Directed	Completed	36	86%	6	14%	42	100%
	Not Completed	24	75%	8	25%	32	100%
	Pending	48	94%	3	6%	51	100%
	Consolidated	1	50%	1	50%	2	100%
	Total	109	86%	18	14%	127	100%
Opted	Completed	24	96%	1	4%	25	100%
	Not Completed	12	75%	4	25%	16	100%
	Pending	43	91%	4	9%	47	100%
	Consolidated	1	100%			1	100%
	Total	80	90%	9	10%	89	100%
<b>Grand Total</b>		<b>189</b>	<b>88%</b>	<b>27</b>	<b>13%</b>	<b>216</b>	<b>100%</b>

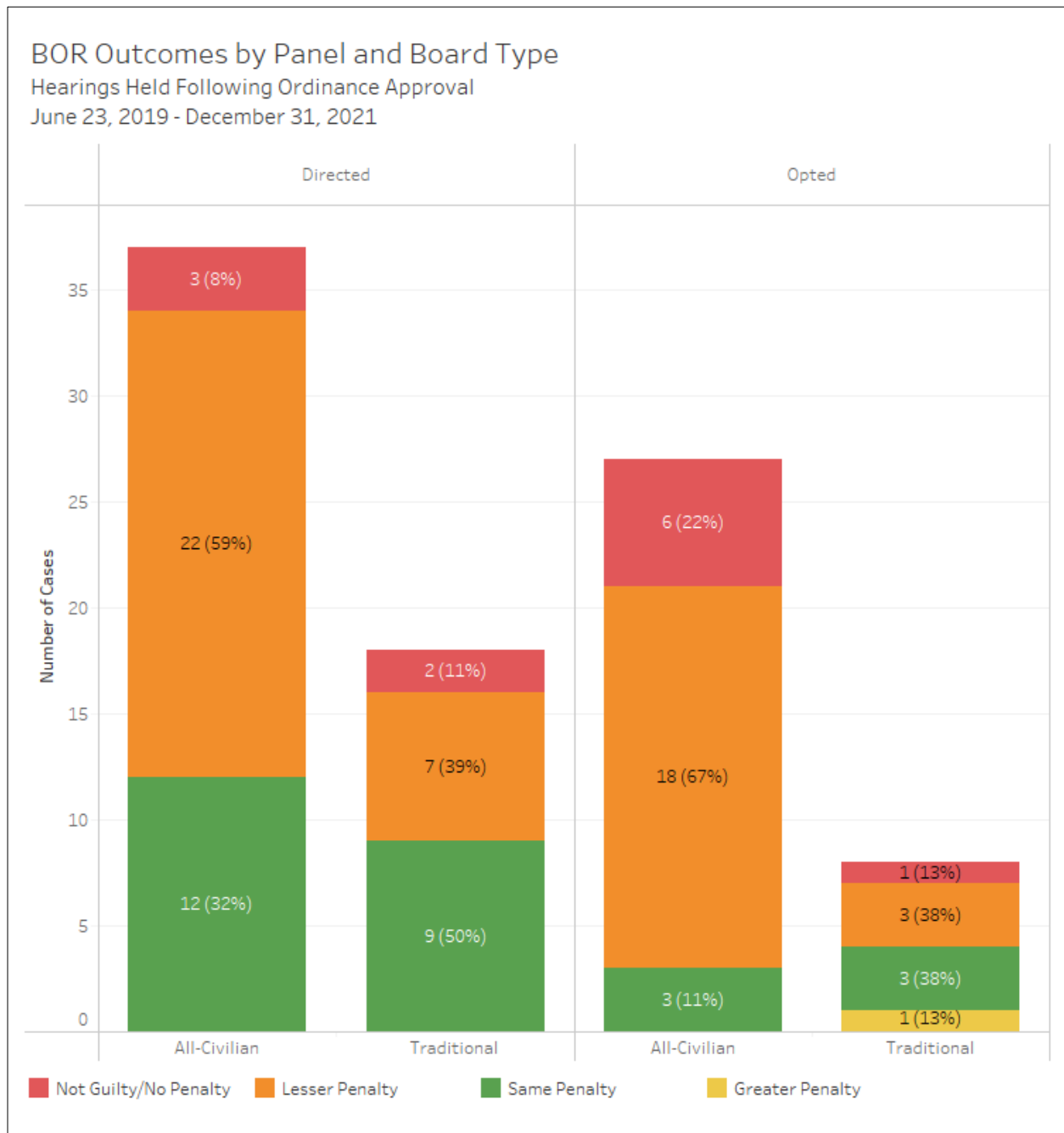
Includes all cases filed with the BOPC between June 23, 2019 and December 31, 2021. Cases listed as "Consolidated" were combined with another disciplinary case involving the same officer. Note that figures shown may not add up to the corresponding totals due to rounding.

## B. Outcomes by BOR Panel and Hearing Type

The OIG also compared BOR outcomes for the 90 hearings held following implementation of the Ordinance, separating those conducted by All-Civilian Panels and those with Traditional Panels. (For the purpose of comparison, this group includes 16 cases that were not eligible for an All-Civilian Panel but were held during this time period. In these cases, the complaint was filed with the BOPC prior to the effective date of the Ordinance.)

These outcomes are shown in the chart on the next page. In Directed BORs, Traditional Panels during this period appeared substantially more likely than All-Civilian Panels – with 50 vs. 32 percent, respectively – to agree with the COP’s recommendation that the subject officer be removed from employment. All-Civilian Panels, on the other hand, were much more likely to recommend a lesser penalty. This dynamic was also seen for Opted BORs, with Traditional Panels (38 percent) more likely than All-Civilian Panels (11 percent) to arrive at the same penalty recommendation as the COP.<sup>54</sup> In contrast, All-Civilian Panels in Opted BORs were more likely to recommend less discipline, or no discipline at all based on a Not Guilty finding.

<sup>54</sup> As previously noted, in one Traditional Opted Board (representing 14 percent of that category), the panel recommended a greater penalty as a result of combining it with a Directed Board for the same officer, resulting in a recommendation for the officer’s removal.



In presenting this data, the OIG notes that the overall number of BORs in each category – as well as the difference in outcomes – is fairly small due to the relatively short window of time being examined. As such, percentages may change significantly with a difference of only a few cases. This data also does not capture other factors that might be helpful in analyzing the results, such as the relative strength of the cases being presented to each BOR based on the available evidence and the types of allegations that must be proved in each case. As such, it may be too early to draw strong conclusions about whether these numbers represent meaningful differences between the two types of panels.

The chart below provides a combined comparison of outcomes by panel type, which shows similar results as those for each type of hearing.

Board Outcome	All-Civilian		Traditional		Grand Total	
	#	Percent of Cases	#	Percent of Cases	#	Percent of Cases
Not Guilty/No Penalty	9	14%	3	12%	12	13%
Lesser Penalty	40	63%	10	38%	50	56%
Same Penalty	15	23%	12	46%	27	30%
Greater Penalty			1	4%	1	1%
Grand Total	64	100%	26	100%	90	100%

### C. Penalty Recommendations

The OIG also analyzed the extent to which penalties recommended by the COP were reduced by a BOR.<sup>55</sup> As shown in the following chart, for Directed BORs in which the COP has recommended that the subject officer be removed, All-Civilian Panels arrived at a reduced penalty about 68 percent of the time. Instead of removal, these BORs recommended unpaid suspensions for the subject officers ranging from one day to 65 days (65 is the maximum number of suspension days allowable for officers, per the City Charter). Additionally, subject officers were found to be Not Guilty by three All-Civilian Panels, resulting in no discipline at all, and recommended to receive an Admonishment by one All-Civilian Panel.

In contrast, Traditional Panels made fewer penalty reductions (in about 50 percent of cases) when presented with a recommendation for removal by the COP. These reduced recommendations ranged from two to 65 suspension days. Additionally, subject officers were found to be Not Guilty by two Traditional Panels.

<sup>55</sup> Of these, one penalty recommendation was subsequently further reduced by the COP. In that instance, the final penalty was reduced from a 65-day suspension to a 22-day suspension.

Board Recommendations by Panel Type Directed Boards, Hearings Held Post-Ordinance						
Board Recommendations	All-Civilian		Traditional		Grand Total	
	#	% Cases	#	% Cases	#	% Cases
Removal	12	32%	9	50%	21	38%
65 Days	3	8%	3	17%	6	11%
51-60 Days	3	8%			3	5%
41-50 Days	3	8%			3	5%
21-30 Days	3	8%			3	5%
11-20 Days	2	5%	1	6%	3	5%
1-10 Days	7	19%	3	17%	10	18%
Not Guilty	3	8%	2	11%	5	9%
Admonishment	1	3%			1	2%
Grand Total	37	100%	18	100%	55	100%

Figures shown may not add up to 100 percent due to rounding.

The next chart shows the type of penalty changes made in Opted Boards by panel type. The largest category was a reduction in the number of suspension days for the subject officer, with six cases being reduced to an Official Reprimand. Another large category identified in this data included cases where the accused officer was found Not Guilty.

*[This space has intentionally been left blank.]*

Penalty Changes by Panel Type Opted Boards, Hearings Held Post-Ordinance						
Penalty Change	All-Civilian		Traditional		Grand Total	
	#	% Cases	#	% Cases	#	% Cases
No Change	3	11%	3	38%	6	17%
Fewer Suspension Days	11	41%	1	13%	12	34%
Suspension to Not Guilty	6	22%			6	17%
Suspension to Official Reprimand	4	15%	2	25%	6	17%
Combined with Other Case			1	13%	1	3%
Removed Demotion/Added Suspension Days*	1	4%			1	3%
Removed Demotion/Fewer Suspension Days	1	4%			1	3%
Removed Demotion/Same Suspension Days	1	4%			1	3%
Suspension and Demotion to Not Guilty			1	13%	1	3%
<b>Grand Total</b>	<b>27</b>	<b>100%</b>	<b>8</b>	<b>100%</b>	<b>35</b>	<b>100%</b>

\* The BOR removed a recommended demotion in rank but added more suspension days.  
Figures shown may not add up to 100 percent due to rounding.

There were 20 Opted Boards in which an officer was found to be Guilty of some misconduct but still had their penalty recommendation reduced.

**IV. APPENDIX**

**A. Type and Status of Eligible Boards of Rights Initiated in 2019-2021**

Year-End Status of Eligible BORs Initiated 2019-2021				
Complaints Filed with BOPC 06/23/19 - 12/31/2021				
BOR Status	Status Reason	Directed	Opted	Grand Total
Completed	Completed	42	25	67
	Total	42	25	67
Consolidated	Consolidated	2	1	3
	Total	2	1	3
Not Completed	Cancelled	3	11	14
	Removed - Other	3		3
	Resigned/Retired	20	4	24
	Settled	6	1	7
	Total	32	16	48
Pending	Pending	51	47	98
	Total	51	47	98
<b>Grand Total</b>		<b>127</b>	<b>89</b>	<b>216</b>



B. Text of Los Angeles Administrative Code, Article 12, Section 22.290

**ARTICLE 12**

**ALTERNATIVE COMPOSITION OF BOARD OF RIGHTS**

Section  
22.290 Board of Rights Optional Composition.

**Sec. 22.290. Board of Rights Optional Composition.**

(a) **Composition.** Pursuant to Charter Section 1070(h), the accused shall have the option of having the complaint heard and decided by a Board of Rights composed of three individuals who are not members of the Department (three civilian members) instead of a Board composed of two officers and one civilian.

(b) **Qualifications and Compensation of the Civilian Members.** The Board of Police Commissioners shall maintain a panel of competent adult civilians to serve as members of Boards of Rights and to be compensated at a per diem rate established for City hearing examiners.

(c) **Selection Procedures for Civilian Members to Board of Rights.** Upon the filing of the request for a hearing before a Board of Rights, the Police Commission staff shall randomly draw nine names from the approved panel of individuals who are qualified to be civilian members of the Board of Rights. The Department representative and the employee shall each strike three of the nine names selected. The Department representative shall strike the first name and the employee shall strike the second name in alternating fashion until there are three remaining names. Those three remaining names shall serve as members of the Board of Rights. The Board of Police Commissioners shall establish any additional procedures necessary to effectuate the selection process above.

(d) **No Retroactive Application.** This section shall not apply to any complaint that has been filed by the Chief of Police with the Board of Police Commissioners prior to the effective date this section.

(e) **Annual Audit by Inspector General.** The Inspector General of the Police Commission shall conduct an annual audit on the Board of Rights proceedings.

(f) **Release of Board of Rights Decisions.** The Board of Rights decisions shall be released to the public as permissible under law.

(g) **Repeal Period and Evaluation.** This section shall not be repealed for at least two years after its adoption. At the end of the two-year period, the Department shall submit a report to the City Council evaluating the effectiveness of the ordinance.

SECTION HISTORY

Added by Ord. No. 186,100, Eff. 6-13-19.