Principled Policing: The Mayor's 2018 Police Accountability Report

Dear Oaklanders,

This is the Principled Policing Report for 2018. The purpose of the report is to bring greater transparency to police data and outline how the City of Oakland's Police Department (OPD) is managing and meeting its accountability goals.

Most notably:

- **No officer discipline has been reversed by arbitration for more than four years** (page 9);
- **OPD has reduced the number of Police Misconduct Legal Claims by 64% since baseline year of 2012** (page 14); and
- **OPD made 8,311 fewer discretionary stops of African Americans after training officers in new policy (2018 vs. 2017) – a 43% reduction in its policing "footprint"** (page 16).

Of concern is an increase in misconduct complaints beginning in 2016 (page 4).

Pages 9 detail some recent recommended policy and training changes prompted by internal review processes. These are just some of the steps we're taking to ensure that misconduct doesn't occur in the first place. In addition, OPD began its second phase of procedural justice training for officers and professional staff in November of 2017. Just and principled policing is not only about ensuring individual officers are fit and equipped to conduct themselves according to our community's highest expectations, it also means that we as leaders are constantly adjusting policies, practices and training to reduce harm and increase trust.

We need this community's partnership to make Oakland the safe community it deserves to be, as well as delivering responsive and trustworthy government services. Please send your feedback and suggestions to me at OfficeoftheMayor@oaklandnet.com or to the Oakland Police Commission at 510-238-2187.
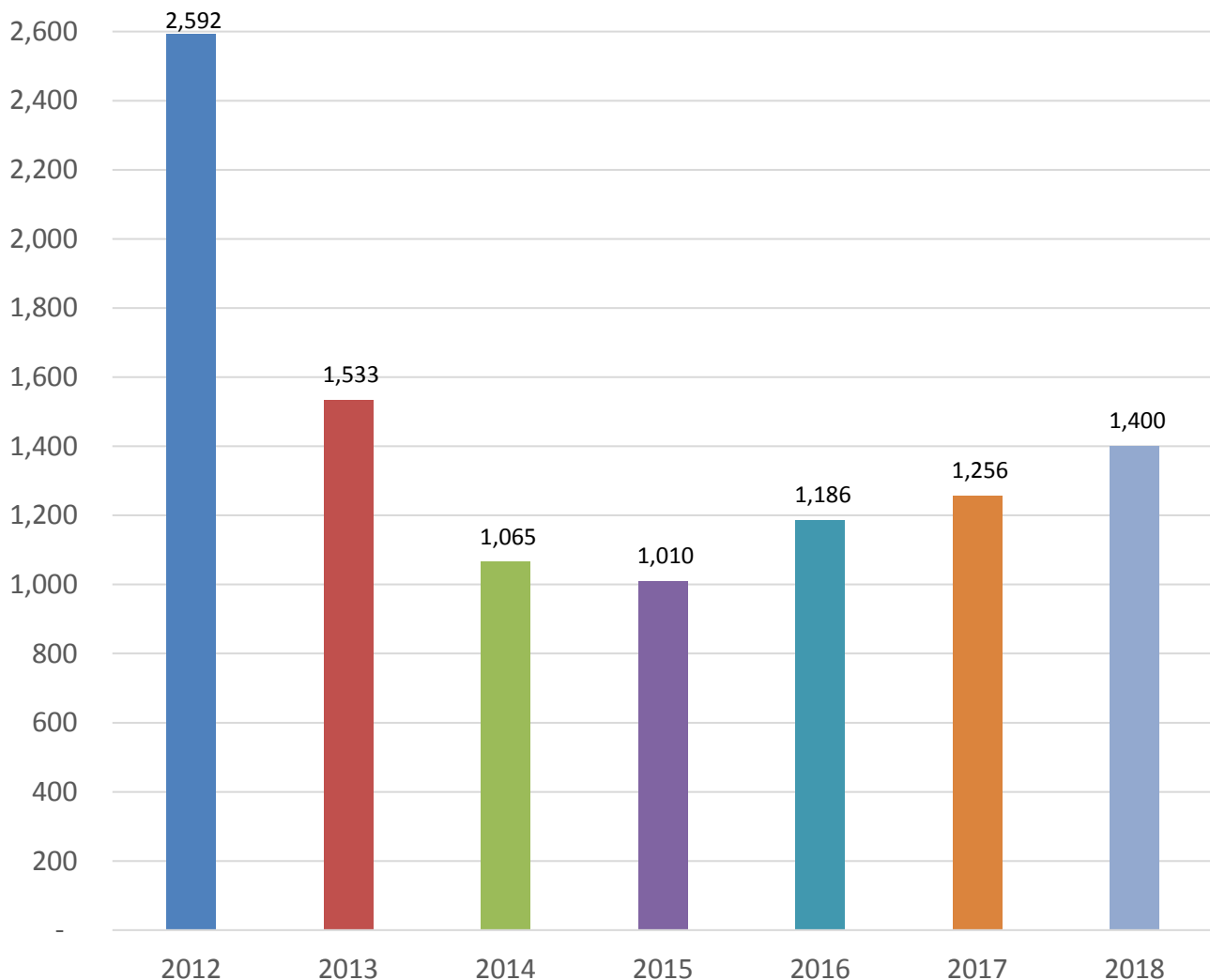
Respectfully,
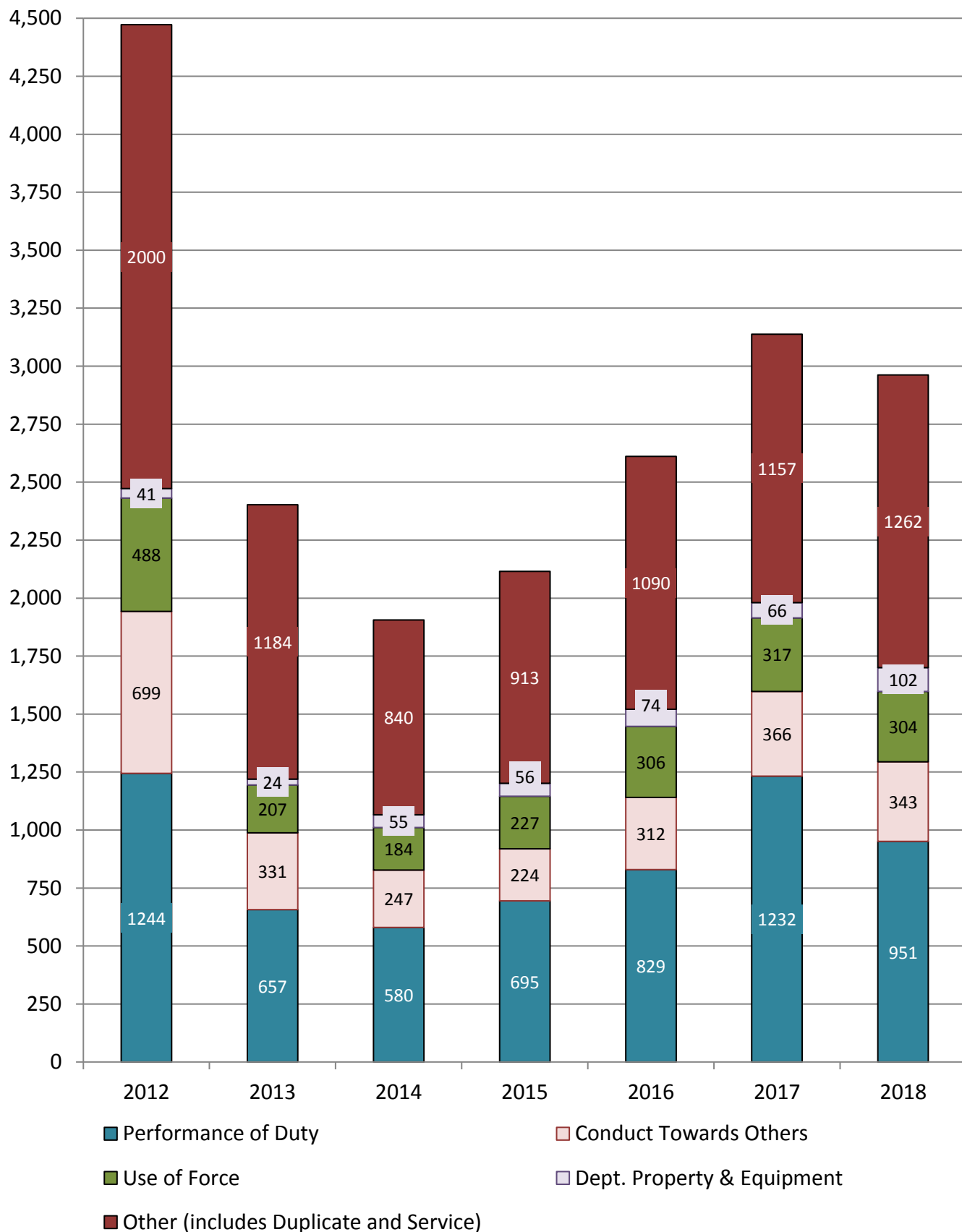
Oakland Mayor Libby Schaaf

COMPLAINT CASES

OPD keeps all its rules on-line at oaklandpolice.com and continually trains officers to reinforce proper conduct. OPD closely tracks complaints against officers, looking for early signs that individual officers or squads need interventions, as well as searching for overall trends that suggest a need for new policies or training. Additionally, the Community Police Review Agency conducts independent investigations of some of these complaints. Currently, OPD's Internal Affairs Division (IAD) reviews all complaint cases. Its complaint acceptance policy can be viewed by the public at https://www.oaklandca.gov/resources/oakland-police-department-opd-policies.

Internal Affairs Division (IAD) Complaint Cases Received 2012 to 2018 – Each Case May Contain Multiple Allegations and/or Involve Multiple Officers

During 2018, 1,471 allegations concerning police services – including misconduct – were filed, resulting in 685 cases. A single case can include multiple allegations and/or multiple officers, so although the number of cases filed has increased, the next chart shows that the number of investigable allegations went down slightly in 2018 compared with 2017, but was still higher than all previous years since 2012.

Individual Manual of Rules Allegations Received by IAD January 2012 to June 2018

	2012	2013	2014	2015	2016	2017	2018
Other (includes Duplicate and Service)	2000	1184	840	913	1090	1157	1262
Dept. Property & Equipment	41	24	55	56	74	66	102
Use of Force	488	207	184	227	306	317	304
Conduct Towards Others	699	331	247	224	312	366	343
Performance of Duty	1244	657	580	695	829	1232	951

Legend:
- Performance of Duty
- Conduct Towards Others
- Use of Force
- Dept. Property & Equipment
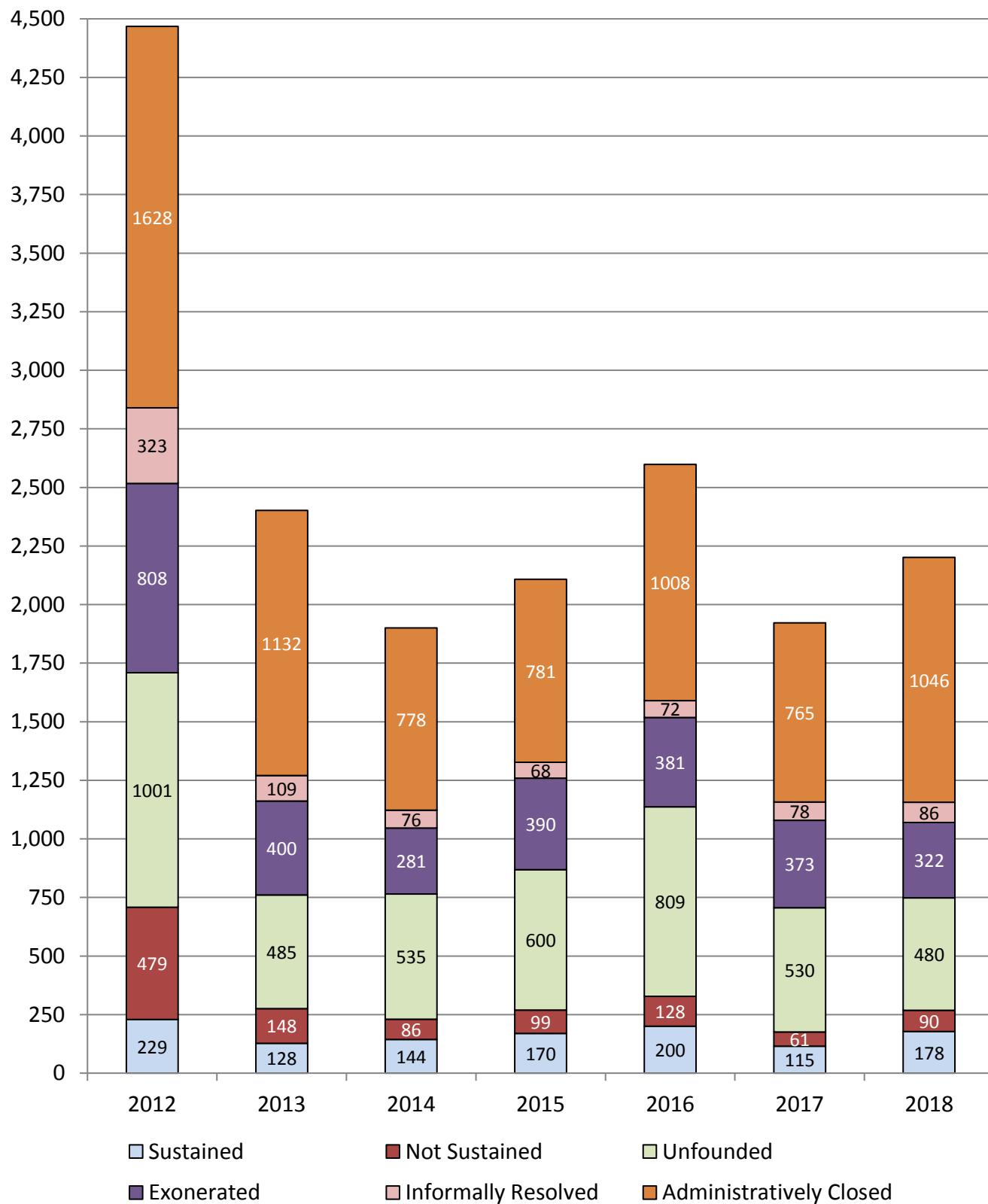- Other (includes Duplicate and Service)

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During 2018, the largest number (43 percent) of the allegations against the Police Department were not actionable because they fall under Other, which includes Duplicate and Service complaints. Service complaints are not actionable because they did not involve allegations of misconduct against specific employees, but instead pertained to a police practice mandated by policy or law – such as towing of a vehicle, or a delay in service – such as a long wait for an officer's presence due to call for service volume.

Performance of Duty was the second most common type of complaint in 2018, with 32 percent of all allegations falling into this category. Violations of performance of duty include, but are not limited to, the following:

- Intentional illegal search, seizure, or arrest;
- Unintentional or improper search, seizure, or arrest;
- Failure to perform duties as required or directed by law, Departmental rule, policy, or order;
- Improper care of the property of persons; and
- Changing a work assignment without authority.

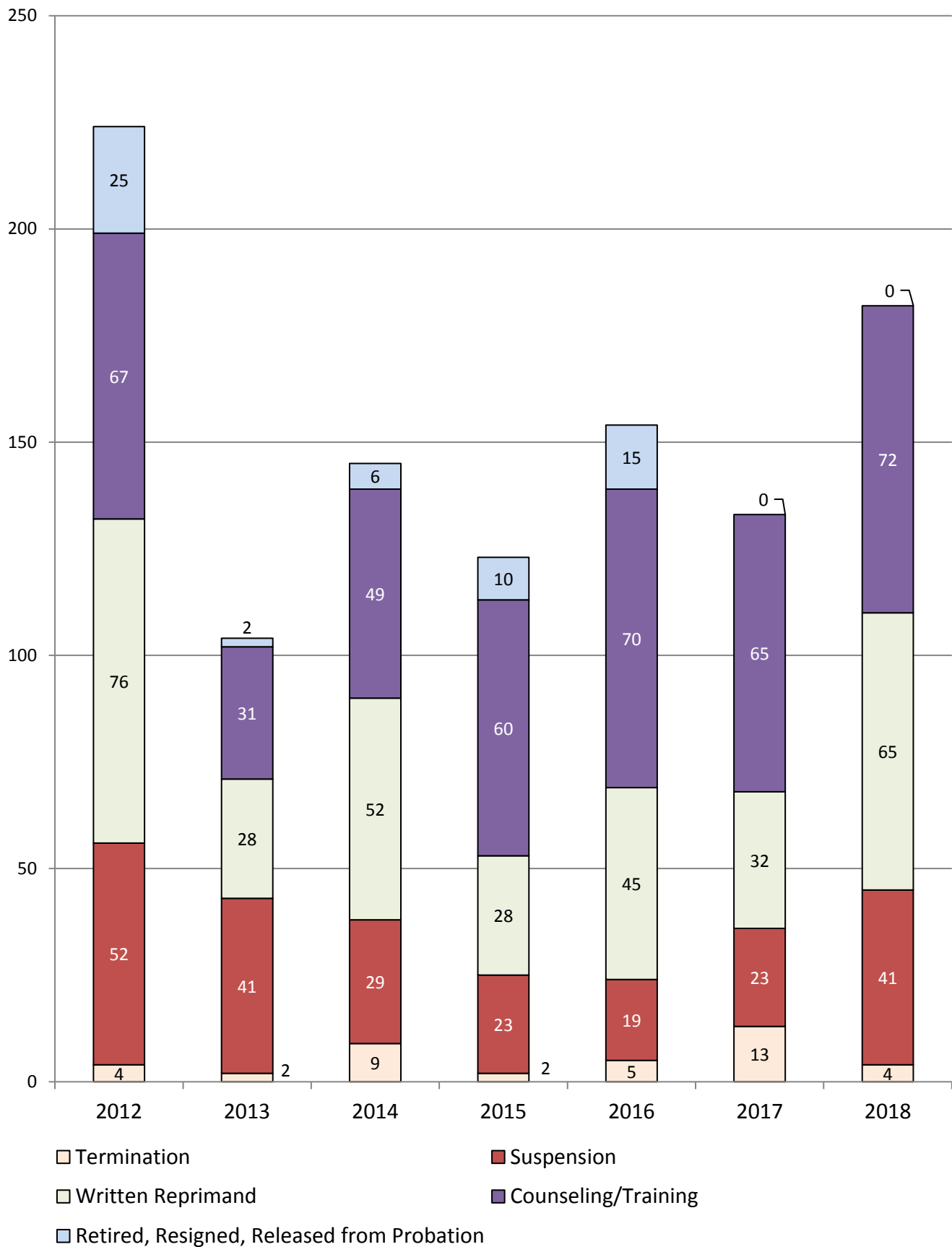## Disposition of Individual Allegations 2012 to 2018

Not all cases brought in 2018 have yet resulted in a finding, as investigations may take up to 180 days to complete. This figure will be updated in the next report. It is noteable that 2018 saw one of the highest ratios of sustained violations since our baseline year os 2012.

During 2018, dispositions were reached on 2,202 cases involving complaints against OPD. The findings are defined as follows:

- **Sustained (8%):** When an investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.
- **Not Sustained (4%)**: When an investigation concludes there isn't enough evidence to either sustain the complaint or fully exonerate the member.
- **Unfounded (22%)**: When an investigation concludes the alleged acts did not occur, did not involve department members or were frivolous.
- **Exonerated (15%)**: When an investigation discloses that the alleged act occurred but was justified, lawful, and/or proper.
- **Informally Resolved (4%)**: OPD provides for an Informal Complaint Resolution (ICR) process. This is when a complainant agrees to have a subject employee's supervisor sit down with the employee for training, policy review, and/or a discussion of alternatives to handling whatever matter led to the complaint. The ICR is documented in the subject employee's electronic file and the IAD control file.
- **Administratively Closed (48%)**: meaning they were based on a service complaint or the investigation cannot or should not proceed. Instances in which the investigation cannot or should not proceed include (but are not limited to) the complainant withdrawing the complaint; the affected OPD employee separating from employment; a failure of the complainant to identify an act or omission that would constitute an actual violation of the Manual of Rules; or a service complaint.

In 2018, of the sustained findings, OPD saw increases in performance of duty (general), preventable collision, and failure to accept/refer a complaint violations.

Disciplinary Decisions for Sustained Cases 2012 to 2018

Legend:
- ☐ Termination
- ■ Suspension
- ☐ Written Reprimand
- ■ Counseling/Training
- ☐ Retired, Resigned, Released from Probation

For sustained allegations of misconduct, discipline ranging from counseling/training to termination may be imposed. For 2018, there were 184 instances of imposed discipline as compared to 108 for 2017. The most common discipline imposed for 2018 was counseling/training (40 percent); followed by written reprimand (36 percent); and suspension (23 percent). There were four terminations in 2018. With the exception of 2012, when many officers received discipline arising from actions related to Occupy Oakland, 2018 represents a year with a greater number of disciplinary actions, as well as an increasing percent of serious discipline.

Of the termination cases in 2017 and 2018, there were six violations for Obedience to Laws, four violations for Truthfulness and Reports and Bookings, and seven temporary employees (police trainees and one cadet) released from the Department.
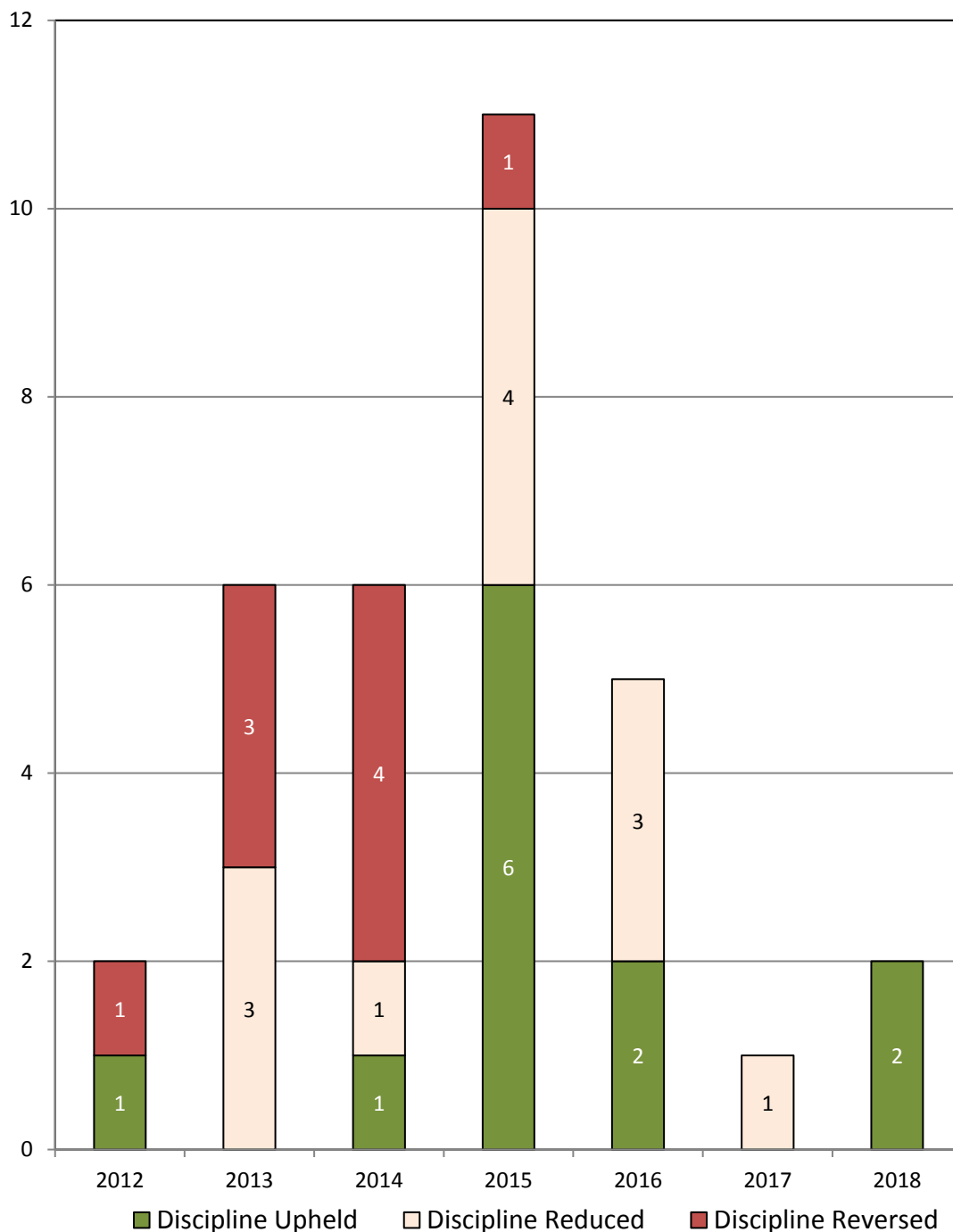

POLICY AND TRAINING RECOMMENDATIONS

In April of 2016, OPD began formally tracking all policy and training recommendations that resulted from Internal Affairs investigations. If a recommendation is urgent, it is addressed through an immediate policy change or training implementation. If not urgent, the recommendation may be included in the next regular policy rewrite or regular training. For the 2018, these recommendations included:

- Evaluate OPD hosting interview and interrogation training
- Update policy to emphasize the recognition of additional factors that may necessitate the use of force beyond the three most identifiable Graham factors
- Issue an information bulletin reminding commanders and supervisors of the roles and responsibilities of incident and tactical commanders during critical incidents
- Update racial profiling policy to include contemporary definitions of racial and identity profiling
- Determine if policy should be updated to reflect evolving standards of reportable uses of force
- Provide training on excited delirium syndrome to patrol line-ups and as part of continuous professional training
- Develop standard procedures concerning the use of three-dimensional scanners in recording incidents
- Train all Criminal Investigations Division investigators who might be involved in the investigation of a Level 1 use of force incident or pursuit

Arbitration Decisions 2012 to 2018

When officers believe they were unfairly disciplined, they have the right to appeal that discipline through an arbitration process. Arbitrations may result in the discipline imposed by OPD being upheld, reduced or completely reversed.

In 2018, two OPD sworn matters went to arbitration. Both were upheld. It's encouraging to note that no disciplinary actions have been reversed since 2015 and that fewer cases are being brought to arbitration at all.

USES OF FORCE

The Oakland Police Department defines Use of Force as:

- *Use of Force* - Any physical or mechanical intervention used by a member or employee to defend, control, overpower, restrain or overcome the resistance of an individual.
- *Reasonable Force* - That amount of force that is objectively reasonable to affect a lawful police purpose and protect the safety of members or others based upon the totality of the circumstances.
- *Lethal Force* - Any force that creates a substantial risk of causing death or serious bodily injury.
- *Less-Lethal Force* - Any use of force, other than lethal force, which by design and application is less likely to cause serious bodily injury or death.
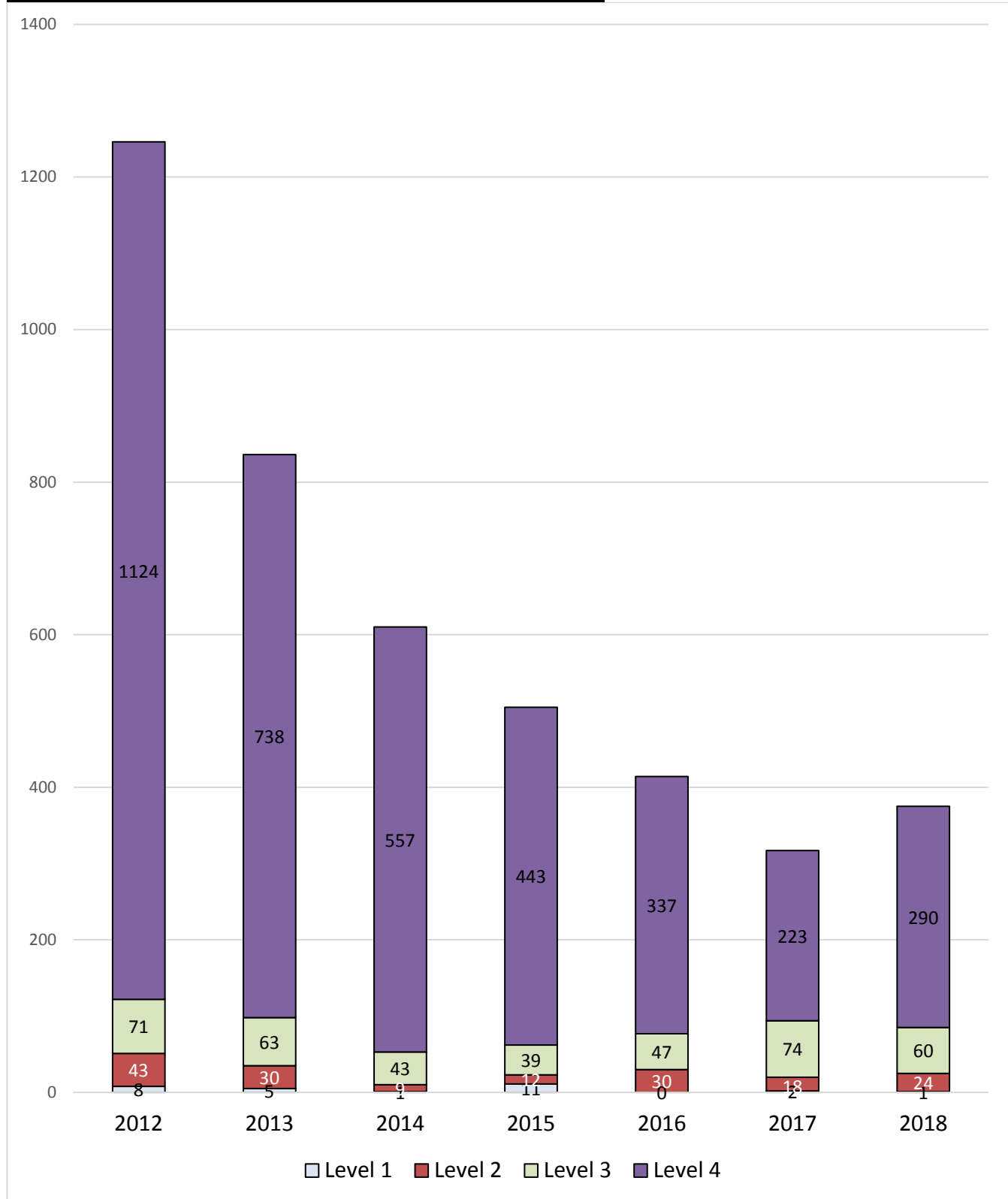- *Officer-Involved Shooting* - Any non-accidental discharge of a firearm by an officer outside of training.

OPD evaluates any state-sanctioned use of force in four levels:

FORCE LEVEL: LEVEL 4	
A firearm intentionally pointed at a person	An on-duty firearm discharge to dispatch an injured animal
A Weaponless Defense Technique: hair grab, pressure to mastoid or jaw line, shoulder muscle grab	A Weaponless Defense Technique Control Hold: escort (elbow), twist lock, arm-bar, bent-wrist
FORCE LEVEL: LEVEL 3	
Oleoresin Capsicum/Pepper Spray applied to a person	The baton used for a non-striking purpose
The use of a Taser	A Weaponless Defense Technique: hand/palm/elbow strikes, kicks, leg sweeps, takedowns
Any impact weapon w/o contact	An on-duty firearm discharge at an animal
FORCE LEVEL: LEVEL 2	
Any strike to the head	Any unintentional firearm discharge w/o injury
Carotid restraint w/o the loss of consciousness	A police canine bites
Use of impact weapons w/contact	Any use of force w/injury
FORCE LEVEL: LEVEL 1	
Any use of force resulting in death	Any unintentional firearm discharge w/injury
Any intentional firearm discharge at a person	Any intentional impact weapon strike to the head
Any force w/a substantial risk of causing death	Any UOF investigation that is elevated to a Level 1
Serious bodily injuries	

The Oakland Police Department continues to make a strategic effort to reduce the use of force through the following means:

- *Increased Training*- We have increased classroom training to remind officers of the legal requirements for using force – even lower level uses of force, such as the pointing of a firearm at a person. We have added additional dynamic training that includes simulated arrests, video simulators and role playing with non-lethal firearms as well as other force options. Additionally, more officers are trained in crisis Intervention techniques with a focus on interacting with persons experiencing mental distress.

- *Enhanced Policy*- Oakland Police Department policies and procedures emphasize decision making which weighs the need for immediate apprehension against the amount of risk immediate apprehension creates for community members, officers, and the person to be apprehended. Policies are implemented which require and value accomplishing police objectives with respect and minimal reliance on the use of physical force.

- *Improved Review*- Executive commander and review board analyses of serious uses of force require assessments as to whether actions leading up to the use of force made a use of force more likely to occur. Analysis also requires an enumeration of other available options which could have or should have been considered.

- *Using Body-Worn Cameras*- The Oakland Police Department was the first large agency in the United States to equip all uniformed officers with body-worn cameras. Not only is there correlation between body-worn camera use and recent reductions in uses of force and complaints, but the Department is forging new ways of evaluating body-worn camera footage within contexts of officer performance data, citizen contact analysis, and risk management.

- *Increased Oversight*- All uses of force by Oakland police officers are reported, tracked, and reviewed. The lowest level uses of force are reviewed by the supervisor and commander of the officer using the force through a review of video. Higher level uses of force are investigated by the Oakland Police Department Homicide Section, the Internal Affairs Division, and the Alameda County District Attorney's Office.

Uses of Force January 1, 2012 to December 31, 2018

Year	Level 1	Level 2	Level 3	Level 4
2012	8	43	71	1124
2013	5	30	63	738
2014	1	9	43	557
2015	11	12	39	443
2016	0	30	47	337
2017	2	18	74	223
2018	1	24	60	290

Legend: Level 1, Level 2, Level 3, Level 4

** NOTE: Due to a recent audit, the Level 4 numbers reported in this chart cannot be confirmed as accurate totals.

During 2018, there were 375 reported uses of force. There was one Level 1 use of force. Six percent of the uses of force were Level 2; 16 percent were Level 3, and 77 percent were Level 4.

After a steady decline in reported uses of force between 2012 and 2017, there was an increase between 2017 and 2018. The Department's Office of Inspector General initiated an audit of the pointing of a firearm (Level 4 Type 22) in mid-2018 to determine the cause of the downward trend with this type of force. Pointing of a firearm makes up most reported Level 4 uses of force.

The OIG identified several factors that may be contributing to the downward trend, primarily in the areas of policy, training, and monitoring of force. The audit found that policy provided insufficient guidance on when to report the pointing of the firearm, causing inconsistencies in reporting. The sole non-reportable "low ready" firearm position defined in policy and when to report the pointing of the firearm were not emphasized in police officers' practical firearms training, and were not in the practical firearms training curriculum. Also, the low thresholds for Level 4 uses of force that trigger a management review may impact the reporting of such force. Upon hearing of the preliminary audit findings in September 2018, the Chief of Police directed re-training of all patrol officers to clarify what is a reportable pointing of a firearm. After the training, the Department experienced an increase in the numbers of reports for this type of force, hence the increase in Level 4 uses of force between 2017 and 2018. In addition, the Chief directed supervisors to review the video footage of all incidents involving resisting arrest or battery on a police officer violations, to ensure any reportable use of force is correctly reported and documented. Furthermore, the Department is working with the Police Commission on revising the current use of force policy, and the OIG is conducting a more comprehensive review of the reporting of all types of force.

FORCE REVIEW BOARDS:

OPD conducts Force Review Boards (FRBs) and Executive Force Review Boards (EFRBs) to independently evaluate and review the factual circumstances surrounding force incidents and whether the incident suggests a need for policy or training changes going forward. FRBs analyze and assess lower level use of force incidents. EFRBs analyze and assess Level 1 lethal use of force incidents, in-custody deaths, deadly incidents related to pursuits, and other incidents at the direction of the Chief of Police.

FRBs are comprised of three command staff members, all of whom must hold the rank of Captain of Police or higher. EFRBs are comprised of three command staff members, at least one of whom must hold the rank of Deputy Chief of Police and serve as Board Chair. The other two members of the EFRB must hold the rank of Captain of Police or higher. A member of the civilian Police Commission must observe all EFRBs. The boards have two duties:
1. Determine whether the use of force complied with departmental policy
2. Identify any needed policy revision needed as a result of learnings from the investigation.

Use of force incidents are not always reviewed during the year in which they occurred. Reviews have been as follows:
2018: 15 boards reviewed 47 uses of force;
2017: 18 boards reviewed 79 uses of force;
2016: 22 boards reviewed 101 uses of force;
2015: 11 boards reviewed 38 uses of force.

Specific Force Applications Reviewed During 2018

- Four – Lethal Firearm Discharge (Type 1)
- Four – Strike to the Head (Type 9)
- Ten – Electronic Control Weapon (Type 11)
- Eight – Impact Weapon with Contact (Type 12)
- One – Any Use of Force Resulting in Injury (Type 13)
- Two – Other – Use of an Electronic Control Weapon on a Restrained person and Weaponless Defense Technique other than a Control Hold on a Restrained Person (Type 15)
- Nine – Weaponless Defense Technique other than a Control Hold (Type 16)
- One – Intentionally Pointing a Firearm at a Person (Type 22)
- One – Weaponless Defense Technique Applied to a Vulnerable Area, Excluding Strikes (Type 23)
- Five – Weaponless Defense Technique Control Hold is Applied: Escort (elbow); Twist Lock; Arm-bar; or Bent Wrist (Type 25)
- Two – Unintentional Discharge with No Resulting Injury (Type 27)

In 2018, out of the 15 boards (47 reviewed uses of force), there were four uses of force found out of compliance. Further, there were five uses of force, connected to officer involved shooting incident of Joshua Pawlik, found out of compliance by the Compliance Director. The Pawlik case does not yet have a final determination, as the Citizen's Police Review Agency has not yet made its finding. Finally, one of the boards reviewed a pursuit that was determined to be out of compliance. Pursuant to the boards, there were recommended training points, policy reviews, and deliverables.

ADDITIONAL INFORMATION

Below is additional information concerning sworn personnel within the Oakland Police Department.

	2012	2013	2014	2015	2016	2017	2018
Number of complaints per officer	4.10	2.44	1.59	1.40	1.56	1.67	1.89
Uses of force per arrest	0.12	0.09	0.05	0.04	0.03	0.03	0.04
Level 1	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Level 2	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Level 3	0.01	0.01	0.00	0.00	0.00	0.01	0.01
Level 4	0.10	0.08	0.05	0.04	0.03	0.02	0.03
Uses of force per officer	1.97	1.33	0.91	0.70	0.55	0.42	0.51
Number of complaints per dispatched incident	0.01	0.01	0.00	0.00	0.00	0.00	0.00
Uses of force per dispatched incident	0.01	0.00	0.00	0.00	0.00	0.00	0.00
Sick hours per officer	18.49	25.09	21.36	22.03	26.49	26.59	25.46
Officer-Involved Shootings	7	4	0	6	0	1	1
Vehicle Pursuits	151	148	43	52	57	64	104
All Claims against OPD	163	123	131	122	116	113	92
Police Misconduct Claims	121	91	77	60	71	52	43

ADDRESSING RACIAL PROFILING, BIAS & THE POLICING "FOOTPRINT"

Of particular note in 2018 is a promising trend in reducing discretionary stops, particularly of African Americans. Changes in policies and practices can be credited to OPD's ongoing work with Dr. Jennifer Eberhardt of Stanford and Chief Kirkpatrick's Precision Policing approach and new policies around Intelligence-led Stops.

OPD is recognized as the law enforcement leader in California for: collecting more and better stop data than any other law enforcement agency in California; publishing Departmental stop data for review and study by third parties (including academic researchers); analyzing stop data to inform the Department's crime reduction strategies and stops (intelligence-led and precision-based); and, an industry-leading requirement that officers use body-worn cameras to record discretionary stops.
While OPD has revised its stop data forms for purposes of complying with AB 953 (the Racial Identity and Profiling Act of 2015), OPD's new stop data forms not only collect the state mandated data, but also a larger set of stop data categories. Officers were

trained on the new forms in December 2018.

OPD analyzes stop data during monthly Risk Management Meetings to: 1) identify policies and practices which adversely impact communities of color (in particular African-Americans) in order to reduce the Department's "footprint" on these traditionally over-policed communities; and 2) identify and examine "outlier" squads and officers to determine whether their actions are consistent with constitutional policing and Department directives, or are rather indicative of potential bias and/or disparate treatment.[1]

The Department's focus on intelligence-led policing continues to bring significant and positive results. The Department's percentage of "intelligence-led" stops is still increasing. At the same time, the Department continues to reduce its overall number of stops (particularly discretionary stops), thus reducing the Department's impact (or "footprint") on the community.

Police Department Discretionary Stops By Race: 2014-2018

Total stops in 2014-2017 averaged more than 30,000 per year. After the implementation and training on intelligence-led policing, the Department reduced its stops by **37 percent** in 2018 for a total of 19,900 stops.[2] The overall number of stops in every category of race (African American, Asian, Hispanic, White and Others) are down.

The drop for African-Americans is particularly substantial—from 19,185 in 2017, to 10,874 in 2018—a 43% reduction. OPD's focus and training on intelligence-led policing represents a significant cultural shift in the Department's approach to patrol policing. The Department is committed to sustaining these changes in the long-term.

To date, OPD's collection and analysis of stop data and work with outside researchers has led to several changes in its policing strategies, including the introduction of intelligence-led policing and reduction of traffic citations for mechanical issues, which

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[1] The Independent Monitor has also recognized the Department's "integration of its stop data into the wider framework of risk management", which includes analysis of officer, squad, area and Department-wide data on complaints and discipline, uses of force, and pursuits and collisions, as well as a review of officers on intervention and supervisory monitoring.

[2] As noted on the chart, because of the implementation of new stop data forms on December 20, 2018, to comply with the state's new stop data requirements (AB 953), the data for 2018 includes stops through December 19, 2018. Even if one were to project a small adjustment for the last twelve days of the year based on a daily average of stops (54.5) over the course of the year, the final number (20,554) would still represent a massive reduction in overall stops. Moreover, the number is likely to be lower given that the last two weeks of the year—which involve the holidays—generally have lower numbers of stops per day.
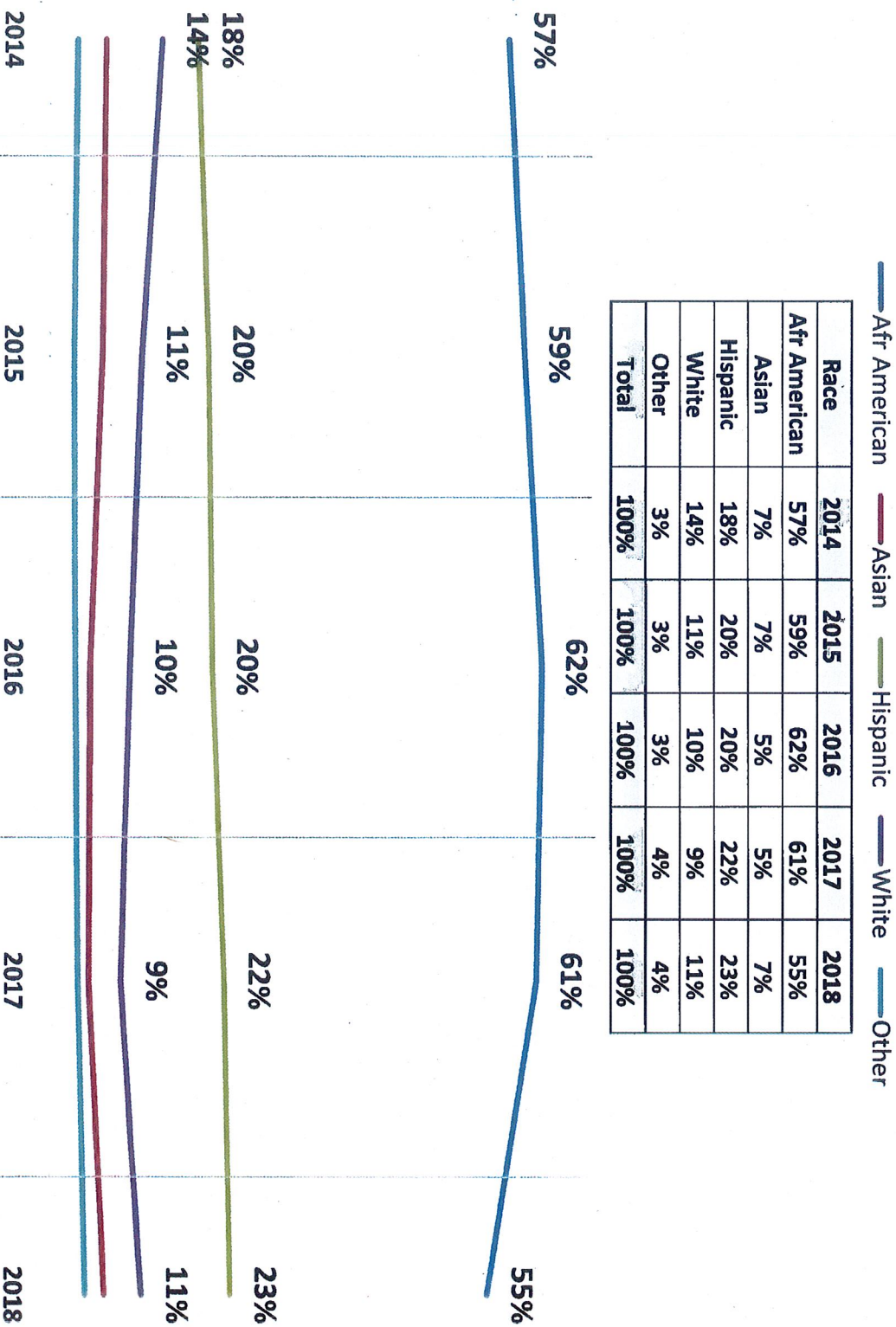
Discretionary Stops by Race 2014-2018*

Afr American —— Asian —— Hispanic —— White —— Other

Race	2014	2015	2016	2017	2018	% Change 2017-2018
Afr American	19,077	22,500	20,032	19,185	10,874	43%
Asian	2,316	2,483	1,648	1,553	1,371	12%
Hispanic	6,101	7,496	6,590	6,855	4,483	35%
White	4,615	4,328	3,256	2,805	2,277	19%
Other	1,142	1,148	1,043	1,130	895	21%
Total	33,251	37,955	32,569	31,528	19,900	37%

*Data through December 19, 2018. CA Assembly Bill 953 stop data collection requirements started on 12/20/18.

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Discretionary Stops by Race 2014-2018*

Afr American ——   Asian ——   Hispanic ——   White ——   Other ——

Race	2014	2015	2016	2017	2018
Afr American	57%	59%	62%	61%	55%
Asian	7%	7%	5%	5%	7%
Hispanic	18%	20%	20%	22%	23%
White	14%	11%	10%	9%	11%
Other	3%	3%	3%	4%	4%
Total	100%	100%	100%	100%	100%

*Data through December 19, 2018. CA Assembly Bill 953 stop data collection requirements started on 12/20/18.

disparately impact lower income and minority communities, changes in the Department's handcuffing policy to address disparity in its handcuffing rates, a proposed probation and parole policy which includes first-in-California restrictions on probation and parole searches of non-violent offenders (to address disparity in searches), and Department-wide implicit bias training. While it may be too soon to tell, OPD is hopeful that these changes (most of which took place over the last one to two years), are in fact having some effect on racial disparities. Admittedly, the Department's changes in policy and policing strategies have had less of an effect on racial disparities in the data—*i.e.*, the percentage of stops attributable to each racial group. Data shows only a six percent reduction in disparity related to African-Americans from 2017 to 2018.

OPD's *process* of collecting and analyzing stop data to identify and address racial disparities—as well as its willingness to collaborate with outside researchers and academics—that represents industry-leading best practices.

The Department also continues to perfect its drill-down and in-depth analyses of squad and individual officer data to ascertain the basis for any identified disparate treatment during its monthly Risk Management Meetings ("RMMs").

Each month OPD Command staff examines stop data for squads and officers whose data is not in line with the Department's expectations or deviates from the norm, including an extensive review of their stop data narratives and body camera footage. Area commanders are then specifically and purposefully questioned regarding their review and conclusions during RMMs. In order to institutionalize this process and ensure that all OPD members (including Sergeants and Officers) understand the RMM process and its goals, the Department has begun holding additional RMM meetings at the Area level. That is, in each patrol area and the Ceasefire unit, Captains are meeting with their area supervisors to analyze and address the data in the same manner that the Executive Commanders do with Area Captains at the monthly RMMs. The Department is hopeful that this process will result in an understanding and appreciation of the RMM management process at all levels of the Department.

IMPLEMENTING "THE STANFORD 50" RECOMMENDATIONS

OPD's extensive work with Dr. Eberhardt resulted in 50 Recommendations to reduce racial bias in policing. To date, OPD has implemented 42 of the 50 recommendations, including the new data collection and analysis practices and trainings.

The 8 remaining recommendations are in process and should be completed within the next 6 months:
- Build a stop data dashboard
- Integrate body worn camera footage into Stop Data system to allow supervisors and commanders to immediately review

stops, arrests and uses of force.

- Hire a data manager
- Support customer-service audits by an independent entity (like Stanford) after routine stops
- Regularly administer a community survey
- Train Officers in Social Tactics and Make Trainings Shorter and More Frequent
- Incentivize training-in-action workshops
- Produce and publish an annual Racial Impact Report

CONCLUSION

As OPD enters 2019, we remain reflective as we acknowledge both successes, such as our marked reduction in discretionary stops of African Americans, as well as challenges, such as inconsistent reporting of the pointing of firearms and increased complaints. We remain committed to institutionalizing a culture of constant self-examination and self-improvement. We welcome an increased role by our Police Commission, particularly as invaluable partners in policy development.

We welcome your continued feedback on how the Mayor's Office can better share and explain our policing data with the interested public by emailing officeofthemayor@oaklandca.gov or calling 510-238-3141.