

Rise in CCRB Funding Leads to More Completed Investigations

SUMMARY

The Civilian Complaint Review Board (CCRB) is an independent agency created in 1993 to review allegations of noncriminal misconduct by the city's police officers. If the CCRB concludes misconduct did occur, the board recommends discipline to the police commissioner—who retains exclusive authority to impose punishment.

For several years after CCRB's formation, some observers contended that the board was inadequately funded and had too few investigators to examine the number of complaints received. This resulted in a large number of unresolved cases.

The board's funding has increased substantially since 1993, as has the number of investigators, which has doubled to 130. As the board's staff has grown, IBO finds that the number of cases closed without a definitive conclusion about the allegations of police misconduct has fallen by over half—from 4,444 in 1996 to 1,952 in 2001—although the number of allegations has remained relatively steady. Looking more closely at the pattern of conclusions the board has reached with its increased investigations staff, IBO finds:

- The share of *substantiated* cases fell from 11 percent of all fully investigated charges in 1996—(when the board began publishing data on allegations)—to 7 percent in 2001.
- The number of allegations determined to be *unfounded* has nearly tripled—from 497 in 1996 to 1,480 in 2001
- The number of allegations in which CCRB investigations have *exonerated* the police officers has more than doubled—from 822 in 1996 to 2,169 in 2001.

The number of investigations that are incomplete, or “truncated,” remains substantial and largely unaffected by the rise in CCRB staff. About 4 out of 10 allegations are filed away without a full investigation—primarily because investigators cannot gain cooperation from the individuals who made the complaint.

Discipline has been imposed in a growing number of cases referred from the CCRB to the police commissioner, in large measure due to the board's success in conducting more timely investigations. In 2001 the police commissioner disciplined officers in 57 percent of the cases substantiated by the CCRB, up from 32 percent in 1997.

Last year the board and police department agreed to transfer administrative prosecution of substantiated charges to the CCRB. Several police unions have filed suit to block the shift.

AGENCY BACKGROUND

The Civilian Complaint Review Board investigates citizen complaints against New York Police Department (NYPD) uniformed personnel. The board is empowered to receive, investigate, and recommend action to the police commissioner on complaints filed by an alleged victim or a witness to an alleged incident. Although the CCRB conducts its activities independently, final discretion concerning any actual discipline to be imposed on police officers rests solely with the police commissioner.

History. The CCRB has been in existence since 1953, but has operated as a separate agency (outside of the NYPD) only since July 1, 1993.¹

The original board of the 1950s consisted of three deputy police commissioners responsible for reviewing investigative reports prepared by police department staff and reporting findings and recommendations directly to the police commissioner.

In 1987, former Mayor Edward Koch and the City Council agreed on a restructuring of the CCRB into a “mixed” or “hybrid” format, meaning it was to be made up of NYPD personnel as well as private citizens appointed by the Mayor and the Council. The agency remained a branch of the police department, however, with CCRB investigations performed by a combination of police officers and civilian NYPD personnel. Six years later, Mayor David Dinkins and the City Council enacted Local Law 1 of 1993, which established the CCRB in its present form as an independent city agency with its own staff and operating entirely outside of the NYPD. This was done in an effort to assure the public that charges of police misconduct were being investigated impartially.

Responsibility for the discipline of police officers remains with the police commissioner—in some cases, following an administrative trial before the city’s Office of Administrative Tribunals and Hearings or the NYPD’s deputy commissioner for trials. Mayor Giuliani and, more recently, the City Council have proposed shifting responsibility for prosecutions of officers to the CCRB, but the action has been held up by a suit brought by unions representing police officers and superior officers.

Composition. The CCRB is comprised of 13 members; five (including the chairperson) selected directly by the Mayor; five designated by the City Council (one from each borough); and three designated by the police commissioner. All CCRB

members must be city residents, but may not hold any other public office or employment. In addition, no CCRB member, except for those selected by the police commissioner, can have ever served in law enforcement or as an NYPD employee.

The CCRB has a staff of 166 (as of April 30, 2001), about three-quarters of whom are investigative staff. The remaining CCRB staff members are involved in functions such as alternative dispute resolution, agency administration, complaint intake, and community outreach.

Jurisdiction. The CCRB’s jurisdiction includes complaints of certain types of misconduct alleged by citizens against New York City police officers. The types of police misconduct falling under the CCRB’s purview fall into four categories: use of excessive or unnecessary force (F), abuse of authority (A), discourtesy (D), or use of offensive language (O). As a result, the acronym “FADO” is often used to describe complaints within the agency’s jurisdiction.

Allegations of other types of police misconduct reported to the CCRB, such as criminal uses of force and corruption, are immediately referred either to the NYPD’s Office of the Chief of the Department, the NYPD’s Internal Affairs Bureau, or the appropriate district attorney’s office. A notice about this referral is sent to the complainant.

Processing of complaints. When a complaint is received, the CCRB’s Case Response Unit forwards it to one of nine investigative teams. Unless a complaint is referred for alternative dispute resolution, the investigative team attempts a full investigation of each complaint. Once CCRB’s investigative staff has completed work on a complaint, the case is forwarded to a review panel made up of three board members, one from each of the appointee subcategories described above. Each of the four panels meets once a month to review investigated cases and to vote on whether misconduct occurred.

RESOURCES AND OUTCOMES

Resources. When the board assumed its current form in 1993, its resources for investigating complaints were viewed by many observers as inadequate. However, from fiscal year 1994 through fiscal year 2001, CCRB’s annual expenditures grew from \$3.5 million to \$9.2 million. The growth in agency expenditures was primarily a result of the increase in the number of personnel employed, from 91 to 166. Projected final spending in fiscal year 2002 is \$9.3 million. The growth in CCRB agency staffing has been largely driven

by the investigations unit, which grew from 65 staff members in fiscal year 1994 to 130 now. In the early years of its existence as a separate agency independent of the police department, the CCRB struggled in its attempts to adequately deal with incoming complaint caseloads, in part as a result of inadequate investigative staffing. In more recent years, an enhanced pay structure and additional opportunities for promotion have allowed the agency to enlarge its investigative unit (in part by doing a better job of retaining investigative staff).

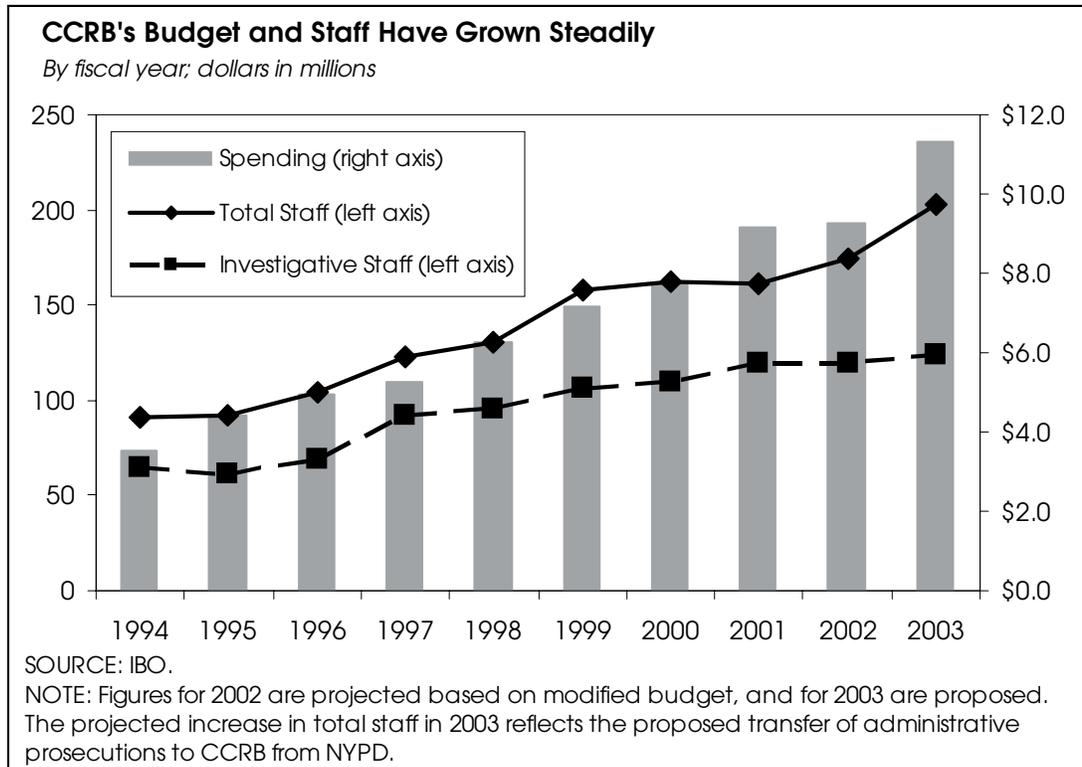
affected by the level of its resources.

Fully investigated cases. The majority of allegations are fully investigated. The proportion of allegations closed with a full investigation has mirrored truncated investigations, falling slightly to just over 60 percent in recent years.

A fully investigated case may either reach an “affirmative finding” or investigators may not be able to reach a conclusion based on the available evidence. As a share of fully investigated

cases, those ending without a conclusion (called “unsubstantiated”) have fallen by over half in recent years, reflecting the rise in the board’s resources for investigations.

At the same time, the share of cases with affirmative findings—i.e., that reach a conclusion of one sort or another about the allegation—has risen. There are three possible affirmative findings: *substantiation* of the allegation, *exoneration* of the officer, or a conclusion that the



Trends in case dispositions. In broad terms, there are three possible outcomes when the CCRB closes a complaint case: an incomplete (truncated) investigation, a full investigation, or referral to alternative dispute resolution (ADR). (The appendix provides detailed data on CCRB complaint dispositions since 1996. Because a single case may include more than one allegation, we present outcomes on the basis of allegations, rather than cases.)

Truncated investigations. The share of allegations closed with an incomplete (truncated) investigation has risen slightly, from 30 percent in 1998 up to 38 percent in 2001. In most cases, the board is unable to complete a full investigation because the alleged victim/complainant subsequently withdraws the complaint, cannot be located, or (most often) is unwilling to give a formal statement to investigators. These are factors largely beyond the board’s control, and will not be

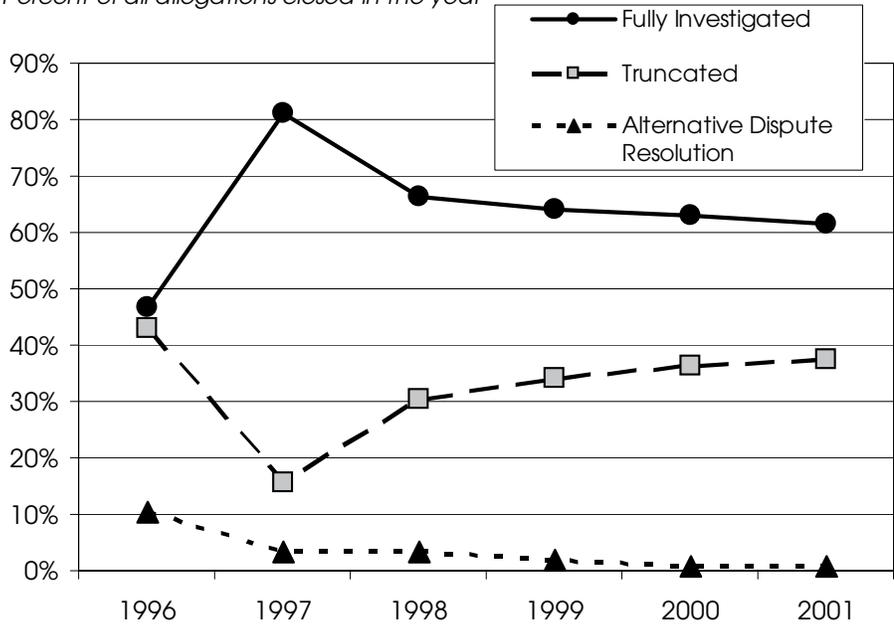
affected by the level of its resources. As more cases are closed with an affirmative finding, the majority of them increasingly have resulted in exoneration—that is, that the alleged action occurred but it was lawful and proper. Findings of unfounded—that the action did not occur—have also risen. In contrast, the share of substantiated cases—in which the board finds that the officer committed the alleged misconduct—fell from 11 percent in 1996 to 5 percent in 2000, rising to 7 percent of all fully investigated cases in 2001.

The rise in affirmative findings also has been driven in part by a decline in the number of cases referred to alternative dispute resolution (discussed in more detail below).

Timeliness. Increasing the timeliness with which complaint cases are investigated helps to improve the board’s chances for

The Majority of Allegations Are Fully Investigated

Percent of all allegations closed in the year



SOURCES: IBO; Civilian Complaint Review Board.

reaching a conclusive determination as to whether or not a given allegation of misconduct is to be found credible. Delays in investigating complaints, on the other hand, reduce the chance of conclusive outcomes as a result of increased difficulty in finding witnesses, gathering evidence, etc.

It is also critical that substantiated complaints of misconduct be forwarded to the NYPD with sufficient time for the police commissioner to review and decide on appropriate discipline, if any, before expiration of the statute of limitations. Police officers cannot be disciplined if more than 18 months have elapsed from the date a substantiated incident occurred.

In an audit released in May 2002, the City Comptroller found that the CCRB showed a “marked improvement in its ability to manage its caseload in a timely and efficient manner.”²² According to the Comptroller’s audit, the most significant change was a 40 percent decrease from July 1994 to July 2001 in the number of

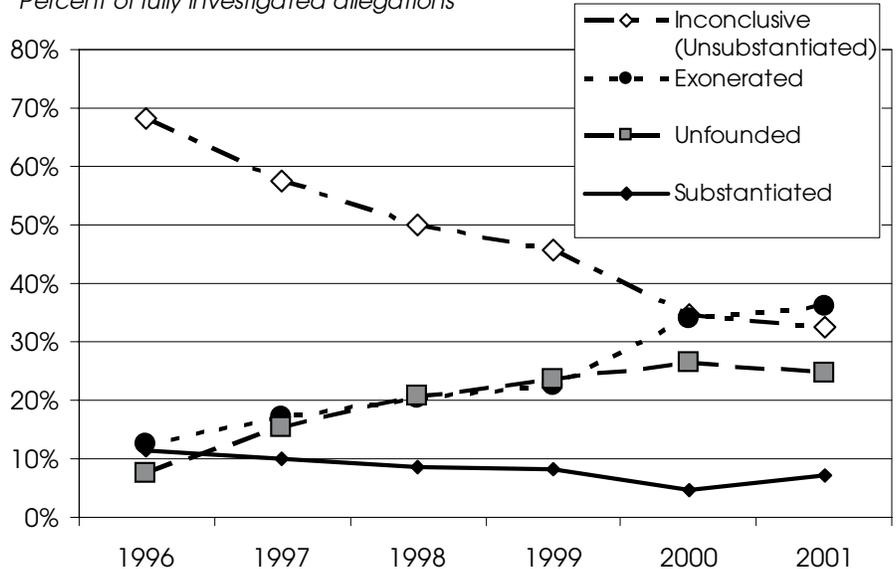
substantiated cases referred to the NYPD that were more than 15 months old. Substantiated cases older than 15 months when forwarded to the police commissioner are considered at risk of reaching the 18 month expiration point before formal discipline is imposed.

The CCRB also has managed to reduce the number of unresolved cases awaiting disposition, referred to as the agency’s *docket*. An important subset of the docket consists of those cases that have been awaiting disposition for longer than four months, referred to as the agency’s *operational backlog*. The latter declined from 2,663 at the close of fiscal year 1994 to 423 as of June 30, 2001. But the operational backlog

increased to 1,234 as of December 31, 2001, largely as a result of disrupted agency operations attributable to the September 11, 2001 terrorist attack on the World Trade Center, very near the agency’s Rector Street location in Lower Manhattan.

As More Allegations Are Fully Investigated, Findings of "Unfounded" and "Exonerated" Have Risen

Percent of fully investigated allegations



SOURCES: IBO; Civilian Complaint Review Board.

NYPD action on substantiated cases. A case substantiated by the CCRB is forwarded to the police commissioner, usually with a recommendation that a specific type of formal discipline be imposed on the police officer(s) in question. Final discretion concerning any discipline to be imposed (e.g., suspension, loss of vacation days, termination, etc.) rests solely with the police commissioner.

The police commissioner has imposed discipline on a growing share of those officers facing substantiated CCRB complaints. More specifically the proportion disciplined by the commissioner increased from 32 percent in 1997 to 61 percent in 1999, dipping down to 57 percent in 2001.

There are several possible factors associated with the increased rate at which the police commissioner is now imposing formal discipline, including the improved timeliness of CCRB investigations, as well as improvements in the quality of investigations. With respect to timeliness, while 10 percent of police officers in 1997 avoided formal discipline as a result of expiration of the 18 month statute of limitations, the comparable figure fell to 3 percent by 2001.

complainant has the right to request that the case be returned for standard case processing.

Of the 51 cases closed through ADR last year, mediation resolved 32 and another 19 concluded through “attempted mediation.” In the latter, the complainant and police officer agreed to mediate, but the complainant either failed to appear for the scheduled mediation twice without good cause or failed to respond to phone calls and letters to set up a session.

Cases that are mediated are not fully investigated because the goal is not to ascertain whether or not misconduct actually occurred. For that reason, mediated cases are typically disposed of more expeditiously than other types of cases. For example, cases resolved through mediation during the first six months of 2001 were disposed of in an average of 113 days, as opposed to 170 days for all CCRB case dispositions.

In testimony presented before the City Council on May 13, 2002, CCRB representatives expressed their goal of mediating a greater number of cases this year. In the early years of its existence as an independent agency, the CCRB disposed of

several hundred cases each year through a different alternative dispute resolution technique, referred to as *conciliation*. The peak occurred in 1996 when about 1 out of every 6 (16 percent) of case dispositions

Police Commissioner Actions on Substantiated CCRB Cases					
<i>Percent of total disciplinary actions</i>					
	1997	1998	1999	2000	2001
Discipline Imposed	32%	47%	61%	60%	57%
Terminated	n.a.	n.a.	1%	1%	0%
Lost Vacation / Suspension / Probation	n.a.	n.a.	13%	19%	20%
Command Discipline	n.a.	n.a.	39%	26%	21%
Instructions	n.a.	n.a.	8%	13%	14%
No Discipline Imposed	62%	47%	34%	36%	37%
Found Not Guilty After Trial	7%	7%	5%	24%	27%
Officers Not Prosecuted	45%	30%	28%	11%	8%
Statute of Limitations Expired	10%	10%	2%	1%	3%
Case Filed (Officer retired or resigned)	6%	6%	5%	5%	6%
Total Number of Disciplinary Actions	276	374	482	540	329
SOURCES: IBO; Civilian Complaint Review Board.					
NOTES: See Glossary for definitions.					

Alternative dispute resolution. In a small number of cases last year (51, or 1 percent), the board resolved complaints through alternative dispute resolution. The ADR technique currently used by the CCRB is *mediation*. The police officer and complainant agree to meet face-to-face (along with a trained mediator) in an attempt to reconcile their differences in a neutral, nondisciplinary environment. Such proceedings are confidential and cannot be used in any future judicial or administrative proceedings. If the matter is resolved in a manner satisfactory to both parties, the case is considered closed. If mediation fails to resolve the matter, the

were accomplished through conciliation. Unlike mediation, conciliation did not involve bringing the complainant and officer together for face-to-face discourse, but instead involved the complainant agreeing that the case would be resolved by retraining the officer in question.

The CCRB voted in May 1999 to entirely suspend conciliation, and instead focus all its ADR efforts on developing successful mediation efforts. The board’s rationale for suspending conciliation was a concern that it was not being taken as seriously by police officers as it was prior to

CCRB's separation from the NYPD. Before 1993, police officers were required to speak about their alleged misbehavior with an NYPD supervisor as opposed to a CCRB staff member. The board also feared that conciliation was to open to abuse by complainants since they were not required to participate in any way after allegations were filed.

Proposed shift of administrative prosecutions. In April 2001, the CCRB and NYPD signed a Memorandum of Understanding shifting responsibility for prosecuting police officers to the CCRB. Existing protocol calls for substantiated CCRB cases to be prosecuted by NYPD personnel before administrative law judges at the city's Office of Administrative Trials and Hearings or the NYPD's deputy commissioner for trials.

The Giuliani Administration contended that such a transfer of responsibilities to the CCRB would eliminate duplicative investigative activity currently performed by the NYPD after receiving cases for prosecution. Pursuant to the proposed transfer of responsibility, a new legal unit within CCRB would be established to handle such cases, at an annual cost of about \$1.4 million. The proposed shift has been at least

temporarily blocked by a lawsuit filed by unions representing uniformed police personnel. Meanwhile, legislation has been introduced in the City Council to amend the City Charter to give the CCRB responsibility for prosecutions.

Though a number of observers welcome the shift in prosecutorial responsibilities to the CCRB, concerns remain about the fact that the police commissioner ultimately retains sole discretion concerning discipline of NYPD personnel found by the CCRB to have committed acts of misconduct.

Written by Bernard O'Brien

END NOTES

¹ All reference to years are to calendar years unless designated as a "fiscal year." The city's fiscal year begins July 1st and ends on June 30th.

² City of New York, Office of the Comptroller: *Follow-up Audit Report on the Case Management Policies and Procedures of the Civilian Complaint Review Board*, Audit Report MH01-183F, May 21, 2002.

APPENDIX

CCRB Allegations Received and Disposition of Allegations, 1996-2001						
<i>Calendar year</i>						
	1996	1997	1998	1999	2000	2001
Total Allegations Received	N/A	13,034	13,810	12,197	10,487	11,024
Total Allegations Closed	13,898	14,324	13,881	11,133	12,557	9,793
Outcomes of Closed Allegations						
Truncated Investigations	5,970	2,235	4,198	3,795	4,570	3,676
Fully Investigated	6,509	11,621	9,210	7,145	7,890	6,034
Affirmative Finding	2,065	4,953	4,592	3,870	5,149	4,082
Substantiated	746	1,181	787	590	380	433
Unfounded	497	1,775	1,914	1,677	2,082	1,480
Exonerated	822	1,997	1,891	1,603	2,687	2,169
Inconclusive	4,444	6,668	4,618	3,275	2,741	1,952
Alternative Dispute Resolution	1,419	468	473	193	97	83
Conciliation	1,419	466	455	149	0	0
Mediation	0	2	18	44	97	83

SOURCES: IBO; Civilian Complaint Review Board.
 NOTE: See Glossary for definitions. Allegations data not available prior to 1996.

Police Commissioner Actions on Substantiated CCRB Cases					
	1997	1998	1999	2000	2001
Discipline Imposed	89	176	292	323	187
Officer terminated	n.a.	n.a.	4	3	1
Suspended or lost vacation days	n.a.	n.a.	65	102	66
Command discipline	n.a.	n.a.	186	138	70
Instructions	n.a.	n.a.	37	72	47
No Discipline Imposed	170	174	166	192	123
Found not guilty after trial	18	26	24	127	88
Case dismissed	28	37	9	4	9
Statute of limitations expired	124	111	133	61	26
Case Filed (Officer retired or resigned)	17	24	24	25	19
Total	276	374	482	540	329

SOURCES: IBO; Civilian Complaint Review Board.
 NOTES: Total for "Discipline Imposed" for 2000 and 2001 exceeds sum of individual items due to cases in which the same officer was involved in more than one case, but received only one disciplinary action. See Glossary for definitions.

GLOSSARY

Affirmative Finding: Cases that conclude with a definitive determination as to whether or not misconduct occurred. There are three types of affirmative findings: substantiated, unfounded, and exonerated (see below).

Alternative Dispute Resolution (ADR): A process to resolve complaints that does not involve a full investigation into whether alleged misconduct occurred. See “mediation” and “conciliation.”

Command Discipline: Imposed directly by the subject officer’s commanding officer, with penalties ranging from oral warning to loss of up to 10 vacation days or accrued time.

Conciliation: A form of ADR no longer used by the CCRB, in which the complainant agreed that the case would be disposed of by retraining of the officer in question.

Exonerated: Subject officer was found to have committed the act alleged, but the act was determined to be lawful and proper.

Full Investigation: Case in which the CCRB was able to conduct a complete inquiry by collecting sufficient information from police officers, civilians, and witnesses. Fully investigated cases yield either an affirmative finding or an inconclusive (unsubstantiated) finding.

Instructions: Least serious type of formal discipline, involves instruction from subject officer’s commanding officer on proper procedures with respect to the alleged offense. This may also include in-service training or Police Academy presentation.

Mediation: Brings police officers and complainants together with a trained mediator in an attempt to reconcile their differences in a neutral, nondisciplinary environment. Proceedings are confidential and cannot be used in any future judicial or administrative proceedings.

Substantiated: A case disposition where there is sufficient credible evidence to believe that the subject officer committed the alleged act of misconduct. (Only substantiated cases are forwarded to the police commissioner for imposition of formal discipline against the police officer.)

Truncated Investigations: Cases closed without a full investigation, due to withdrawal of the complaint or lack of cooperation on part of the complainant.

Unfounded: A case disposition wherein the preponderance of the evidence shows that the alleged act did not occur.

Unsubstantiated: A case disposition where, notwithstanding a full investigation, the available evidence is insufficient to yield an affirmative finding concerning the alleged misconduct.

Final Disposition of Allegations, Calendar Year 2001

Percentage of total dispositions

