

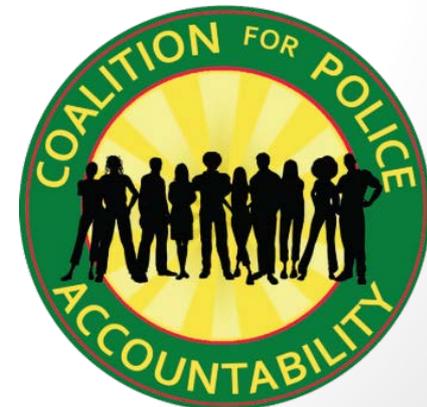
# APPEALS OF POLICE DISCIPLINE IN CALIFORNIA

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# Who We Are

- Law school clinic at UC Berkeley
- Teams of law and public policy students
- Two-year project on police accountability
  - Analyzing the use of suicide by cop in officer-involved shootings
  - Providing technical support to Oakland ballot measure
    - Coalition for Police Accountability

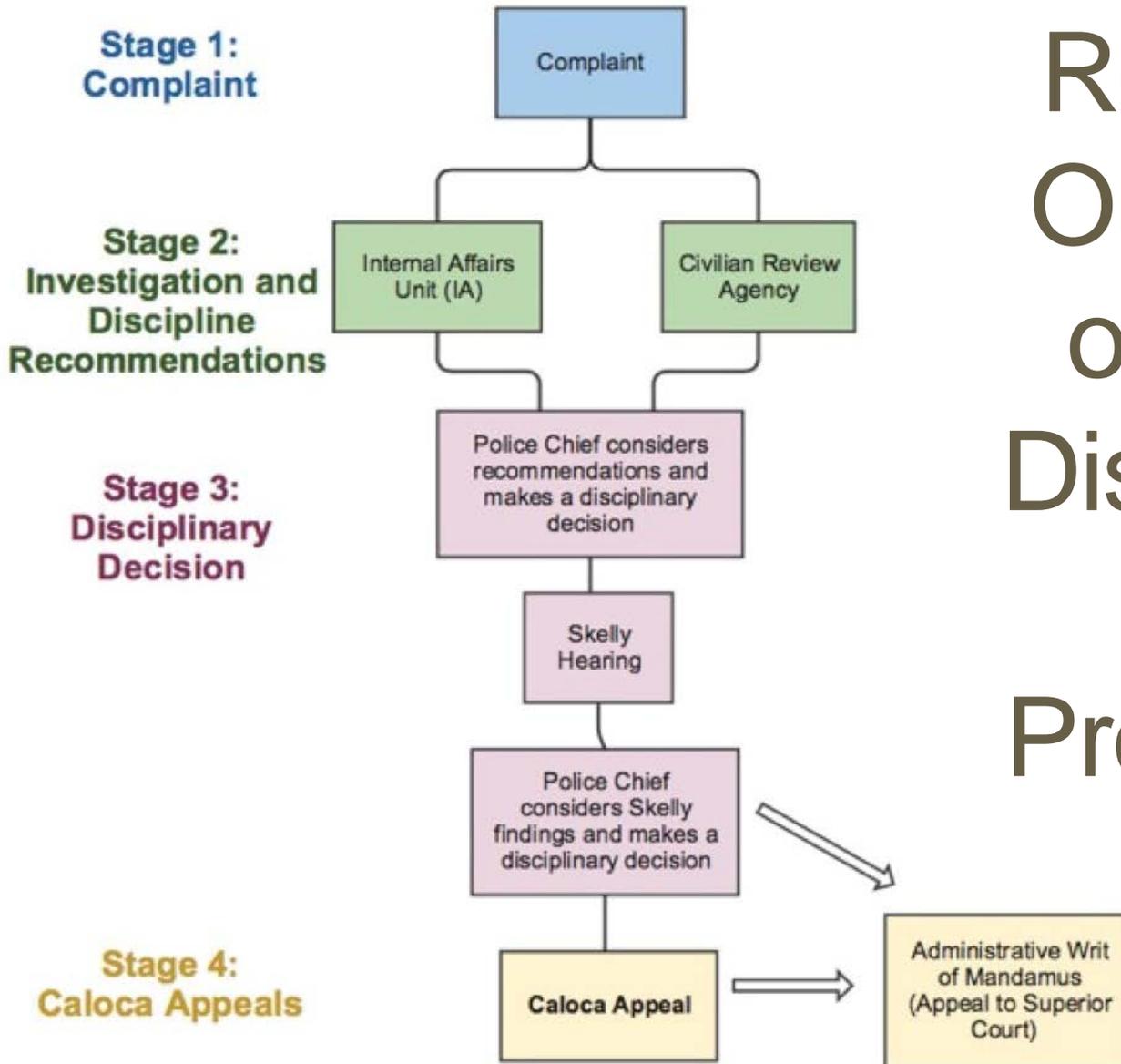


# Overview

Our presentation today will proceed in two parts:

1. The legal prerequisites for pursuing and enforcing discipline of police officers in California
2. An examination of the different ways California cities and police departments have implemented these requirements and the relative merits of these different systems

# Rough Outline of the Discipline Process



# Legal Framework

- State law dictates overall structure and minimum processes
- Individual cities and departments have discretion in deciding how to meet state law requirements
- Key sources of law:
  - Pitchess Statutes (Cal. Penal Code § 832.5)
  - *Skelly* (15 Cal. 3d 194 (1975))
  - Public Safety Officer Bill of Rights Act (POBRA) (Cal. Gov't Code § 3303 *et. seq*)
  - *Caloca* cases (72 Cal. App. 4th 1209 (1999); 72 Cal. App. 4th 1209 (1999))
  - Administrative Mandamus (Cal. Code Civ. Proc. §§ 1084-1097)

# Pitches Statutes

- Cal. Penal Code § 832.5
- Requires that each city establish a investigatory and disciplinary procedure for dealing with citizen complaints

**“Each department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public.”**

# Skelly Hearing

- *Skelly v. State Pers. Bd.*, 15 Cal. 3d 194, 220 (1975)
- The California Supreme Court rules that state employees have legally protectable interest in their employment that cannot be adversely affected by discipline absent certain procedural protections

**“As a minimum, these pre-removal safeguards must include notice of the proposed action, the reasons therefor, a copy of the charges and materials upon which the action is based, and the right to respond, either orally or in writing, to the authority initially imposing discipline.”**

# Public Safety Officer Bill of Rights Act (POBRA)

- Cal. Gov't Code § 3304(b)
  - “No punitive action . . . shall be undertaken by any public agency against any public safety officer . . . without providing the public safety officer with an opportunity for administrative appeal.”
- Guarantees any police officer subject to a final order of discipline an additional and independent opportunity to appeal their discipline

***But what are the minimum procedures guaranteed to police officers in this appeal?***

# *Caloca* Cases

- Two cases in which the court construed the scope of POBRA in California
  - *Caloca I* established the scope of “punitive actions” covered by POBRA for which police officers are entitled to independent appeal
  - *Caloca II* establishes the minimum procedural standards for an administrative appeal to comply with POBRA

# *Caloca I*

- 72 Cal. App. 4th 1209 (1999)
- Civilian oversight bodies that recommend discipline or sustain findings of misconduct constitute “punitive action” where they may adversely impact the officer’s future performance reviews
  - Even if a civilian oversight body’s recommendations are purely advisory and the body lacks the authority to order formal discipline

# *Caloca II*

- 102 Cal. App. 4th 433 (2002)
- Announced the minimum standards for administrative appeal under POBRA. These include:
  - Include independent fact finding or “de novo” review;
  - Assign the burden of proof to the body that found misconduct;
  - Hold the adjudicator’s decision to be final, pending review by administrative writ; and
  - Be heard by a different body than the one that made the initial disciplinary decision.

# *Skelly* v. *Caloca* Hearings

## *Skelly*

- Guaranteed to all California public employees
- Afforded to subject officer prior to issuance of final disciplinary decision

## *Caloca*

- A separate level of review available only to California police officers
- A separate and independent hearing afforded after the issuance of final discipline

# Administrative Mandamus

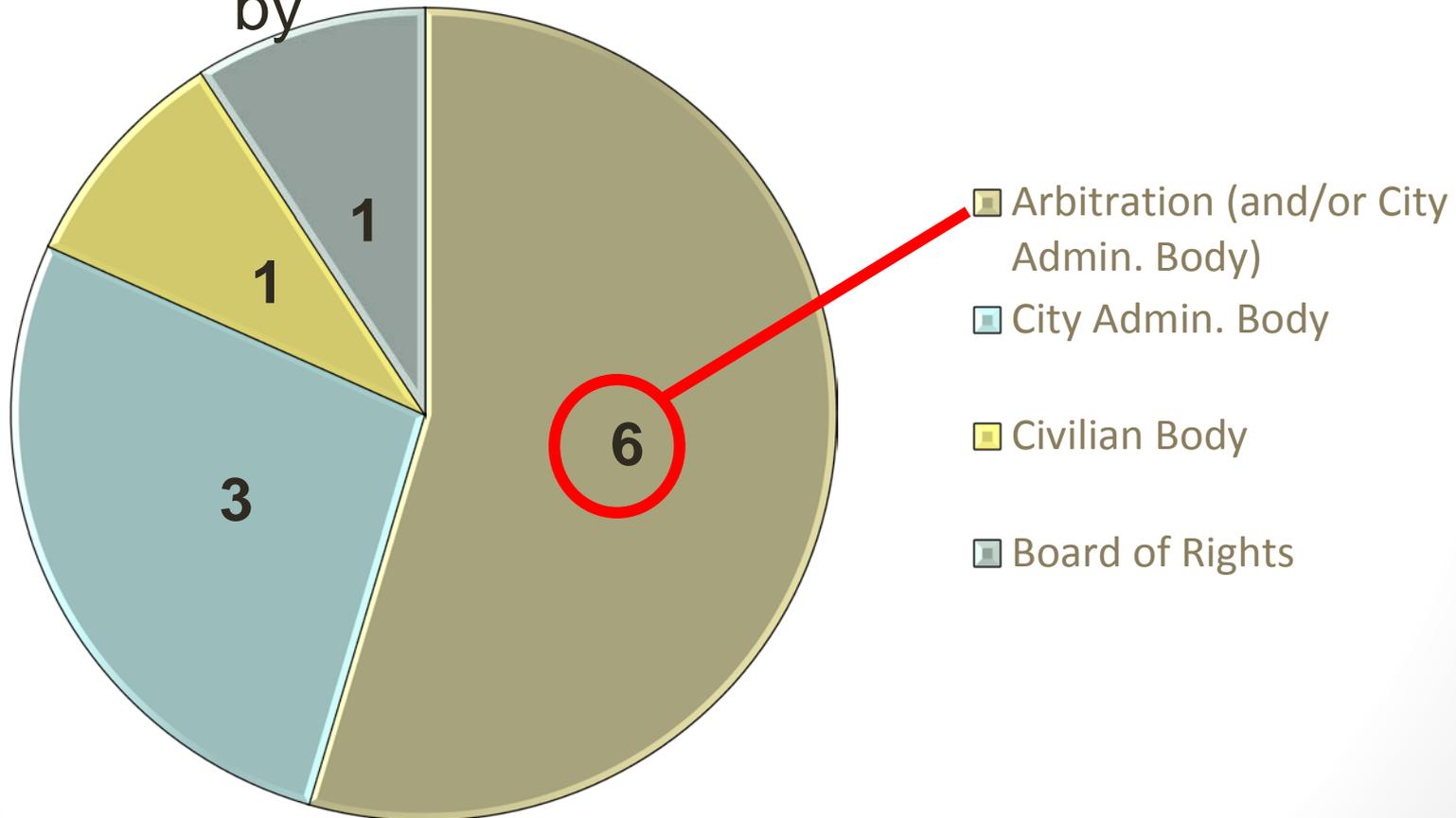
- Cal. Code Civ. Proc. §§ 1084-1097
- An officer whose discipline has been upheld following POBRA appeal may appeal the final order of discipline to a California state court under a writ of administrative mandamus
- Courts at this stage generally will **only** review for compliance with the procedural processes outlined in the earlier slides, and should **not** conduct independent review of the facts of the case

# *Caloca Appeals in Action*

- Cities have broad latitude to establish specific procedures and processes for review of citizen complaints
- Local jurisdictions can establish different mechanisms for these types of review by charter, ordinance or regulation
- Police officers have leverage to influence these processes through collective bargaining
- Cities Surveyed:
  - Anaheim, Berkeley, Fremont, Fresno, Long Beach, Los Angeles, Oakland, Sacramento, San Diego, San Francisco, San Jose

# City Application of *Caloca*

Final Appeals of Terminations Held  
by



# City Application of *Caloca*

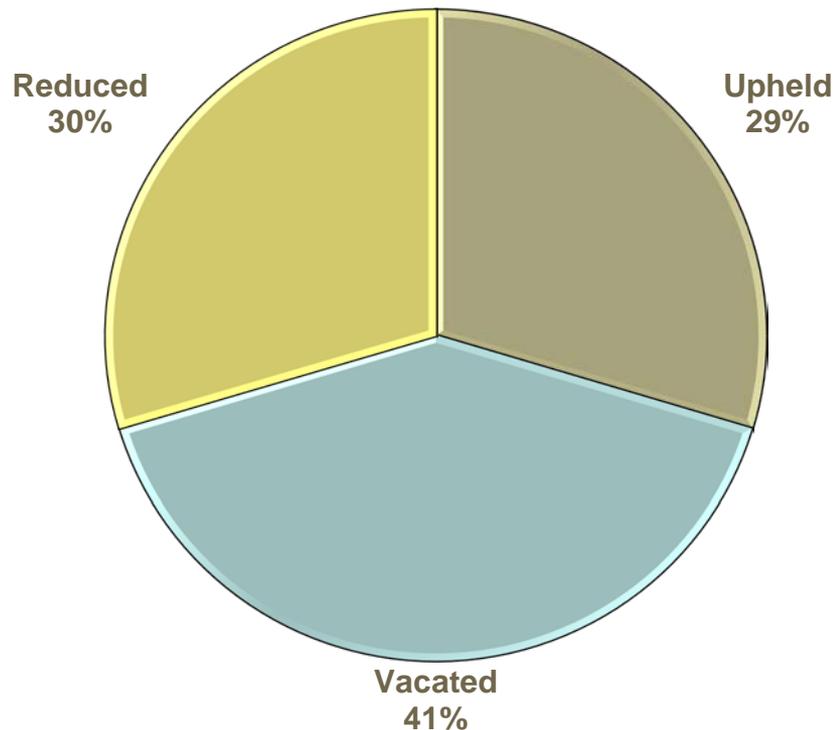
- Other methods:
  - Board of Rights or All-Civilian Board (Los Angeles): Two police officers and one civilian or all-civilian disciplinary board hear appeals and establish maximum discipline Police Chief may impose
  - Administrative Hearing Committee (Fresno): One member of police union, one city representative, and one mutually agreed upon member of the Fresno Police Department
  - Civilian Review (San Francisco): Only city in California to allow a civilian body to hear and decide final appeals of police officer discipline

# In Practice...

- Data is limited
  - Cities are not required to maintain or accumulate data on rates of sustained discipline and rates of discipline overturned on appeal
  - In fact, cities are required by portions of the Pitchess Statutes to delete certain types of data after varying periods of time
- Hard to evaluate if things are working with incomplete data

# Oakland

- Between 2010 and 2015, officer discipline reduced or vacated after arbitration in 19 of 26 cases appealed by officers

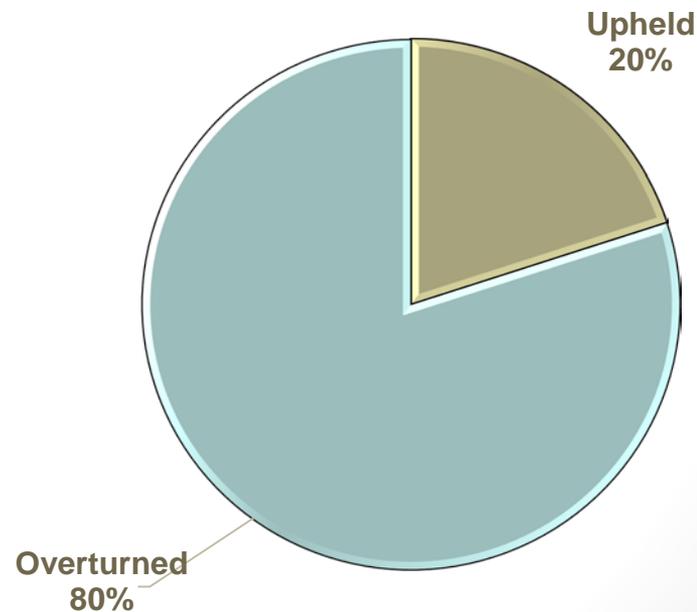


- Well known: “If their arbitration record is any indicator they should start pressing your uniform now.”

Source: Edward Swanson, Report of the Court-Appointed Investigator In *Delphine Allen V. City Of Oakland* 10-11 (2015).

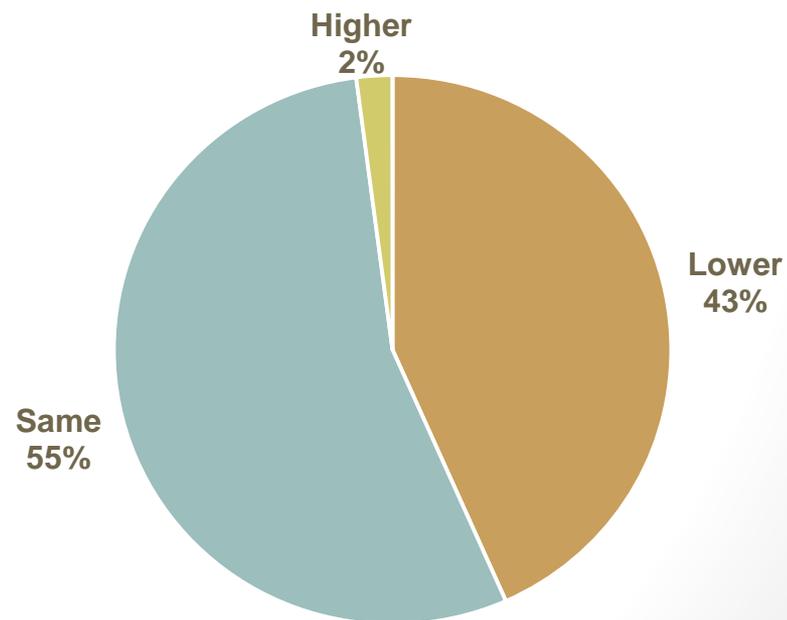
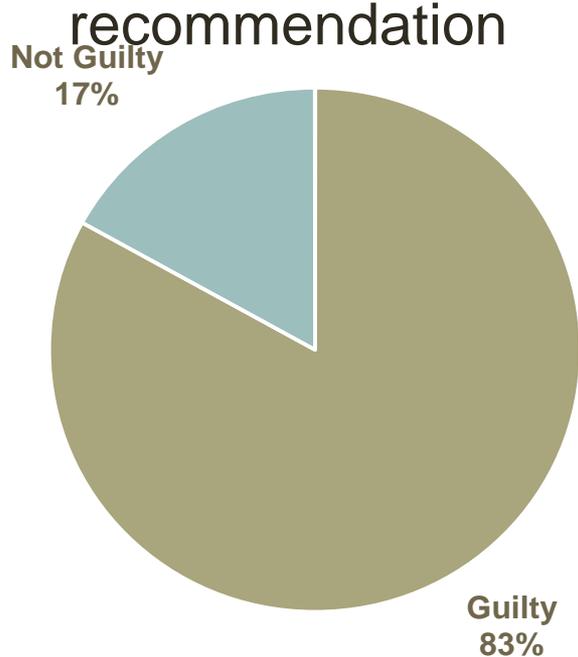
# Berkeley

- Between 2011 and 2015, police officers appealed findings of misconduct in 11 cases involving 13 sustained allegations of misconduct
  - Administrative law judge upheld 3 and overturned 10 as not sustained, unfounded or exonerated
  - Clear and convincing evidence standard



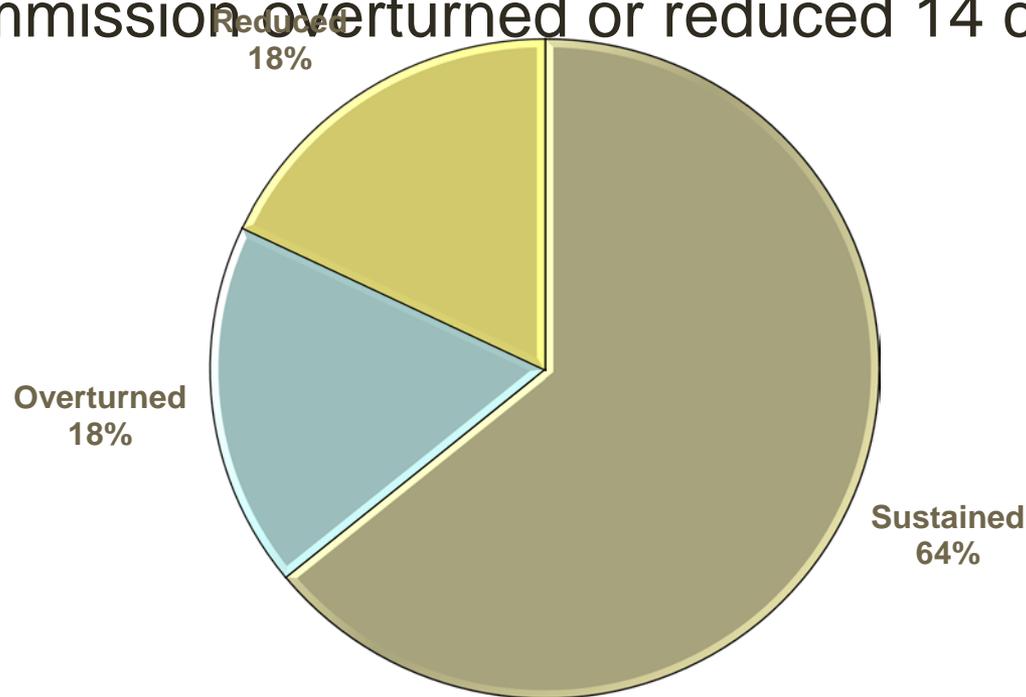
# Los Angeles

- Between 2010 and 2015 in termination cases, the Board of Rights found officers guilty 240 times and not guilty 49 times
  - Of guilty findings, 104 for lower penalty, 131 for same penalty, and 5 for higher penalty than Police Chief's recommendation



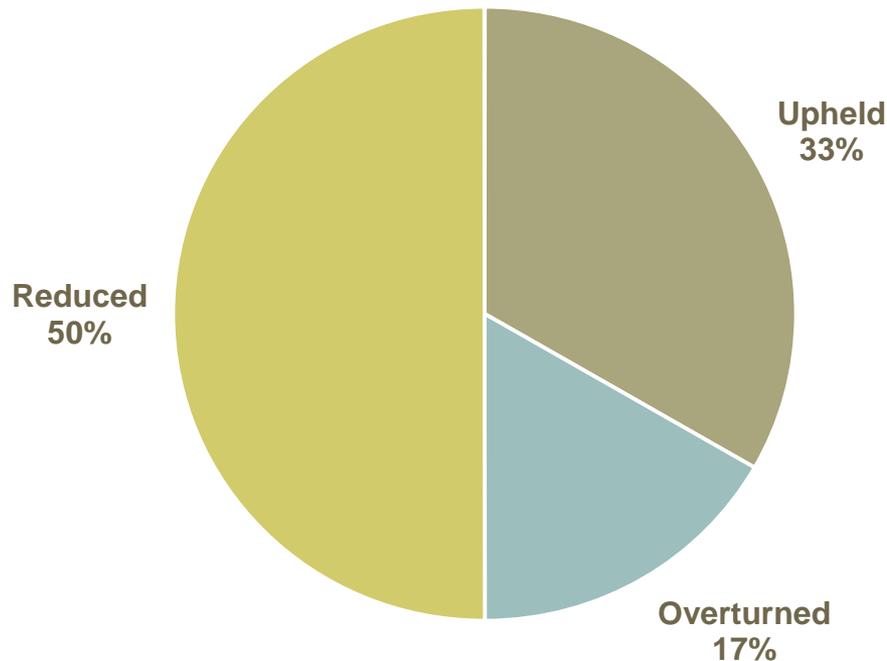
# Long Beach

- Between 2010-2014, police officers appealed findings of misconduct in 40 cases to the Civil Service Commission
  - Commission overturned or reduced 14 cases



# San Jose

- Between 2010 and 2015, police officers appealed findings of misconduct to arbitration in 12 cases
  - Officer discipline overturned or reduced in eight cases appealed by officers



# Other City Practices

- Sacramento
  - No data responsive
  - Would require the city to go through its files and manually review all discipline files to determine the information requested
- Anaheim
  - “[R]ecords you seek may no longer be available in accordance with our City Council approved retention schedule. Furthermore, the APD has no document(s) that identifies the specific compilation of statistical information you seek ... and has no duty to create a record that does not exist at the same time of the request.”
- Fremont
  - Provided a chart for our requested data listing either “NRD” or “N/A” in all boxes



Why are the  
overturn/reduced rates  
so high?

# Takeaways

- Confidentiality/Transparency
  - Data and Outcomes
  - Public Access
- Resources
  - People
  - Funding
  - Prioritization
- Policy
  - POBRA
    - Arbitration

Review and evaluate current practices

# Contact Information

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