

# The City of Albany Community Police Review Board

2019 First Quarter Report of the City of Albany

November 1, 2018 – January 31, 2019



Submitted to:

The Mayor of the City of Albany

The Common Council of the City of Albany

The Police Chief of the City of Albany

## **Background**

Section 42-340 of Chapter 42, Part 33 of the Albany City Code requires the Government Law Center of Albany Law School to file, on behalf of the Albany Community Police Review Board (CPRB), quarterly reports containing “summaries of complaints, including a comparison of the CPRB’s findings with the final determinations of the [Police] Department.” This is the First Quarter Report so submitted in the year 2019.

The Government Law Center of Albany Law School was retained by the City of Albany to provide a number of services to the Board, the City, and the community. Many of these services are discussed, as appropriate, below.

## **Definitions**

### Definition of Terms

For purposes of this Report, the following words and phrases shall have the following meanings:

APD - City of Albany Police Department

COMPLAINT - A written statement concerning police conduct which is either submitted to the Community Police Review Board for filing with the Albany Police Department or filed directly with the Albany Police Department

CPRB or BOARD - Community Police Review Board

GOVERNMENT LAW CENTER - The Government Law Center of Albany Law School

GRIEVANCE FORM - An APD form used to gather contact information from the complainant and forwarded to the Government Law Center for CPRB outreach purposes

MEDIATION - A structured dispute resolution process in which a neutral third party assists the disputants to reach a negotiated settlement of their differences

OFFICER - Any sworn police officer of the City of Albany Police Department affected by a citizen complaint

OFFICE OF PROFESSIONAL STANDARDS (OPS) - Professional Standards  
Unit of the City of Albany Police Department

Definition of CPRB Findings

Section 42-344A of Chapter 42, Part 33 of the Albany City Code charges the Board with making one of the following findings on each allegation by majority vote after review and deliberation on an investigation:

- (1) *Sustained* - where the review discloses sufficient facts to prove the allegations made in the complaint.
- (2) *Not Sustained* - where the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint.
- (3) *Exonerated* - where the acts which provide the basis for the complaint occurred, but the review shows that such acts were proper.
- (4) *Unfounded* - where the review shows that the act or acts complained [of] did not occur or were misconstrued.
- (5) *Ineffective Policy or Training* - where the matter does not involve guilt or lack thereof, but rather ineffective departmental policy or training to address the situation.
- (6) *No Finding* - where, for example, the complaint failed to produce information to further the investigation; or where the investigation revealed that another agency was responsible and the complaint or complainant has been referred to that agency; or where the complainant withdrew the complaint; or where the complainant is unavailable to clarify the complaint; or where the officer is no longer employed by the City.
- (7) *Mediation* - where the complaint is resolved by mediation.

**Board Membership**

The following members constituted the Board during the first quarter of 2019:

Larry Becker	Zach Garafalo	Matthew Ingram
Reverend Victor Collier	Warren E. Hamilton, <i>Vice Chair</i>	Ivy Morris, <i>Chair</i>
John T. Evers	Veneilya A. Harden, <i>Secretary</i>	

As of January 2019, there are two positions open for Mayoral Appointments.

### **Complaint Review**

Under Section II, Subsection I of the Board's Operating Procedures, each of the eight appointed members of the Committee on Complaint Review, in addition to the Chair of the Committee, will be responsible for the presentation of a particular complaint to the Board at its monthly meetings as assigned by the Chair of the Committee. The December meeting was cancelled. Altogether, four complaints containing six allegations, was presented for review in the first quarter of 2019.

### **Complaint Summaries**

The Board received five new complaints in addition to its eight active complaints and four suspended complaints. Of the thirteen complaints before the Board, One complaint was presented for review and rendered findings for six allegations. Three monitors were appointed to investigate the allegations presented. As to the six allegations that were reviewed and closed, the Board made four findings not consistent with the preliminary findings of the Office of Professional Standards:

A. CPRB No. 21-17 / OPS No. CC2017-051 [monitor appointed]

#### **1. Office of Professional Standards description of allegation:**

The complainant alleged excessive force was used by officers when they were controlling and immobilizing both her arms and legs. It is further stated that the complainant suffered injuries to her wrist, left arm and middle of her back as a direct result of the unwarranted and overly aggressive conduct of the officers and that this could not be justified under Article 30 of the penal law due to the complainant being a female weighing 115lbs and a height of 5'3". Video evidence indicated the officers were calm and not overly aggressive, but the complainant refused to comply with the orders she was given several times. Officers gave her commands that she was under arrest, stop fighting, put your hands behind your back and that she was being videotaped. In fact the complainant stated that she wasn't under arrest then smiled and said bye and started to get up again. The video indicated the officers tried to restrain the complainant rather than use more force such as less lethal or to employ hand techniques. Officers stated they only used resistance techniques and a hand technique to restrain the

complainant. The officers were within department policy and law in the force they used.

**Office of Professional Standards categorized this allegation as:** Use of Force

**Office of Professional Standards finding:** Exonerated - the acts which provide the basis of the complaint occurred, but the review shows that such acts were proper.

**CPRB finding:** Not Sustained - OPS conducted an adequate investigation and the CPRB agrees with the method and outcome of the investigation however, there was not enough evidence uncovered to prove or disprove the allegation.

## **2. Office of Professional Standards description of allegation:**

The complainant alleged she had her head forcibly held down while on a bed by officers and had to lift her head repeatedly in order to breath. Video evidence does not corroborate the allegation as the video indicated the complainant is moving about the whole time. Both officers either had an arm bar or their hand in the small of the complainants back. The complainant is either talking or screaming while on the bed and at no time does she say that she can't breathe.

**Office of Professional Standards categorized this allegation as:** Use of Force

**Office of Professional Standards finding:** Unfounded – where the review shows that the act or acts complained of did not occur or were misconstrued.

**CPRB finding:** Not Sustained - OPS conducted an adequate investigation and the CPRB agrees with the method and outcome of the investigation however, there was not enough evidence uncovered to prove or disprove the allegation.

Under the law creating the CPRB (Chapter 42, Part 33 of the Albany City Code), the Board may make a finding of **Not Sustained** - OPS conducted an adequate investigation and the CPRB agrees with the method and outcome of the investigation however, there was not enough evidence uncovered to prove or disprove the allegation.

B. CPRB No. 26-17 / OPS No. CC2017-058 [monitor appointed]

## **3. Office of Professional Standards description of allegation:**

The complainant alleged that he was stopped while operating his vehicle only because he was black. The officer stated he did not stop the complainant because he was black and that he was not aware of his racial identification prior to approaching the vehicle. The officer stated that he was traveling the same route as the complainant and that on First Street (about mid-block) he observed the complainant execute a left hand turn onto Lark Street. He states that the

complainant only engaged his directional just prior to making his turn (onto Lark Street) and that this violation (Insufficient Turn Signal - Less than 100 feet - NYS V&T 1163B) was his reason for effecting the traffic stop. The 1163B violation was observed on Unit 207's DVR.

**Office of Professional Standards categorized this allegation as:** Arrest Authority & Procedures

**Office of Professional Standards finding:** Unfounded – where the review shows that the act or acts complained of did not occur or were misconstrued.

**CPRB finding:** Unfounded - OPS conducted adequate investigation and the CPRB agrees with the method and outcome of the investigation and as a result of the investigation the incident described in the allegation was not an accurate depiction of the actual events that occurred.

**4. Office of Professional Standards description of allegation:**

The complainant alleged the officer was rude. The officer stated the complainant appeared to be defensive, stand-offish, and unhappy from the onset of their interaction. The officer denied that he was "bullying" or intimidating in any way during his interaction with the complainant. The complainant's witness corroborated what the officer reported. She stated that the officers did not strike her as rude. She further stated the officer was not "bullying" or "rude" and that the complainant was angry because he believed that the officer had no good reason to stop him.

**Office of Professional Standards categorized this allegation as:** Conduct Standards

**Office of Professional Standards finding:** Unfounded- where the review shows that the act or acts complained of did not occur or were misconstrued.

**CPRB finding:** Not Sustained – OPS conducted an adequate investigation and the CPRB agrees with the method and outcome of the investigation however, there was not enough evidence uncovered to prove or disprove the allegation.

\*It should be noted the investigation found the officer did not activate his remote microphone for the unit's DVR while on the stop, which is a violation of the department policy.

C. CPRB No. 2-18 / OPS No. CC2018-05 [no monitor appointed]

**5. Office of Professional Standards description of allegation:**

The complainant alleged an officer grabbed her by the coat/upper arms and turned her around so that she was facing the door. The complainant states she said "Get the fuck off of me" then she left. The complainant stated the officer was

in uniform during this incident, but was not there because of a call; he was visiting a female on the first floor.

**Office of Professional Standards categorized this allegation as: Use of Force**

**Office of Professional Standards finding: Not Sustained** - where the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint. The complainant alleged an officer grabbed her by the coat/upper arms and turned her around so that she was facing the door. The complainant states she said “Get the fuck off of me” then she left. The complainant stated the officer was in uniform during this incident, but was not there because of a call; he was visiting a female on the first floor. The officer stated he only put his arms up to prevent the complainant from invading his personal space; he states he never grabbed the complainant. He also stated he was at that location to have his dinner break at a friend’s apartment. The witness stated the officer did not touch the complainant.

\*\*\*It should be noted that the complainant alleged the night of 3/11/18, she saw the officer walk in (not in uniform) and she yelled at her friend downstairs, but “she’s not a good friend, very disrespectful, so I started slamming my door so I guess he left.” They did not actually encounter each other. The complainant states she felt uncomfortable because she lives by herself. Although the complainant included this information as part of her allegation, she, the officer and the witnesses state the complainant and officer had no interaction on this date. The complainant’s statements here were included as part of the case file to provide a more accurate understanding of her unfounded negative prejudices towards the officer and not as a legitimate complaint.

**CPRB finding:** Not Sustained – OPS conducted an adequate investigation and the CPRB agrees with the method and outcome of the investigation however, there was not enough evidence uncovered to prove or disprove the allegation.

\*It should be noted the investigation found the officer did not activate his remote microphone for the unit’s DVR while on the stop, which is a violation of the department policy.

D. CPRB No. 2-18 / OPS No. CC2018-05 [monitor appointed]

**6. Office of Professional Standards description of allegation:**

The complainant alleged that he was stopped while operating his vehicle only because he was black. The officer stated he did not stop the complainant because he was black and that he was not aware of his racial identification prior to approaching the vehicle. The officer stated that he was traveling the same route as the complainant and that on First Street (about mid-block) he observed

the complainant execute a left hand turn onto Lark Street. He states that the complainant only engaged his directional just prior to making his turn (onto Lark Street) and that this violation (Insufficient Turn Signal - Less than 100 feet - NYS V&T 1163B) was his reason for effecting the traffic stop. The 1163B violation was observed on Unit 207's DVR.

**Office of Professional Standards categorized this allegation as:** Arrest Authority & Procedures

**Office of Professional Standards finding: Exonerated** - where the acts which prove the basis for the complaint occurred, but the review shows that such acts were proper. The complainant alleged an officer conducted an unlawful search of his person and vehicle. He alleged that because his fare was only a paid customer that the police had no legal right to search him or his vehicle. A police officer may conduct a traffic stop when he or she has probable cause to believe that the driver of an automobile has committed a traffic violation. The officer established probable cause to conduct a traffic stop of the complainant by pacing the vehicle at a speed in excess of the posted thirty mile per hour limit. The officer has participated in a large number of drug related arrest during his tenure as a police officer with the City Based on the officer's police training, experience and familiarity with the characteristics of marijuana (specifically, the odor of the substance when it is burned) in addition to oral admissions made by the witness, probable cause was established to search the complainant's person, vehicle and the occupants therein. The fact that the complainant was operating a taxi cab does not negate the lawfulness of the seizure and subsequent search of the complainant and his vehicle. The complainant's allegation that an unlawful search of his person and vehicle was conducted is incorrect.

**CPRB finding:** Exonerated - where the acts which provide the basis for the complaint occurred, but the review shows that such acts were proper.

### **Meetings**

The Board meets on the second Thursday of every month so as not to conflict with the monthly meetings of the County Legislature, and to encourage media and public participation at its meetings.

The Board met twice to conduct business during the first quarter of 2019. Both meetings were held at the Albany County Development Agency, 200 Henry Johnson Blvd., at 6:00 p.m.

## **Conclusion**

The Boards' first quarter concluded with an election. Member Ivy Morris was elected as Chair. Warren E. Hamilton was elected as Vice Chair. And Veneilya Harden was re-elected as Secretary. The Albany Community Police Review Board continues to work collaboratively with the Albany Police Department, The City of Albany and the Community we serve.

Respectfully submitted,

Clay Gustave  
Government Law Center of Albany Law School  
Approved by and submitted on behalf of the  
City of Albany Citizens' Police Review Board

Approved by the CPRB: TBD