

# CITY OF ALBUQUERQUE



## CIVILIAN POLICE OVERSIGHT BOARD

Friday, August 24, 2018 – 5:00 PM  
Vincent E. Griego Chambers, Basement Level  
City/County Government Center – One Civic Plaza NW  
Albuquerque, New Mexico

### Members Present:

Leonard Waites, Chair  
Chantal Galloway, Vice Chair  
Joanne Fine  
Valerie St. John  
Dr. William Kass  
Chelsea Van Deventer

### Others Present

Edward Harness, CPOA  
Katrina Sigala, CPOA  
Cdr. Robert Middleton, APD  
Esteban Aguilar Jr., City Atty  
Jeremy Schmehl, Asst. City Atty

### Special Meeting Minutes

- I. **Welcome and call to order.** Chair Waites called to order the special meeting of the Police Oversight Board at 5:01 p.m.
- II. **Pledge of Allegiance.** Member St. John led the meeting in the Pledge of Allegiance.
- III. **Mission Statement.** Chair Waites read the Police Oversight Board's mission statement.
- IV. **Approval of the Agenda.**
  - a) A motion was made by member Fine to approve the agenda as written. Member St. John seconded the motion. The motion was carried by the following vote:  
**For: 6 – Waites, Galloway, Fine, St. John, Kass, Van Deventer**
- V. **Public Comments.**
  - a) Jim Larson (see attachment) A document was provided - *SOP 3-52*.
  - b) Charles Arasim
- VI. **Public Comments on Use of Force 2-52.**
  - a) Member Kass gave an introduction on the Use of Force 2-52 and its revisions to the draft.
  - b) Robby Heckman
  - c) Judith Minks
  - d) Rachel Smith
  - e) Renetta Torres

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- f) Steve Torres
- g) Alan Wagman (see attachment) A document was emailed and provided to board members.
- h) Esteban Aguilar Jr., City Attorney gave his report and address any concerns regarding the Graham standard in the Use of Force Policy. The City wants to have a productive and professional working relationship with POB and address any concerns.
  - 1. Jeramy Schmehl and Commander Middleton and Esteban Aguilar discussed the policy development process and timeline for Use of Force 2-52 and the language of Graham being added to the PPRB draft. Board members asked questions and gave feedback and want to help meet required deadlines and revisit at the six month review process.

**VII. POB Discussion on Use of Force 2-52**

- a) POB discussed the process on the Use of Force and expressed their concerns on the policy and being a voice for the citizens and is not happy that Graham language is written back into the draft.
- b) **Motion.** Vice-Chair Galloway motioned to end the discussion on Use of Force 2-52. Member Fine seconded the motion. The motion was carried by the following vote:  
**For: 6– Waites, Galloway, Fine, Kass, St. John, Van Deventer**

**VIII. Update Review Lt. Garcia Investigation.**

- a) Director Harness gave an update on Lt. Garcia's request to review the investigative file and the miscommunication between the City Attorney's Office and CPOA.
- b) Esteban Aguilar explained that employment matters are handled by a third party company and his office did not receive a formal written request. The file will be provided to CPOA.
- c) Director Harness will review the contents and redact the necessary information and vote at a subcommittee meeting.

**IX. Update Executive Director Contract**

- a) **Contract Update.** The renewal for Director Harness's contract was on the City Councils agenda which was held August 20, 2018. It was deferred for 90 days and the POB is working with City Council on this matter.

**X. Meeting with Counsel re: Pending Litigation or Personnel issues:**

**Closed Discussion and Possible Action re: Pending Litigation or Personnel Issues**

a) **Matters subject to the attorney-client privilege pertaining to threatened or pending litigation in which the public body is or may become a participant pursuant to NMSA 1978. Section 10-15-1(H)(7); and**

b) **Limited personnel matters pursuant to NMSA 1978; Section 10-15-1(H)(2)**

a) **Motion.** Vice-Chair Galloway motioned to take a member by member vote to move into a closed session for the limited purpose of discussing a personnel matter. Member Fine seconded the motion. The motion was carried by the following vote:

b) **Roll call vote by board members.**

**For: 6– Waites, Galloway, Fine, Kass, St. John, Van Deventer**

**--- Meeting on Personnel issues began at 6:31 p.m. and  
the meeting reconvened at 7:21 p.m. ---**

a) **Motion.** Vice-Chair Galloway motioned to reconvene the special meeting into regular session. Member Fine seconded the motion. The motion was carried by the following vote:

b) **Roll call vote by board members.**

**For: 6– Waites, Galloway, Fine, Kass, St. John, Van Deventer**

**XI. Adjournment.** A motion was made by Member Van Deventer to adjourn the meeting. Member Fine seconded the motion. The motion was carried by the following vote:

**For: 6 – Waites, Galloway, Fine, Kass, St. John, Van Deventer**

The meeting adjourned at 7:23 p.m.

***Next Regularly scheduled POB meeting will be on September 13, 2018 at 5:00 p.m. in the  
Vincent E. Griego Chambers.***

# Attachments

DRAFT

# POLICE OVERSIGHT BOARD

## PUBLIC COMMENT

### SIGN IN

DATE: August 24, 2018

NAME (PLEASE PRINT)

1. JIM LARSON

13. \_\_\_\_\_

2. CHARLES ARASIM

14. \_\_\_\_\_

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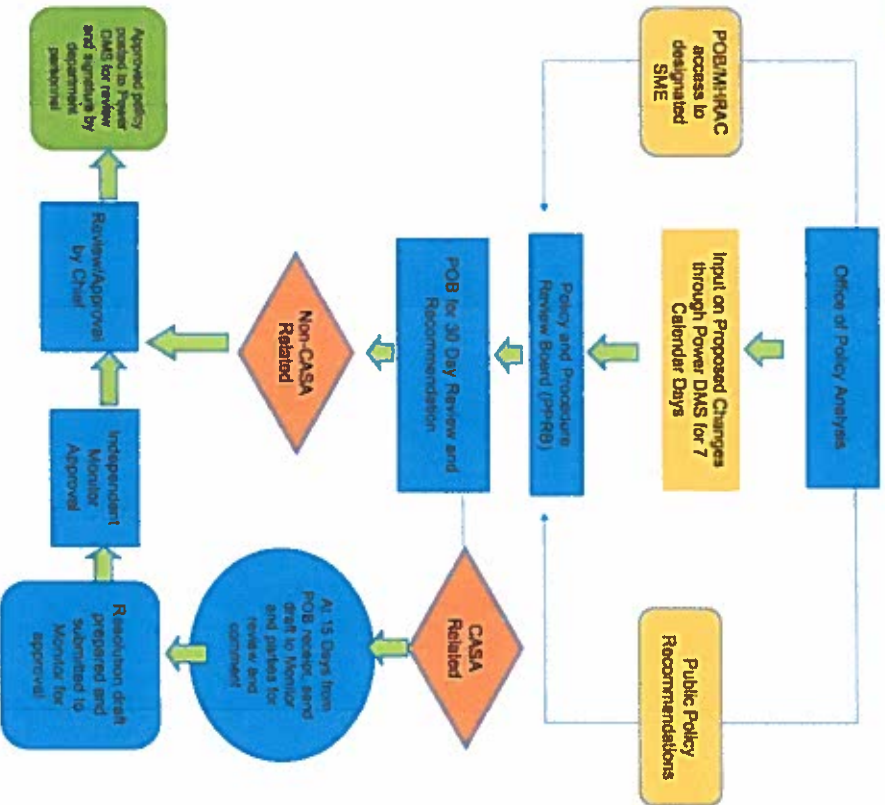
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12. \_\_\_\_\_

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3-52-3 Policy Development Process

A. Policy Development Overview (Flowchart)

*The transparent, structured and informed development of Departmental policies and standard operating procedures is a crucial part of meeting the Department's mission to provide effective and constitutional policing to the community.*

June 14 POB Public Comments on 2-52

July 10, PPRB Approved 2-52  
CPOA Director and POB are voting members

July 12 POB P&P Subcommittee Report

July 19 POB P&P Subcommittee Minutes

August 9 POB Public Comments 2-54 / 2-55

August 16 POB P&P Subcommittee

August 24 POB Special Meeting

September 21, Court Deadline

POLICE OVERSIGHT BOARD  
**USE OF FORCE**  
PUBLIC QUESTION AND COMMENT  
SIGN IN

DATE: August 24, 2018

NAME (PLEASE PRINT)

1. ROBBY HECKMAN

13. \_\_\_\_\_

2. Judith Minks

14. \_\_\_\_\_

3. Rachel Smith

15. \_\_\_\_\_

4. Steve Torres

16. \_\_\_\_\_

5. Renetta Torres

17. \_\_\_\_\_

6. ALAN WAGMAN

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## Harness, Edward

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**From:** Alan Wagman <avramwagman@gmail.com>  
**Sent:** Friday, August 24, 2018 1:51 PM  
**To:** POB  
**Subject:** Proposed revisions to draft Use of Force Policy

### 2-52-2

#### **Paragraph 6:**

If and whenever Department policy and standards ordained by either the United States or New Mexico Constitution on the use of force diverge, officers must comply with whichever requirements set stricter limitations on the use of force. REASON: Constitutional law changes over time, and there are actually 2 constitutions which must be followed, whichever is more stringent.

#### **Add Paragraph 9:**

Objective reasonableness takes into account whether officers effectively employed all feasible de-escalation techniques to gain the voluntary compliance of an individual to reduce or eliminate the need to use force. REASON: De-escalation must be emphasized at every opportunity.

### 2-52-4

#### **B. Reasonable Force**

Force is reasonable when, under the totality of the circumstances, it is the minimum amount of force necessary to effect the purpose of the use of force or protect the officer or other person. REASON: Use of force is allowed for purposes other than just arrest.

#### **D. Proportional Force**

(third paragraph) The more immediate the threat and the more likely it is that the the threat will result in death . . . (rest of sentence unchanged) REASON: The sentence as written in the draft policy does not scan.

#### **E. Totality of the Circumstances**

##### **E.1.**

1.c. At the end, replace the period with a semicolon.

Add the following:

1.d. Whether the officers had and utilized opportunities to give a warning, use verbal de-escalation, use other de-escalation techniques or tactics or to limit the amount of force used; and

1.e. Whether the officer engaged in any of the prohibitions set forth in Department policies concerning the use of force.

REASON: There is a need to keep emphasizing that lack of de-escalation is a key part of the totality of circumstances and not just one of the “other” factors. Also, violation of policies is or should be a major consideration in evaluating the situation as it stood when force was used.

E.2. Eliminate E.2.f. Renumber E.2.g. REASON: I am suggesting E.2.f. be moved up to a new E.1.d..

### **2-52-5. Use of Force Prohibitions**

**Add F.** Officers shall not use a “sternum rub” on unconscious individuals unless directed to do so and supervised by medical personnel trained in its use. REASON: This is an extremely painful technique. Its only proper use is to determine whether an unconscious individual is comatose. Individuals who are merely



intoxicated will wake up and almost certainly strike the officer. This puts the officer at risk of injury and the individual at risk of undeserved felony charges. Based upon my experience as a public defender, officers are trained to wake up drunks with a sternum rub. I have spoken to Paul Kavanaugh of the DOJ about this, and he has informed me that DOJ is aware of and concerned about the issue.

**2-52-6 Use of Force Procedures**

**A.6.c.** Delete. REASON: Do you really want to permit “leg sweeps, arm-bar takedowns, prone restraints, use of force against a handcuffed individual” who is exercising “passive resistance”?

**D.9.** Put this in a section all its own. “Verbal warnings shall be given, when feasible, prior to the use of deadly force.” REASON: First, this is too important to be subsumed in a list; second, this is not a definition of deadly force and does not fit here.

AW

(((Alan Wagman))) <[avramwagman@gmail.com](mailto:avramwagman@gmail.com)>

Resistance is the new normal.

=====  
This message has been analyzed by Deep Discovery Email Inspector.



## 2-52 Use of Force - General

### 2-52-1 Purpose

The purpose of this policy is to describe the procedures, requirements, and expectations surrounding the use of force by all personnel of the Albuquerque Police Department.

### 2-52-2 Policy

Officers shall make every effort to preserve human life in all situations.

The Department shall hold officers accountable for upholding lawful, professional, and ethical standards through assertive leadership and supervision before, during, and after every use of force incident.

Officers who use force shall use the minimum amount of force that is reasonable, necessary, and proportional based on the totality of the circumstances confronting the officers in order to bring about a lawful objective.

Once force is used, officers shall reduce the level of force or stop using force as the resistance or threat decreases.

Officers derive their authority to use force from the United States Constitution, Federal and State laws, APD Policies, and the community. Unreasonable force degrades the legitimacy of the officer's authority. The unreasonable use of force will subject officers to discipline, as well as to possible criminal prosecution and/or civil liability.

While officers must at all times comply with the minimum legal requirements as set forth in the United States Supreme Court decision in *Graham v. Connor*, 490 U.S. 386 (1989) governing the use of force, such as objectively reasonable force, they must also comply with even stricter standards as set forth in Department policy.

Objectively reasonable force is a level of force that is appropriate when analyzed from the perspective of a reasonable officer on-scene rather than with 20/20 hindsight.

Objective reasonableness takes into account where appropriate the fact that officers must make rapid decisions regarding the amount of force to use in tense, uncertain, and rapidly evolving situations.

### 2-52-3 Definitions

For a listing of definitions specific to use of force, refer to SOP 2-53 – Use of Force Definitions.



## 2-52-4 Use of Force Requirements

### A. General Requirements

1. Officers shall first use de-escalation techniques when feasible to gain the voluntary compliance of an individual to reduce or eliminate the need to use force.

Among these techniques are the use of advisements, warnings, and verbal persuasion. (Refer to the De-Escalation policy.)

2. An officer shall use only the degree of force that is reasonable, necessary under the circumstances, and proportional to the threat or resistance of the individual.
3. Officers shall continually assess whether the use of force is necessary and whether a different level of force is appropriate, and shall adjust the use of force accordingly, to include stopping the use of force.

### B. Reasonable Force

Force is reasonable under the circumstances when it is objectively reasonable and the minimum amount of force necessary to effect an arrest or protect the officer or other person.

### C. Necessary Force

Force is necessary when no reasonable alternative to the use of force exists. When force is necessary, officers shall use the minimum amount of force required and shall avoid unnecessary risk of injury to the officer or any individual.

### D. Proportional Force

Force is proportional when it reflects the totality of circumstances surrounding the situation, including the presence of imminent danger to the officer or others.

The use of proportional force by an officer does not require the use of the same type or amount of force as that used by the individual.

The more immediate the threat and more likely, that the threat will result in death or serious physical injury, the greater the level of force that is reasonable and necessary to counter it.

### E. Totality of the Circumstances

When force is used, the decision to use force and the level of force must be reasonable, necessary, and proportional under the totality of the circumstances.

1. Factors defining the totality of the circumstances include, but are not limited to the



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following:

- a. The severity of the crime(s) at issue;
  - b. Whether the individual is actively resisting arrest or attempting to evade arrest by flight;
  - c. Whether the individual poses an immediate threat to the safety of the officer(s) or others.
2. Other factors may include the following:
- a. The knowledge or belief the individual is under the influence of alcohol and/or drugs.
  - b. The individual's medical or mental health history or condition is known to the officer at the time.
  - c. The individual's known history to include violent tendencies or previous encounters with law enforcement, which were combative.
  - d. Disparities of force (i.e. differences in factors such as physical size, numbers, gender, age, weapons, injury, special knowledge or skills that place an officer at an advantage (positive disparity) or disadvantage (negative disparity), are part of the "totality of the circumstances" and can have direct implications on the reasonableness of a use of force. The existence of a negative disparity for the officer could justify the use of a higher level of force in a given situation whereas a positive disparity for the officer could reduce the level of force deemed reasonable in a given situation.
  - e. The individual's condition if known (e.g., it is apparent to the officer that an individual is in crisis) must be considered in the officer's approach to the situation. [\(also refer to SOP 2-19 - Response to Behavioral Health Issues\)](#)
  - f. The opportunities the officer had to give a warning, use verbal de-escalation, use other de-escalation techniques or tactics or to limit the amount of force used.
  - g. Whether the officers made statement(s) or took action(s) that created the need to use force.
3. The dynamics of a use-of-force encounter can change rapidly which may affect the reasonableness of the officers' current actions and require them to quickly escalate or de-escalate the level of force they are using against an individual.

#### F. Lawful Objectives

1. Officers shall only use force to achieve a lawful objective. Officers are authorized to use force:
  - a. To effect a lawful arrest or detention of a person;
  - b. To prevent and/or terminate the commission of a crime;
  - c. To intervene in a suicide or self-inflicted injury;



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- d. To enforce a valid Certificate of Evaluation;
- e. To defend an officer or person from the physical acts of another; or
- f. To conduct a lawful search.

### 2-52-5 Use of Force Prohibitions

- A. Officers shall not use force to attempt to gain compliance with an unlawful command.
- B. Officers shall not engage in actions or tactics, or make statements that escalate a situation such that the use of force becomes necessary.
- C. Officers shall not use force against a restrained or handcuffed individual unless the force is necessary:
  1. To prevent imminent bodily harm to the officer or another person or persons;
  2. To overcome active resistance;
  3. To move an individual who is passively resisting.
- D. Officers shall not use deadly force against any individual who is threatening suicide or self-injury when that individual is not posing a threat to anyone else.
- E. Officers shall not use neck-holds, as defined in SOP 2-53, unless deadly force is justified.
- F. Officers shall not fire warning shots.
- G. Officers shall not fire less-lethal or lethal munitions at an individual in a crowded environment who poses an imminent danger when the officer determines, based upon the totality of the circumstances, that the danger to the public of firing outweighs the need to stop the individual.

### 2-52-6 Use of Force Procedures

#### A. General Procedures

1. Officers shall identify themselves as peace officers and announce their intent to detain, search or arrest an individual before resorting to using force when feasible.
2. Officers should recognize and utilize distance, cover, concealment, or intermediate barriers in order to maximize their reaction time and deployment of resources.
3. When feasible, and when doing so would not increase the danger to officers or others, officers shall issue a verbal warning to the individual prior to using force.
4. Officers shall take reasonable steps under the circumstances, before and during any use of force, to avoid unnecessary risk to bystanders, victims, hostages, and



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other involved civilians, as well as other officers and emergency personnel.

5. In situations when the individual is forced into a face-down position, Officers shall release pressure/weight from the individual and position the individual on their side or sit them up as soon as they are restrained and it is safe to do so. Officers shall monitor the individual for any respiratory or breathing problems or any other signs of distress.
6. The use of leg sweeps, arm-bar takedowns, prone restraints, or a use of force against a handcuffed individual, when necessary, must be objectively reasonable and shall only be considered and used in the following circumstances:
  - a. To prevent imminent bodily harm to the officer or to another person or persons;
  - b. To overcome active resistance; or
  - c. To overcome passive resistance and handcuff the individual, as is objectively reasonable and where physical removal is necessary.
7. Any on-scene officer who observes another officer using force that a reasonable officer would view as excessive or unnecessary under the circumstances shall, when in a position to do so, safely intercede to stop the officer's actions.
8. An officer is expected to immediately notify a supervisor and document any use of force as set forth in SOP 2-56 Use of Force Reporting and Investigations.

B. Response to High Threat Situations

1. Absent an immediate need to act, officers should take time to plan how they will respond to the situation. When feasible, officers arriving on scene will secure additional force options, to include less-lethal and lethal force, as a part of a force array prior to the initial contact.
2. When an individual officer arrives on the scene of a potentially violent encounter, the officer should not attempt to resolve the incident alone, unless there is an imminent threat of death or serious physical injury. For example, in an active shooter scenario, immediate intervention should be considered. Officers should continuously evaluate whether their response is reasonable, necessary, and proportional.
3. Officers should recognize and utilize distance, cover, concealment, or intermediate barriers in order to maximize their reaction time and deployment of resources.
4. Supervisors should manage the overall response to a potentially high threat or violent encounter by coordinating resources and ensuring that a force array is employed.





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C. Deadly Force

1. All of the provisions of this policy, that govern use of force, including the officers' duty to preserve human life, the requirement to use de-escalation techniques and tactics, the requirements that officers use only the minimum amount of force reasonable, necessary, and proportional under the circumstances governing force, also govern lethal force.
2. Officers shall not use deadly force against an individual unless an officer has probable cause to believe that an individual poses a significant threat of death or serious bodily injury to the officer or anyone else.
3. Officers shall not use deadly force against an individual who is fleeing or attempting to escape unless:
  - a. The officer has probable cause to believe that the individual has committed or is in the process of committing a felony involving the infliction or threatened infliction of death or serious bodily injury, and
  - b. If permitted to flee or escape, the individual would pose a significant threat of death or serious bodily injury to the officer(s) or anyone else not apprehended, and
  - c. The officers have identified themselves as law enforcement officers, have stated the intention to use deadly force, and have given the individual a reasonable opportunity to comply, if time, safety, and the totality of the circumstances permit.

D. Deadly Force is:

1. Discharging a firearm at an individual, whether intentional or accidental;
2. Any neck hold as defined by Department policy;
3. Intentional strikes with any hard object such as a baton, flashlight, radio, weapon stock/handle, or improvised weapon to the head, neck or throat;
4. Intentionally striking an individual's head against a hard, fixed object such as a roadway, floor, wall, or steel/iron bars;
5. Intentionally targeting the head, neck or chest of an individual with a beanbag shotgun;
6. Intentionally targeting the head, neck or chest with a 40 millimeter impact munition launcher;
7. Intentionally targeting an individual's head, neck or genitalia with an ECW;
8. Intentionally kneeling or kicking an individual's head or neck while the individual is



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in a prone or supine position.

9. Verbal warnings shall be given, when feasible, prior to the use of deadly force.

#### E. Deadly Force and Motor Vehicles

1. Officers shall not reach into vehicles, or place themselves in the path of a vehicle.
2. When feasible officers shall move out of the path of a moving vehicle to a position of cover.
3. Officers shall not discharge a firearm at or from a moving vehicle, unless an occupant of the vehicle the officer is engaging is using lethal force against the officer or another person. Such action must be necessary for self-defense, for the defense of other officers, for the protection of another person, or because the officer has no reasonable alternative course of action.

#### F. Duty to Provide Medical Attention

1. Following a use of force and once it is safe to do so, officers shall:
  - a. Determine whether any person was injured by the use of force.
  - b. Immediately render aid consistent with the officer's training.
  - c. Immediately request medical attention when an individual is injured or complains of injury following a use of force.
  - d. Officers shall immediately request medical attention for the following use of force events regardless of visible injury or complaint of injury:
    - i. Baton (Expandable or Straight)/Bokken
    - ii. Oleoresin Capsicum (OC) Spray
    - iii. Electronic Control Weapons
    - iv. Use of patrol canine
    - v. Use of Force with a vehicle (refer to SOP 2-45 Pursuit by Motor Vehicle)
    - vi. Impact Munitions
    - vii. Firearm
    - viii. Strikes to the head, throat or neck with a hard object.
2. If officers are unable to secure the scene, officers may safely extract the individual and transport them to a safe location for medical treatment, if necessary.
3. Officers shall closely monitor individuals who are taken into custody if the individual





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is injured, exhibits physical distress, complains of pain, or has been rendered unconscious.

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