

CIVILIAN POLICE OVERSIGHT BOARD

Thursday, August 10, 2017 – 5:00 PM
Vincent E. Griego Chambers, Basement Level
City/County Government Center – One Civic Plaza NW
Albuquerque, New Mexico

Members Present:

Joanne Fine, Chair
Dr. Carlotta Garcia, Vice Chair
Johnny J. Armijo
Eric Cruz
Dr. William Kass
Rev. Dr. David Z. Ring III
Valerie St. John
Leonard Waites

Members Absent

Susanne Brown

Others Present

Edward Harness, CPOA
Paul Skotchdopole, CPOA
Diane McDermott, CPOA
Michelle Contreras, CPOA
Amanda Bustos, CPOA
Major Jessica Tyler, APD
Julian Moya, City Council
Jeremy Schmehl, Asst. City Atty

Meeting Minutes

- I. Welcome and call to order** – Chair Fine called to order the regular meeting of the Police Oversight Board at 5:00 p.m.
- II. Pledge of Allegiance** – Vice Chair Garcia led the meeting in the Pledge of Allegiance.
- III. Mission Statement** – Chair Fine read the POB’s Mission Statement.
- IV. Approval of the Agenda**
 - a) Copies of the Agenda were distributed to each Member in their packets.
 - b) After the pledge of allegiance and before the reading of the mission statement, Chair Fine made the following changes to the agenda:
 - i. Since the mayoral candidates were at a ballot draw, the mayoral forum will take place when all the candidates arrive to the meeting after 6 p.m.
 - c) A motion was made by Member Ring to approve the agenda. Vice Chair Garcia seconded the motion. The motion was carried by the following vote:
For: 8 – Armijo, Cruz, Fine, Garcia, Kass, Ring, St. John, Waites
- V. Public Comments**
 - a) **Tony Pirard.** Mr. Pirard gave a summary to the board about his concerns on the APD reform process.
 - b) **Pete Dinelli.** Mr. Dinelli waived to speak during public comment and will stick around for the mayoral forum to see what the candidates had to say.
- VI. Review and Approval of Minutes.** For more information about minutes from prior POB meetings, please visit our website here: <http://www.cabq.gov/cpoa/police-oversight-board/pob-agenda-meeting-minutes>
 - a) **Approval of the Minutes from July 13, 2017**

1. Copies of the draft minutes from July 13, 2017 POB meetings were distributed to each member in their packets.
2. A motion was made by Member Waites to approve the minutes as written. Vice Chair Garcia seconded the motion. The motion was carried by the following vote:
For: 8 – Armijo, Brown, Cruz, Fine, Garcia, Kass, St. John, Waites

VII. Discussion:

- a) **Update on Workflow charts.** A meeting was held with Major Jessica Tyler to discuss the workflow charts in order to solidify for what is supposed to happen. Director Harness will be presenting a draft of the workflow process at a future meeting.
- b) **Policy/Ginger Letter.** Chair Fine sent a letter to Dr. Ginger and sent copies to many individuals, such as the City Council Members and all the amici, explaining that the POB and APD have different definitions of what meaningful civilian input is. The POB believes that APD's process does not allow for educating the public in terms of policy proposal. The POB/CPOA is waiting for a flow chart/recommendation as to when the POB can see the policies and that will be presented to the POB and Dr. Ginger. This issue has not been resolved but hopes that resolution near.
- c) **CIRT/OIS Cases?** - Director Harness gave a progress report regarding the CIRT/OIS cases.
 1. **CIRT Cases.** The reason that the POB have not had any CIRT cases to review is because there have not been many cases reviewed by the Force Review Board (FRB) over the last few months. The department is looking at the FRB itself and the policy and how it needs to change. Director Harness anticipates that he will receive CIRT cases in a matter of weeks.
 2. **OIS Cases.**
 - i. Director Harness had a discussion with IA Commander Jeremy McRae regarding the backlog of OIS cases and how IA wants to handle the backlog of cases. The cases are currently in a hard copy format and IA is going to put the cases in a medium that's reviewable by the POB. Commander McRae will have his investigators make their findings and they will present those findings to the POB.
 - ii. The reason for the delay of the OIS cases was because the former process was that the file was sent to the IRO and then the IRO would do the findings, which was not done.
 - iii. There are about 15 OIS cases in the process but there is no timeline as to when they will be ready for the POB to review. Director Harness anticipates that he will be alerted by IA as to when the cases are ready and then they will be placed onto Sharepoint.

- d) **Traffic Accident report update.** Chair Fine gave an update as to the Officer-Involved traffic accident data that the POB has been waiting on from APD. It is anticipated that the officer-involved traffic accident report will be presented to the POB at the September meeting.

VIII. Consent Agenda Cases: The CPOA's findings in each case listed on the consent agenda are reviewed and approved by the POB. The findings become part of the officer's file, if applicable. Copies of the full findings letters to the citizens can be located at <http://www.cabq.gov/cpoa/findings-letters/civilian-complaints-pob-findings>.

a) Administrative Closed Cases

004-17 011-17 039-17

1. A motion was made by Member Waites that the Administratively Closed cases are approved. Member Armijo seconded the motion. There was no discussion as to any of the administratively closed cases. The motion was carried by the following vote:
For: 8 – Armijo, Cruz, Fine, Garcia, Kass, Ring, St. John, Waites
2. After the motion and vote, Chair Fine defined what administratively closed cases are and what it means.

b) Cases Investigated

195-16 007-17 093-17 117-17

1. A motion was made by Member Waites that Cases Investigated be accepted. Member Ring seconded the motion.
2. **CPC 093-17** - After the motion and second, CPOA Assistant Lead Investigator Paul Skotchdopole read the CPOA Findings letter in CPC 093-17. **For draft findings letter, please see attachment "A."**
 - i. During Assistant Lead Investigator's presentation, there was a brief interruption at 5:38 p.m. by security regarding the posting of the American flag upside down posted by several citizens in the audience.
 - ii. CPOA Assistant Lead Investigator Skotchdopole continued to read his findings while Matthew Jackson and Julian Moya look up the rules about banners.
 - iii. Chair Fine read out loud the POB's rules and regulations regarding the posting of signs or banners.
 - iv. Members discussed the issue and voted unanimously that the flag be taken down because it was a distraction.
 - v. After the brief interruption to address the banner issue, CPOA Assistant Lead Investigator Paul Skotchdopole continued to read his findings.

- vi. Investigator Skotchdopole answered several of Chair Fine's questions as it related to the investigation.
 - vii. Members Waites and Armijo commended Investigator Skotchdopole for doing a thorough job on this case.
 - viii. Chair Fine made a statement about why this case was investigated.
 - ix. The policy recommendations as stated by Investigator Skotchdopole will be referred to the POB Policy & Procedure Subcommittee.
3. After CPOA Investigator Paul Skotchdopole's presentation, Member Ring made another motion to accept the cases as written. Member Armijo seconded Member Ring's motion. The motion was carried by the following vote:
For: 7 – Armijo, Cruz, Fine, Garcia, Ring, St. John, Waites
- c) **CIRT Cases** – There were no CIRT cases to be heard.

IX. (Previously listed on agenda as Item X) –Mayoral Forum. Prior to the forum, Chair Fine set out the following rules:

- Each mayoral candidate will have 5 minutes to discuss their views on police reform and civilian oversight.
 - The POB will not ask questions in order not to open the door to politics.
 - Asked that during each candidate's comments, that there are no questions or interruptions from the audience.
 - Chair Fine called out each candidate in random order.
- a) **Mayoral candidate Ricardo Chaves** – Mr. Ricardo Chaves was invited to speak at the forum but was absent from the meeting.
- b) **Mayoral candidate Brian S. Colón** – Mayoral candidate Mr. Brian S. Colón gave his presentation to the board regarding police reform and civilian oversight.
- c) **Mayoral candidate Michelle Garcia Holmes** – Ms. Garcia Homes was invited to speak at the forum but was absent from the meeting.
- d) **Mayoral candidate Wayne Johnson** - Mayoral candidate Wayne Johnson was invited to speak at the forum but was absent from the meeting.
- e) **Mayoral candidate Tim Keller** – Mr. Keller disseminated a copy of the document titled, “ Real Solutions for Making Albuquerque Safer” to the POB. Mayoral candidate Mr. Tim Keller gave his presentation to the board regarding police reform and civilian oversight.
- f) **Mayoral candidate Dan Lewis** - Mayoral candidate Mr. Dan Lewis gave his presentation to the board regarding police reform and civilian oversight.

- g) **Mayoral candidate Augustus “Gus” Pedrotty** - Mayoral candidate Mr. Augustus Pedrotty gave his presentation to the board regarding police reform and civilian oversight.
 - h) **Mayoral candidate Susan Wheeler-Deichsel** - Mayoral candidate Ms. Susan Wheeler-Deichsel gave her presentation to the board regarding police reform and civilian oversight.
- X. (Previously listed on agenda as Item XIII) - Meeting with Counsel re: Pending Litigation & 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);**
 - b) **Limited personnel matters pursuant to NMSA 1978, Section 10-15-1(H)(2)**
 - 1. Director Harness suggested that the POB go into an executive session during their dinner break.
 - 2. Chair Fine read aloud the following statement:

“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 limited personnel matters Pursuant to NMSA 1978, Section 10-15-(H) (2).”
 - 3. A motion was made by Chair Fine that the POB enter into an executive session. Member St. John seconded the motion.
Roll call: Kass, Cruz, St. John, Garcia, Fine, Waites, Ring, Armijo
 - 4. At 6:55 p.m., the POB went into an executive session/dinner break.
 - 5. At 7:26 p.m., the POB came out of an executive session/dinner break.
 - 6. Chair Fine called the meeting to order and made the following statement:

“In our closed discussion, we discussed possible action regarding pending litigation or personnel issues. 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 limited personnel matters pursuant to NMSA 1978, Section 10-15-(H)(2) and only that.”

7. A motion was made by Member Cruz that the POB come back into session.
Member St. John seconded the motion.
Roll call: Kass, Cruz, St. John, Garcia, Fine, Waites, Ring, Armijo

XI. (Previously listed on agenda as item IX) - POB's Review of Garrity Materials –C-7-16

- a) Director Harness expects that case C-7-16, which is a CIRT case but also an Officer-Involved shooting case, will be reviewed by the Force Review Board (FRB) within the next few weeks. Director Harness feels that it is appropriate for the POB to vote so that they can view the Garrity materials.
- b) A motion was made by Chair Fine for the POB to view the Garrity materials in C-7-16. Member St. John seconded the motion. The motion was carried by the following vote:
For: 8 – Armijo, Cruz, Fine, Garcia, Kass, Ring, St. John, Waites

XII. (Previously listed on agenda as item XI) - Reports from Subcommittees

- a) **Community Outreach Subcommittee – *Dr. Ring*** - For more information regarding POB Community Outreach Subcommittee meetings, agendas and minutes, please refer to the website located here:
<http://www.cabq.gov/cpoa/subcommittees/outreach-committee> Member Ring gave a report on behalf of the Community Outreach Subcommittee:
 1. The Community Outreach subcommittee last met on July 18, 2017 and the following topics were discussed:
 - i. Welcomed Dr. Bill Kass as another member in the Community Outreach Subcommittee.
 - ii. They are still in the process of revising the complaint/commendation form.
 - iii. The Outreach Subcommittee will be meeting with the Silverhills Neighborhood Association on Monday, August 14, 2017 at 7 p.m. at Height's Community Center, 823 Buena Vista Dr. SE, to discuss police oversight efforts with the community.
 - iv. Since several members are attending the NACOLE conference in September and the Daigle training in October, the next regular meeting will be held on Monday, November 14, 2017 at 5 p.m. However, the Community Outreach subcommittee will reserve the right to reserve the right to call a special meeting, if needed.
- b) **Policy and Procedure Review Subcommittee – *William Kass*** - For more information about the POB Policy and Procedure Subcommittee meetings, agendas

and minutes, please refer to the website located here:

<http://www.cabq.gov/cpoa/subcommittees/policy-procedure-review-committee>

1. The Policy and Procedure Review subcommittee last met on July 20, 2017 and discussed the following topics:
 - i. Susanne Brown will be working on the Domestic Violence policy. After further review, it's not ready to be taken forward.
 - ii. The Policy Subcommittee discussed the Oversight ordinance and how APD is named in the ordinance. This will be an opportunity to approach APD to create policy to improve their relationship with the POB.
 - iii. Director Harness stated that according to the City's action plan filed with the Court, they recommend that the POB submit policy recommendations in a formal manner as opposed to informal manner (e.g. letters).
 2. **(Previously listed on agenda as item XI, b. 1) HR/APD Supervisor Promotion Policy** – A copy of the Human Resource promotion policy was distributed to the POB members in their packets but not discussed. **See attachment "B"**.
 3. **(Previously listed on agenda as item XI, b. 2) Domestic Violence Policy** – A copy of the APD's Domestic Violence policy 4-25 was distributed to the POB members in their packets but it was not discussed in detail. **See attachment "C"**. See item XII. b. i. for a discussion on this item.
 4. After the Case Review Subcommittee report, Member Kass added that the Policy and Procedure Subcommittee next regularly scheduled meeting will take place on August 17, 2017 at 5 p.m.
 5. After the Case Review Subcommittee report, Member Armijo decided to formally join the Policy and Procedure Subcommittee.
- c) **Case Review Subcommittee –Leonard Waites**. For more information regarding POB Case Review Subcommittee meetings, agendas and minutes, please refer to the website located here: <http://www.cabq.gov/cpoa/subcommittees/case-review-committee-crc>. Subcommittee Member Waites gave a report on behalf of the Case Review Subcommittee.
1. The Case Review Subcommittee met on August 1, 2017 and discussed the following topics:
 - i. During public comment, Mr. Jim Larson discussed his concerns regarding policy recommendations for CPC 093-17.
 - ii. Discussed the findings letter from case CPC095-16 and why it did not include the disciplinary recommendations.
 - iii. The majority of the meeting discussion was about CPC 093-17.
 - iv. The Case Review subcommittee next regularly scheduled meeting will be held on September 5, 2017 at 10:00 a.m.

2. Appeals – None.

XIII. (Previously listed on agenda as item XII) - Reports from City Staff

- a) APD – APD Major Jessica Tyler gave a report on Statistical Data for the Month of July 2017. Copy of the following document was distributed:
- **Attachment “D”**-Police Oversight Board, APD Internal Affairs, Statistical Data for the Month of July 2017.
1. Major Tyler followed up on the following topics that arose during the meeting:
 - i. Major Tyler stated that APD does value the POB’s input as part of meaningful civilian input but also feels that part of that civilian input can come from other areas such as the CPC’s or the general public who would have the ability to make recommendations on their own through forms available to them either through the website or through the CPC’s. APD looks at the POB as one of those forums that would allow civilian input.
 - ii. Member Ring, Member St. John, Member Armijo (as backup) and Attorney Matt Jackson will be a part of APD’s focus group to work on the Citizen Police Academy curriculum.
 2. Member Waites made a comment as to the meeting in which the APD traffic accident data was discussed. Mr. TJ Wilham has compiled a tremendous amount of data from cities in comparison to Albuquerque and will be presenting the data along with a full report to the POB.
 3. Major Tyler answered Member Ring and Chair Fine’s questions as it relates to the Officers who resign in lieu of termination. Individuals who apply for law enforcement jobs must go through a background investigation and sign a full release so that the potential employer can access their files.
 4. Major Tyler answered Member Armijo’s question as it relates to the language barrier in the field. The language line is available for officers but sometimes there can be dialects, circumstances or no phone available for the officers. The system unfortunately is not perfect.
 5. Major Tyler answered Member Kass’s question as it pertains to the liability ride-a-long waiver form and the POB training at the APD Citizen Police Academy. Major Tyler will have their counsel contact the POB’s counsel as to the liability waiver for the ride-a-long form. The focus group will be meeting to discuss the POB’s curriculum, which will be presented at the Citizen Police Academy.
- b) **City Council** – Mr. Julian Moya gave a report on behalf of City Council, as follows:
1. The POB/CPOA’s proposed ordinance changes that the POB approved in July will be introduced at the City Council meeting on August 21, 2017.

2. The CPOA's Semi-annual report will also be introduced at the City Council meeting on August 21, 2017 and then referred to the Finance and Government Operations Committee meeting in September.
 3. Discussed that any policy changes should include Director of Council services Jon Zamon as well as the City Council president.
- c) **Mayor's Office** – No one present to give report.
- d) **City Attorney** – Mr. Jeramy Schmehl, Assistant City Attorney, gave a report on behalf of the City Attorney's office, as follows:
1. As per the meeting of the parties earlier in the week, they discussed Policy 3-52, Policy on Policies. They will be moving forward with this policy and it will be at Office of Policy Analysis (OPA) in the next two weeks. In further discussion, Mr. Schmehl and Director Harness explained the policy timeline for the policy process for the POB members.
 2. If the POB have anything they want to discuss or an issue that you would like for Mr. Schmehl to discuss at a meeting, please feel free to contact him ahead of time.
- e) **CPOA – Edward Harness, Executive Director.** Director Harness gave his report for the CPOA, as follows:
1. **City's Action Plan**
 - i. The city filed its action plan with the Court on July 17, 2017.
 - ii. Prior to the City's filing of their action plan, Director Harness and Dr. Garcia sat in a discussion with the DOJ about the City's action plan and what the CPOA/POB perceives as the lack of incorporation of the CPOA/POB's concerns.
 - iii. The City's action plan was discussed at a meeting with all of the parties on Tuesday, August 8, 2017 and discussed a plan moving forward and how we can get those issues in front of the Court. Attorney Elizabeth Martinez from the DOJ will get Director Harness a copy of the transcript from the status conference.
 - iv. A meeting will take place to go over the City's action plan and the concerns of the CPOA/POB, which will be facilitated by Major Tyler.
 2. **IA Pro**
 - i. Discussed the administrative access and who can have access to the IA Pro software program. Since the program only allows one person from APD to have administrative access, APD has pledged to facilitate any administrative changes that the CPOA needs to make.
 3. **Southern Christian Leadership Conference Presentation.** On Saturday, August 12, 2017, Director Harness will do a presentation about community and policing.

4. **No Quorum at PPRB, SOPRC, OPA Meetings.**
 - i. There was a PPRB meeting the morning of August 10, 2017 but there was no quorum. In addition to no quorum at PPRB, there are not enough voting members at SOPRC or OPA.
 - ii. Major Tyler explained that she will take back to the department the CPOA/POB's concern as to why there was no quorum at SOPRC meeting.
5. **CPOA Complaints and JWD Report:**
 - i. For the month of July 2017, the CPOA office received the following:
 - a. 8 Job Well Done (JWDs);
 - b. 56 complaints;
 - c. 23 tickets received from 311 call center.
 2. **Travel to NACOLE.** Director Harness stated that the POB members should be receiving their itinerary for the NACOLE conference by the following week.
 3. Member Garcia and Director Harness discussed the IA Pro resolution. See item XIII. e. 2. i. for more information.
 4. **DAIGLE training.** The Daigle training is scheduled for October 30, 2017 through November 3, 2017. Since the Outreach Member Dr. Ring, Member Armijo and Dr. Kass are attending the NACOLE conference in September; Chair Fine suggested that Dr. Ring reconsider having an outreach meeting in September.
 5. Director Harness clarified for Member Kass the number voting seats that the CPOA/POB have on the following committees:
 - SOPRC: 1 ex officio seat (non-voting)
 - OPA: 2 voting seats (1 POB/1CPOA)
 - PPRB: 2 voting seats (1 POB/1CPOA) and 1 ex officio seat.
 The standing meetings for the PPRB and OPA are as follows:
 - The PPRB meetings are held every other Thursday at 9:00 a.m.
 - The OPA meetings are held every other Wednesday at 8:30 a.m.
 - i. Member Kass to replace Member Brown on the above-referenced committees.
 6. **Council Bill Number O-17-45.** A copy of Council Bill number O-17-45 as it relates to the prioritization of fully staffing and funding the APD was distributed to the POB members in their packets but was not discussed. **See attachment "E."**
- XIV. **(Previously listed on agenda as item XIII) - Meeting with Counsel re: Pending Litigation or Personnel issues.** This item was moved to item X.
- XV. **(Previously listed on agenda as item XIV) - Other Business.** None.

XVI. (Previously listed on agenda as item XV) - Adjournment - A motion was made by Member Ring to adjourn the meeting. Member Kass seconded the motion. The motion was carried by the following vote:

For: 8 – Armijo, Cruz, Fine, Garcia, Kass, Ring, St. John, Waites

The meeting adjourned at 8:10 p.m.

*Next regularly scheduled POB meeting will be on
Thursday, September 21, 2017 at 5 p.m. in the Vincent E. Griego Chambers.*

APPROVED:

Joanne Fine, Chair
Civilian Police Oversight Agency

Date

CC: Julian Moya, City Council Staff
Natalie Howard, City Clerk
Isaac Benton, City Council President

Minutes drafted and submitted by:
Michelle Contreras, Senior Administrative Assistant

Attachments

DRAFT

CIVILIAN POLICE OVERSIGHT AGENCY

Police Oversight Board *Joanne Fine, Chair* *Dr. Carlotta A. Garcia, Vice Chair*
Johnny J. Armijo *Susanne Brown* *Eric H. Cruz*
Dr. William J. Kass *Valerie St. John* *Rev. Dr. David Z. Ring III*
Leonard Waites
Edward Harness, Executive Director

August 11, 2017
Via Certified Mail

Draft

Re: CPC #093-17

Dear ,

Our office received the complaint you filed against Albuquerque Police Department (APD) Officer D. and Communications Director E. on March 16, 2017. A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your complaint. The CPOA made findings of whether the Albuquerque Police Department (APD) Officer involved, and the Civilian Employee involved, violated Standard Operating Procedures (SOPs) based on a preponderance of the evidence. A preponderance of the evidence means that one side has a greater weight of evidence that is more credible and convincing than the other side. Another way of saying it is more than 50% of the credible evidence. If the credible evidence is 50-50, the proper finding is Not Sustained.

Please be aware, the contract between the Albuquerque Police Officer's Association (APOA) and the City of Albuquerque requires that officers and employees cooperate in the investigation; therefore, the officer's or employee's statements may not be made public. Below is a summary of the complaint, the CPOA's investigation, and findings.

I. THE COMPLAINT

V M was found murdered, burned, and dismembered, in her mother's West Side Albuquerque apartment Aug. 24, 2016, the day after her 10th birthday. In November of 2017, the State of New Mexico Children, Youth, and Families Department (CYFD) released a four page summary of their four contacts with V and her younger sibling. None of the contacts made by CYFD Investigators was for sexual or physical abuse. CYFD reported that someone had called CYFD on March 28, 2016 to report that V M ' mother's ex-boyfriend had tried to kiss V The reporting party told the intake worker that Ms. Michelle Martens, the mother, immediately broke up with the ex-boyfriend and he no longer had access to V The reporting party stated that V : never made any disclosures of physical or sexual abuse. The reporting party told the intake worker that the ex-boyfriend was

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not a parent to, a Guardian of, or a Custodian of V _____ M. _____ Because of that the referral did not fall within CYFD's jurisdiction to investigate the referral, and they did not send the referral to a CYFD Investigator for follow up. Instead, CYFD sent the referral to the Albuquerque Police Department's (APD) Crimes Against Children Unit (CACU) pursuant to the Children's code.

In January of 2017 in a recorded conversation, APD Public Information Officer D. told Albuquerque Journal Reporter Elise Kaplan that he had been provided with information that detectives had gone out on the referral and talked to the family. He specifically told Ms. Kaplan that both V _____ and her mother had been interviewed and "the mom told us he attempted to kiss but would not give us a description of how and V _____ said that it never happened." He went on to say that Detectives could not go any further lawfully because if they did so they would be violating M _____ Fourth Amendment rights. Officer D. said that if the police went forward with any further investigation "We would be seizing them for an investigation that we don't have a lawful right to do." When Ms. Kaplan questioned Officer D. further he said, "this is information I got from my detectives. These are conversations we have had numerous times about this..." APD Communications and Community Outreach Director (Director) E. just one day later provided Ms. Kaplan similar information. Both Officer D. and Director E. told Ms. Kaplan that there was no probable cause to believe a crime had been committed because an attempted kiss is not against the law. Furthermore, Officer D. and Director E. gave out information to Ms. Kaplan that there were various reasons why a report wasn't written or any documentation of the visit to the Martens' home. On January 27, 2017 the Albuquerque Journal published a story that indicated that APD Detectives had followed up on the referral but there was little they could do. Both Officer D. and Director E. told the reporter that APD policy was followed.

On March 15, 2017, the Albuquerque Journal reported that on March 13, 2017, Director E. told the Journal that in fact, no one from APD ever went out on the referral. Director E. told the Journal that the referral did not meet investigative criteria because APD Standard Operating Procedure (SOP) only calls for follow up if there is report of neglect, abuse, or a crime. Director E. said that an attempted kiss is not a crime. She told the reporter that the incorrect information given to the media in January was due to a miscommunication. Director E. blamed the reporter for misunderstanding what she and Officer D. said in January. Director E. told the reporter that in January Officer D. said that investigators had followed up on the referral and that he was referring to CYFD Investigators and the reporter inferred that it was APD Investigators. Director E. said that she thought that CYFD Investigators went out on the referral and that was who she and Officer D. were referring to. When the reporter asked her why she did not attempt to correct the misinformation until asked about it in March, Director E. replied that they try to answer all questions from the media in a timely and factual manner even under "submersible pressure and copious criticism".

_____ filed a complaint with the Civilian Police Oversight Agency requesting that an independent official investigation be conducted to find out why Officer D. and Director E. provided grossly misleading information to the media regarding APD's response to the referral. _____ asked that the investigation cover whether or not SOPs were violated by

Attachment "A"

department personnel. stated in his written complaint that the behavior of the APD spokespersons fails to foster mutual trust and cooperation between the police and civilians. In a later written document he summed it up this way:

My complaint is the public must be able to trust the police department to provide truthful and accurate information regarding actions taken or not taken by officers. That trust was violated when the department provided false statements to the public regarding actions or inactions of detectives regarding the CYFD referral and questions remain unanswered about who provided the fictional information and why that information was provided to the public.

----- went on to request that the investigation be conducted so that there could be an assessment of why the events took place and if policies and procedures were violated, the violators are held appropriately accountable, and further identification of policy and procedural refinements may be identified to improve the system.

II. FINDINGS AND CONCLUSIONS REGARDING APPLICABLE STANDARD OPERATING PROCEDURES REGARDING OFFICER D.'S CONDUCT

The Executive Director of the CPOA reviewed the investigation conducted by the CPOA Investigator, which included a review of the applicable Standard Operating Procedures (SOPS), the Complaint, the recorded interviews between Journal Reporter Elise Kaplan and Officer D. and Director E., a recorded conversation with Ms. Kaplan, a review of the Albuquerque Journal articles, an interview with a review of APD Standard Operating Procedures concerning Juvenile investigations, a conversation with the former Crimes against Children Unit (CACU) Commander, Commander R., a conversation with CACU Supervisor Sergeant E., recorded interviews with Officer D. and Director E., a recorded phone message from reporter Elise Kaplan, and reviews of various e-mails, applicable NM State Law regarding Assault and Battery and attempted misdemeanors, applicable recognized federal law regarding consensual encounters between the police and citizens, and various other documents.

A) The CPOA reviewed Standard Operating Procedure 1-1-4 B 7A regarding APD Officer D.'s conduct, which states in part:

Personnel will conduct themselves both on and off duty in a manner that reflects most favorably on the Department. Conduct unbecoming an officer or employee of APD includes:

Conduct that could bring disrepute, shame, dishonor, disgrace or embarrassment to the Department.

The investigation conducted by the CPOA Investigator revealed that Officer D. knowingly provided Albuquerque Journal Reporter Elise Kaplan with false information.

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The investigation revealed that sometime in November of 2016, the Children Youth and Families Department (CYFD) Cabinet Secretary and CYFD Public Information Officer (PIO) held a meeting at a CYFD facility. In attendance were APD Chief E., Officer D., and an APD Crimes Against Children (CACU) Sergeant. At that meeting, CYFD announced that they were going to release a summary of their investigations related to V _____ M _____ and her siblings. A four page summary of their investigations was provided to Officer D..

The summary showed that there had been five referrals to CYFD regarding V _____ M _____ and her sibling prior to V _____ 's death. All five referrals were cross reported to APD's CACU. Four of the five referrals were investigated by CYFD. Only one referral, the attempted kiss referral, was not investigated by CYFD. APD did not investigate any of the five referrals sent to them by CYFD.

The four page CYFD summary showed that on March 14, 2015 someone called CYFD to report that V _____ M _____ and her sibling had been exhibiting poor hygiene and were wearing dirty clothes, had been improperly disciplined by a grandparent, and the grandparent had consumed alcohol in front of the children. There were no allegations of physical abuse regarding V _____ and no allegations of sexual abuse regarding either child. CYFD Investigators investigated and determined the allegations were unsubstantiated.

A year passed with no referrals to or from CYFD regarding V _____ M _____. On March 28, 2016, a source reported to CYFD that V _____ M _____ 's mother, Michelle Martens, had disclosed to the source that that Michelle's ex-boyfriend had tried to kiss V _____. Michelle Martens, according to the source, broke up with the ex-boyfriend and the ex-boyfriend no longer had access to Michelle Martens or the Martens family. The source noted that the information came from Michelle and that V _____ never made any disclosures to the source of physical or sexual abuse. CYFD noted in their report the following information:

The information provided by the reporting party...indicated that the former boyfriend was not a parent...guardian...or a custodian...of V _____ herefore it did not fall within CYFD's abuse and neglect jurisdiction as is provided for in NMSA 1978, Sections 32A-4-2 (B)and (F).SCI, did not send the allegation to an Investigator with the Protective Services Division because the matter fell outside of CYFD's legal authority to investigate. SCI referred the matter to an appropriate local law enforcement agency. The information was sent to CACU of APD pursuant to the Children's Code.

So in November of 2016, Officer D. knew that CYFD Investigators did not go out on the attempted kiss referral.

In May and June of 2016, CYFD received three more calls about the Martens children. Two of the three calls were made to CYFD by Michelle Martens. The third was from another source. The allegations once again ranged from hygiene concerns to the children's biological father leaving the children with and unknown caretaker.

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CYFD Investigators interviewed the children on all three referrals and the children were asked about physical and sexual abuse and the children made no disclosures to CYFD Investigators about being physically or sexually abused. Those referrals were also sent to CACU.

The CPOA Investigation revealed that later in November or possibly early December of 2016, another meeting was held in Chief E.'s office regarding the CYFD summary and the follow up that APD CACU did with regards to any of the referrals sent in to them by CYFD. CACU Commander R., a CACU Sergeant, Chief E., and Officer D. were present in that meeting. It should be noted that Director E. was not present in either one of the referenced meetings as she was on vacation at the time.

Commander R. informed the Chief of Police and Officer D. that CACU had received the referral about the attempted kiss but it was not assigned to a detective for follow up because it did not meet the criteria for case assignment. Information was also revealed at that meeting that after V _____ M _____ was murdered, the FBI had come in to help with following up on various aspects of the homicide. The FBI disclosed to the CACU that they had in fact been investigating the ex-boyfriend who had attempted to kiss V _____ M _____.

The CPOA Investigation revealed that the CACU receives hundreds of referrals a month and they simply do not have the staff to assign every referral to an investigator for follow up. Cases that are reported to CACU where a CYFD Investigator has gone out and made a determination that the allegations were unsubstantiated normally do not get assigned for follow up. What does get assigned to various units are basically crimes that could be considered felonies. Misdemeanor allegations of child abuse are usually investigated by APD Field Services.

So in late November or early December of 2016, the Chief of Police and Officer D. were informed that no Detectives from CACU ever went out on the attempted kiss referral.

In January of 2017, Elise Kaplan interviewed Officer D.. The recorded interview is full of false information provided by Officer D. and it is clear that Officer D. was referring to APD Detectives and not CYFD Investigators. In fact, documents and conversations with CACU Personnel proved that Officer D. knew that not only did CYFD Investigators not go out on the referral but neither did APD Detectives. Even though Officer D. knew the referral was never investigated he told Ms. Kaplan that it was. In fact, he told in great detail how it was investigated, and then he provided even more false information to Ms. Kaplan about just how and when a police officer can contact a citizen.

Elise Kaplan asked Officer D. if detectives went out and talked to V _____ about the attempted kissing. He replied, "Yes. The mom had told us that there was nothing going on in the home; that she removed the boyfriend. She told him not to return....So she was self-initiating at that point. And when the **Detectives** spoke to the kids they didn't make any allegations that anything had happened." Officer D. knew this information to be false when he provided it.

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Reporter Kaplan asked Officer D. why the detectives didn't write a report. Officer D. said that he did not know why there was not a report written. He said, "I'd have to talk to the **detective, if the detective still works for us**, and find out why." Certainly, he is implying here that an APD Detective followed up on the tip but didn't write a report. Officer D. knew at the time that no APD Detective went out on the attempted kiss referral.

Elise Kaplan asked, "But you are confident that somebody went out and spoke to V and Michelle about it?" Officer D. answered, "We look into a lot more stuff than CYFD actually gives us. We do a lot of secondary investigations on our own without having them ask us to do the investigation because there have been so many balls dropped on their end. A lot of the investigations that we investigate we have to send off on our own because of stuff we've seen in their reports...per State Law they are supposed to report anything they see as a criminal act to us so that we can investigate. If there's no criminal act that's founded then we can't go any further. We don't have the right to go to people's houses and investigate them if they don't want us in the house. CYFD does. We have to actually have probable cause and a warrant in order to do that. If we don't have probable cause we can't go further with our investigation. That's why we rely so heavily on CYFD because they have the right to go into a family's home and investigate....Once they see a criminal act that's when they report to us so we can further. A lot of times we have to go off what they observe in order to have the probable cause in order to do a further investigation. If we don't get that from them, we don't have the right to be in people's homes unless they allow us in or unless we have a warrant. "

This is false and erroneous information. There are three recognized categories of Fourth Amendment police-citizen interaction: Arrests which require probable cause which sometimes require warrants; Detentions which are justifiable by a lower standard of reasonable suspicion; and Consensual Encounters in which the police use no commands, force, lights or sirens, but simply approach a person and engage him in conversation and make plain view observations without any official restraints and for which no level of justification is needed because the encounter is not a seizure of a person. Most arrests based on probable cause, all investigative detentions based on reasonable suspicion, and all consensual encounters do not require a warrant.

Officer D. went on to tell Ms. Kaplan, when he was pressed for more information about what the detective did when he went out to investigate the referral, that he would talk to the detective, "**if he still works for us**" but that because there was no report it would be difficult.

Ms. Kaplan said that she was trying to find out if any APD Detective physically made contact with V and Michelle in reference to the referral over the attempted kiss.

Officer D. responded, "That information was given to me that **Detectives** went and talked to the family. That's where we got the information that the mother had taken care of the situation by telling the boyfriend to leave and not come back. Obviously, the mom was lying to us because she's allowed this person back and she's allowed other people that were harming V around V ."

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Elise Kaplan asked Officer D. what would have made the attempted kiss a crime and he said that the act would have had to have been completed. He told Kaplan that under State Law in order for an act to be considered a crime an act has to be completed.

This is not entirely true. There are many attempted crimes on the book including attempt to commit a felony. In New Mexico, there is case law that there is no such thing as an attempted petty misdemeanor. As ludicrous as it seems, the lips are not considered to be an "intimate part" under the law. Kissing someone who doesn't want to be kissed is considered a petty misdemeanor battery under State Law. It would be the unlawful intentional touching when done in a rude, insolent or angry manner. If one were to attempt an unwanted kiss and fail, it would likely be classified as an Assault, which is an attempt to commit a battery. Assault is also a petty misdemeanor. Assault is a crime under the law. A reported assault of a nine year old girl by an adult male warrants an investigation whether or not the perpetrator is still around. APD absolutely should have assigned this referral to a CACU Investigator or any other APD Officer to investigate it. There was a reported crime committed and it should have been investigated.

Officer D. said in his interview with Elise Kaplan, "Based on the information that both Mom and V [REDACTED] gave us at the time, there was no act that was completed that we could investigate. Mom said that this guy attempted to kiss her but V [REDACTED] never said that." He said, "There's no law that says that you can't attempt to kiss somebody. Now if he would have grabbed her arm or pulled her or done more then that's a battery. That falls under a crime." More untrue information. Arguably, an assault occurred.

When she asked, "What does attempted to kiss mean?" Officer D. responded, "That's exactly what we were trying to find out." She asked, "And what did you find out?"

Officer D. answered, "Both parties that we interviewed, the mom and V [REDACTED] told us that. Mom told us that he attempted but didn't give us any description on how and V [REDACTED] said that never happened. So based on the information that detectives were getting, we couldn't go further lawfully or we would be violating their fourth amendment rights of illegal search and seizures. Because that's exactly what we would be doing. If we force an investigation that we don't have enough proof to go forward with, we are now seizing them for an investigation which we don't have lawful right to do."

This is more untrue information as discussed above. There is nothing that prevents an officer from approaching a house where a child has allegedly been assaulted, knocking on the door and asking questions about this incident. There is nothing in the law that prevents an officer from speaking with the child and asking the child if something happened to them. There is no "seizure" under the law.

Ms. Kaplan asked, "Do you think this is something that CYFD should have handled?" Officer D. answered yes to that once again confirming that he knew that CYFD Investigators did not go out on the referral. Officer D. then went on to heavily criticize CYFD and said that APD often has to force CYFD to conduct investigations.

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Towards the end of the interview Ms. Kaplan asks for some proof of a record or something that would show that Detectives went to the house. Officer D. said that was where the police need to be careful because if the police track information on people that don't have a criminal history or don't have a criminal investigative need, then the police would be "surveillancing people" and it's against the law for the police to do that. She said she was just asking for a record of the call. She told Officer D. that she was skeptical of what he was saying because there was no record of a response to the referral.

Officer D. said, "I would have to talk to **my detectives** because like I said this is information I got from **my detectives, from conversations that we've had numerous times about this.**"

Officer D. went on to say that the police can't just go out and investigate someone because there is an allegation made against them. Untrue. If that was the case, no tip on people breaking the law could ever be followed up on by the police. He said that if a person is investigated and the information turns out to be wrong then the police could be sued for conducting that investigation. He said that there are too many things now that restrict the police from doing their jobs.

Elise Kaplan then asked Officer D. if he could provide her with some kind of proof just to confirm the detectives went out on the referral. Officer D. then said that the information may not be available yet because the investigation was still ongoing. He said, "I don't know if that's what's holding up the full report from being released but that investigation is still active and ongoing. The murder side of it has been closed and turned over to the DA but we're still looking into the sexual abuse and everything that still open in that case. That may be why that's not available yet."

Ms. Kaplan told him that without proof she was going to have to write in her report that Officer D. said that the police responded but there is no proof that APD did. Officer D. then told Ms. Kaplan to file an IPRA request for the report on the contact because if it the file was a protected file, it won't be in the public record. She asked for a case number or something that would help her and Officer D. said, "If you can't get it, they won't give it to me. It has to go through an IPRA request. It has to go through City Legal. I can't, I can't, make that decision."

Ms. Kaplan asked Officer D. if he was willing to talk to his detectives and he said that he would but if the case was still being worked there was nothing he could do. He said, "There's Lieutenants and Sergeants above me that will tell me to beat sand."

Then, in a follow up interview, the following day, Officer D. told Ms. Kaplan that he couldn't release the names of the Detectives who went out and followed up on the referral because, "They work a lot of high profile cases. Some with the FBI. So if their names are released that could compromise other children's cases. We have to make sure that we are not going to re-victimize those victims by their case being dismissed."

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Officer D., even in the second interview, continued his deceit with Ms. Kaplan, inferring that he knew the names of the Detectives who went out on the referral but he had to be careful about releasing their names because they work some of their cases with the FBI and releasing the names could compromise other investigations. The CPOA Investigation revealed that there are no CACU Detectives assigned to the FBI. CACU Detectives' names are public record. The names of APD CACU Detectives being released can't jeopardize any child abuse or neglect investigation. They sign the complaints against the perpetrators whom they incarcerate and charge with crimes. Again, documents and other APD Personnel interviewed, proved that Officer D. knew when he gave the first interview that no one from APD ever went out on the attempted kiss referral. He surely knew at the second interview that no APD Detectives ever went out, yet he made up details that simply were not true and embellished the information so that one would think that if he did release the investigating detective's names, somehow other children would be victimized.

All of the above proves that Officer D. intentionally lied to Ms. Kaplan during his interviews with her in January of 2017. Not only did he lie to her about what APD Detectives did to follow up on the referral, he also provided her with false information about Citizen/Police interaction. Those lies about APD following up on the referral were printed, making the citizens believe that APD had in fact followed up on the referral and everything had been done properly. Nothing could be further from the truth.

As _____ complained, "the public must be able to trust the police department to provide truthful and accurate information regarding actions taken or not taken by officers. That trust was violated when the department provided false statements to the public regarding actions or inactions of detectives regarding the CYFD referral."

The CPOA finds Officer D.'s conduct to be Sustained, where the investigation determined by a preponderance of the evidence that the alleged misconduct did occur.

III. FINDINGS AND CONCLUSIONS REGARDING APPLICABLE STANDARD OPERATING PROCEDURES REGARDING DIRECTOR E.'S CONDUCT

A) The CPOA reviewed Standard Operating Procedure 1-1-4 B 7A regarding APD Communications Director E.'s conduct, which states in part:

Personnel will conduct themselves both on and off duty in a manner that reflects most favorably on the Department. Conduct unbecoming an officer or employee of APD includes:

Conduct that could bring disrepute, shame, dishonor, disgrace or embarrassment to the Department.

The CPOA Investigation determined that Director E. gave Reporter Elise Kaplan, the same wrong and misleading information that Officer D. did. The investigation showed that Director

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E. was briefed on the homicide two to three days after it occurred and during that briefing she was made aware that CYFD referrals had been made to the APD but the status of those referrals were not known at that time. At the briefing she was told that CACU detectives would be following up to see what referrals were made and what the department's response was to those referrals.

The investigation showed that Director E. was not present for the meeting that took place at CYFD wherein the four page summary of referrals was provided to Officer D.. Director E. was also not present when a second meeting took place in the Chief's office to discuss what APD's response was to the referrals sent to them.

The CPOA investigation revealed that PIO D. was the lead contact for the media on this case and he was the one who preliminarily provided most, if not all, of the incorrect information to Elise Kaplan.

In January of 2016, when Director E. was getting ready to speak with Elise Kaplan over the phone about APD's response to the referrals, she met with Officer D. and discussed what APD's response was. Officer D. gave her the exact false and erroneous information that he had provided to Ms. Kaplan. Because of their working relationship, Director E. trusted what Officer D. told her and she did not feel the need to re-verify the information before speaking with Ms. Kaplan. Director E. said in her interview that the information that Officer D. provided to her led her to believe that APD Detectives did respond to the referral of the attempted kiss. She believed that Detectives questioned the mother and the girl and there was nothing further that the APD Detectives could have done. She was led to believe that APD Detectives had followed policy and procedure and that APD did everything they could have done in response to the referral. She was also briefed by Officer D. on why APD couldn't do more with the referral and was led to believe that if APD had pursued the matter further they would have been violating the family's rights. All of the information that she provided to Elise Kaplan in that first phone call was provided to her by Officer D..

Director E. does not have a background in law enforcement. She has never been a police officer or attended a police academy. She was TV reporter, and then she took a job as PIO with Santa Fe PD. She later took the Director position with APD. She has never been formally trained in the difference between probable cause and reasonable suspicion, nor has she been formally trained on the types of police/citizen encounters. In her job, she relies heavily on what police officers and detectives tell her and she relies on those officers to tell her what she can and cannot release. She expects the information that she is being provided by the officers to be truthful and factual.

Director E. was contacted by CACU Sergeant E. when the Albuquerque Journal article broke in January 2017, that said that CACU Detectives did go out on the referral. Not only was Sergeant E. shocked to read that, but Sergeant E. had informed PIO D. prior to the printing of the article that APD CACU Detectives never went out on the referral.

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Director E. maintained that she questioned Officer D. after she spoke with Sergeant E.. It was only then that Officer D. told her that when he gave Ms. Kaplan the information that he did, he was referring to CYFD Investigators and not APD Detectives. Director E. said that she informed the Chief of Police of the miscommunication with Ms. Kaplan and she said that she contacted Ms. Kaplan to inform her that the information that she had been provided was wrong and that APD never went out on the referral because it did not meet APD's criteria for case assignment. Director E. said that she e-mailed Elise Kaplan and they e-mailed back and forth.

It should be noted that Director E. said she contacted Ms. Kaplan by e-mail and they, she and Ms. Kaplan, e-mailed back and forth. The CPOA Investigator contacted her attorney, Mr. John D'Amato, and requested copies of the e-mail exchange from his client, Director E.. The CPOA Investigator also contacted Ms. Kaplan and asked if an e-mail exchange occurred between her and Director E. regarding the erroneous information being provided to her by Officer D.. Mr. D'Amato told the CPOA Investigator that Director E. was going to look for the e-mails and she would contact the CPOA Investigator directly when she had them in her possession.

Reporter Elise Kaplan said that Director E. did not reach out to her to correct the record as Director E. purported in her interview with the CPOA Investigator. Ms. Kaplan said that she was the one who reached out to Director E. in a March 3, 2017 e-mail and started asking her about APD's response to the referral then. Although e-mails were exchanged between the two, it was only on March 13, 2017 in that recorded interview, that Director E. told Elise Kaplan that APD did not go out on the attempted kiss referral.

Director E. knew at the end of January 2017, possibly as early as the 27th or 28th of that month that APD CACU Detectives did not go out on the referral. She said she had informed the Chief of the miscommunication and she said she e-mailed Ms. Kaplan. The investigation revealed that Director E. did not contact Elise Kaplan by e-mail to inform Ms. Kaplan of the miscommunication but rather it was Elise Kaplan who initiated the e-mail exchange. Even though Director E. had known for at least a month by that time that APD Detectives did not go out on the referral, she waited an additional 10 days for a total elapsed time of almost a month and a half to reveal that fact to Ms. Kaplan. From the evidence, it appears that had the reporter not repeatedly asked about APD's response to the attempted kiss referral, Director E. would have not corrected the record.

Director E. stressed how important transparency was to her and talked about the integrity of her office. Director E. said that the integrity and the transparency of what her office does is held to the highest standard. She said that she in no way ever wanted to mislead anyone and it is her goal to be completely transparent. Yet, even after she was made aware that she and PIO D. had released incorrect and untruthful information to Ms. Kaplan, Director E. waited a month and a half before she corrected the record and she only did it after she was questioned further by Ms. Kaplan on March 13, 2017. Knowing that she provided false information to the media and then waiting a month and a half to correct it even under "submersible pressure and

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copious criticism”, flies in the face of transparency and integrity and the conduct reflects badly on her, her division, and APD as a whole.

The CPOA finds Director E.’s conduct to be **Sustained**, as the investigation determined by a preponderance of the evidence that the alleged misconduct did occur.

Further Conclusion and Recommendation

It should be noted that there was no evidence that was uncovered during the investigation that suggested that there was any type of collusion or conspiracy among other members of the department that the false information that was released to Ms. Kaplan was generated by anyone other than Officer D.

What is troubling in reviewing policies and procedures is that APD has no written policy and procedure in place that addresses exactly how CYFD referrals are handled. The way they are currently handled is that a trained civilian reads the referrals and decides if the referral should be assigned for follow up. In this case, the civilian reviewed the referral and based on their training and experience decided that the referral did not warrant follow up. In hindsight, both the CACU former Commander and the Current CACU Sergeant felt that the referral should have been assigned for follow up. There was no review system in place to check the civilian’s work. That is a problem.

Clearly, not every referral can be followed up on and most that are not followed up on were investigated by CYFD before coming to APD. The following recommendation will be made to the Police Oversight Board:

That the Police Oversight Board Policy and Procedures sub-committee address this issue by working with APD to formulate a stand-alone policy that specifically addresses how APD will respond to CYFD referrals.

The CACU, and the Juvenile Section of APD does some outstanding work and their successes are rarely recognized. However, our children are our most precious asset in this community. We have to work together to find a solution. Even one child missed is one child too many.

Your complaint and these findings are made part of Officer D.’s and Director E.’s Internal Affairs files.

You have the right to appeal this decision.

1. If you are not satisfied with the findings of the CPOA, please request an appeal in a signed writing to the undersigned within 30 days of receipt of this letter. Include your CPC number.

The POB may grant a Request for Reconsideration only upon the complainant offering proof that:

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- A) The APD policy or APD Policies that were considered by the POB were the wrong policies or they were used in the wrong way; or,
- B) The APD Policies or APD Policies considered by the POB were chosen randomly or they do not address the issues in your complaint; or,
- C) The findings of the POB had no explanation that would lead to the conclusion made by the POB; or,
- D) The findings by the POB were not supported by the evidence that was available to the POB at the time of the investigation.

2. If you are not satisfied with the final disciplinary decision of the Chief of Police, you can request a review of the complaint by the City's Chief Administrative Officer. Your request must be in writing and submitted within 30 days of this letter. Include your CPC number.

If you have a computer available, we would greatly appreciate your completing our client survey form at <http://www.cabq.gov/cpoa/survey>.

Thank you for participating in the process of civilian oversight of the police, ensuring officers and personnel of the APD are held accountable, and improving the process.

Sincerely,
The Civilian Police Oversight Agency by

Edward Harness, Esq.
Executive Director
(505) 924-3770

Enclosures

CC: Albuquerque Police Department Chief of Police

Attachment "A"

**CIVILIAN POLICE OVERSIGHT AGENCY
EXECUTIVE DIRECTOR'S
Recommendation Form**

Employee Involved: Communications and Community Outreach Director [REDACTED] E [REDACTED]

SOP Violation(s): 1-1-4 B 7 A

Date and Time of Incident: 08/24/2016

Investigating Officer: CPOA Assistant Lead Investigator Paul Skotchdopole

Date Investigation Completed: _____

Completed Case Reviewed by _____ Date: _____

Date to A/C: _____

Date Returned From Chief's Office: _____

Date to CPOA: _____

Date Returned From CPOA: _____

1.	Sustained The investigation determined, by a preponderance of the evidence, the alleged misconduct occurred ----->	<input checked="" type="checkbox"/>
	<i>1-1-4 B 7 A</i>	
2.	Not Sustained The investigation was unable to determine, by a preponderance of the evidence, whether the alleged misconduct occurred. ----->	<input type="checkbox"/>
3.	Sustained Violation not based on original complaint The investigation determined, by a preponderance of the evidence, that misconduct occurred that was not alleged in the original complaint but discovered during the investigation ----->	<input type="checkbox"/>
4.	Unfounded The investigation determined, by clear and convincing evidence, that the alleged misconduct did not occur or did not involve the subject officer ----->	<input type="checkbox"/>
5.	Exonerated The investigation determined, by a preponderance of the evidence, that the alleged conduct did occur but did not violate APD policies, procedures, or training; ----->	<input type="checkbox"/>
6.	Administratively Closed The policy violations are minor, the allegations are duplicative, or investigation cannot be conducted because of lack of information in the complaint, or resolved through mediation, ----->	<input type="checkbox"/>
7.	FIREARM DISCHARGE Will be classified as:	
	<input type="checkbox"/> JUSTIFIED	<input type="checkbox"/> UNJUSTIFIED
	<input type="checkbox"/> ACCIDENTAL	
RECOMMENDATIONS		
<input type="checkbox"/>	NO DISCIPLINARY ACTION	<input type="checkbox"/> VERBAL REPRIMAND
<input checked="" type="checkbox"/>	WRITTEN REPRIMAND	<input type="checkbox"/> SUSPENSION _____ HOURS
<input type="checkbox"/>	TERMINATION	<input type="checkbox"/> OTHER: _____
	<u>1ST LEVEL 6 VIOLATION</u>	

Attachment "A"

**CIVILIAN POLICE OVERSIGHT AGENCY
EXECUTIVE DIRECTOR'S
Recommendation Form**

Employee Involved: Officer [redacted] D

SOP Violation(s): 1-1-4 B 7 A

Date and Time of Incident: 08/24/2016

Investigating Officer: CPOA Assistant Lead Investigator Paul Skotchdopole

Date Investigation Completed: _____

Completed Case Reviewed by _____ Date: _____

Date to A/C: _____

Date Returned From Chief's Office: _____

Date to CPOA: _____

Date Returned From CPOA: _____

1. Sustained The investigation determined, by a preponderance of the evidence, the alleged misconduct occurred ----->	<input checked="" type="checkbox"/>
2. Not Sustained The investigation was unable to determine, by a preponderance of the evidence, whether the alleged misconduct occurred. ----->	<input type="checkbox"/>
3. Sustained Violation not based on original complaint The investigation determined, by a preponderance of the evidence, that misconduct occurred that was not alleged in the original complaint but discovered during the investigation ----->	<input type="checkbox"/>
4. Unfounded The investigation determined, by clear and convincing evidence, that the alleged misconduct did not occur or did not involve the subject officer ----->	<input type="checkbox"/>
5. Exonerated The investigation determined, by a preponderance of the evidence, that the alleged conduct did occur but did not violate APD policies, procedures, or training; ----->	<input type="checkbox"/>
6. Administratively Closed The policy violations are minor, the allegations are duplicative, or investigation cannot be conducted because of lack of information in the complaint, or resolved through mediation, ----->	<input type="checkbox"/>

1-1-4 B 7 A

7. **FIREARM DISCHARGE** Will be classified as:

JUSTIFIED UNJUSTIFIED ACCIDENTAL

RECOMMENDATIONS

NO DISCIPLINARY ACTION VERBAL REPRIMAND

WRITTEN REPRIMAND SUSPENSION 80 HOURS

TERMINATION OTHER: REMOVAL FROM POLICE INFORMATION OFFICE

LEVEL 6 VIOLATION SUSTAINED 2016

THATFORE THIS IS A LEVEL 4 1ST OFFENSE

Attachment "A"

TITLE— HUMAN RESOURCES DEPARTMENT-
 CHAPTER 2 Testing and Examinations
 PART 3- Police Department Promotional Procedures

1. ~~ISSUING AGENCIES~~ISSUING AGENCIES; The Human Resources Department and the Albuquerque Police Department.
2. ~~SCOPE~~SCOPE: This section will be the only source of authority for promotion of sworn personnel.--
3. ~~STATUTORY AUTHORITY~~STATUTORY AUTHORITY: Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 (2006); Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e (2006); Civil Rights Act of 1991; EEOC Uniform Guidelines on Employee Selection Procedures, 29 CFR pt. 1607, (1978); City of Albuquerque, NM. Code of Ordinances, Ch. 3 art. 1, Merit System; N.M. Stat. Ann. § 66-5-54; 49 U.S.C.A. §§ 31100-31161; Retention and Disposition Schedule for General Personnel Records, 1.15.6 NMAC; Uniformed Services Employment and Re- Employment Rights Act (USERRA), 38 U.S.C.A. § 4301 et seq.; Family and Medical Leave Act of 1993 (FMLA)
4. ~~DURATION~~DURATION: Until revoked.
5. ~~EFFECTIVE DATE~~EFFECTIVE DATE: July 19, 2016 [Month] [Date], 2017
6. ~~OBJECTIVE~~-OBJECTIVE: The historic agreement between the City of Albuquerque and the US Department of Justice, CASA, contemplates the adoption of Constitutional and community oriented policing. (CASA 241)

"At its most basic level, Constitutional policing is described as 'legal policing.' This means that policing must be conducted in accord with the parameters set by the US Constitution, state constitutions and the many court decisions that have defined in great detail what the Constitution mandates in terms of everyday practices of policing." ("Constitutional Policing as a Cornerstone of Community Policing: a Report by the Police Executive Research Forum, April 2015, Office of Community Oriented Policing Services, US Department of Justice.) The phrase is often used in the context of deciding whether a certain policy or practice by a police department, or a particular officer's action in a certain situation, adheres to the requirements of the US Constitution and is lawful. (id. Page 3).

A concomitant part of Constitutional policing is community policing. The phrase refers to a "strategy of policing that focuses on police building ties and working closely with members of a community" (Wikipedia, November 28, 2016, 2048: UTC).

Community policing has its Genesis in the Violent Crimes Act of 1994, which, among other things, created the Office of Community Oriented Policing Services with the US Department of Justice.

The intent of community policing is to expand the police function from a reactive force that responds to crimes already committed to a proactive process that builds partnerships with

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community groups, citizens, neighborhood associations, non-profit organizations, merchant groups and service providers. The process promotes collaboration and cooperation between law enforcement and the community served; develops strategies to solve community problems; enhances the development of safe and secure neighborhoods; builds trust; encourages the sharing of information; and, increases officer accountability to the citizens they serve.

6. The purpose of this Regulation is to establish the procedures for promoting to the ranks of Sergeant and Lieutenant those persons who are best qualified or suited for advancement, and the determination of placement on a promotional eligibility list based on the selection process. These procedures are to assure that selection procedures are objective and free of considerations such as race, color, religion, national origin or ancestry, disability, age, gender, Vietnam Era or disabled veteran status, sexual orientation or medical condition. ~~These promotional rules are intended to prioritize effective, constitutional, and community-oriented policing as criteria for promotions and to account for experience, protection of civil rights, discipline history, and previous performance evaluations when considering individuals for promotion.~~

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7. ~~RESPONSIBILITY FOR ADMINISTRATION~~ADMINISTRATION. The Chief of Police and the Director of the Human Resources Department are jointly responsible for the administration of the Police Department Promotional Procedures.-

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8. ~~DEFINITIONS~~DEFINITIONS. The definitions provided herein are specific to this regulation and the promotional process.

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A. **Assessment Center** means a group of situational exercises that simulate job related tasks and work activities designed to measure critical knowledge, skills, abilities, behaviors, qualities, dimensions, and competencies that have been identified through a job analysis as being required for successful performance in the position.

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B. **Activation Date** means the date a Promotional Eligibility List becomes official.

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C. **Assessor** means someone knowledgeable about the requirements of the position being tested and is qualified to rate the performance of candidates.

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D. **Business day** means a day in which the City's administrative offices are open, typically weekdays Monday-Friday, from 8:00 AM to 5:00 PM, except City holidays and other days when the administrative offices are not open for business. See also "Calendar day" and "Day".

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E. **Calendar day or "day"** means a 24-hour period, from midnight to midnight.

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F. **Calendar month** means a period of time beginning on the 1st day of a month on the calendar and ending on the last day of the month as designated on the calendar; by contrast, "month" means a period from a specified day in any one calendar month to the day numerically corresponding to that day in the following calendar month, less one, typically regarded as 30 consecutive days. -By way of

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example:- a calendar month is the month of June or the month of July; a "month" is typically 30 days, such as from June 20 to July 19.

- G. **Candidate** means an employee seeking promotion.
- H. **Chief Administrative Officer** means the Chief Administrative Officer for the City of Albuquerque or designee.
- I. **Chief of Police** means the administrative head of the Police Department or designee.
- J. **City** means the City of Albuquerque, a municipal corporation.

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K. Community policing is the process of policing that focuses on building and strengthening ties with the community through the creation of partnerships with community groups, citizens, neighborhood associations, merchants, non-profit community organizations and community service providers. The intent is to promote collaboration and cooperation between law enforcement and the community served, develop strategies to solve community problems, promote the development of safe and secure neighborhoods, share information and increase officer accountability to the community.

L. Complaints see policy statement 3-22-3, and definitions 34-22-3 (A-C).

M. Constitutional policing means that the policing function must be conducted in accord with the US Constitution, state constitution and the federal and state court decisions that define and explain rights and responsibilities under law.

N. Consultant means an independent contractor engaged by the City for a specific project, typically, but not necessarily, selected through a competitive process, to provide special expertise or independence not otherwise available through City staff.

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O. Current continuous employment means no break or interruption in an employee's assignment in current rank; a "break" or "interruption" includes a demotion for any length of time and certain leaves of absences.

P. Department means the Albuquerque Police Department, commonly abbreviated "APD".

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Q. Dimensions mean factors that represent a broad range of qualities, knowledge, skills, competencies, or behaviors a candidate should demonstrate to be successful in a position.

R. Director of Human Resources means the administrative Head of the Human Resources Department or designee.

S. Disciplinary action means an action taken by the Chief Administrative Officer,

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Department Director or designated management representative in response to a proven act of employee misconduct or uncorrected poor work performance. Disciplinary actions include, but are not limited to oral reprimands, written reprimands, counseling, corrective training, suspension, demotion, loss of rank and discharge.

T. Discipline means corrective action imposed on an employee intended to improve or mold behavior or to punish for misconduct, including violations of rules, regulations, policy, procedures, or directives. It may include oral reprimands, written reprimands, counseling, suspension or demotion, or termination of employment.

U. Egregious Conduct means conduct which shocks the conscience.

Q-V. Eligibility to Participate List means the list of candidates who ~~have been~~ deemed eligible to participate in a promotional process following the Management Review conducted by the Promotions Committee and approved by the Chief of Police.

R-W. Employment Testing Division means the division of the Human Resources Department responsible for test development, validation, and administration.

S-X. Exhaustion, in the context of promotional lists, means all candidates eligible for promotion ~~have been~~ promoted prior to expiration of the current promotional list.

T-Y. Expiration, in the context of promotional lists, means midnight of the last date on which the promotional list is valid as provided herein; position vacancies arising after expiration cannot be filled from an expired promotional list.

U-Z. Job means an official position within the City personnel system. For example, "the job duties of a Sergeant include..."

V-AA. Job analysis means a determination of the relative importance of the various aspects of the job based on a detailed inventory of job tasks, duties, and activities performed on the job, and the knowledge, skills, abilities, and other characteristics required to perform the job.

BB. Just cause ~~for the sole purpose~~ means having a good and sufficient reason. In the context of Police Department Promotional Procedures ~~policy shall mean any~~ it means that the Chief of the following when they raise concerns regarding a candidate's ability to perform supervisory and management duties consistently with effective, constitutional, and community-oriented policing: (1) sustained discipline; (2) patterns of complaints, other than unfounded or exonerated, dating back two (2) years from the date Police may remove a candidate from the promotional list when the Chief of Police has just cause.

W. Just cause exists when a candidate for promotion has, within five years of

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the written examination ~~3) a pending lawsuit alleging specific acts of unconstitutional conduct by the promotional candidate or for promotion, incurred a judicial finding by a Court of competent jurisdiction of unconstitutional conduct, a violation of the civil or Constitutional rights of another, is under investigation for alleged criminal violations or violations of civil or Constitutional rights as defined within this policy, or has been indicted or had a probable cause determination by a judicial officer that he likely committed a felony or misdemeanor involving moral turpitude.~~

Just cause also exists when a candidate for promotion incurs two disciplines within a two year period prior to the written examination.

Just cause also exists when a candidate for promotion's misconduct, occurring within 12 months of the written examination is so egregious as to raise legitimate questions about the candidate's commitment to Constitutional and community policing and his or her ability, in light of the misconduct, to effectively supervise and manage lower level officers.

Just cause exists when a candidate for promotions has engaged in conduct of such an egregious nature during ~~their~~his or her career, which directly violates the spirit of the Court Approved Settlement Agreement (CASA) entered into with the United States Department of Justice in *United States v City of Albuquerque*, No. 1:14-CV-1025 RB-SMV/ Such conduct that predates the CASA or the effective date of this policy shall be limited to most egregious cases.

CC. **Key copy review** means a process whereby a candidate may protest questions on the written examination.

DD. **Key** means a copy of the written examination with the correct answers provided.

EE. **Knowledge, skill, and ability**, in the promotional context, mean the body of learned information which is used in and is a necessary prerequisite for observable aspects of work behavior of the job.

FF. **Lieutenant's Promotional Packet** means a packet completed by a prospective Lieutenant candidate. This packet includes the prospective candidate's department photo, last two years' of approved Employee Work Plans (EWPs), professional resume, letter of recommendation from the candidate's current Commander, and any other required documentation.

~~AA. This packet includes the prospective candidate's department photo, last two years' of approved Employee Work Plans (E/WPs), professional resume, letter of recommendation from the candidate's current Commander, and any other required documentation.~~

GG. **Management Review** means a formal review by the Promotions Committee of a candidate's submitted promotional packet.

Comment [HSM2]: Rejected deletion on 4/7/17 pursuant to the IM's Resolution proposal.

Comment [HSM3]: Added pursuant to the Memorandum Opinion and Order on the City's Motion for Clarification

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HH Moral turpitude means intentional conduct considered contrary to community standards, justice, honest or good morals. It refers to an intentional act that is wanton, vile, depraved and contrary to accepted rules of morality.

II On the Job Training means newly promoted Sergeants and Lieutenants will receive on the job training and will have to demonstrate proficiency in all aspects of the newly promoted position.

CC-JJ Pattern of complaints means that an employee has received two or more citizen complaints of a similar nature, filed with the Civilian Police Oversight Commission (CPOA), for which the officer was not exonerated or the complaint determined to be unfounded as defined by Internal Affairs policy, within the twelve month period prior to or subsequent to the written examination for promotion.

DD-KK Position means an official job title accompanied by a specified set of duties as set forth in the City personnel system.

EE-LL Promotion means the advancement of an employee into a higher graded position or rank within the department.

FF-MM Promotional Eligibility List means the Police Department's official list of those candidates eligible to be promoted to a higher graded position or rank within the department.

GG-NN Promotions Committee means a committee designated by the Chief of Police consisting of three (3) Department lieutenants, one (1) Commander, the APD Personnel/Payroll Coordinator, one (1) union representative, and one (1) Human Resources Employment Testing Division representative as a non-voting observer. The committee will prepare and make recommendations for the Police Chief's Directive.

HH-OO Police Chief's Directive means the Department memorandum published by the Promotions Committee for the Sergeant and Lieutenant promotional processes. This directive establishes the study materials, resources, and other requirements for promotional processes.

II-PP Scoring benchmarks means a set of specific behavioral examples illustrating different levels of performance, used to rate a candidate's performance in an assessment center or oral interview.

JJ-QQ Scoring review means a process whereby a candidate can compare his or her answer sheet against the template of correct answers for accuracy.

RR Sergeant's Promotional Packet means a packet completed by a prospective Sergeant candidate. This packet includes the prospective candidate's department photo, last two years' of approved Employee Work Plans (EWPs), professional resume, letter of recommendation from the candidate's current Commander, and any other required documentation.

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Comment [HSM4]: Added 4/7/17 - pursuant to the IM's Resolution Proposal

Comment [HSM5]: Added 3/31/17 - Amended Resolution Policy

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~~KK-SS~~ Scoring review means a process whereby a candidate can compare his or her answer sheet against the template of correct answers for accuracy.

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~~LL~~ Sergeant's Promotional Packet means a packet completed by a prospective Sergeant candidate. This packet includes the prospective candidate's department photo, last two years of approved Employee Work Plans (EWPs), professional resume, letter of recommendation from the candidate's current Commander, and any other required documentation.

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~~MM-TT~~ Situational exercise means an exercise, within the Assessment Center, developed to assess a candidate's ability to handle a hypothetical scenario presented, and to assist in determining whether the candidate possesses the knowledge, skills, and abilities required for the position.

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~~NN-UU~~ Source documents mean the required study materials listed in the official announcement for a promotional process.

~~QQ-VV~~ Structured oral interview means an interview to solicit answers to questions presented to assist in determining whether a candidate possesses knowledge, skills, and abilities as well as experience and judgment required for the position.

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~~PP-WW~~ Subject-matter expert (SME) means an individual having a definitive source of knowledge, technique, or expertise in a specific subject area.

~~QQ-XX~~ Testing Committee means a committee designated by the Chief of Police consisting of Department Lieutenant and Commander subject-matter experts. This committee is responsible for working with the Human Resources Department in the development, validation, and administration of the promotional written exam, assessment center exercises and/or structured oral interviews.

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~~YY~~ Under Investigation means an investigation being conducted by APD Internal Affairs, the CPOA, or any state or federal agency for alleged criminal violations or violations of civil or Constitutional rights.

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~~RR-ZZ~~ Validation, in personnel psychology, means establishment of the relationship between a test instrument or other selection procedure and performance on the job.

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~~SS-AAA~~ Written examination means a multiple-choice test that assists in determining whether a candidate possesses the knowledge, skills, and abilities required for the position.

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9. PREPARATION AND ADMINISTRATION OF PROMOTIONAL PROCESS

A. Upon request of the Chief of Police, the Director of Human Resources will authorize the development, validation, and administration of the promotional process. The

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use of a consultant may be authorized by the Director of Human Resources.

- B. The dates, locations of the administration of the promotional proceedings, and the source documents to be used in the development of the written examination will be announced at least thirty (30) calendar days in advance of the administration of the written examination. Any rescheduling or relocation must be announced in a timely manner.

10. **ELIGIBILITY TO PARTICIPATE IN A PROMOTIONAL PROCESS - GENERALLY**

- A. The Promotions Committee, selected by the Chief of Police, consisting of three (3) Department Lieutenants, one (1) Commander, the APD Personnel/Payroll Coordinator, one (1) union representative, and one (1) Human Resources Employment Testing Division representative as a non-voting observer, will determine if personnel who signed up for the written examination are qualified to compete for promotion. The union representative's role shall be limited to observing, reviewing, and validating the candidate's eligibility to participate in a promotional process.

- B. A Management Review will be conducted by the Promotions Committee to determine a candidate's eligibility to participate in a promotional process.

- (1) Candidates must be in compliance with Employee Work Plan requirements; and, for a period of two years prior to the administration of the examination, Candidates must have no discipline as defined under Section 11 or patterns of complaints which indicate a lack of Constitutional policing, a lack of community policing or a judicial finding of violations of civil or constitutional rights, have no disciplinary issues discipline as defined in Section 11 or patterns of complaints, other than unfounded or exonerated, dating back two (2) years twelve months from the date of the written examination, or which indicate a lack of constitutional Constitutional policing, a lack of community policing, or a judicial finding of violations of civil or constitutional rights; and meet all rank specific requirements.

(2) If a candidate receives a "does not meet standards" rating on either of the two most recent final annual

- (2) performance evaluations in the personnel file the candidate will be an automatic disqualifier. automatically disqualified.

- (3) If the Management Review determines a candidate is ineligible to participate in a promotional process due to disciplinary issues two or more disciplines, including violations of rules, regulations, policies, procedures or directives within a 12 month period prior to or subsequent to the written examination for promotion, or if there is any

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judicial determination of civil or Constitutional rights violations, or any indictment or probable cause determination made by a judicial officer involving a felony or misdemeanor relating to moral turpitude, or patterns of complaints as described in section 10(B)(1), the Chief of Police will be notified in writing of the findings. The Chief of Police shall either concur or differ with the findings.-

(4) After the Promotions Committee ~~has~~ formally reviewed/reviews all candidates' packets to determine eligibility to proceed in a promotional process, a list of candidates who ~~are~~ are eligible to participate in the written exam will be issued. The Eligibility to Participate List must be approved by the Chief of Police.

(5) Nothing shall prevent the Chief of Police from removing a candidate's name ~~from~~ from the Eligibility to Participate List for just cause ~~as defined in "Definitions" Section BB of this policy~~ as defined in "Definitions" Section BB of this policy ~~as for the reasons described in Section 14.~~

C. Personnel who ~~have been~~ were temporarily demoted (not permanently) and wish to participate in a promotional process in order to obtain their original rank must submit a letter to the Chief of Police for consideration of eligibility to participate in the promotional process.-

11. ~~44.~~ ELIGIBILITY TO PARTICIPATE IN A PROMOTIONAL PROCESS - SUSTAINED SUSPENSION OR A DISQUALIFYING EVENT.

A candidate who is considering participating in a promotional process must not have any sustained discipline resulting in suspension within the last twelve (12) months prior or subsequent to the date of the written examination, excluding first accident suspension.-

A. Any ~~sustained~~ suspension received within two (2) years of the written examination will ~~also~~ be considered and may, at the discretion of the Chief of Police, disqualify the candidate.

B. Any two (2) suspensions received within five (5) years of the written examination will ~~also be considered and may, at the discretion of the Chief of Police, disqualify the candidate.~~

C. Any ~~sustained suspension of forty (40) or more hours, to include time held in abeyance,~~ within five (5) years of the written examination will ~~also be considered and may, at the discretion of the Chief of Police, disqualify the candidate.-~~

C. Any suspension of forty (40) or more hours, to include time held in abeyance, within five (5) years of the written examination will be considered and may, at the discretion of the Chief of Police, disqualify the candidate.

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Comment [HSM7]: Change added on 4/7/17 pursuant to IM's resolution comment

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D. The date on which the disciplinary ~~infraction~~action occurred ~~will be~~is used to determine ineligibility.

E. ~~In addition to the suspensions described in this Section, the~~The Chief of Police may exclude a candidate ~~who is considering~~from participating in ~~the~~ promotional process for just cause as defined in these Rules.-

(1) ~~The Chief of Police may exclude a candidate for just cause for who has incurred any incident dating back five (5)two (2) or more disciplines occurring within two years from the date of the written examination.-~~

(2) Ordinarily, only incidents dating back ~~five (5)two (2)~~ years from the date of the written examination will be considered. However, the Chief of Police, at his or her discretion, may consider any disciplinary action throughout the candidate's career, if the underlying action is ~~so egregious that it directly violates the spirit of the CASA, egregious or implicates a public safety concern~~. If the Chief of Police considers disciplinary action beyond ~~two (2) five (6)~~ years from the date of the written exam, he or she will notify the candidate, in writing, that he or she is contemplating suspending the candidate from eligibility to participate in a promotional process. Such notification ~~shall~~will contain a description of why the candidate is being excluded from participating in a promotional process, with sufficient detail to allow the candidate to respond. The candidate will be given the opportunity to rebut the decision in writing within ten (10) calendar days from the date of notification. The Chief of Police will provide a written response to the candidate with a final determination within seven (7) calendar days from the date the candidate submits a written rebuttal.-

F. If a ~~sustained~~disciplinary action resulting in suspension is ~~being~~appealed, the candidate ~~will be~~is permitted to participate in the promotional process until such time as the appeal is decided.

(1) If the discipline is upheld, the candidate ~~will be~~is removed from the process.-

(2) If the appeal is not determined at the time the list of candidates eligible to participate in the assessment center is published, and the candidate has received a written exam score that would make the candidate eligible to participate in the assessment center, the candidate ~~will be~~is permitted to proceed to the assessment center. In that event, the number of candidates eligible to participate will increase according to the number of candidates currently involved in an appeal.

(3) If the appeal is not determined at the time the promotional eligibility list is published, and the candidate's combined score from the written examination and the assessment center totals at least seventy percent

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(70%), the number of candidates placed on the promotional eligibility list will increase according to the number of candidates currently involved in an appeal.

- (4) As appeals are resolved, candidates made ineligible by their disciplinary action being upheld will be removed from the list or demoted to the previously held rank if the promotion has already been processed.
- (5) The Chief of Police may utilize the rule of three (3) in cases where an appeal is pending.

~~12.~~ ~~12.~~ **RANK-SPECIFIC REQUIREMENTS**, listed from lowest to highest, are those requirements that a candidate must meet to be eligible for promotion to a specific rank. In addition to the rank-specific requirements, a candidate must meet all the requirements of the lower rank and currently be holding that rank as well as those specified for the rank to which promotion is sought.

B. Sergeant

To be eligible to participate in the Sergeant's promotional process, sworn personnel must have, as of the date of the written examination, six (6) years of ~~current~~ **continuous** employment as a full-time certified APD Police Officer.

C. Lieutenant

To be eligible to participate in the Lieutenant's promotional process, sworn personnel must have, as of the date of the written examination, nine (9) years of ~~current~~ **continuous** employment as a full-time certified APD Police Officer; three (3) years of which must have been from the date of promotion to the permanent rank of Sergeant with the APD and currently hold the rank of Sergeant.

13. PROMOTIONAL EXAMINATIONS

- A.** Each Sergeant and Lieutenant promotional process will consist of a written examination, **A.** an assessment center, and a rating of experience/education.
- B.** Prior to the administration of the written examination and after consultation with the Chief of Police, the Human Resources Department will announce the number of candidates expected to advance from the written examination to the assessment center and the final number of candidates to be placed on the promotional list.

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- C. The number of candidates to be placed on the promotional list will be based on the existing and/or anticipated vacancies for the next twelve months as determined by the Chief of Police in consultation with the Director of Human Resources.
- D. Promotional lists expire twelve (12) calendar months from the activation date of the promotional list and will be dated so the list ends on the first calendar day of a pay period. Individuals on a promotional list who are not promoted by the expiration date of the list must retest in a future promotional process to be considered for promotion.
- E. If a promotional list is exhausted in a year or less, the Chief of Police may request another promotional examination.

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~~14. ELIGIBILITY TO CONTINUE PARTICIPATING IN A PROMOTIONAL PROCESS PENDING THE OUTCOME OF AN ACTIVE INVESTIGATION~~

14. ELIGIBILITY TO CONTINUE PARTICIPATING IN A PROMOTIONAL PROCESS PENDING THE OUTCOME OF AN ACTIVE INVESTIGATION

- A. A candidate who is participating in a promotional process and becomes the subject of an active criminal ~~investigation~~ or civil rights investigation, in which the underlying facts implicate: 1) violations of department policies and/or the law; 2) disciplinary action; 3) patterns of complaints, other than unfounded or exonerated, dating back ~~twelve (12) months, two (2) years~~ from the date of the written examination; 4) patterns of sustained IA complaints; or, 5) the candidate has a pending lawsuit alleging specific acts of unconstitutional conduct by the promotional candidate or judicial finding of unconstitutional conduct, will at the discretion of the Chief of Police be conditionally allowed to continue in the promotional process, pending the results or outcome of such investigation or lawsuit. ~~at the discretion of the Chief.~~
- B. A candidate who is participating in a promotional process and becomes the subject of an administrative investigation will at the discretion of the Chief be conditionally allowed to continue in the promotional process pending the results or outcome of such investigation. ~~at the discretion of the Chief.~~
- C. The candidate ~~shall~~ will be notified in writing that he/she is the subject of ~~such~~ an investigation and is being conditionally allowed to continue in the promotional process, pending the results or outcome of the relevant investigation or lawsuit. ~~---~~
- D. In the event that an active criminal or federal or state civil rights investigation, as defined in Section 14(A) above, results in a sustained finding of the candidate's violation of the civil or constitutional rights of another, the candidate will be permanently removed from participation in the current promotional process. ~~In the event that an administrative investigation results in a sustained finding, the candidate will be permanently removed from participation in the current promotional process.---~~

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15. LEAVE OF ABSENCE AS A BREAK IN CURRENT CONTINUOUS EMPLOYMENT

- A. An approved leave of absence of six (6) calendar weeks or more ~~may be~~ counted as current continuous employment in determining eligibility to participate in promotional proceedings, if the leave is determined by the Chief of Police to have further advanced the candidate's qualifications. Such determination should be made prior to a candidate ~~embarking on or commencing the~~ leave of absence.
- (1) ~~Candidates are~~ A candidate is responsible for initiating a request for determination prior to the start of the leave of absence.
- (2) If a leave of absence is not approved by the Chief of Police as continuous employment further enhancing the candidate's qualifications, the leave period will be deducted from the period of continuous employment.
- B. Leave with or without pay under the Family and Medical Leave Act of 1993 (FMLA) ~~will be~~ counted as continuous employment for the ~~sole~~ purpose of determining eligibility to participate in the promotional process.
- C. ~~Leaves~~ A leave of absence to campaign for public office as allowed under the Merit System Ordinance of Personnel Rules and Regulations, to hold public office, or to pursue other gainful employment ~~will not be~~ counted as continuous employment in determining eligibility to participate in a promotional process. The period during which leave is taken ~~will be~~ deducted from the period of continuous employment.

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16. PARTICIPATION IN THE PROMOTIONAL PROCESS

- A. ~~Sworn~~ A sworn eligible ~~personnel~~ employee who ~~wish~~ wishes to participate in a promotional process must sign a request roster posted in the APD Personnel/Payroll Office within the time-frame announced.
- (1) ~~Eligible personnel~~ The candidate must appear at the examination site at the designated time.
- (2) Failure to appear ~~for~~ participate in any part of the scheduled promotion proceedings will result in termination of the candidate's continuation in the promotional process.
- B. ~~Sworn eligible personnel~~ A candidate on approved leave at the time of the announcement may submit a written request ~~for modification of the promotional process schedule~~ to the Chief of Police within the same time-frame period.
- C. The Uniformed Services Employment and Reemployment Rights Act (USERRA) ~~will be~~ followed for candidates unable to participate due to approved military leave when called to active duty in emergencies declared by the Governor or President.
- D. ~~Travel~~ A candidate's travel expenses ~~will~~ are not be paid by the City.

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17. SUBJECT MATTER OF PROMOTIONAL PROCESS

- A. Written test items for the promotional examinations for the ranks of Sergeant and Lieutenant ~~will beare~~ prepared by or under the direction of the Human Resources Department from materials approved by the Chief of Police or designee. The subject area and, where possible, the source materials for each promotional process ~~will beis~~ specified, ~~butand~~ will include ~~constitutional-policing-testing on Constitutional and~~ community ~~oriented~~-policing, and protection of civil ~~and Constitutional~~ rights.
- B. The Chief of Police ~~shallwill~~ designate Police Department subject-matter experts to the Testing Committee to work with the Human Resources Department in the preparation of written test items, assessment center exercises, and/or structured oral interviews. The Testing Committee ~~shall-also~~will complete an After Action Report to be submitted to the Promotions Committee after a promotional process ~~hasis~~ concluded.
- C. The Promotions Committee ~~will-beis~~ responsible for ~~making recommendationsrecommending~~ and reviewing all source materials for each promotional process. Source materials ~~will-beare~~ listed in the Chief of Police's Directive and are effective for two promotional testing processes for the same rank. If source materials ~~are-deemed-in-need-of-changerequire revisions~~, a new directive ~~will-beis~~ issued with a list of the updated materials.
- D. The most recent version of source materials ~~that-are-continually-being-updated-will beis~~ used for promotional processes whenever possible. ~~-These materials may~~ include, but ~~are~~ not limited to, Departmental Procedures, Special Orders, and City of Albuquerque Rules ~~and~~, Regulations ~~and~~ Policies.
- E. The subject area(s) and, ~~as applicable~~, the source materials for each promotional process ~~will beare~~ specified in the announcement.
- F. The Chief of Police or designee ~~will-review~~reviews the job description for the rank being tested, the structure and ~~weights-of-weight given to~~ the promotional process subject areas, and ~~the~~ administration of the promotional process to ascertain ~~conformanceconformity~~ to City and Police Department rules and regulations, practices, procedures, ~~policy~~, equipment, and training.

18. PROMOTIONAL PROCESS FOR SERGEANT AND LIEUTENANT-

- A. The final promotional score ~~will-consist~~consists of the written examination score, assessment center score, and the experience/education rating score. Up to thirty (30) points ~~canmay~~ be obtained on the written examination, up to sixty (60) points on the assessment center, and up to ten (10) points on the experience/education rating.

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B. Written Examination

- (1) The written examination for each rank ~~will be~~ developed based on the knowledge, skills, and abilities identified in the job analysis.
- (2) To be eligible to participate in the assessment center, ~~candidate~~ ~~candidate~~ must achieve a minimum score of seventy percent (70%). However, a written score of seventy (70%) does not guarantee eligibility to proceed to the assessment center.
- (3) In ~~accordance~~ ~~accord~~ with the criteria set forth in Section 9 (Preparation and Administration of the Promotional Process), the Human Resources Department ~~will prepare~~ ~~prepares~~ an official announcement listing the names of the candidates eligible to proceed from the written exam to the assessment center based on the highest attained written exam scores; provided, however, no candidate, with a score of less than seventy percent (70%) of the total possible score, ~~shall~~ ~~will~~ be permitted to proceed to the assessment center. The number of candidates permitted to advance to the assessment center ~~shall be~~ stated in the initial official announcement issued by the Human Resources Department.-

C. Assessment Center

- ~~Candidates~~
- (1) ~~A candidate~~ eligible for the assessment center process ~~will be~~ provided information about the assessment center ~~at least~~ ~~no less than~~ five (5) business days before the ~~commencement of the~~ assessment center ~~begins~~.
 - (2) Dimension definitions, if applicable, and an explanation of the assessment center scoring process ~~will be~~ provided to ~~candidate~~ ~~the candidate~~ at the Assessment Center Candidate Orientation prior to the administration of the assessment center.
 - (3) Scoring benchmarks ~~will be~~ designed in such a way that a score of seventy percent (70%) or higher ~~will reflect~~ ~~reflects~~ a level of proficiency sufficient to succeed in the position at entry level.
 - (4) ~~A file containing~~
~~The candidate must submit~~ a ~~candidate's~~ resume ~~and other documents will be~~ ~~one~~ component of the Assessment Center.-

D. Experience and Education

- (1) A rating for this score ~~will be~~ calculated from an approved resume form submitted by ~~each~~ ~~the~~ candidate.
- (2) The Promotions Committee ~~will verify~~ ~~verifies~~ the information on the resume

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prior to the assessment center.

- (3) Ratings ~~will be~~ calculated by the same committee that determines eligibility to participate in the promotional process. ~~The experience rating score will be~~ calculated as of the last day of the assessment center for time in service.
- (4) The experience rating score for ~~candidate~~ ~~a candidate~~ for Sergeant is one-quarter (0.25) of a point per year for service as a sworn APD police officer, calculated from the date of graduation from the Albuquerque Police Academy, or date of hire for lateral police officers.
 - a) Credit is limited to twenty (20) years, for a maximum of five (5) points.
 - b) No credit ~~will be~~ given for periods of Leave without Pay, exclusive of FMLA, or disciplinary suspensions unless the Chief of Police determines in writing that the infraction is not related to fitness for promotion.
- (5) The experience rating score for ~~candidate~~ ~~a candidate~~ for Lieutenant is one-eighth (0.125) of a point per year for service as a sworn APD police officer, calculated from the date of graduation from the Albuquerque Police Academy, or date of hire for lateral police ~~officer~~ ~~officer~~.
 - a) ~~a)~~ Credit is limited to twenty (20) years, ~~for up to~~ a maximum of two and one-half (2.5) points.
 - b) ~~b)~~ In addition, ~~candidate~~ ~~a candidate~~ for Lieutenant ~~will receive~~ ~~receives~~ 0.1665 points per year of service with APD at the rank of Sergeant. This credit is limited to fifteen (15) years, for a maximum of two and one-half (2.5) points.
 - c) ~~c)~~ No credit ~~will be~~ given for periods of Leave without Pay, exclusive of FMLA, or disciplinary suspensions unless the Chief of Police determines in writing that the infraction is not related to fitness for promotion.
- (6) The education rating score ~~will be~~ a maximum of five (5) points. ~~Candidate~~ ~~A candidate~~ competing for the position of Sergeant or Lieutenant who ~~have~~ ~~has~~ an Associate's ~~degree~~ degree from an accredited college or university ~~shall~~ ~~will~~ receive two (2) education rating ~~points~~ points. ~~Candidate~~ ~~A candidate~~ who ~~have~~ ~~has~~ a Bachelor's degree, or higher, from an accredited ~~college~~ college or university ~~shall~~ ~~will~~ receive five (5) education rating points.

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19. REVIEW PROCESS

A. Key Copy Review

- (1) After completion of the written examination, candidates a candidate may review a keyed copy of the exam by making one (1) appointment for a maximum of two (2) hours with the Employment Testing Division of the Human Resources Department.
 - a) This two (2) hour key copy review period represents the challenge process whereby a candidate may protest questions on the examination.
 - b) Key copy reviews will are only be held for five (5) business days beginning on the first business day immediately following completion of the written examination.
- (2) Candidates participating in the key copy review process will be are given a total of two (2) hours to review the keyed copy of the exam and to prepare written protests on-site.
- (3) If a candidate wishes to protest any of the test questions, he or she the candidate must submit the protest of the test question in writing during the two (2) hour review.
- (4) Taking notes is permitted during this period; however, no testing materials, including notes, may be removed from the room at the completion of the test review.
- (5) All protests will be are submitted in writing to the Director of Human Resources, or designee, who must review reviews and evaluate evaluates all information concerning the challenge.-
- (6) The Director of Human Resources, or designee, with the input of the subject-matter experts, will makemakes the final decision for upholding or denying the protest and will notify the candidate in writing of the decision.-
- (7) After all challenges for the written examination have been are resolved, and answer sheets will be scored, and candidates will be a candidate is individually notified in writing of their the results.

B. Scoring Review

Candidates

- (1) A candidate may review their his or her answer sheets for scoring accuracy.
- (2) Candidates must A candidate may make one (1) appointment with the

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Employment Testing Division of the Human Resources Department ~~and to~~ review the scoring within five (5) business days following the official announcement of scores.

- (3) During the scoring review period, ~~candidatea candidate~~ may compare ~~theirs or her~~ answer sheets with a template of the correct answers. ~~The~~ keyed copy of the exam ~~willis not-be~~ available for review during the scoring review period.
- (4) Following the scoring review period, a list of those candidates eligible to compete in the assessment center process, if applicable, ~~will-beis~~ posted.

C. Post Assessment Review

Candidates may schedule one (1) post-assessment review by making an appointment with the Employment Testing Division of the Human Resources Department.

D. Appeal of Scoring

- (1) A candidate may appeal any ~~alleged~~ math or scoring errors in the computation of the final promotional examination score. ~~AppealsAn appeal~~ alleging math or scoring errors ~~shall-beis~~ submitted in writing to the Employment Testing Division of the Human Resources Department no later than five (5) business days after the date the ~~candidate were~~ ~~candidate is~~ notified of ~~theirs or her~~ individual scores.
- (2) The Employment Testing Division of the Human Resources Department ~~shall investigate~~ ~~investigates~~ the alleged math or scoring error identified in the appeal. In the event that a math or scoring error ~~is determined to have~~ occurred, a ~~correction will be~~ ~~corrected score is~~ applied equally to all candidates impacted by the error. ~~If any such-corrected score would~~ ~~result results~~ in a change to the rank order of the promotional eligibility list, the Chief of Police ~~will-beis~~ notified and the Employment Testing Division of the Human Resources Department ~~will create~~ ~~creates~~ a revised list based on the corrected scores.
- (3) The promotional eligibility list ~~willis not-be~~ considered final until the five (5) business days appeal period is completed and any confirmed errors are corrected.

20. ISSUES NOT SUBJECT TO CITY APPEAL

The following issues cannot be appealed by a candidate with the City:

- (1) ~~the~~ (1) the minimum requirements for the job classification;
- (2) ~~the~~ (2) the prerequisites for entering the promotional process;
- (3) ~~the~~ (3) final scores from any components of the promotional process;

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- (4) ~~_____~~ (4) final combined scored promotional examination scores;
- (5) ~~_____~~ post-assessment review feedback from assessors cannot be used to appeal
- (5) ~~_____~~ assessment center scores or final combined promotional examination scores.

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21. ELIGIBILITY LISTS FOR PROMOTION

A. For placement on the promotional eligibility list a candidate must achieve a final combined promotional score of seventy percent (70%) or greater.

Candidates

- (1) A candidate who participated in a promotional process but did not attain a final combined promotional score of seventy percent (70%) or greater must retest in a future promotional process to be considered for promotion.
- (2) A final combined candidate who achieves a promotional score of seventy percent (70%) does and who was not guarantee automatic placement been removed from eligibility for just cause will be placed on the promotional eligibility list.

B. A promotional eligibility list in order of highest-attained scores will be compiled by the Human Resources Department and provided to the Chief of Police.

- (1) Seniority, as defined in the APD collective bargaining agreement, will be used for list placement only in the event of a tie.
- (2) In accordance with the criteria set forth in Section 9 (Preparation and Administration of the Promotional Process), based on the number of anticipated vacancies and promotions for the rank being tested as stated in the initial official announcement, the Human Resources Department will prepare a promotional eligibility list consisting of the candidates in order of scoring, which list shall include the candidates with the highest combined final scores, provided that no candidate with a score of less than seventy percent (70%) will be placed on the promotional eligibility list.
- (3) The Chief of Police will select candidates for promotion to Sergeant and Lieutenant.
 - a) In selecting candidates for promotion, the Chief of Police may apply the "rule of three" to the promotional eligibility list.
 - i. The Chief of Police may promote any candidate to the position of Sergeant or Lieutenant who scores in the top

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three (3) slots of the respective promotional eligibility list.

- ii. Once the selection ~~has been~~ made, the next rank-ordered name on the promotional eligibility list ~~will advance into~~ advances to the top three.
- iii. The top three (3) candidates ~~will be~~ considered each time a promotion is made, regardless of their final scores.
- iv. ~~Candidates~~ A candidate on the list who ~~may have been~~ passed over by the application of the "rule of three" ~~will retain their~~ retains his or her relative ~~positions~~ position on the list until promoted or removed ~~as a condition of a disciplinary action from the list due to discipline.~~

- b) ~~Any serious disciplinary infractions can be~~ are sufficient cause for the Chief of Police to remove a candidate from a promotional eligibility list. For the purposes of this subsection, serious discipline means a sustained finding of a violation of any of the following: Insubordination; Arrests or criminal investigations that include reasonable evidence inculcating the Candidate ~~where the Candidate has a personal attachment~~; Associating with persons of ill repute; Unauthorized weapons and ammunition; Failure to keep police business confidential; Accessing any information system(s) which contains or may contain criminal history or personal information for reasons not related to official purposes and then disseminating the information to another party; Untruthfulness; Fraternalism as defined as prohibited by the APD Code of Conduct; Arrest or citation for criminal conduct, either felony or misdemeanor involving moral turpitude, (other than minor traffic violations); Use of official position to affect the outcome in a civil case ~~case~~ where personally involved; Violation of the City's Substance Abuse Policy, defined in Section 1100 of City Personnel Rules and Regulations; Any act of violence by a Candidate against another employee in the City; Excessive use of force; Theft; Refusal to testify; Cheating on employment examinations; Giving unlawful assistance to suspect; or any act or omission of such an egregious nature that the Candidate is rendered ineffective in his or her position and/or the act or omission would tend to bring the Department into public discredit, or disrepute. In any such instance, the removal ~~shall be~~ is an element of the imposed discipline.
- c) Sworn personnel on an approved leave of absence without pay will not be promoted until their return to regular duty.

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22. SUSPENSION OR REMOVAL FROM PROMOTIONAL ELIGIBILITY LIST

A. A candidate who is currently on a Promotional Eligibility List and is the subject of an active criminal investigation, or federal or state civil rights investigation, as defined in Section 14(A) of this policy, or is the subject of a formal administrative investigation under investigation as defined under "Definitions", Section YY, will be temporarily suspended from the Promotional Eligibility List pending the results of such investigation.

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Comment [GK13]: Added on 4/7/17 pursuant to the IM's resolution comment.

B. The candidate shall be notified in writing that he or she is the subject of such an investigation and of the temporary suspension from the Promotional Eligibility List. The candidate's eligibility shall only be temporarily suspended until disposition of the case under investigation. Depending on the disposition of the investigation, the candidate's eligibility may be permanently removed from the Promotional Eligibility List.

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C. Nothing shall prevent the Chief of Police from permanently removing a candidate's name from the current existing Promotional Eligibility List for just cause, as defined in this policy.

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The Chief of Police can permanently intend to rely on the just cause provisions definition of this SOP Rule to remove a candidate from the current Promotional Eligibility List. The Chief of Police will notify the candidate of the proposed removal and describe with particularity why the removal is contemplated. Such notification shall be provided to the candidate for promotion in writing.

Comment [HSM14]: Added on 4/7/17 pursuant to the IM's resolution comment

The Chief of Police will allow the candidate for just cause for any incident dating back five (5) years from promotion to respond in writing within ten calendar days of the date of the Chief of Police's written notification. Any such response shall be made directly to the Chief's Office.

Comment [HSM15]: Added on 4/7/17 pursuant to the IM's resolution comment.

(+) The Chief of Police will consider the candidate's written examination response together with the totality of the circumstances, the nature of the misconduct, the frequency of the candidate's discipline occurring within two years from the date of the test, the candidate's commitment or lack of commitment to principles of Constitutional and community policing, and whether the public interest is served by removing or retaining the candidate on the Promotional List.

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(2) Ordinarily, only incidents dating back five (5) years from the date of the written exam for the corresponding promotional process will be considered. However,

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~~the Chief of Police, at his or her discretion, may consider any disciplinary action throughout the candidate's career, if the underlying action is egregious or implicates a public safety concern.~~

~~D. Notice of the Chief of Police's final determination will be provided to the candidate within seven calendar days of the receipt of the candidate's written response.~~

~~D. If any disciplinary action for just cause is imposed by a superior officer other than the Chief of Police upon a candidate currently on a promotional list, the superior officer will notify the Chief of Police of said disciplinary action in writing. The Chief of Police shall review the disciplinary action to determine if the candidate's actions indicate just cause to be removed from the promotional eligibility list.~~

~~E. E. If a candidate is permanently removed from a current eligibility list the candidate will receive notification in writing. Such notification shall contain a description of why the candidate is being removed from the current list with sufficient detail to allow the candidate to respond. The candidate will be given the opportunity to rebut the decision in writing within ten (10) calendar days from the date of notification. The Chief of Police will provide a written response to the candidate with a final determination within seven (7) calendar days from the date the candidate submits a written rebuttal.~~

23. PROMOTIONAL PROCESS FOR POLICE COMMANDER

A. ~~The Chief of Police will use an evaluation process to select officers from the rank of Lieutenant for promotion to Police Commander.~~

B. ~~The process may include includes a structured oral interview, a written examination, an assessment center or other process as determined by the Chief of Police and with concurrence with from the Director of Human Resources prior to the initiation of the process.~~

C. ~~Police Commanders are appointed by the Chief of Police with the concurrence of the City's Chief Administrative Officer.~~

24. PROMOTIONAL PROCESS FOR MAJOR

~~A. The Chief of Police will use an evaluation process to select officers from the rank of Police Commander for promotion to Major.~~

~~B. The process may include a structured oral interview, a written examination, an assessment center or other process as determined by the Chief of Police and in concurrence with the Director of Human Resources prior to the initiation of the process.~~

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C. Majors are appointed by the Chief of Police with the concurrence of the City's Chief Administrative Officer.

25. **PROMOTIONAL PROCESS FOR DEPUTY CHIEF**

- A. The Chief of Police will use an evaluation process to select officers from the rank of Police Commander for promotion to Major.
- B. The process includes an oral interview and a review of the candidate's Department and Internal Affairs file with concurrence from the Director of Human Resources prior to the initiation of the process.
- C. Majors are appointed by the Chief of Police with the concurrence of the City's Chief Administrative Officer.

26. **PROMOTIONAL PROCESS FOR DEPUTY CHIEF**

- A. The Chief of Police uses an evaluation process to select officers from the rank of Police Commander or Major for promotion to Deputy Chief.
- B. The process may include a structured includes an oral interview, a written examination, an assessment center or other process as determined by the Chief of Police and a review of the candidate's Department and Internal Affairs file with concurrence with from the Director of Human Resources prior to the initiation of the process.
- C. Deputy Chiefs are appointed by the Chief of Police with the concurrence of the City's Chief Administrative Officer.

27. **POST-PROMOTIONAL PROCESS REQUIREMENTS FOR SERGEANTS AND LIEUTENANTS**

- Candidates who are A Candidate placed on a promotional list must complete and pass all sections of the Post-Promotional Process Education Requirements.
- A. Candidates who are A Candidate placed on a promotional list for Sergeant are required to satisfactorily complete a mandatory supervisors' course approved by the APD Training Academy.
- B. B. Candidates who are placed A Candidate on a promotional list for Lieutenant wills required to satisfactorily complete a department leadership course approved by the APD Training Academy, as such appropriate courses become available.

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C. Promoted Sergeants and Lieutenants will enter the FTO and Evaluation Program. These personnel will receive on-the-job training and must demonstrate proficiency in all aspects of the duty position.

D. CandidatesA candidate who completecompletes the required courses but areis not promoted by the expiration date of a promotional eligibility list dedoes not have to complete the courses again in the future if they choosehe or she chooses to retest for promotion.

28. EVALUATION OF NEWLY PROMOTED SERGEANTS AND LIEUTENANTS

A. Promotions are contingent on satisfactory performance during a twelve (12) month evaluation period.

B. The twelve (12) month evaluation period is calculated from the date of promotion.

C. All newly promoted sworn personnel must be formally evaluated quarterly by their supervisors during this evaluation period using an approved departmental format or process. Failure to perform satisfactorily during the evaluation period may result in a return to the previous rank, remedial training, or a continuation of the probationary period as determined by the Chief of Police.

D. After the Chief of Police, or designee, releases the newly promoted Sergeant or Lieutenant from the twelve (12) month evaluation period, such promotions will be considered permanent and subject to performance and disciplinary requirements.

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ALBUQUERQUE POLICE DEPARTMENT
FIELD SERVICES BUREAU ORDERS

SOP 4-25

Effective: 01/14/16 Expires: 01/14/17

4-25 DOMESTIC VIOLENCE

4-25-1 Policy

It is the policy of the Department to enforce laws dealing with domestic abuse and to take appropriate action in cases involving domestic abuse.

4-25-2 Definitions

A. Domestic Abuse

Any incident resulting in physical harm, bodily injury or assault, or a threat causing imminent fear of such harm by any household member.

B. Household Member

A spouse, former spouse, parent, present or former stepparent, present or former parent-in-law, grandparent, grandparent-in-law, a co-parent of a child or a person with whom a person has had a continuing personal relationship. Cohabitation is not necessary to be deemed a household member for the Crimes Against Household Members Act.

4-25-3 Rules and Procedures

A. Order of Protection

1. An Order of Protection is issued by any state district court judge under the Family Violence Protection Act and is granted for the protection of victims of domestic abuse with a specific expiration date, valid for the period listed by the court.
2. A victim of domestic abuse may petition the district court under the Family Violence Protection Act for an Order of Protection. The Department is required to keep blank petition forms for distribution to victims of domestic violence. These forms will be available at all police substations and will be in possession of police officers for distribution to victims. Officers should familiarize themselves with these forms and their implication to instruct family violence victims seeking such relief.

B. Emergency Order of Protection (EOP)

1. Officers are authorized to obtain an emergency order of protection after regular business hours. Officers responding to a domestic violence incident shall complete an application for an EOP when appropriate, adhering to the following guidelines:
 - a. Probable cause exists that an act of domestic violence/abuse has occurred.

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ALBUQUERQUE POLICE DEPARTMENT
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Effective: 01/14/16 Expires: 01/14/17

- b. The victim wants an order of protection issued.
 - c. The victim and/or children are in danger of or believe they are in danger of receiving additional acts of domestic violence/abuse.
 - d. Before obtaining an emergency order of protection, the location of the restrained party shall be known by the officer.
 - e. EOP must be approved by a supervisor before requesting approval by a judge.
2. If the conditions above exist, officers will complete Sections 1 through 4 of the Application (Order of Protection), APD Form 3094.
 3. Officers must contact a district court judge for approval.
 - a. Permanent numbers to all district court judges can be obtained through ECC or the on-call victim advocate.
 - b. Officers must provide the judge a brief description of the facts surrounding the incident.
 - c. Officers must provide the judge with viable reasons/facts as to why the EOP should be granted.
 - d. If the EOP is denied, officers will indicate in the report the name of the judge and the reason denied.
 4. After approval by the judge, sections 7 through 9 (the actual EOP) will be filled out indicating judge's approval.
 5. EOP will be distributed as follows:
 - a. The original white copy (top page) will be hand-carried immediately to the Bernalillo County Sheriff's Department, Warrants Section.
 - b. The yellow copy will be given to the victims.
 - c. If the offender is at the scene, serve the offender his/her copy (pink copy) and complete proof of service portion of the EOP.
 - d. The goldenrod copy will be scanned and logged in the sergeant's report log.
 6. If the offender is not present, leave the EOP with the victim/protected party.
 7. If officers are responding to a call where an EOP has already been approved by a judge and the offender is present but has not been serviced, officers will:
 - a. Obtain the EOP from the victim/protected party and serve the offender.
 - b. Complete a Return of Service Form. These forms should be available at all substations.
 - c. The original Return of Service will be hand-carried to the Bernalillo County Sheriff's Office, Warrants Section, immediately.
 - d. The officer will scan and submit the goldenrod copy to be retained with the original report.

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ALBUQUERQUE POLICE DEPARTMENT
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C. Temporary Orders of Protection

1. Temporary orders of protection are granted by a judge at the 2nd Judicial District Court, during normal business hours.
2. Initial temporary orders of protection are granted as non-mutual and apply to only one party, therefore, can only be violated by the restrained part. Initial orders are valid until the listed date; then a hearing is held on whether the order should be extended for six months or more.
3. After the hearing date noted on the temporary order of protection, an order of protection may be granted for an extended period.

D. Out-of-State Protective Orders

1. All out-of-state protective orders shall be enforced as written.
2. All out-of-state protective orders are presumed valid upon presentation to law enforcement officers and under full faith and credit.
3. Out-of-state orders do not have to be filed in district court to be valid and enforceable.

E. Civil Service of Court Orders

1. Officers shall serve district court orders of protection under the following circumstances only:
 - a. If the officer is requested to do so.
 - b. The restrained party must be physically served with the order.
 - c. The protected party must have a copy of the valid district court order in his possession.
 - d. Before serving the restrained party with the court order, officers will have ECC contact the Warrants Section of the Bernalillo County Sheriff's Office and determine if the order has already been served.
 - i. If service has not been made, officers will promptly serve the Order of protection on the respondent.
 - ii. If service has been made and the Order of protection prohibits the restrained party from being on the premises.
 - iii. The officer will complete a police report and thoroughly document the incident.
2. Any officer serving a civil district court order as outlined above will fill out a 'Sheriff's Return of Service' form and hand carry the original to the Bernalillo County Sheriff's Office, Warrants Division, immediately.

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ALBUQUERQUE POLICE DEPARTMENT
FIELD SERVICES BUREAU ORDERS

SOP 4-25

Effective: 01/14/16 Expires: 01/14/17

F. Enforcement of Orders of Protection

1. An order of protection shall be deemed valid if the following criteria are met:
 - a. The order states the name of the protected and restrained parties.
 - b. The order contains the date it was issued.
 - c. The order has an expiration date and has not expired.
 - d. The order contains the name of the issuing court.
 - e. The order is signed by, or on behalf of a judicial officer.

2. When an order of protection is presented to an officer by the complainant, the officer shall:
 - a. Officers will deem if the order is valid using the above-noted criteria.
 - b. Determine if the conduct is prohibited by the order.
 - c. Attempt to confirm the order through BCSO Warrant Division or NCIC.
 - d. The officer shall assume that the restrained party was given notice of the Order of Protection and its contents
 - e. If it is determined the restrained party has not been served, the officer shall serve the restrained party with a copy of the restraining order and file a return of service through BCSO warrants.
 - f. If the officer has probable cause to believe that the Order of protection has been violated, he may shall arrest the restrained party for the violation of the order, but only when an arrest is reasonably necessary to protect the protected party from further domestic abuse. NMSA 40-13-6 (D); 40-13-7(B)
 - g. If the officer has probable cause to believe that the Order of protection has been violated, the officer shall –and– charge a violation of an order of protection. Where an arrest is not necessary, this may be done by summons. 40-12-6.
 - h. Officers shall enforce the provisions of custody as outlined in the court order that may include removing a child or children from the non-custodial parent or guardian.
 - i. Police Service Aides should be utilized whenever possible or practical. However, it is the officer's responsibility to make sure that the mandate of the court is carried out.

3. Orders of protection must be enforced per NMSA 40-13-6D, "Service of Order". A peace officer may shall arrest without a warrant and take into custody a person whom the peace officers had probable cause to believe has violated order under this section.

G. Officers Responsibilities on a DV call – under State Statute 40-13-7

1. Officers responding to requests for assistance shall take whatever steps are reasonably necessary to protect the victim(s) from further domestic abuse. See NMSA 40-13-7

Commented [JH1]: 43-13-6(D) does not mandate arrest. It states "A peace officer may arrest without a warrant... probable cause to believe has violated an order of protection". To be consistent with the statute, I propose reflecting "may" rather than mandatory language of "shall"

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Commented [JH2]: Consider moving to section on Enforcement of Orders of Protection

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Commented [JH4]: Changed to reflect the statutory language of 40-13-6(D). This is duplicative of 2(f) above.

Commented [JH5]: This is housed under the Orders of protection section, but largely seems applicable to if arriving at a DV scene even if no order in place. So consider keeping order of protection stuff in one section, and maybe a separate section for DV calls generally "Titled Officer Responsibilities"

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2. Officers will enforce the provisions of valid court orders of protection if one exists. (see Section F "Enforcement of Orders of Protection")
3. Officers will advise the victim of the procedures and remedies available under the Family Violence Protection Act, i.e., the right to file a written statement or request for an arrest warrant, and the availability of domestic violence shelters, medical care, counseling, other services, and the importance of preserving evidence.

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4. ~~Upon request of the victim, the officer shall make reasonable efforts to arrange for transportation to a shelter, safe refuge, or medical facility, for victims of domestic abuse. When it is possible, and the Sheriff's Department is available, arrangements can be made for transportation to destinations substantially outside the city limits but within Bernalillo County. A reasonable effort to resolve the situation locally is sufficient until other arrangements can be made at a more appropriate time.~~
5. ~~Police Service Aides should be utilized whenever possible or practical. However, it is the officer's responsibility to make sure that the mandate of the court is carried out.~~
6. ~~Officers shall, upon request of the victim, accompany the victim to the victim's residence to remove the victim's clothing and personal effects required for immediate needs and the clothing and personal effects of any children in the care of the victim.~~
7. ~~Officers shall enforce the provisions of custody as outlined in the court order that may include removing a child or children from the non-custodial parent or guardian.~~
8. ~~Officers shall, upon request of the victim, assist in placing the victim in possession of the dwelling or premises or otherwise assist in execution or service of an order of protection.~~
8. Arrests are not mandatory. Absent exigent circumstances, officers shall only arrest the abusing household member or predominate aggressor only when other measures listed above will not reasonably protect the victim from further domestic abuse.
11. appropriate. Determining whether to issue a summons or effect an arrest:
9. a. Not every DV call need result in the issuance of a summons or arrest.
 - a. As stated in the Warrantless Arrest Act, Section 31-1-7, NMSA 1978, officers may arrest a person without a warrant when the officer is at the scene of a domestic disturbance and has probable cause to believe that the person has committed an assault or battery upon a family or household member.
 - b. Officers shall only arrest the alleged offender where it has been determined arrest is reasonably necessary to protect the victim(s) from further domestic abuse.
 - c. When an arrest is made, officers shall charge domestic violence offenses under the Assault Against a Household Member Section 30-3-12, NMSA

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- 1978, and Battery Against a Household Member Section 30-3-15, NMSA 1978. These laws can be used even when no order of protection exists. This does not preclude the application of felony charges arising out of domestic violence incidents, if and when such probable cause exists. If felony charges are appropriate, the arrest and applicable charges will be handled by SOP 2-14, or NMSA 1978 as applicable.
- ~~b.d. If an arrest is appropriate, but cannot be reasonably effected at the time of the incident, a summons will be issued by the responding officer(s). Summons cannot be issued for both parties arising out of the same incident.~~
- ~~c.e. If issuing a summons or effecting an arrest, it is incumbent upon the officers at the scene of a domestic violence incident to determine the predominant aggressor and then effect an arrest (or issue a summons if appropriate) for the applicable party.~~
- d.f. Dual arrests shall not be made for domestic violence offenses. Summons cannot be issued for both parties arising out of the same incident.

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e.g. When an arrest has been made under this section, but the offender is taken to the hospital for treatment, an officer will stay with the prisoner until the prisoner can be transported to the Metropolitan Detention Center or PTC and booked. Hospital holds will not be placed on prisoners arrested under the Family Violence Protection Act (Domestic Violence), even when the applicable charges involve only misdemeanor offenses. The transporting officer is responsible for remaining with and guarding the prisoner.

10. Officers shall complete a standard Albuquerque Police Department offense and incident report on all domestic violence investigations.

11. Criminal Complaints

When a subject is arrested for a charge committed by a household member against a household member, the arresting officer shall list the charge in the "Charges" portion of the criminal complaint as a domestic violence incident. For example, when a household member is charged with battery against a household member (30-3-15) and harassment (30-3A-2), the "charges" portion of the complaint should read "Domestic Violence, Battery against a Household Member, Harassment". The bottom of the complaint where each section is listed, should read "31-1-7, 30-3-15, 30-3A-2". This procedure shall be followed for all domestic situations where an offender is arrested or summoned following a domestic violence incident.

12. Officers will not offer or accept any waivers of prosecution in any domestic violence case.

13. Handwritten statements from the victim(s) and witness(es) will be obtained at the scene, whenever possible.

a. Officers shall scan all domestic violence statements to be included with their report. The handwritten statement will be turned into the supervisor to be logged and sent to Report Review

14. Any visible injuries relating to the battery shall be documented and photographed to be used as evidence for prosecution whenever possible.

15. Officers shall have available and provide to victims the necessary court petition forms and instructions (Domestic Violence Packets) for their completion. These forms are available in both English and Spanish.

16. All officers should utilize the following guidelines in determining the need to locate and arrest an offender in domestic violence.

a. If an offender is still at or near the scene of a domestic violence case, the officer shall, when arrest is reasonably necessary to protect the victim from further domestic abuse, make every reasonable attempt to place the

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offender under arrest, rather than merely issuing a criminal summons, where there is probable cause to believe that the person has committed an assault or a battery upon a household member.

- a. :
- b. If an offender has fled the scene of a domestic violence case, before officer's arrival, and cannot be located at or near the scene of the domestic violence, a summons or warrant will be issued for the offender.
- c. Officers should take whatever steps that are reasonably necessary to protect the victim from further domestic abuse that may include writing an arrest warrant.

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17. On all domestic violence calls when an officer requests authorization to change the call to something other than a domestic violence, the supervisor will conduct a thorough investigation before granting the change. Additionally, the officer will supply sufficient remarks in the "added remarks" to justify the change in the status of the call.

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G. Encountering and Assisting Individuals with Behavioral Health Issues on a DV Call

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1. All Officers who respond to domestic disturbance calls must familiarize themselves with SOP 2-19: Response to Behavioral Health Issues
2. If an officer is called to a domestic disturbance and is informed by dispatch or discovers through investigation that the individual whose behavior, criminal or otherwise, appears to stem from a behavioral health disorder, the Officer shall:
 - e. Immediately call for assistance from an Enhanced Crisis Intervention Team (ECIT) officer
 - f. If the situation is determined to be a crisis, request a mMobile eCrisis iTeam (MCT)
 - g. While waiting for an eECIT officer, MCT, or supervisor to arrive, Officers shall de-escalate and calm the situation as much as possible. See SOP 2-19-7.
 - h. If a MCT is not available and the Officer believes the individual to be a danger to themselves or others, the Officer may transport the individual to UNMH or another available mental health evaluation facility. See SOP 2-19-8: NMSA 43-1-10.
 - i. Officers shall reasonably accommodate the disabilities of an individual who either has a behavioral health disorder, or is perceived to have a behavioral health disorder.
3. Officers shall not transport an individual whose behavior, criminal or otherwise, appears to stem from a behavioral health disorder, to MDC or PTC solely for the purpose of getting mental health treatment for the person. Mental health evaluation and treatment facilities may be used for that purpose.
4. An Arrest or charge is not necessary to transport the person to UNMH or other mental health treatment or evaluation facility if the individual who has or appears to have a behavioral health disorder or who is experiencing a behavioral health crisis presents a likelihood of serious harm—danger—to themselves or others, including danger to himself/herself due to grave passive

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neglect, and that immediate detention is necessary to prevent such harm - NMSA 43-1-10

5. If an individual's apparent criminal behavior appears to stem from a behavioral health disorder and he or she would be better served at a treatment location rather than in a criminal justice setting, Officers should seek such interventions in lieu of arrest or criminal charges. See SOP 2-19-8(C).
6. Officers shall not arrest individuals who have or appear to have behavioral health issues solely because they are resisting the assistance of their friends, family members, care givers, or officers, unless exigent circumstances are present and transporting the individual to a treatment location would be inappropriate.

H. Victim Notification

1. The arresting officer at the scene of a domestic abuse incident will ask the victim the following:
 - a. The telephone number and email address where she/he may be contacted personally.
 - b. If a telephone number is not available, a telephone number where a message can be left for the victim to provide notification of offender release.
 - c. The officer will get an address where notification can be made.
2. The arresting officer will complete the Victim Notification Information Worksheet (PD 3075) and telephone the New Mexico Offender Release Notification System at 768-CARE (2263) with the telephone number(s) and/or address(es) where the victim can be notified.
3. The arresting officer shall complete the Albuquerque Police Department Pre-booking worksheet (PD 3068). This worksheet contains a section for the Domestic Violence Notification ID# and the CADS number.
4. Upon notification by MDC to the Albuquerque Police Department's Emergency Communications Center that the offender is released from custody, the Communications Center will make every reasonable attempt to notify the victim in accordance to the information provided by the arresting officer.
5. In the rare case where no telephone is available, Emergency Communications will create a 10-10 event and dispatch an officer to make notification at the victim's location.

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Replaces: 06/03/15

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POLICE OVERSIGHT BOARD
INTERNAL AFFAIRS
STATISTICAL DATA FOR THE MONTH OF JULY 2017

APD 911 Communications Center

Dispatched calls for Service for JULY 2017: **46,718 (increase from June (1,782))**

INTERNAL CASES FOR THE MONTH OF JULY 2017

I's

Total Internal Cases Completed the Month of JULY: 8

Comprised of:

- **6-Internal Affairs Investigations**
- **2-Area Command Investigated cases**

Discipline imposed for Internal Cases/ JULY 2017:

2:Letter of Reprimand – Supervisory Leadership, Conduct

1: 8 hour Suspension – Use of Force

1: 80 hour Suspension – Conduct

1:Resignation in Lieu of Termination – Conduct

EIS JULY 2017: 19 Alerts distributed

Pending IA Cases for the Month of JULY 2017:6*

***Is related to the number of cases opened within JULY**

Attachment "D"

1 Section 2. That a new Section 14 shall be added to Chapter 2, Article 1
2 ROA 1994 reading as follows:
3 "§ 2-1-14 PRIORITY OF APD FUNDING. Effective July 1, 2018, and every
4 year thereafter, the City Council shall make its first priority providing funding
5 to fully staff the Albuquerque Police Department. Each year the Council shall
6 provide in the City's annual operating budget sufficient funding and programs
7 necessary to recruit and retain the number of officers necessary to fully staff
8 the Albuquerque Police Department."
9 Section 3. SEVERABILITY. If any section, paragraph, sentence, clause,
10 word or phrase of this Ordinance is for any reason held to be invalid or
11 unenforceable by any court of competent jurisdiction, such decision shall not
12 affect the validity of the remaining provisions of this Ordinance. The Council
13 hereby declares that it would have passed this Ordinance and each section,
14 paragraph, sentence, clause, word or phrase thereof irrespective of any
15 provision being declared unconstitutional or otherwise invalid.
16 Section 4. COMPILATION. This ordinance shall be incorporated in and
17 made part of the Revised Ordinances of Albuquerque, NM, 1994.
18 Section 5. EFFECTIVE DATE. This Ordinance shall take effect five days
19 after publication by title and general summary.

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