



## POLICE OVERSIGHT BOARD POLICY AND PROCEDURE REVIEW SUBCOMMITTEE

Thursday, December 21, 2017 – 5:00 p.m.  
Plaza Del Sol Building, 600 2<sup>nd</sup> Street NW  
3<sup>rd</sup> Floor Small Conference Room

### Members Present

Dr. William Kass, Chair  
Susanne Brown  
Eric Cruz  
Valerie St. John

### Others Present

Edward Harness, Exec. Director  
Diane McDermott  
Maria Patterson

### Minutes

- I. **Welcome and Call to Order:** Subcommittee Chair Kass called the meeting to order at 5:00 p.m.
- II. **Approval of Agenda:** Copies of the agenda were distributed. Subcommittee Member Cruz made a motion to approve the agenda. Subcommittee Member Brown seconded the motion. The motion was carried by the following vote:  
**For: 4 – Brown, Cruz, Kass, St. John**
- III. **Approval of the Minutes:**
  - A. Minutes for November 30, 2017
    - i. A motion was made by Member Cruz to amend the November 30, 2017 Policy Subcommittee Minutes to read that Member Cruz abstained from voting on item III. A. 2. because he felt he should not vote on a conversation he could not hear well. Member Cruz also asked for his abstention from the item IX vote to be noted. After reviewing a recording of the November 30, 2017 meeting the minutes were amended appropriately. Please see Appendix A, item 2 of November 30, 2017 minutes for further explanation.
    - ii. Subcommittee Member Cruz motioned to approve the minutes as amended. Member St. John seconded the motion. The motion was carried by the following vote:  
**4 – Brown, Cruz, Kass, St. John**
- IV. **Public Comments** – There was no public comment.
- V. **Discussion of Practical Guide to POB Policy Recommendations**
  - A. **Discussion of Chair Kass’s Practical Guide to POB Policy Recommendations. See attachment “A.”**

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- i. **Summary.** In response to the discussion at the December 14, 2017 POB meeting, Chair Kass wrote up a potential guide for making policy recommendations. To summarize, he looked at the ordinance, SOPs, and APD's policy process in order to identify and distinguish between different types of recommendations.
- ii. **Categorization.** In the document these types are further clarified.
  - a. Type 1 changes are the ones that APD makes and though we can be present we have more of an advisory role. It is determined by an SOP and changed internally.
  - b. Type 2 changes are those related to the CASA.
  - c. Type 3 changes are the formal recommendations with a process that includes research, discussion with the Policy Subcommittee, and decide what we want to propose to the full board and get majority board approval.
- iii. **Ordinance.** Chair Kass feels that most of the ordinance changes are Type 1 changes because they are prescribed by the ordinance and the challenge lies in getting APD to adopt those changes.
- iv. **Response.**
  - a. Director Harness stated that this document makes sense in terms of the way that APD policy is developed now, however he recently met with the director of the CAO and it sounds like they are going to completely change the process of APD policy implementation.
  - b. Director Harness clarified that in the case of an individual making a suggestion the distinction is whether it's a representative of the aboard or just as a representative in APD's body who is on the board. The key is communication and feedback however APD does not always inform the board when they are supposed to.
  - c. Member Brown asked if APD's policy committees are named in the ordinance. Director Harness replied that the language used in the ordinance is "policy-making bodies," which is appropriate.
  - d. **Discussion of Policy Language.** Member Brown commented that the language of APD's policies are laborious compared to that of other jurisdictions, including some of the CASA-related ones such as the Use of Force policy. Director Harness agreed that it was written with risk management and that the Use of Force policy should be redone.
  - e. **Back to Types.** Member Cruz asked about how the categorization of policy recommendations and how policies will filer up to the board. Chair Kass replied the board



- would not have to do anything with type 1 policies and would not even track them.
- f. **Clarification.** Member Cruz then clarified that the point of the document was to organize at the subcommittee level by categorizing the policies and then only tracking types 2 and 3.
  - g. **Scope.** Member St. John wanted to make sure that the process would stay thorough enough that no important policies slipped through the cracks. On the other end, Member Brown warned against making the process so cumbersome that it precluded the board from being at the table at the right time.
  - h. **CASA-related Policies.** Chair Kass suggested a less thorough approach to CASA-related policies. Director Harness countered that the board can be proactive and drive policy changes in CASA-related policies. Additionally, the DOJ wants 3-52 to include the board reviewing and commenting on a policy before it goes to the monitor.
  - i. **Board member expectations.** The committee discussed how much research board members should reasonably be expected to do. Ms. McDermott suggested that the board discuss a concept as a committee and bring it to the board and if there are remaining details then staff can help.
  - j. Member Brown asked how APD policy procedure will change. Director Harness replied that they do not yet know what it will look like, but the DOJ did say that the policies, once amended, should come to the POB for review and comment before going to the monitor.
  - k. Member Brown felt it was important to at this point determine which types of policy recommendations should be presented to the board in detail and which should be passed on. Director Harness noted that the DOJ is not committing the board to a 30-day turnaround.
  - l. **The Board's Role.** Chair Kass argued that the board needs to set an objective standard to organize cases. Director Harness reminded Chair Kass that the board is asked to review policies as citizens, not policy experts. Additionally, the board only has to make a recommendation.
  - m. Chair Kass wondered how far they can and should take a recommendation. Director Harness summarized the process, explaining that the department has 45 days to say yay or nay and if they don't accept the recommendation with an

- explanation then the board can do more research and bring it back or go to City Council.
- n. Member Brown noted that it would be nice if, when a policy was brought to the board, it had already been researched and a justification for the policy as well as a list of alternative practices was included. Director Harness replied that he had already made that suggestion to the CAO.
  - o. **Prioritization Process.** Chair Kass noted that the subcommittee needed to figure out which policies the subcommittee wants to prioritize and how far the board should take their recommendations.
  - p. Member Cruz suggested going through the list of policies and voting on which type each policy is.
  - q. Ms. McDermott suggested using what the CPOA consistently finds in complaints to guide the committee in deciding which policies to research.
  - r. Chair Kass wondered about the workload and what the time commitment should be. Member Cruz stated the committee could always leave something on the back burner in order to address high-priority concerns first.
  - s. Member Brown noted that it is too difficult to predict what policies will come up and when.
  - t. Edward Harness noted that as far as research goes, Miriam can synthesize research and put together a presentation in an hour for a subcommittee so that members do not have to do as much research.
  - u. **Motion.** Member Brown restated that they needed to find a way to prioritize recommendations. Member Brown motioned to focus on all the CASA-related policies in addition to the 10 to 15 policies the staff comes up with based on complaints.
  - v. Member Brown clarified that she loosely defines “focus on” as looking at the policy more closely, perhaps having Miriam research it, and then recommending the policy to the board.
  - w. Member St. John recommended they amend the motion to read “referred from the staff” and don’t include a number. Member Cruz added the motion should read, “whatever referred from the staff is what we will prioritize and take up to the board.”
  - x. Chair Kass sought further clarification regarding what exactly is taken to the board. Member Brown clarified that it would be the equivalent of level 2 and 3 cases in Chair

Kass's document, though the language from the document had not been formally adopted.

- y. Chair Kass asked for the motion to be restated. Ms. Patterson read the motion: "The Policy and Procedure Subcommittee will prioritize and take to the board CASA-related policies and policies referred by staff."
- z. Member Brown suggested that they save the mechanics of the motion for a later discussion. Cruz agreed that they have scope now and after that the subcommittee can break down the implementation process. Cruz seconded the motion. The motion was carried by the following vote:  
**4 – Brown, Cruz, Kass, St. John**
- aa. **Timeline.** Member Brown asked Director Harness if there would be any clue as to what policies will be coming up for discussion when. Director Harness stated that he did not, and Ms. Nair she had no idea even what the policy development process was.
- bb. Member Brown asked for Director Harness to help solve the problem of not having enough notice for upcoming policies. Member Cruz noted that they could put a desire for notice in their M.O.
- cc. Ms. McDermott and Director Harness noted that all the cases are on a one-year review cycle however there is no obvious logic to the order in which they are addressed.
- dd. Chair Kass noted that the discussion was moving into the territory of agenda item VI: Discussion of APD Policy Process.
- ee. Member Cruz asked if he was suggesting tabling the conversation and Chair Kass made the argument that at this point the subcommittee needs to know what APD's policy is and how the subcommittee can best affect it.

**VI. Discussion of APD Policy Process (SOP 3-52)**

- A. The subcommittee informally transitioned into a discussion of APD Policy Process.
  - i. **OPA Timelines.** Director Harness suggested that, at this point, the OPA timeline is the best the subcommittee has at this point. Ms. McDermott added that they can use that to figure out what is coming up soon.
  - ii. Chair Kass said he thinks this process would work better if it melded more closely with APD's process. However, APD's process is likely to change.
  - iii. Member Brown noted that even though the subcommittee knows what policies will be discussed in OPA or PPRB meetings, the

notice only a week. Ms. McDermott reminded Member Brown that the DOJ monitor has not tied the board to a strict 30 day timeline.

- iv. **Opportunity for Improvements.** Chair Kass suggested this is an opportunity to change how they learn what policies APD is going to present and it would be advantageous to decide what an appropriate amount of notice is and then lobby to get that notice.
- v. **Prioritization and Timeline.** Chair Kass showed the subcommittee an internal development process document from APD that lists SOP start dates and what stage they are in. Ms. McDermott suggested they use the list to pick policies to deal with and in what order, even if the timing is not always correct.
- vi. Chair Kass argued that the easiest way to be on the same page is to talk to APD and use their paper as a guideline to get more details about what they are planning.
- vii. Member Cruz made the point that the subcommittee needs to have a backup plan in case such a timeline no longer exists in the future. Member Brown added that the board has had access to schedules like this in the past only to have them disappear without notice.
- viii. Ms. McDermott suggested again that they not worry about the schedule too much because there is no way of knowing if the policies will actually come up when they are supposed to.
- ix. Chair Kass asked if that meant the subcommittee has an opinion about all of the policies without knowing how APD might modify them. Ms. McDermott restated that the subcommittee simply needs to look at the policies conceptually and if a policy doesn't sound right to the subcommittee as a citizenry, then the board can research the policy. It is possible that in that time APD may have already made the same changes to that policy.
- x. **Resulting Action.** After more discussion of the APD internal development process document, Director Harness suggested contacting Vicki Durham and asking for an updated timeline.

**VII. Discussion of Office of Policy Analysis (OPA) Agenda Item 2-92 CYFD Policy (on the agenda as item VIII)**

- A. Director Harness reminded the subcommittee that there is an OPA meeting on January 10 with two notable policies on the agenda: crimes against children and the juvenile section. Director Harness has arranged for Paul Skotchdopole to be at the OPA in order to make his suggestions based on the Martens case.
- B. **Email Chain.** Chair Kass read an email chain from Adam Garcia that outlined potential changes for CYFD.
  - i. The first email was sent by Jeremy McCray to Bill Swanson on November 15 about suggestions the Chief has about the policy process regarding CPC-93-17.

- ii. The second email was from Richard Evans to McCray, Swason, and Garcia and noted that Sgt. Evans was working to have the CYFD policy changed. He hoped to start this process by the start of 2018.
  - iii. The third email, from Bill Swason to Evans, McCray, and Garcia, suggested that this would be a perfect topic for OPA.
  - iv. The fourth email was from Jessica Tyler and said yes, it needed to be reviewed by OPA.
  - v. The fifth email was from Vicki Durham to Sgt. Evans. It suggested they put the policy on the OPA agenda for January 2018.
  - vi. The sixth email, from Sgt. Evans to Vicki Durham, agreed that it should be on the January 2018 OPA agenda.
- C. Agenda.** Member Cruz asked if there were any voting items left in the agenda. Chair Kass thought there might be and introduced the next topic of discussion.

**VIII. Proposed Changes to SOPs 3-41, 3-44, 3-4 (on agenda as item VII)**

- A.** Chair Kass explained that Ms. McDermott has written some language that they propose to incorporate into SOPs 3-41, 3-44, 3-4 in order to implement some of the provisions of the ordinance the subcommittee has discussed.
- B. 3-41. (See attachment “B”)**
- i. Ms. McDermott explained that she looked at what the ordinance says and what APD’s requirements are and then incorporate them into these three policies. Her suggestions are in red.
  - ii. **3-41-4 Procedures.** Member Cruz had a question about E. 3. g. and asked about reviewing Garrity Materials. Director Harness replied that it was adopted in the ordinance change in June of 2015 so members can review Garrity Materials in accordance with the ordinance.
  - iii. Member Cruz also noted that there is a typo in H. 2.
  - iv. Director Harness said he would get his corrections to Ms. McDermott later.
  - v. Member Brown wanted to add a statement about collecting data on the effects of these policies in 3-41-1, the purpose paragraph. Director Harness added that they would then need to add paragraphs about the data that will be collected and how to collect it.
  - vi. Member Cruz asked if the data collection statement could be added to any other SOP. Member Brown replied, this is the policy in front of them now and if it turns out to be redundant, Member Brown is fine with removing it later.
  - vii. Member Brown also suggested “chain of command be defined, but Director Harness and Ms. McDermott replied that it is define in other places and the definition may change.

- viii. Member Brown pointed out that in the retaliation policy, “group” is written in item 3 but is left out of item 4 and needs to be fixed.
- ix. Member Brown asked about how case numbers are assigned and Director Harness replied that this is no longer a concern now that they have IA Pro.
- x. Member Brown was also concerned about referrals of complaints where criminal activity is found. Director Harness explained the process and confirmed that this process is partially described in the policy, though the policy does not cover the role of NCIC. Member Brown recommended they think about adding that.
- xi. Member Brown recommended that on the last page under required examinations they put that employees and sworn officers are required to go for ETOH substance testing after traffic accidents and discharging weapons.
- xii. Brown’s final note was that the document is lacking a process for investigating complaints about policies. Ms. McDermott replied that they could add that as a new disposition—“failure of policy”—and noted that it would have to be a CASA modification as well.
- xiii. **Planning and Timeline.** Chair Kass asked how they should handle incorporating the changes. Director Harness suggested that the members submit any proposed language for the policy to him within two weeks.
- xiv. **Next Steps.** Chair Kass asked if they would take this to the full board. After a discussion, the subcommittee agreed that they would take it to the full board.
- xv. Member Brown made a motion that the amended changes from Brown and McDermott be tuned up by Director Harness and submitted to the board for approval at the January POB meeting. Cruz seconded the motion. There was no further discussion. The motion was carried by the following vote:

**For: 4 – Brown, Cruz, Kass, St. John**

**C. Agenda Amendment.** Member St. John suggested that the subcommittee amend the agenda due to time constraints.

- i. Member St. John motioned to table the rest of the item VII and all that follows in the agenda excepting the report from Director Harness. Brown seconded the motion.

**For: 3 – Brown, Kass, St. John**

**Opposed: 1 – Cruz**

- ii. Cruz opposed the motion because he did not want to table essential aspects of the meeting such as setting the next meeting date and adjournment.



- iii. Member St. John amended the motion to also exclude items XI and XII and the rest of the subcommittee members agreed. There was not a second formal vote.

**IX. Report from CPOA - Edward Harness**

- A. Meeting with CAO.** Director Harness met with the new CAO, Sarita Nair, and Elizabeth Martinez. Director Harness learned that the administration is exerting a lot of control over APD and that it appears the current policy process is going to be scrapped.
- B. The CPCs.** Director Harness clarified for the CAO that the CPCs are the city's responsibility, not APD's. There is now a position to support the CPCs and the position is going to be moved from APD to some other city department to remove it from APD's influence.
- C. Brainstorming Session.** The planned summit has been converted to a brainstorming session hosted by the DOJ. The brainstorming session still occur on January 17<sup>th</sup> at 6:00pm in the DOJ building. It is open to board members but not to the public.
- D. City Convention.** The POB and CPOA will need to attend a city-wide event for all of the city departments. City employees will be able to attend facilitated discussions about areas of concern. This will occur at the convention center sometime in February.
- E. Data Analyst Contract.** Director Harness wondered if the CPOA will have to take legal action against the City for standing in the way of the CPOA getting the data analyst contract signed. He has made Matt Jackson aware of the problem to see if the City is improperly impeding the CPOA.
- F. CPCs and Deputy Chief Medina.** Director Harness attended the Northwest CPC and was very impressed with what Deputy Chief Medina had to say. Chair Kass saw him at the Foothills CPC. There is no CPC for tonight for Southeast and no CPC for Valley next Thursday.

**X. Other business.** None. Member Cruz moved to adjourn, Brown seconded the motion. Member St. John reminded them they did not reach that item of the agenda yet.

**XI. Next Meeting:** The next meeting will occur on January 18, 2018 at 5:00 p.m.

**XII. Adjournment:** Subcommittee Member St. John made a motion to adjourn the meeting Member Cruz seconded the motion. The motion was carried by the following vote:

**For: 3 – Brown, Cruz, Kass, St. John**

Meeting adjourned at 6:53 p.m.



Approved by:  
William Kass, Chair  
Policy Review Subcommittee

18 Jan 2018  
Date

CC: Julian Moya, City Council Staff  
Trina Gurule, Interim City Clerk  
Isaac Benton, City Council President

Minutes drafted and submitted by:  
Maria Patterson, Temporary Administrative Assistant

# **Attachments**

I would like to emphasize that the following document is substantially my own opinion based on my reading of the CABQ oversight ordinance and understanding of the APD policy process. I suggest that this document can be a starting point for discussion in the Policy and Procedures Recommendation Subcommittee and welcome the insight and expertise of CPOA staff and POB members.

#### Practical guide to POB policy recommendations

In its creation by city ordinance (Ordinance 2014-019), the POB was tasked with spending a majority of its time to “review and analyze policy suggestions, analysis, studies and trend data collected or developed by the administrative office and shall by majority vote recommend policies relating to training, programs and procedures or other matters relating to APD”. The following is an attempt to describe the policy process as it exists at APD and then explore the relationship of the CPOA/POB to this process.

#### Description of APD policy process

APD uses standard operating procedures to define processes that comprehensively describe and regulate APD functions. They fall into three general categories: 1-xx General Orders Manual; 2-xx Procedural orders manual; 3-xx Administrative orders manual. These SOPs are owned by APD and APD controls of the processes of writing, reviewing, approving and implementing them.

When the City of Albuquerque entered into the CASA, the independent monitor team was tasked with guiding APD to write new SOPs and rewrite many existing SOPs. The focus of SOP writing was around use of force processes and there was significant pressure to complete writing of SOPs to allow subsequent training to the new SOPs followed by field implementation of the training. This occurred simultaneously with APD creating a new process to write/rewrite SOPs. This process is described in another SOP – 3-52.

SOP 3-52 describes a detailed process that involves review by the Office of Policy Analysis (OPA), SOP Review Committee (SOPRC), Policy and Procedure Review Board (PPRB), CABQ attorney, CASA applicability, the chief of police, and others. In the case of CASA related SOPs there are also timelines and requirements to periodically review certain SOPs. These steps are outlined in a flow chart in SOP 3-52.

SOP 3-52 is significant because it introduces the CPOA into the APD SOP process. Exactly how CPOA is supposed to participate has been the subject of discussion since the creation of the CPOA. APD's

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## **Attachment “A”**

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position was that the CPOA should be treated as another stakeholder among a group of community stakeholders. APD suggested that CPOA submit recommendations on the same form provided for the public and get in the same queue.

The DOJ has opined that CPOA/POB needs to have a greater role in the APD SOP process than it has currently. In my opinion, APD, the CABQ attorney's office, DOJ and CPOA need to create a working group to iron out in more detail how the CPOA should participate. With the new city administration, I believe this will occur soon.

#### Type of APD policies

As a starting point for discussion about how the CPOA should direct its policy recommendation efforts, a working definition of categories of SOPs is suggested. There is overlap in many cases between categories and may require that SOPs be examined in detail for content. It should be a subject for discussion by the CPOA whether these are useful definitions or can be modified to be useful.

1. APD internal. SOPs that guide the internal functions of APD such as dress code, equipment, ...
2. External agencies. SOPs that implement laws, and ordinances and describe enforcement methods.
3. CASA related – SOPs that deal with use of force, crisis intervention, reviewing, training, reporting and other activities mentioned in the CASA.
4. CPOA related SOPs which mention the interaction of APD with the CPOA; SOPs which are implied or expressed by the CASA that require the CPOA to do something which in turn requires APD cooperation; and SOPs that impact continued oversight after the CASA requirements are satisfied.
5. Other

#### Sources of SOP Changes

Modifications to the SOPs can be triggered internally within APD or through external processes. I make this distinction for a couple of practical reasons. APD already has an obligation to make their SOPs work in their capacity as a government agency so the change process to SOPs is or should be a permanently embedded part of APD's function. The second practical reason is that APD is defended against responding to external pressures to make changes.

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APD policy changes leading to adopting best practices or updates to practices;

law or ordinance implementation (Police Oversight Ordinance re CPOA);

CASA required changes

In the case of internal triggers, APD is answerable to the Mayor who can set policy and to the legislative branches of government that write legislation that APD must enforce. CASA required changes are considered internal but temporary for this discussion since the CASA compliance monitoring will end after the CASA terms are met.

External:

CPOA initiated policy recommendations based on observations, community input, trend analyses, ...

Public input

Other

CPOA Recommendations

For the CPOA to meet the requirement that it make policy recommendations, it must have a means by which to do so. First, we must address how the CPOA/POB can actually make a recommendation.

That starts with APD's policy process. I believe that the authority granted in the ordinance to the CPOA should allow the CPOA to identify the appropriate SOPs and submit suggested changes to APD which APD would implement through their process to accommodate CPOA's oversight function.

Recommendations that implement the ordinance provision should trigger the same obligation that APD has to implement any new law or ordinance. The CPOA role is to identify those SOPs that it thinks are critical to its function.

Modifications to the SOPs to implement the ordinance requirements can be done within the existing SOP process. For future recommendations to proceed, I think the SOP 3-52 process should be refined through the working group mentioned above.

## **Attachment "A"**

Purpose for the CPOA to make recommendations

As mentioned earlier the CPOA has the obligation to make policy recommendations. We need to discuss what kind of policy recommendation we want to make. As a starting point, we need to define our organizational goals and then the processes required to meet our goals. I think this is a subject that needs full board discussion and I want to defer that for now.

For further discussion, I suggest the following definitions:

A Type I recommendation is a voluntary recommendation made by the CPOA to an APD initiated policy review. A Type II recommendation is associated with a CASA related policy. A Type III recommendation is a researched proposal that has been reviewed and approved by a majority vote of the POB board.

Here are some suggestions for our role in the policy process.

We can monitor and recommend changes (Type I) to policies initiated within the APD process by attending OPA and PPRB meetings and through participation in the SOPRC. POB members and CPOA staff have membership on these committees and the staff has the expertise to monitor critical policies related to the CASA (Type II). If the POB decides it would like a report of these meetings, some of which do not have minutes recorded, it should have a discussion with the CPOA director to determine if resources are available to create such reports.

We can make policy recommendations (Type III) based on research, analysis, and community input. The Policy and Procedure Review Subcommittee (PPRS) has developed a process that outlines the steps involved. The process starts with an idea from APD data, POB member observations or community input followed by research into best practices and other available criminology data. The POB champion of this recommendation writes a proposal which is reviewed by the PPRS and presented to the POB for further review and approval. The recommendation is then submitted to APD.

#### POB Strategy

I hope that this memo addresses some of the concerns raised at the recent POB meeting regarding POB policy recommendations. In my opinion, the POB does not need to review or approve Type I or Type II recommendations. These recommendations are presented dynamically at reviews initiated by the APD or required by the CASA. The POB needs to be aware of these activities and may have an obligation to review or approve decisions as a representative of the POB on an APD policy board.

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#### Attachment "A"

In my view, previously identified sections of the Oversight Ordinance requiring APD cooperation through changes in the SOPs are Type I recommendations and should not require that the POB approve them. It is the responsibility of the PPRS with the help of CPOA staff to identify the appropriate SOPs, suggest the language to add and introduce these recommendations to the APD process. The analysis identifying the need for ordinance related APD contacts, information, access, training, etc. was first presented to the PPRS at the July 20, 2017 meeting and again in more detail on August 17. Since that time several SOPs have been identified for change based on the preceding ordinance analysis.

Recently, the PPRB initiated a review of a CASA related SOP (3-41 Complaints Involving department policy or personnel). This SOP requires APD to provide data to the CPOA and is an opportunity to add language to specify details of APD's obligation. POB did not respond to this when it was on the November 30 agenda and review was postponed until the January meeting of the PPRB. We can provide the language at the next meeting and not delay the discussion. Since this is what I call a Type I recommendation, I don't think it should require approval of the POB. If we don't have the language ready, it does not impact APD's ability to meet their CASA related timeline requirements, it just means we must reintroduce the Oversight Ordinance related changes later.

Another Oversight Ordinance-related SOP has been identified by Director Ed Harness and Investigator Diane McDermott. It is SOP 3-44 "Review of completed administrative cases", to which clarifying language has been created by Diane McDermott regarding the CPOA role in use of force reviews, provisions to provide CPOA and POB members with reasonable access to premises, files, documents, etc., language to require that the chief respond to disciplinary recommendations within 30 days and other changes. This SOP was discussed in the September 28, 2017 meeting of the PPRS.

The POB member training required from APD could be introduced into SOP 3-4 "Professional Accountability Bureau" which deals in part with the APD Academy and training. In my opinion, this would also be a Type I recommendation. The appropriate language needs to be created by the PPRB and CPOA staff.

At the August 17 meeting of the PPRS, Investigator Paul Skotchdopole recommended changes to APD policy regarding CYFD handoff to APD resulting from his investigation into APD's role in the Victoria Martens case and Director Harness suggested that PPRS members look at the CYFD policy 2-92, "Crimes Against Children". This should probably be a Type III recommendation, requiring majority POB approval,

## **Attachment "A"**



but as I reported at the December 14 POB meeting, APD has now put this on the agenda for the next OPA meeting on January 10, 2018, prompted by Investigator Skotchdopole's report.

The POB does need to review and approve Type III recommendations. I have started a Type III recommendation which would make it a policy for APD to respond to all Priority 1 calls without using Code 3 protocol. Currently, this is in the early development stage. To receive more community feedback, I presented this as an example of a future possible recommendation that the POB could consider at a NE heights CPC meeting. I also made it clear that this was in the proposal stage and has not been reviewed or approved by the POB.

The POB policy recommendation process was developed in the PPRS (see the September 28, 2017 minutes of the PPRS) and presented earlier in a modified form to the POB at the September 21, 2017 meeting without the process flow chart. This process consists of conceiving an idea for a policy recommendation, conducting supporting research, airing the idea with the community (in the Code 3 case, it originated within the community), and holding discussions with APD officers and subject matter experts. More information can be found in the October 26, 2017 minutes of the PPRS.

For the future, I think the POB should discuss first, what resources are needed to meet the requirements of the ordinance and CASA and second, how to make recommendations that will be viewed as relevant to the public needs and our mission. This may require substantial resources and merits the attention of the full board. The effort to make serious policy recommendations is hampered by the lack of a data analyst. Without adequate research to support a proposal, it will be met with justified skepticism when introduced into the APD policy process.

I think from a practical standpoint if we can make a recommendation to APD through OPA or PPRB contacts that APD will adopt as its own idea, the chances of success are much greater with less expenditure of resources. The CYFD policy mentioned above is a potential example of that.

Making policy changes is much like writing legislation, especially if you are in a lobbying position akin to the position of the POB which can only make recommendations. APD makes and implements policy decisions. I think we should have a discussion of policy recommendation strategies keeping this framework in mind.

## **Attachment "A"**

ALBUQUERQUE POLICE DEPARTMENT ADMINISTRATIVE ORDERS

SOP 3-41 Effective: 06/02/16 Review Due: 11/29/16 Replaces: 05/05/16

**3-41 COMPLAINTS INVOLVING DEPARTMENT POLICY OR PERSONNEL**

**3-41-1 Purpose**

The purpose of this policy is to inform all employees and the public of procedures for accepting, processing, and investigating allegations of employee misconduct. The definitions, procedures, and rules outlined below are intended to provide guidance, clarity, and define responsibilities for the investigation of complaints. For additional information on Internal Affairs procedures, refer to the Internal Affairs Division (IAD) SOP.

**3-41-2 Policy**

The Department will ensure that all complaints concerning employee misconduct, policies, procedures, and tactics are thoroughly investigated. The Department will accept and fairly, impartially, and openly investigate all complaints of employee conduct to determine the validity of allegations and to impose any disciplinary actions that may be justified in a timely and consistent manner.

**3-41-3 Definitions**

**A. Apparent Criminal Misconduct**

Apparent criminal misconduct is an act or omission that violates United States or New Mexico State criminal codes, with the exception of minor traffic violations. Minor traffic violations are defined as violations of NMSA Section 66-7-1 et seq. except, Driving While Intoxicated (DWI), Reckless Driving, Leaving the Scene of an Accident, and Vehicular Homicide. Parking violations are not apparent criminal misconduct.

**B. Complaint**

A report of an act or omission allegedly committed by Department personnel that constitutes a violation of Department policies, rules, or procedures, an alleged violation of local, state, or federal law, or an allegation that Department policies, procedures, and/or rules are deficient, defective in implementation or unconstitutional in practice. There are two types of complaints, civilian police complaints and internal complaints.

**C. Civilian Police Complaints (CPCs)**

1. Civilian police complaints are complaints originating externally from non-Department personnel.
2. All civilian complaints are forwarded to the Civilian Police Oversight Agency (CPOA) for investigation. The CPOA will investigate civilian complaints unless apparent criminal misconduct is identified by the CPOA.
3. Complaints indicating apparent criminal misconduct will be administratively investigated by IAD and, if appropriate, criminally investigated by the appropriate criminal investigative unit or agency.

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4. Civilian police complaints are assigned CPC numbers. The format is CPC, year, hyphenated unique six-digit number, for example, CPC16-123456.
5. CPOA policy and procedures are not governed by the Department; however, they follow the City Ordinance Section 9-4-1 et seq., Albuquerque Police Officers' Association Collective Bargaining Agreement (APOA CBA), and Department policy.
6. Civilian Police complaints may be resolved through mediation or investigation.
7. The Department will track allegations regarding misconduct involving civilians who are homeless and/or have behavioral health issues, mental illness or disorders, whether or not it is related to a complaint.
8. The information relating to alleged misconduct is obtained from the CPC form and tracked through the software programs IPro/BlueTeam.

#### D. Civilian Police Oversight Agency (CPOA)

The CPOA has the duty to independently investigate all civilian complaints.

#### E. Dispositions

The investigator will identify every applicable SOP section relevant to the issue raised in the complaint (issues of concern) during an investigation of misconduct and recommend one of the following dispositions for each allegation of misconduct in an administrative investigation.

##### 1. Unfounded

Investigation classification when the investigator(s) determines, by clear and convincing evidence, that alleged misconduct did not occur or did not involve the subject officer.

##### 2. Sustained

Investigation classification when the investigator(s) determines, by a preponderance of the evidence, the alleged misconduct did occur by the subject officer.

##### 3. Not Sustained

Investigation classification when the investigator(s) is unable to determine one way or the other, by a preponderance of the evidence, whether the alleged misconduct either occurred or did not occur.

##### 4. Exonerated

Investigation classification where the investigator(s) determines, by a preponderance of the evidence, that alleged conduct in the underlying complaint did occur but did not violate APD policies, procedures, or training.

##### 5. Sustained Violation Not Based on Original Complaint

Investigation classification where the investigator(s) determines, by a preponderance of the evidence, misconduct did occur that was not alleged in the original complaint (whether CPC or internal complaint) but that other misconduct was discovered during the investigation, and by a preponderance of the evidence, that misconduct did occur.

##### 6. Administratively Closed

Investigation classification where the investigator determines:

- the policy violations of a minor nature and do not constitute a pattern of misconduct (i.e. a violation subject to a class 7 sanction, with no other pattern or history of misconduct);
- the allegations are duplicative;
- the allegations, even if true, do not constitute misconduct; or

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the investigation cannot be conducted because of the lack of information in the complaint, and further investigation would be futile. Such complaints may be reopened if additional information becomes available.

**F. Formal Investigation**

A continuation of the preliminary investigation. In a formal investigation, the assigned investigator(s) will conduct and document formal interviews with fact witnesses, identify, collect and evaluate applicable evidence including written and other tangible materials, and compile the investigator's findings into a written report that includes a narrative, summary of the evidence, and dispositions.

**G. IAD**

Acronym for Internal Affairs Division.

**H. IAS**

Acronym for Internal Affairs Section. IAS is a section within IAD.

**I. Internal Complaints**

Internal complaints are complaints made by APD personnel alleging misconduct by another employee. An Internal Complaint ("I number") is assigned to internal investigations. The format for the internal complaint is a capital "I" followed by the last two numbers of the year then a hyphenated unique six-digit number, for example, I09 123456

**J. Investigator**

Any Department employee (IAD or Chain of Command), CPOA employee, or contracted external investigator charged with conducting an administrative investigation of either a CPC or internal investigation.

**K. Mediation**

Mediation is the process of resolving a conflict through discussion, negotiation and compromise, without formal investigation or fact-finding. Mediation is appropriate when a complaint does not present misconduct, but instead indicates interpersonal conflict or a civilian's misunderstanding of department policy and procedures.

**L. Misconduct**

A violation of departmental policies or procedures; violation of federal, state, or local criminal laws; constitutional violations, whether criminal or civil; violation of personnel rules; or violation of administrative rules or regulations.

**M. Preliminary Investigation**

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The initial inquiry into the nature of the complaint, the direction the investigation should take, and the identification of the resources needed to complete the investigation. A preliminary investigation shall be fully conducted to determine whether the complaint should be formally investigated by the chain of command, IAD, or may be resolved through mediation, or administratively closed. A CPC is forwarded to the CPOA without an IAD/APD preliminary investigation. The CPOA may conduct a preliminary investigation on a CPC.

### **3-41-4 Procedures**

#### **A. Anti-retaliation Policy**

1. Department personnel are required to report misconduct and to encourage members of the public to report misconduct in accordance with this policy.
2. Discouraging either Department personnel or members of the public from reporting misconduct is prohibited.
3. Department personnel may not take any intentional adverse action against any individual or group (including both Department personnel and members of the public), in response to that individual or group:
  - a. making or supporting a complaint; or
  - b. testifying, assisting, or participating in any manner with an investigation.
4. Retaliation includes, but is not limited to, threats, intimidation, coercion, or other adverse action against any person in the workplace or community.
5. Retaliation against personnel who report misconduct or who cooperate with an investigation of misconduct is grounds for discipline, up to and including termination of employment.

#### **B. Civilian Police Complaint (CPC) – Process**

##### **1. Resources**

All Department personnel will familiarize themselves with the resources available to assist civilians with their complaints against the department and/or its personnel. The resources are:

- a. The CPOA phone number is (505)924-3770.
- b. The CPOA website is <https://www.cabq.gov/cpoa>.
- c. The CPOA email address is [cpoa@cabq.gov](mailto:cpoa@cabq.gov)
- d. CPC forms and brochures in English and Spanish are located at all APD substations, libraries, IAD, community centers, APD headquarters, and the CPOA office.
- e. All officers in marked police vehicles will carry CPC forms in English and Spanish. Officers will provide the CPC form to anyone who indicates that they are making a complaint or would like to make a complaint regarding Department personnel or policy.
- f. Civilian complaints can be entered into BlueTeam software without needing the CPC form.

##### **2. Department Personnel Treatment of Complainants**

- a. Department personnel will professionally and courteously assist any civilian wishing to file a complaint.
- b. All civilian complaints will be accepted.
- c. Department personnel will notify a supervisor when a complaint is tendered.
- d. Department personnel will not discourage, intentionally misinform, or interfere with a civilian wishing to file a complaint.

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3. Telephone and In-Person Complaints at an APD Facility
  - a. When a member of the public makes a complaint at an APD facility, either in person or telephonically, the APD employee contacted by the individual will notify a supervisor, who will assume the complaint intake process, and speak with the complainant.
  - b. If a supervisor is unavailable, the APD employee will advise the civilian of the resources available to initiate an investigation into their complaint and, at the individual's option, assist them in completing a CPC form with as much detail as possible.
  - c. The APD employee will turn the CPC form over to a supervisor before the end of the employee's shift for routing to IAD.
4. In-Person Complaints in the Field
  - a. When a civilian contacts an APD employee in person wishing to file a complaint at a location that is not an APD facility, the APD employee will advise the civilian about the resources available for initiating a complaint, provide forms if the employee is near the employee's marked APD vehicle, and offer to contact a supervisor to come out and assist the complainant with filing a complaint.
  - b. The civilian has the choice of using the resources provided, or speaking with a supervisor.
  - c. The employee will notify a supervisor of interest in making a complaint even if the individual elects not to have a supervisor come out.
5. Written Complaints
  - a. Complaints received by mail, electronic mail, or facsimile will be promptly forwarded to a supervisor by the employee receiving the communication.
  - b. The supervisor will forward the complaint to IAD.
6. Complaints Related to a Judicial Proceeding
  - a. The IAD commander, at the direction of the Chief of Police, will annually notify the Chief Judges from the Second Judicial District and Metro Court and the District Attorney's and Public Defender's Offices of the complaint process.
  - b. Complaints received from any of these entities will be handled as a complaint from a civilian, directed to a supervisor for intake and routing to IA, and forwarded to CPOA within three business days for investigation.
  - c. If complaints relating to a judicial proceeding are made by an APD employee or an employee of the City Attorney's office, they will be investigated as internal complaints.
7. Third Party or Anonymous Complaints
  - a. A person is allowed to file a complaint on behalf of another individual.
  - b. A person is allowed to file a complaint even when the person had no direct involvement or physical contact in the incident the civilian is complaining about.
  - c. A person is also allowed to file a complaint anonymously.
  - d. These types of complaints will be investigated in the same manner as any other complaint.
8. Employees' Responsibilities for Civilian Complaints
  - a. Employees operating marked patrol vehicles will carry CPC forms in English and Spanish in their patrol vehicles, or if so equipped will print them on demand.
  - b. Employees will provide their name and identification number when requested by a civilian.

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- c. Employees will immediately notify a supervisor when a civilian requests a CPC form and immediately notify a supervisor when a civilian desires to make a complaint.
- d. Employees will fully cooperate with all civilian complaint investigations to include, truthfully answering all questions, providing requested City owned items/documents under their control, and reporting for interviews on time.

9. Supervisor Duties for Civilian Complaints

- a. For all complaints, supervisors will ensure that the CPC form is filled out as thoroughly as possible and hand delivered to IAD by the end of the shift following the shift in which the misconduct complaint was received.
- b. The supervisor will keep custody of all paperwork should the complaint occur during a holiday, weekend, or non-business hours, then ensure the complaint is delivered to IAD at the beginning of the first business day.
- c. If a supervisor is notified of a complaint about an allegation of misconduct that just occurred (i.e. the officer is still on the call or has just left the call or incident), the supervisor will take additional investigatory steps such as interviewing the complainant, gathering any relevant evidence (including tagging any relevant video for retention), identifying all potential witnesses, and identifying the employee(s) involved.
- d. A supervisor may use BlueTeam software in-lieu of a CPC form for entering a complaint. The supervisor will still forward all supplemental documentation and evidence to IAD by the end of the shift following the shift in which the misconduct complaint was received.
- e. A supervisor will immediately inform the chain of command and IAD when a supervisor is notified of an allegation of apparent criminal misconduct by a Department employee. The supervisor will still forward the complaint to IAD.
- f. Supervisors will respond to the scene when they are notified that a citizen has requested them. Employees will request their immediate supervisor to respond; however, when their immediate supervisor is unavailable, any other supervisor will suffice.

10. IAD Responsibilities for Civilian Complaints

- a. Ensure that all CPCs received are entered into IAD and an alert is sent to the CPOA no later than three days from receiving the complaint.
- b. Confirm that any video related to the complaint is classified for retention.
- c. APD shall provide POB members, the Director, and CPOA staff with reasonable access to APD premises, files, documents, reports and other materials that are reasonably necessary for the agency to perform thorough, independent investigations of civilian complaints and reviews of serious uses of force and officer-involved shootings.

C. Apparent Criminal Misconduct – Process

- 1. If IAD believes that a CPC indicates apparent criminal misconduct, they will notify the chain of command, but will still forward the complaint to CPOA.
  - a. IAD will consult with CPOA regarding the issue.
  - b. CPOA will transfer the case to IAD if the CPOA investigator concurs that there is an indication of apparent criminal misconduct.
- 2. If at any time during the intake process or investigation of misconduct complaint intake or investigation the investigator determines that there may have been criminal conduct by any employee, the investigator shall immediately notify the commanding officer of IAD.

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- a. If the complaint is being investigated by the CPOA, the CPOA investigator will transfer the administrative investigation to IAD.
  - b. The commander of IAD shall immediately notify the Chief.
3. For all cases indicating apparent criminal misconduct, IAD will assume administrative case responsibility and will ensure the proper criminal investigative unit or agency is notified to evaluate the case for a criminal investigation.

#### D. Internal Department Complaints – Reporting and Assignment

1. All officers and employees must report misconduct known to them by any Department officer or employee, including themselves, to a supervisor or directly to IAD for review and investigation.
2. When alleged misconduct is reported to a supervisor, the supervisor will immediately document the conduct and report this information to the IAD.
3. Failure to report or document alleged misconduct or criminal behavior will be grounds for discipline, up to and including termination of employment.
4. Any supervisor receiving an internal complaint (other than misconduct) will obtain sufficient information to assess the seriousness of the complaint and will determine if a non-disciplinary correction can be reached before initiating an investigation or referring the complaint to IAD.
  - a. Non-disciplinary corrections may be pursued for minor internal complaints such as personal conflicts, attitude complaints, minor social media violations, appearance, employee-supervisor conflict, or tobacco use.
  - b. Supervisors will contact the IAD lieutenant for questions concerning whether an internal complaint will be handled through non-disciplinary correction or formal investigation.
5. All internal department complaints will be investigated by an IAD investigator, a designated supervisor outside of IAD, or a contract investigator. The CPOA will not investigate internal complaints; however, the CPOA will audit and monitor all IAD investigations **or investigations by other APD personnel tasked with conducting administrative investigations related to a use of force incident,**
6. An internal complaint involving minor misconduct such as reporting for duty late or unprepared, missed court, or leave abuse, will normally be investigated by the chain of command.
  - a. An internal complaint requiring the interviews of multiple witnesses, multiple employees from various assignments, or extensive documentation retrieval, will be investigated by IAD.
  - b. The IAD lieutenant will determine if a case is to be investigated by IAD or the affected chain of command.
  - c. If the chain of command disagrees with the assignment, he/she may appeal to the Chief of Police.
7. Internal complaints against IAD, the Critical Incident Response Team (CIRT) or personnel assigned to IAS or CIRT will be investigated by a designee of the Chief of Police.
8. An internal complaint investigation shall not be conducted by any supervisor who has a direct interest in the case, e.g., if the supervisor was involved in the incident, use of force, or other actions that are the subject of the complaint, if the supervisor authorized actions that are the subject of the complaint, or if the supervisor is a witness to the incident that is the subject of the complaint.
9. An investigator will notify IAD as soon as he/she initiates an internal investigation or on the next business day.
  - a. The investigator notifying IAD will provide the name of the employee who is the subject of the complaint, the allegations against the employee, date of incident, and a brief summary of the incident.

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- b. IAD is responsible for notifying the subject employee by certified mail of the investigation unless the notification may hinder the investigation.
10. Any investigator conducting an internal investigation will be considered a designee of the Chief of Police and the City Attorney.

**E. Internal Department Complaints - Investigation Process**

1. An investigator will conduct a preliminary investigation.
  - a. The investigator will write a memo to the IAD lieutenant when the preliminary investigation determines there is no need for a formal investigation. The memo to the lieutenant will detail the facts of the case and why those facts do not warrant a formal investigation, i.e. where the case has been referred to mediation, should be administratively closed, or in rare circumstances where the preliminary investigation is sufficient to make another case deposition.
  - b. The IAD lieutenant will make the final decision on whether a formal investigation will or will not proceed.
  - c. If additional information becomes available, the IAD lieutenant may reopen a case and order a formal investigation.
2. Internal complaint investigations will be completed in 90-days from the beginning of the formal investigation when an I number is assigned, not from the date of the incident.
  - a. The 90-day period will not include review of the investigation by the chain of command.
  - b. An extension of the investigation of up to 30-days may be granted, but only if the request for an extension is in writing and is approved by the Chief of Police.
  - c. Review and final approval of the investigation, and the determination and imposition of the appropriate discipline, will be completed within 30 days of the completion of the investigation.
  - d. An extension may be granted in extenuating circumstances, such as military deployments, officer hospitalizations, and extended absences, upon agreement by the Chief of Police or his designee and the employee or his/her representative.
3. The following guidelines should be followed when the preliminary investigation indicates a formal investigation is necessary.
  - a. The investigator will be familiar with the most current applicable collective bargaining agreement before interviewing employees.
  - b. If a criminal investigation is being or may be conducted, employees shall not be compelled to provide a statement and will not be provided the Garrity warning until after consultation with the relevant prosecuting agency.
  - c. As a condition of employment, all employees must truthfully answer questions and cooperate with administrative investigations.
  - d. The formal investigation will include:
    - i. Identification of the policies alleged to be violated (issues of concern).
    - ii. Identification of the employee(s) alleged to have violated policy.
    - iii. Identification of all potential witnesses to the alleged policy violations.
    - iv. Identification of all relevant documentation that will be required to prove or disprove the allegation.
    - v. Identification of what further evidence is needed, for example, photographs, canvassing for potential witnesses, and/or visiting the scene to better understand the conditions. The investigator will obtain and review these additional items before conducting interviews.

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- vi. Interviewing civilian witnesses to objectively determine observations, perspectives, credibility, and physical condition at the time of the incident. The interview should be digitally recorded or a hand written statement may be obtained when circumstances prevent a digital recording. The investigator will document and thoroughly detail why a potential witness was not interviewed.
  - vii. Interviewing employee witnesses in accordance with the current applicable collective bargaining agreement to objectively determine their observations, perspectives, credibility, and physical condition at the time of the incident. All employee interviews will be digitally recorded.
  - viii. Interviewing the subject employee(s) in accordance with the current applicable collective bargaining agreement to objectively determine their actions, observations, perspectives, credibility, and physical condition at the time of the incident. If there is a concurrent criminal investigation, the administrative investigator will consult with the prosecuting agency prior to interviewing the subject employee. The subject employee may have a representative and/or attorney present for the interview.
  - ix. Reviewing collected evidence, documentation, and interviews then determining if further evidence collection, documentation retrieval, and/or interviews are necessary.
  - x. Conducting all follow up evidence collection, documentation retrieval, and/or interviews that are needed after review.
  - xi. Reviewing all known facts of the investigation and determine if collateral allegations have surfaced and need to be addressed.
- e. Repeat steps as necessary until all facts of the case are reasonably understood or no further information can be obtained.
  - f. If a criminal investigation is being or may be conducted, the investigator will not share files or information with the criminal investigator. The investigator may receive information from the criminal investigator, attend briefings by the criminal investigator, and observe interrogations by the criminal investigator only through a monitor system or one-way glass.
  - g. Internal Affairs shall provide a weekly update to the Director on all open internal investigations. The Director's investigation report and findings shall indicate whether within the past year there were any IA investigations or supervisor generated complaints against the officer(s) involved in the incident being investigated or that are otherwise relevant to the subject matter of the investigation, the general nature of the prior investigations or complaints, and whether they resulted in any discipline. Redacted personnel records including those of the Internal Affairs Unit shall be made available to the POB on demand. If the POB votes to review Garrity material, members of the POB may only do so on APD property. The POB may not remove or make copies of such statements.

#### F. Completed Internal Complaint Case

- 1. The completed internal complaint report will be written as follows with variations depending on the complexity/simplicity of the case. Investigators should contact IAD to obtain the cover, tabs, and forms required:
  - a. The entire report will be bound with a Smead no. R129 hard cover or similar.
  - b. Each section will have divider tabs containing letters in sequential order; however, not necessarily starting with "A." The usual order will depend on case complexity and/or content.
  - c. A table of contents that identifies each tab's contents to facilitate the ease of locating information and data.

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- d. An investigative synopsis containing the minimum of one paragraph, sufficient enough to provide the reader with an understanding of the issues of concern and investigation.
- e. The issues of concern citing the applicable SOP sections addressing the allegations and/or conduct.
- f. The Supervisor Recommendation Form for supervisory comments and recommendations.
- g. The investigation narrative will contain a detailed description of the evidence and why it is pertinent to the case. Interviews will be paraphrased in sufficient depth to provide the reader with all the known facts of the case. The narrative should enable the reader to make reasonable determinations and supported conclusions.
- h. The investigator will describe determinations made regarding inconsistencies between witness statements and credibility. To make these determinations, the investigator may rely on general indicators of credibility, such as witness demeanor, consistency of memory, evasiveness of responses, motive to falsify, and inherent implausibility of statements. However, the investigator will not give an automatic preference for an officer's statement over a non-officer's statement, nor will the investigator disregard a witness's statement merely because the witness has some connection to the complainant or because of any criminal history or any concern regarding mental illness. The investigator may consider convictions for crimes of dishonesty of any witness and the record of the subject officer for deception or untruthfulness in any other proceedings or investigations.
- i. Supporting documentation will be individually tabbed records, reports, memoranda, etc. pertinent to the case. Any documentation referenced in the narrative will be included when possible.
- j. Pertinent photographs, if any that accurately represent their content will be included; the location of photographs, if not included will be disclosed should the need to review them arise.
- k. Digital recordings of interviews will be included to allow the reviewer to ascertain exact language, tone, and content of the interviews.
- l. Any and all other items pertinent to the investigation will be included when possible, or at the minimum, their location should be documented for retrieval and/or review when applicable.
- m. The disciplinary history of subject personnel involved in the investigation.
- n. The investigator will include dispositions to each policy violation alleged (issue of concern), including collateral conduct. The dispositions will include justification, based on the facts of the case, for the disposition based on a preponderance of the evidence.

- 2. An administratively-closed investigation may be reopened if additional information becomes available. All relevant deadlines will be restarted when the investigation is reopened.
- 3. If a complaint is sustained, the investigator will identify and charge the employee with applicable sections of the SOP that cover the major violation. Lesser SOP violations, that are included in the major violation, should not be considered when identifying the level of sanction.
- 4. The investigator may write a memo documenting an investigation in lieu of a full completed case as described above when a supervisor wishes to discipline an employee with either a verbal or written reprimand, for example, a single instance of missed court requiring a verbal reprimand or reporting for duty late. The investigator will obtain approval from the IAD lieutenant for anything more complex.

**G. Search of Personal and APD Property**

- 1. Department-issued property and APD facilities are subject to search at any time.

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2. An investigator may reasonably, at any time, ask for and inspect any item that belongs to the Department.
3. Tangible personal property can be searched when it is brought in for an administrative inspection or when the employee is interviewed on APD or City property. Otherwise, personal property will be searched only with permission of the owner or when a valid search warrant is issued.

#### H. Cooperation with Investigation

1. Personnel are required to cooperate with IAD and CPOA investigations, including appearing for an interview when requested by an APD or CPOA investigator.
2. APD agrees to mandate that its officers provide honest and truthful responses to all questions by the Director, CPOA staff or the designated independent investigator. If any officer refuses to answer the questions proposed to him or her by the Director, CPOA staff, or the independent investigator, he or she may be subject to termination or disciplinary action at the discretion of the Chief of Police.
3. Department personnel are also required to provide all requested documents and evidence in the person's custody and control.
4. Investigators will ensure that the supervisor of any employee to be interviewed is notified of the pending interview.
5. The supervisor of the employee will facilitate the employee's appearance, absent extraordinary and documented circumstances.

#### I. Required Examinations

1. The use of any deception detection examination or technique will be in accordance with the current union contract that applies to the employee. Otherwise, such use may be allowed only by order of the Chief of Police, after all other reasonable investigative techniques were exhausted.
2. Photographs taken by employees as part of a criminal investigation may be used in an administrative investigation, as well as photographs on file with APD.
3. Employees will not be directed to participate in a line-up as part of an internal investigation. However, the results of a line-up conducted in a criminal case may be used in an internal investigation.
4. An employee is not required to disclose information regarding his or her financial status, unless all other reasonable investigative means have been exhausted or except as otherwise required by law.

#### J. Maintenance and Analysis of Complaint Information

1. IAD will maintain all complaint information in IAPro.
2. This information will be electronically connected to the early intervention system.
3. The CPOA will have access to this information to review specific cases and to analyze trends.
4. The CPOA will audit and monitor all IAD investigations including full access to investigation files
5. This data will be presented in the IAD annual report and may be used for other periodic audits or analyses by the Department.

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Investigation classification where the investigator(s) determines, by a preponderance of the evidence, that alleged conduct in the underlying complaint did occur but did not violate APD policies, procedures, or training.

5. Sustained Violation Not Based on Original Complaint

Investigation classification where the investigator(s) determines, by a preponderance of the evidence, misconduct did occur that was not alleged in the original complaint (whether CPC or internal complaint) but that other misconduct was discovered during the investigation, and by a preponderance of the evidence, that misconduct did occur.

6. Administratively Closed

Investigation classification where the investigator determines:

- the policy violations of a minor nature and do not constitute a pattern of misconduct (i.e. a violation subject to a class 7 sanction, with no other pattern or history of misconduct);
- the allegations are duplicative;
- the allegations, even if true, do not constitute misconduct; or
- the investigation cannot be conducted because of the lack of information in the complaint, and further investigation would be futile. Such complaints may be reopened if additional information becomes available.

F. Formal Investigation

A continuation of the preliminary investigation. In a formal investigation, the assigned investigator(s) will conduct and document formal interviews with fact witnesses, identify, collect and evaluate applicable evidence including written and other tangible materials, and compile the investigator's findings into a written report that includes a narrative, summary of the evidence, and dispositions.

G. IAD

Acronym for Internal Affairs Division.

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H. IAS

Acronym for Internal Affairs Section. IAS is a section within IAD.

I. Internal Complaints

Internal complaints are complaints made by APD personnel alleging misconduct by another employee. An Internal Complaint ("I number") is assigned to internal investigations. The format for the internal complaint is a capital "I" followed by the last two numbers of the year then a hyphenated unique six-digit number, for example, I09 123456

J. Investigator

Any Department employee (IAD or Chain of Command), CPOA employee, or contracted external investigator charged with conducting an administrative investigation of either a CPC or internal investigation.

K. Mediation

Mediation is the process of resolving a conflict through discussion, negotiation and compromise, without formal investigation or fact-finding. Mediation is appropriate when a complaint does not present misconduct, but instead indicates interpersonal conflict or a civilian's misunderstanding of department policy and procedures.

L. Misconduct

A violation of departmental policies or procedures; violation of federal, state, or local criminal laws; constitutional violations, whether criminal or civil; violation of personnel rules; or violation of administrative rules or regulations.

M. Preliminary Investigation

The initial inquiry into the nature of the complaint, the direction the investigation should take, and the identification of the resources needed to complete the investigation. A preliminary investigation shall be fully conducted to determine whether the complaint should be formally investigated by the chain of command, IAD, or may be resolved through mediation, or administratively closed. A CPC is forwarded to the CPOA without an IAD/APD preliminary investigation. The CPOA may conduct a preliminary investigation on a CPC.

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3.41.4 Procedures

A. Anti-retaliation Policy

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1. Department personnel are required to report misconduct and to encourage members of the public to report misconduct in accordance with this policy.
2. Discouraging either Department personnel or members of the public from reporting misconduct is prohibited.
3. Department personnel may not take any intentional adverse action against any individual or group (including both Department personnel and members of the public), in response to that individual or group:
  - a. making or supporting a complaint; or
  - b. testifying, assisting, or participating in any manner with an investigation.
4. Retaliation includes, but is not limited to, threats, intimidation, coercion, or other adverse action against any person in the workplace or community.
5. Retaliation against personnel who report misconduct or who cooperate with an investigation of misconduct is grounds for discipline, up to and including termination of employment.

B. Civilian Police Complaint (CPC) - Process

1. Resources

All Department personnel will familiarize themselves with the resources available to assist civilians with their complaints against the department and/or its personnel. The resources are:

- a. The CPOA phone number is (505)924-3770.
- b. The CPOA website is <https://www.cabq.gov/cpoa>.
- c. The CPOA email address is [cpoa@cabq.gov](mailto:cpoa@cabq.gov)
- d. CPC forms and brochures in English and Spanish are located at all APD substations, libraries, IAD, community centers, APD headquarters, and the CPOA office.
- e. All officers in marked police vehicles will carry CPC forms in English and Spanish. Officers will provide the CPC form to anyone who indicates that they are making a complaint or would like to make a complaint regarding Department personnel or policy.
- f. Civilian complaints can be entered into BlueTeam software without needing the CPC form.




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<p>6</p> 	<p>2. Department Personnel Treatment of Complainants</p> <p>a. Department personnel will professionally and courteously assist any civilian wishing to file a complaint.</p> <p>b. All civilian complaints will be accepted.</p> <p>c. Department personnel will notify a supervisor when a complaint is tendered.</p> <p>d. Department personnel will not discourage, intentionally misinform, or interfere with a civilian wishing to file a complaint.</p>
<p>7</p> 	<p>3. Telephone and In-Person Complaints at an APD Facility</p> <p>a. When a member of the public makes a complaint at an APD facility, either in person or telephonically, the APD employee contacted by the individual will notify a supervisor, who will assume the complaint intake process, and speak with the complainant.</p> <p>b. If a supervisor is unavailable, the APD employee will advise the civilian of the resources available to initiate an investigation into their complaint and, at the individual's option, assist them in completing a CPC form with as much detail as possible.</p> <p>c. The APD employee will turn the CPC form over to a supervisor before the end of the employee's shift for routing to IAD.</p>
<p>7</p>	<p>4. In-Person Complaints in the Field</p> <p>a. When a civilian contacts an APD employee in person wishing to file a complaint at a location that is not an APD facility, the APD employee will advise the civilian about the resources available for initiating a complaint, provide forms if the employee is near the employee's marked APD vehicle, and offer to contact a supervisor to come out and assist the complainant with filing a complaint.</p> <p>b. The civilian has the choice of using the resources provided, or speaking with a supervisor.</p> <p>c. The employee will notify a supervisor of interest in making a complaint even if the individual elects not to have a supervisor come out.</p>
<p>7</p> 	<p>5. Written Complaints</p> <p>a. Complaints received by mail, electronic mail, or facsimile will be promptly forwarded to a supervisor by the employee receiving the communication.</p> <p>b. The supervisor will forward the complaint to IAD.</p>
	<p>6. Complaints Related to a Judicial Proceeding</p> <p>a. The IAD commander, at the direction of the Chief of Police, will annually notify the Chief Judges from the Second Judicial District and Metro Court and the District Attorney's and Public Defender's Offices of the complaint process.</p>

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- b. Complaints received from any of these entities will be handled as a complaint from a civilian, directed to a supervisor for intake and routing to IA, and forwarded to CPOA within three business days for investigation.
- c. If complaints relating to a judicial proceeding are made by an APD employee or an employee of the City Attorney's office, they will be investigated as internal complaints.

7. Third Party or Anonymous Complaints

- a. A person is allowed to file a complaint on behalf of another individual.
- b. A person is allowed to file a complaint even when the person had no direct involvement or physical contact in the incident the civilian is complaining about.
- c. A person is also allowed to file a complaint anonymously.
- d. These types of complaints will be investigated in the same manner as any other complaint.

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8. Employees' Responsibilities for Civilian Complaints

- a. Employees operating marked patrol vehicles will carry CPC forms in English and Spanish in their patrol vehicles, or if so equipped will print them on demand.
- b. Employees will provide their name and identification number when requested by a civilian.
- c. Employees will immediately notify a supervisor when a civilian requests a CPC form and immediately notify a supervisor when a civilian desires to make a complaint.
- d. Employees will fully cooperate with all civilian complaint investigations to include, truthfully answering all questions, providing requested City owned items/documents under their control, and reporting for interviews on time.

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9. Supervisor Duties for Civilian Complaints

- a. For all complaints, supervisors will ensure that the CPC form is filled out as thoroughly as possible and hand delivered to IAD by the end of the shift following the shift in which the misconduct complaint was received.
- b. The supervisor will keep custody of all paperwork should the complaint occur during a holiday, weekend, or non-business hours, then ensure the complaint is delivered to IAD at the beginning of the first business day.
- c. If a supervisor is notified of a complaint about an allegation of misconduct that just occurred (i.e. the officer is still on the call or has just left the call or incident), the supervisor will take additional investigatory steps such as interviewing the complainant, gathering any relevant evidence (including tagging any relevant video for retention), identifying all potential witnesses, and identifying the employee(s) involved.

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- d. A supervisor may use BlueTeam software in-lieu of a CPC form for entering a complaint. The supervisor will still forward all supplemental documentation and evidence to IAD by the end of the shift following the shift in which the misconduct complaint was received.
- e. A supervisor will immediately inform the chain of command and IAD when a supervisor is notified of an allegation of apparent criminal misconduct by a Department employee. The supervisor will still forward the complaint to IAD.
- f. Supervisors will respond to the scene when they are notified that a citizen has requested them. Employees will request their immediate supervisor to respond; however, when their immediate supervisor is unavailable, any other supervisor will suffice.

10. IAD Responsibilities for Civilian Complaints

- a. Ensure that all CPCs received are entered into IAPro and an alert is sent to the CPOA no later than three days from receiving the complaint.
- b. Confirm that any video related to the complaint is classified for retention.

C. Apparent Criminal Misconduct – Process

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1. If IAD believes that a CPC indicates apparent criminal misconduct, they will notify the chain of command, but will still forward the complaint to CPOA.
  - a. IAD will consult with CPOA regarding the issue.
  - b. CPOA will transfer the case to IAD if the CPOA investigator concurs that there is an indication of apparent criminal misconduct.
2. If at any time during the intake process or investigation of misconduct complaint intake or investigation the investigator determines that there may have been criminal conduct by any employee, the investigator shall immediately notify the commanding officer of IAD.
  - a. If the complaint is being investigated by the CPOA, the CPOA investigator will transfer the administrative investigation to IAD.
  - b. The commander of IAD shall immediately notify the Chief.
3. For all cases indicating apparent criminal misconduct, IAD will assume administrative case responsibility and will ensure the proper criminal investigative unit or agency is notified to evaluate the case for a criminal investigation.

D. Internal Department Complaints – Reporting and Assignment

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1. All officers and employees must report misconduct known to them by any Department officer or employee, including themselves, to a supervisor or directly to IAD for review and investigation.

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2. When alleged misconduct is reported to a supervisor, the supervisor will immediately document the conduct and report this information to the IAD.

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3. Failure to report or document alleged misconduct or criminal behavior will be grounds for discipline, up to and including termination of employment.

4. Any supervisor receiving an internal complaint (other than misconduct) will obtain sufficient information to assess the seriousness of the complaint and will determine if a non-disciplinary correction can be reached before initiating an investigation or referring the complaint to IAD.

a. Non-disciplinary corrections may be pursued for minor internal complaints such as personal conflicts, attitude complaints, minor social media violations, appearance, employee-supervisor conflict, or tobacco use.

b. Supervisors will contact the IAD lieutenant for questions concerning whether an internal complaint will be handled through non-disciplinary correction or formal investigation.



5. All internal department complaints will be investigated by an IAD investigator, a designated supervisor outside of IAD, or a contract investigator. The CPOA will not investigate internal complaints; however, the CPOA will audit and monitor all IAD investigations

6. An internal complaint involving minor misconduct such as reporting for duty late or unprepared, missed court, or leave abuse, will normally be investigated by the chain of command.

a. An internal complaint requiring the interviews of multiple witnesses, multiple employees from various assignments, or extensive documentation retrieval, will be investigated by IAD.

b. The IAD lieutenant will determine if a case is to be investigated by IAD or the affected chain of command.

c. If the chain of command disagrees with the assignment, he/she may appeal to the Chief of Police.

7. Internal complaints against IAD, the Critical Incident Response Team (CIRT) or personnel assigned to IAS or CIRT will be investigated by a designee of the Chief of Police.

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8. An internal complaint investigation shall not be conducted by any supervisor who has a direct interest in the case, e.g., if the supervisor was involved in the incident, use of force, or other actions that are the subject of the complaint, if the supervisor authorized actions that are the subject of the complaint, or if the supervisor is a witness to the incident that is the subject of the complaint.

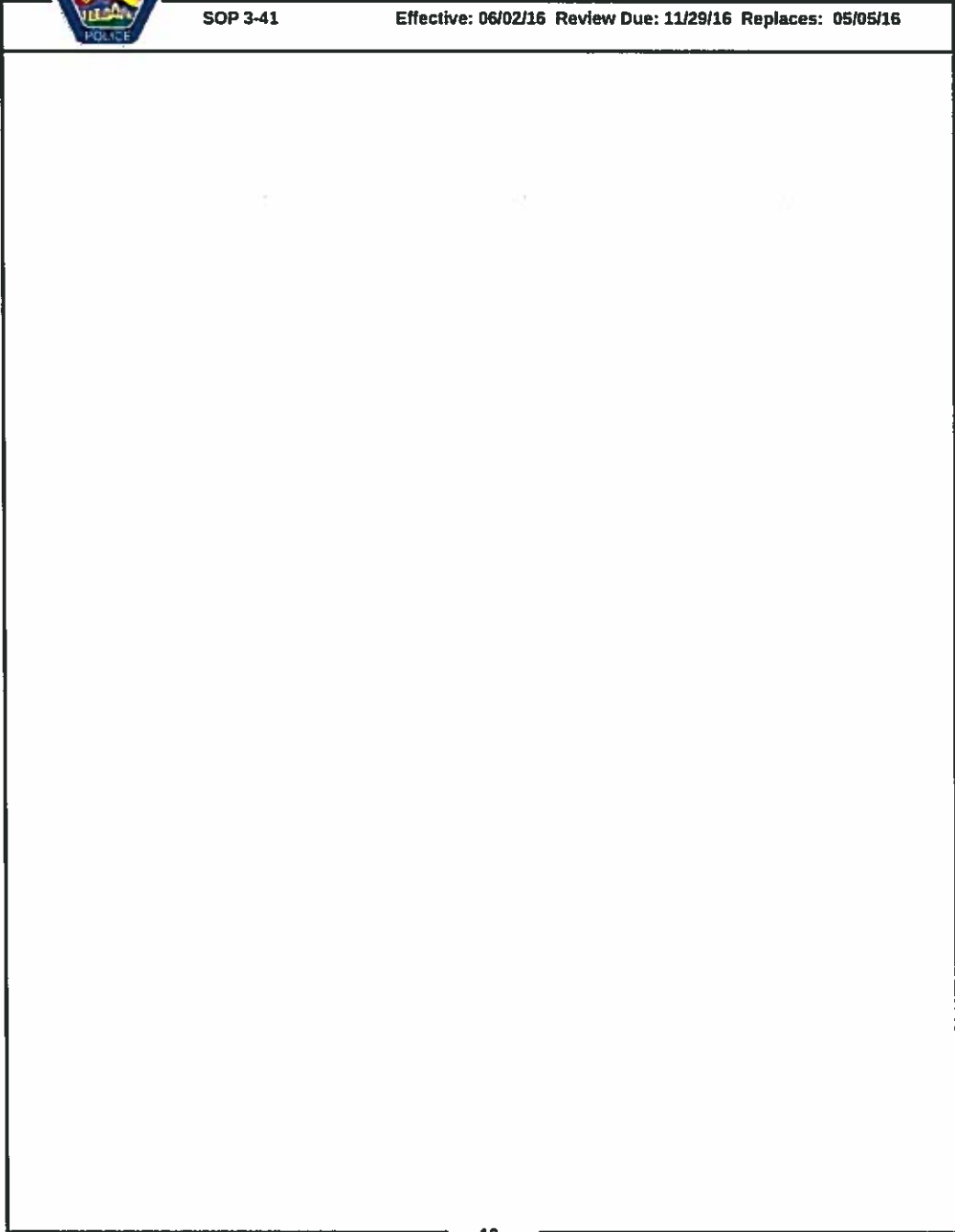
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9. An investigator will notify IAD as soon as he/she initiates an internal investigation or on the next business day.
  - a. The investigator notifying IAD will provide the name of the employee who is the subject of the complaint, the allegations against the employee, date of incident, and a brief summary of the incident.
  - b. IAD is responsible for notifying the subject employee by certified mail of the investigation unless the notification may hinder the investigation.
10. Any investigator conducting an internal investigation will be considered a designee of the Chief of Police and the City Attorney.

E. Internal Department Complaints - Investigation Process

1. An investigator will conduct a preliminary investigation.
  - a. The investigator will write a memo to the IAD lieutenant when the preliminary investigation determines there is no need for a formal investigation. The memo to the lieutenant will detail the facts of the case and why those facts do not warrant a formal investigation, i.e. where the case has been referred to mediation, should be administratively closed, or in rare circumstances where the preliminary investigation is sufficient to make another case disposition.
  - b. The IAD lieutenant will make the final decision on whether a formal investigation will or will not proceed.
  - c. If additional information becomes available, the IAD lieutenant may reopen a case and order a formal investigation.
2. Internal complaint investigations will be completed in 90-days from the beginning of the formal investigation when an I number is assigned, not from the date of the incident.
  - a. The 90-day period will not include review of the investigation by the chain of command.
  - b. An extension of the investigation of up to 30-days may be granted, but only if the request for an extension is in writing and is approved by the Chief of Police.
  - c. Review and final approval of the investigation, and the determination and imposition of the appropriate discipline, will be completed within 30 days of the completion of the investigation.
  - d. An extension may be granted in extenuating circumstances, such as military deployments, officer hospitalizations, and extended absences, upon agreement by the Chief of Police or his designee and the employee or his/her representative.

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3. The following guidelines should be followed when the preliminary investigation indicates a formal investigation is necessary.
  - a. The investigator will be familiar with the most current applicable collective bargaining agreement before interviewing employees.
  - b. If a criminal investigation is being or may be conducted, employees shall not be compelled to provide a statement and will not be provided the *Garrity* warning until after consultation with the relevant prosecuting agency.
  - c. As a condition of employment, all employees must truthfully answer questions and cooperate with administrative investigations.
  - d. The formal investigation will include:
    - i. Identification of the policies alleged to be violated (issues of concern).
    - ii. Identification of the employee(s) alleged to have violated policy.
    - iii. Identification of all potential witnesses to the alleged policy violations.
    - iv. Identification of all relevant documentation that will be required to prove or disprove the allegation.
    - v. Identification of what further evidence is needed, for example, photographs, canvassing for potential witnesses, and/or visiting the scene to better understand the conditions. The investigator will obtain and review these additional items before conducting interviews.
    - vi. Interviewing civilian witnesses to objectively determine observations, perspectives, credibility, and physical condition at the time of the incident. The interview should be digitally recorded or a hand written statement may be obtained when circumstances prevent a digital recording. The investigator will document and thoroughly detail why a potential witness was not interviewed.
    - vii. Interviewing employee witnesses in accordance with the current applicable collective bargaining agreement to objectively determine their observations, perspectives, credibility, and physical condition at the time of the incident. All employee interviews will be digitally recorded.
    - viii. Interviewing the subject employee(s) in accordance with the current applicable collective bargaining agreement to objectively determine their actions, observations, perspectives, credibility, and physical condition at the time of the incident. If there is a concurrent criminal investigation, the administrative investigator will consult with the prosecuting agency prior to interviewing the subject employee. The subject employee may have a representative and/or attorney present for the interview.
    - ix. Reviewing collected evidence, documentation, and interviews then determining if further evidence collection, documentation retrieval, and/or interviews are necessary.
    - x. Conducting all follow up evidence collection, documentation retrieval, and/or interviews that are needed after review.
    - xi. Reviewing all known facts of the investigation and determine if collateral allegations have surfaced and need to be addressed.

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- e. Repeat steps as necessary until all facts of the case are reasonably understood or no further information can be obtained.
- f. If a criminal investigation is being or may be conducted, the investigator will not share files or information with the criminal investigator. The investigator may receive information from the criminal investigator, attend briefings by the criminal investigator, and observe interrogations by the criminal investigator only through a monitor system or one-way glass.

F. Completed Internal Complaint Case

- 1. The completed internal complaint report will be written as follows with variations depending on the complexity/simplicity of the case. Investigators should contact IAD to obtain the cover, tabs, and forms required.
  - a. The entire report will be bound with a Smead no. R129 hard cover or similar.
  - b. Each section will have divider tabs containing letters in sequential order; however, not necessarily starting with "A." The usual order will depend on case complexity and/or content.
  - c. A table of contents that identifies each tab's contents to facilitate the ease of locating information and data.
  - d. An investigative synopsis containing the minimum of one paragraph, sufficient enough to provide the reader with an understanding of the issues of concern and investigation.
  - e. The issues of concern citing the applicable SOP sections addressing the allegations and/or conduct.
  - f. The Supervisor Recommendation Form for supervisory comments and recommendations.
  - g. The investigation narrative will contain a detailed description of the evidence and why it is pertinent to the case. Interviews will be paraphrased in sufficient depth to provide the reader with all the known facts of the case. The narrative should enable the reader to make reasonable determinations and supported conclusions.
  - h. The investigator will describe determinations made regarding inconsistencies between witness statements and credibility. To make these determinations, the investigator may rely on general indicators of credibility, such as witness demeanor, consistency of memory, evasiveness of responses, motive to falsify, and inherent implausibility of statements. However, the investigator will not give an automatic preference for an officer's statement over a non-officer's statement, nor will the investigator disregard a witness's statement merely because the witness has some connection to the complainant or because of any criminal history or any concern regarding mental illness. The investigator may consider convictions for crimes of dishonesty of any witness and the record of the subject officer for deception or untruthfulness in any other proceedings or investigations.
  - i. Supporting documentation will be individually tabbed records, reports, memoranda, etc. pertinent to the case. Any documentation referenced in the narrative will be included when possible.

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- j. Pertinent photographs, if any that accurately represent their content will be included; the location of photographs, if not included will be disclosed should the need to review them arise.
  - k. Digital recordings of interviews will be included to allow the reviewer to ascertain exact language, tone, and content of the interviews.
  - l. Any and all other items pertinent to the investigation will be included when possible, or at the minimum, their location should be documented for retrieval and/or review when applicable.
  - m. The disciplinary history of subject personnel involved in the investigation.
  - n. The investigator will include dispositions to each policy violation alleged (issue of concern), including collateral conduct. The dispositions will include justification, based on the facts of the case, for the disposition based on a preponderance of the evidence.
2. An administratively-closed investigation may be reopened if additional information becomes available. All relevant deadlines will be restarted when the investigation is reopened.
  3. If a complaint is sustained, the investigator will identify and charge the employee with applicable sections of the SOP that cover the major violation. Lesser SOP violations, that are included in the major violation, should not be considered when identifying the level of sanction.
  4. The investigator may write a memo documenting an investigation in lieu of a full completed case as described above when a supervisor wishes to discipline an employee with either a verbal or written reprimand, for example, a single instance of missed court requiring a verbal reprimand or reporting for duty late. The investigator will obtain approval from the IAD lieutenant for anything more complex.
- G. Search of Personal and APD Property
1. Department-issued property and APD facilities are subject to search at any time.
  2. An investigator may reasonably, at any time, ask for and inspect any item that belongs to the Department.
  3. Tangible personal property can be searched when it is brought in for an administrative inspection or when the employee is interviewed on APD or City property. Otherwise, personal property will be searched only with permission of the owner or when a valid search warrant is issued.
- H. Cooperation with Investigation
1. Personnel are required to cooperate with IAD and CPOA investigations, including appearing for an interview when requested by an APD or CPOA investigator.

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2. Department personnel are also required to provide all requested documents and evidence in the person's custody and control.
  3. Investigators will ensure that the supervisor of any employee to be interviewed is notified of the pending interview.
  4. The supervisor of the employee will facilitate the employee's appearance, absent extraordinary and documented circumstances.
- I. Required Examinations
1. The use of any deception detection examination or technique will be in accordance with the current union contract that applies to the employee. Otherwise, such use may be allowed only by order of the Chief of Police, after all other reasonable investigative techniques were exhausted.
  2. Photographs taken by employees as part of a criminal investigation may be used in an administrative investigation, as well as photographs on file with APD.
  3. Employees will not be directed to participate in a line-up as part of an internal investigation. However, the results of a line-up conducted in a criminal case may be used in an internal investigation.
  4. An employee is not required to disclose information regarding his or her financial status, unless all other reasonable investigative means have been exhausted or except as otherwise required by law.
- J. Maintenance and Analysis of Complaint Information
1. IAD will maintain all complaint information in IAPro.
  2. This information will be electronically connected to the early intervention system.
  3. The CPOA will have access to this information to review specific cases and to analyze trends.
  4. The CPOA will audit and monitor all IAD investigations.
  5. This data will be presented in the IAD annual report and may be used for other periodic audits or analyses by the Department.

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SOP 2-92

Effective: 10/25/17 Expires: 10/25/18 Replaces: 07/18/16

**2-92 CRIMES AGAINST CHILDREN**

**2-92-1 Purpose**

It is the purpose of this policy to describe the procedures to be followed by Field Services Bureau personnel while investigating crimes committed against children. For information specific to the Crimes Against Children Unit, refer to the [Juvenile Section SOP](#).

**2-92-2 Policy**

Department policy is to respond to child abuse and/or neglect, immediately. Allegations of child abuse and/or neglect will be thoroughly investigated.

**2-92-3 Procedures**

7

**A. Inter-Agency Cooperation**

Department personnel will work in close cooperation with the New Mexico Children, Youth and Families Department (CYFD), Child Protective Services and the District Attorney's office (DA) for the protection of victims and the prosecution of offenders.

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**B. Dispatched Officers' Responsibilities**

1. If the following injuries are present, personnel will notify the Crimes Against Children Unit (CACU) immediately:

- a. Any inflicted injury to a child 5 years old and under
- b. Serious inflicted injury to a child less than 13 years old, when the offender is a household member.
  - i. Serious bruising likely to cause great bodily harm or death.
  - ii. Broken Bones
  - iii. Medical intervention is necessary for treatment of serious inflicted injuries.
  - iv. Inflicted internal injuries
  - v. Burns/Scalding
  - vi. Inflicted head injury requiring medical intervention.
  - vii. Serious neglect likely to cause great bodily harm or death.

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- c. All unattended deaths of children under eighteen years of age or where death is likely:
- i. Apparent Sudden Unexplained Death in Infancy (SUDI)
    - Sudden Unexpected Death in Infancy (SUDI) is an umbrella term that describes the death of an infant which was not anticipated as a significant possibility 24 hours before the death, or where there was a similarly unexpected collapse leading to or precipitating the events which led to the death.
  - ii. Suicide
  - iii. Homicide by parent or guardian
  - iv. Any accidental death to include; drowning, drug or alcohol overdose
  - v. Apparent natural unattended death
- d. Injury resulting in great bodily harm of a child age 5 and under that appears to have occurred accidentally.
- e. Criminal Sexual Penetration
- i. Children under age 13
  - ii. The CACU will be notified immediately.
  - iii. Because of the complex nature of child sexual abuse, formal interviews of children under age 13 will be investigated by the CACU.
  - iv. The CACU will investigate all criminal sexual penetration cases where the suspect is a parent, guardian, or other family member, and the victim is under age 18 at the time of report.
  - v. If the reporting victim is between 13 to 17 years old but was under age 12 at the time of the offense, CACU shall take case responsibility, regardless of the relationship between the suspect and victim.
- f. Criminal Sexual Contact
- i. Children under age 13
  - ii. The CACU will be notified immediately.
  - iii. Because the complex nature of child sex abuse, formal interviews of children under age 13 will be conducted by CACU.

Children 13 years and older

The appropriate area command Impact Unit will be contacted to conduct the investigation.

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2. The officer will secure the scene and await contact from the detective and possibly CYFD personnel.
3. Officers will conduct a complete and thorough preliminary investigation and will write reports (using the State of New Mexico Uniform Incident Report) on all cases (confirmed or suspected) of child abuse, neglect, abandonment, or cruelty to children. Per state statute 32A-4-3 officers will immediately notify CYFD when they have reasonable suspicion that a child is abused or neglected.
  - a. Officers will not use the word(s) "suspected" or "information" in the offense portion of the report. Reports should be titled as child abuse:
    - i. For non-confirmed cases of child abuse.
    - ii. When the reported child abuse occurred outside the jurisdiction of the department. Note: "Information" reports on children are available to the public.
  - b. Officers will forward a copy of their report to CYFD within 48 hours per state statute 32A-4-3
  - c. Referring a case to CYFD does not relieve the officer of the responsibility of completing a criminal investigation.
4. The CACU detectives may be called for assistance on any case involving:
  - a. Non-felony crimes.
  - b. Requests for assistance from CYFD
  - c. Situations where there are questions about abuse and neglect.
5. Field Services officers will have case responsibility for misdemeanor child abandonment/cruelty to children.
6. In instances where a child's death is the exclusive result of a traffic crash where there was not intent to harm a child, Field Services Bureau and/or Traffic Unit will retain case responsibility.
7. In instances where child abuse charges are filed as the result of a DWI, case responsibility shall remain with the primary investigating officer.

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C. Taking Protective Custody of a Child

1. When responding to any form of child abuse, the officer must determine if the child should be removed from the environment for the child's safety. Pursuant to New Mexico Statute 32A-3B-3, an officer may take a child into protective custody when the officer had reasonable grounds to believe the child:
  - a. Is suffering from illness or injury
  - b. Has been abandoned

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- c. Is in danger from surroundings and removal from those surroundings is necessary.
2. In making a determination of removal for protective custody, officers will obtain all pertinent information, and review the need for removal with their supervisor.
3. When taking a child into custody the officer will:
  - a. Notify CYFD immediately.
    - i. A CYFD Child Protective Services caseworker can assist with placing the child in a temporary home.
    - ii. Immediate contact with CYFD is critical so custody petitions can be filed within 24 hours.

4. CYFD Requests

- a. When CYFD requests that APD take custody of a child, the officer shall ask the caseworker for any documentation of abuse or neglect.
- b. If the caseworker has no documentation and the officer does not find reasonable grounds to remove the child, the officer shall:
  - i. Record the caseworker's statement before making the decision to remove the child
  - ii. Request that the caseworker get a court order to remove the child.
- c. The initial report will list the offense for which the child was taken into protective custody.
  - i. "Protective custody" is not an appropriate title, as protective custody cases are public record
  - ii. Records obtained from CYFD are confidential and cannot be released to the general public or news media.

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5. If the child is to be placed with a family member, relative or other placement, the investigating officer will conduct a criminal history check of the person with whom the child is to be placed. These checks will include but are not limited to:
  - a. Contact CYFD to determine if there is active or prior case history involving the receiving party.
  - b. Wants and Warrants
  - c. NM Courts
  - d. Residence/Call History
6. The results of the criminal history check will be documented in the officer's report.

**Attachment "D"**



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D. Confidentiality of Records Pursuant to NMSA 1978 32A-4-33

1. All records or information concerning a party to a neglect or abuse proceeding, including social records, diagnostic evaluations, psychiatric or psychological reports, videotapes, transcripts and audio recordings of a child's statement of abuse or medical reports incident to or obtained as a result of a neglect or abuse proceeding or that were produced or obtained during an investigation in anticipation of or incident to a neglect or abuse proceeding shall be confidential and closed to the public.
2. The records described in Subsection 1 of this section shall be disclosed only to the parties and:
  - a. court personnel;
  - b. court-appointed special advocates;
  - c. the child's guardian ad litem;
  - d. the attorney representing the child in an abuse or neglect action, a delinquency action or any other action under the Children's Code [32A-1-1 NMSA 1978];
  - e. CYFD department personnel;
  - f. any local substitute care review board or any agency contracted to implement local substitute care review boards;
  - g. law enforcement officials, except when use immunity is granted pursuant to Section 32A-4-11 NMSA 1978;
  - h. district attorneys, except when use immunity is granted pursuant to Section 32A-4-11 NMSA 1978;
  - e. any state government social services agency in any state or when, in the opinion of the department it is in the best interest of the child, a governmental social services agency of another country;
  - f. those persons or entities of an Indian tribe specifically authorized to inspect the records pursuant to the federal Indian Child Welfare Act of 1978 or any regulations promulgated thereunder;
  - g. a foster parent, if the records are those of a child currently placed with that foster parent or of a child being considered for placement with that foster parent and the records concern the social, medical, psychological or educational needs of the child;
  - h. school personnel involved with the child if the records concern the child's social or educational needs;
  - i. health care or mental health professionals involved in the evaluation or treatment of the child, the child's parents, guardian, custodian or other family members;
  - j. protection and advocacy representatives pursuant to the federal Developmental Disabilities Assistance and Bill of Rights Act and the federal Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1991;
  - k. children's safehouse organizations conducting investigatory interviews of children on behalf of a law enforcement agency or the department; and

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- i. any other person or entity, by order of the court, having a legitimate interest in the case or the work of the court.
3. A parent, guardian or legal custodian whose child has been the subject of an investigation of abuse or neglect where no petition has been filed shall have the right to inspect any medical report, psychological evaluation, law enforcement reports or other investigative or diagnostic evaluation; provided that any identifying information related to the reporting party or any other party providing information shall be deleted. The parent, guardian or legal custodian shall also have the right to the results of the investigation and the right to petition the court for full access to all department records and information except those records and information the department finds would be likely to endanger the life or safety of any person providing information to the department.
4. Whoever intentionally and unlawfully releases any information or records closed to the public pursuant to the Abuse and Neglect Act or releases or makes other unlawful use of records in violation of that act is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

E. Hospitalization of an Abused or Neglected Child

1. When hospitalizing an abused or neglected child is necessary:
  - a. Officers will complete a police hold on the child with the assistance of CYFD.
  - b. The child will not be removed unless authorized by a police officer of the agency that has been given custody of the child.
2. When a child is already hospitalized because of injuries, the following conditions apply:
  - a. Officers may take the child into protective custody if the parents attempt to remove the child from the hospital.
  - b. Officers have the legal right and responsibility to prevent the removal of the child in cases where the officer reasonably believes:
    - i. The parents are directly responsible for the injuries to the child.
    - ii. There appears to be danger to the physical well-being of the child.

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3. Victims of child abuse may be photographed in all cases without the consent of the parents or legal guardian. Photographs will be taken, if possible when it will not interfere with the well-being of the child. A person from the hospital should be present.

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F. Arrest for Child Abuse

1. Before making an arrest for child abuse, officers should consider the safety and protection of the child. If the child can be removed from the environment in is preferred that a complete investigation be conducted prior to an arrest.

Officers should consider:

- a. Whether the child is safe from the offender
  - b. Whether the offender is a flight risk
  - c. Whether the case can be fully investigated before it is presented to the grand jury, to include medical, psychological evaluations, and forensic interview of the child and witness.
2. All felony arrest warrants, search warrants, and psychological evaluations will be approved by the Assistant District Attorney assigned to the Family Crimes Division.
  3. Domestic Abuse

- a. Refer to Field Services SOP for duties of Police Officers

Note: Children have the same rights as adults and are granted the same protection as an adult under the Family Violence Protection Act. When children are present, their welfare should be determined.

- b. If domestic abuse against a child escalates to a felony, the CACU will be notified by the dispatched officer, before further investigation.
- c. The investigating officer will contact CACU for determination of case responsibility during a domestic violence investigation, if it is determined that felony child abuse charges meeting the criteria of 2-33-2-B exist.

G. Citations may be issued for:

[N/A]

- iv. Abandonment and cruelty to children
- v. Enticement

Citations should only be issued for violations occurring in the investigating officer's presence.

The use of a criminal summons is preferable in situations involving a misdemeanor that has already occurred.

**Attachment "D"**



**3-4 PROFESSIONAL ACCOUNTABILITY BUREAU**

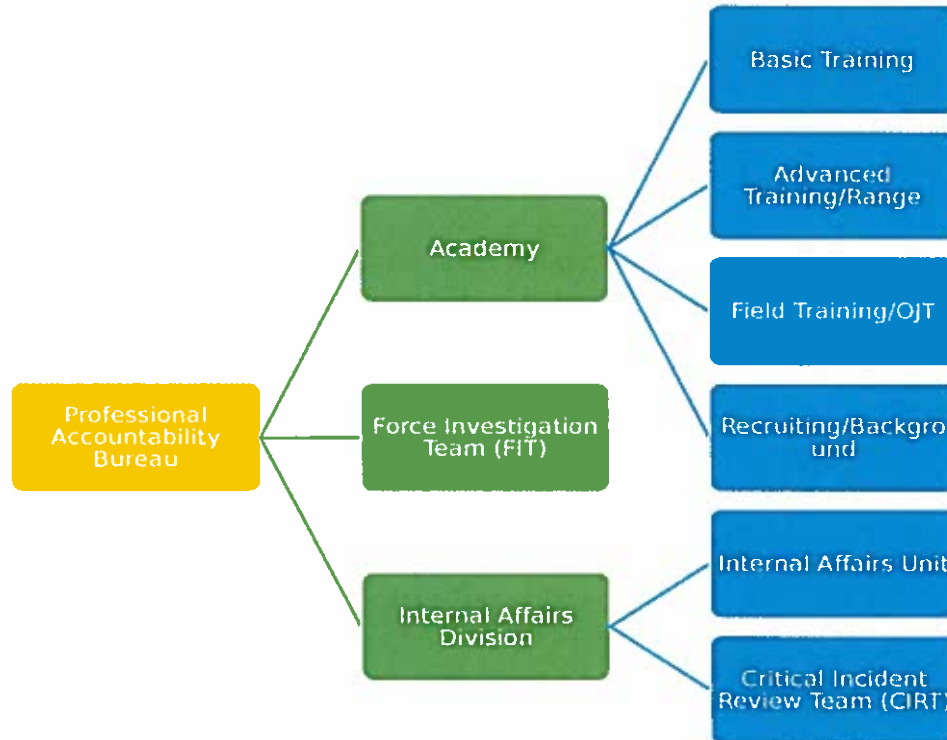
**3-4-1 Purpose**

This policy provides an overview of the duties and functions of the divisions and units comprising the Professional Accountability Bureau.

**3-4-2 Policy**

It is the policy of the Professional Accountability Bureau to provide for accountability within the Department by training, evaluating, and, when appropriate, investigating Department personnel. Personnel assigned to the Professional Accountability Bureau will use objective and comprehensive methods to ensure the delivery of professional services to the City of Albuquerque.

**3-4-3 Organization**



**Attachment “E”**



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**3-4-4 Procedures**

Under the direction of a major, the Professional Accountability Bureau is comprised of the Academy, the Force Investigation Team (FIT), and the Internal Affairs Division.

**A. Academy**

The Academy is responsible for training and recruiting certain police personnel. The Academy is administered by a commander, who reports to the Professional Accountability Bureau major.

**1. Recruiting Section**

This section is responsible for recruiting qualified applicants for sworn and non-sworn police personnel. It will identify, test, and select the most qualified persons to fill vacancies or added positions that become available within the Department. Personnel will be selected following Department guidelines and policies, from among those who possess the necessary skills, knowledge, and abilities required to be most effective. For more information, refer to the [Recruiting SOP 6-2](#).

**a. Polygraph Personnel**

Provides an accurate and reliable investigative tool in the resolution of criminal, and other requests within the jurisdiction of the Department in determining the veracity of the person being tested.

**2. Training Section**

This section is responsible for the initial training, assignment, and evaluation of cadet/recruit officers and police service aides, and the ongoing advanced training of sworn personnel. For more information, refer to the [Training SOP 6-1](#).

**a. Basic Training**

Responsible for training police cadets, lateral transfer officers, and public safety aides.

**b. Field Training Officers**

Responsible for training new officers in various duties which they will most likely perform during their career.

**c. Advanced Training**

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Responsible for coordinating and planning Department training needs, including Maintenance of Effort (MOE) training, Advanced Training, and Specialized Training.

d. Physical Wellness

Responsible for wellness programs and physical fitness assessments of Department personnel and police applicants. Unit personnel maintain the physical fitness facility, advise, and monitor the physical fitness training for police cadets and Department personnel.

e. Firearms/Range Detail

Responsible for the firearms training and qualification requirements for the Department.

B. Force Investigation Team (FIT)

FIT provides the Department with a standardized professional, comprehensive, and neutral criminal investigative response into an underlying crime when an APD officer is involved in a serious use of force or an officer-involved shooting or when a person dies while in police custody. FIT also provides comprehensive and criminal investigations of any OIS or in-custody death in addition to any underlying crime that may be investigated. Should an investigation of an underlying crime where an officer employed a serious use of force show, based upon probable cause, that the force used by the officer involved in the incident was contrary to law, the FIT assumes case responsibility for that criminal investigation as well.

For more information, refer to the [Force Investigation Team \(FIT\) SOP 7-3](#).

C. Internal Affairs Division

This division is responsible for investigating and documenting allegations of misconduct by Department personnel. The Internal Affairs Division is administered by a commander, who reports to the Professional Accountability Bureau major.

The Internal Affairs Division is separated into the following two sections:

a. The Critical Incident Review Team (CIRT)

CIRT is responsible for administrative investigation of all serious uses of force and critical incidents as they pertain to tactics, training, policy, supervision, and performance. For more information, refer to the [Critical Incident Review Team \(CIRT\) SOP 7-2](#).

b. The Internal Affairs Section (IAS)

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IAS is responsible for investigating all internal complaints, the Early Intervention System, maintenance of employee discipline files, and all administrative investigation employee records. For more information, refer to the [Internal Affairs SOP 7-1](#).

**Attachment "E"**