

**POLICE OVERSIGHT BOARD  
POLICY AND PROCEDURE REVIEW SUBCOMMITTEE**

**Thursday, January 18, 2018 – 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  
Eric Cruz  
Valerie St. John

**Others Present**

Edward Harness, Exec. Director  
Diane McDermott  
Maria Patterson  
Cdr. Michelle Campbell  
Jolene Luna

**Minutes**

- I. Welcome and Call to Order:** Subcommittee Chair Kass called the meeting to order at 5:02 p.m.
- A.** Chair Kass had the guests introduce themselves. Commander Michelle Campbell is from APD’s Southwest Area Command. Jolene Luna is from APD Fiscal and she is assisting with the SOP 3-52 rewrite in a collateral manner as part of her secondary duties.
- II. Approval of Agenda:** Copies of the agenda were distributed. Subcommittee Member Cruz made a motion to approve the agenda. Subcommittee Member St. John seconded the motion. The motion was carried by the following vote:  
**For: 3 – Cruz, Kass, St. John**
- III. Approval of the Minutes from October 26, 2017 and December 21, 2017**
- A.** Member Cruz motioned to approve both minutes as written.
- B.** Chair Kass mentioned a small typo in the December minutes, which was corrected and initialed by Chair Kass.
- C.** Member St. John seconded Member Cruz’s motion. The motion was carried by the following vote:  
**For: 3 – Cruz, Kass, St. John**
- IV. Public Comments:**
- A.** Chair Kass invited the guests to please chime in at any time in the meeting.
- V. Presentation and Discussion of Public Policy Process Cycle: Agenda Setting, Policy Formation, Policy Implementation, Policy Review (see attachment “A”)**
- A.** Chair Kass distributed a general model of how policy is produced that he found on the internet. He explained that there are a lot of policy

development processes out there and they all tend to follow the same model.

- B. Chair Kass summarized the model by describing how the process is cyclical so that in the end you measure the performance of your policy, feed that back in and decide where you need to make adjustments.
- C. Chair Kass noted that we wanted the subcommittee to keep this in mind because he wants to test policies in terms of whether there is some measurable involved. He also thought this model could serve as a reminder that there are resources they can follow when thinking about policy development.
- D. Director Harness offered to share a more specific model with the subcommittee, a publication on developing policy from Daigle that is specifically tailored to police policy development. Members Kass and St. John agreed that that would be helpful.

## VI. Discussion of SOP 3-44 and SOP 3-4 to Recommend Changes to POB

### A. 3-41

- i. Chair Kass explained the document he had was a policy with recommended changes drafted by Diane McDermott (see attachment “B”). Chair Kass suggested reviewing the changes the same way they did in their last meeting for 3-41.
- ii. Ms. McDermott went upstairs to get copies of the edited SOPs 3-44 and 3-4.

### B. Recommendations Process.

- i. Chair Kass described how the board submits policy recommendations that primarily focus on the POB’s and CPOA’s performance and operation. The subcommittee makes recommendations to the board and the full POB votes on whether they accept the subcommittee’s recommendations.
- ii. **Timeline.** Director Harness added that the ordinance says policy recommendations go directly to the chief. The chief has 45 days to incorporate them or explain why they are not going to be incorporated.
- iii. **Tracking.** Commander Campbell asked how that is tracked. Director Harness responded that tracks it, noting it now goes directly to the chief through email. Director Harness lets the chief know in the cover letter that he has 45 days from receipt to respond.
- iv. Commander Campbell decided that she would make sure the chief is up to speed on this process, noting that she has had hand-delivered letters get lost.
- v. Director Harness agreed and said that is why he sent the last recommendation through email; it is easy to track and easy to change in a Word format.

- vi. **Meeting Structure and Decision Authority.** Chair Kass stated a major problem is relying on meetings where no person with decision authority is present. The POB and CPOA would prefer to be involved with APD in a way that resulted in someone in the meeting being able to make decisions.
- vii. Ms. Luna asked Chair Kass what he meant by meetings with no decision authority. Chair Kass replied that OPA meetings are a perfect example.
- viii. Director Harness provided a more specific example, recalling that there were some meetings between board members and APD personnel where promises were made but the APD personnel did not have the authority to follow through on those promises. This resulted in the board thinking certain changes had been adopted when they hadn't.
- ix. **Policy Changes.** Cdr. Campbell then provided an overview of how APD is planning to change their policy development process:
  - a. The stakeholders will be invited to participate from day one.
  - b. The policy will be presented to everyone in OPA meetings and stakeholders will be given a referral form to make suggestions. These forms will be tracked and stakeholders will receive responses and updates within a determined timeline.
- x. **Tiered Policies.** Ms. Luna added that they are going to tier the policies in terms of priority. A lack of structure in meetings contributes to this problem: often ideas get tabled or turn into big discussions with no proposed action. Ms. Luna added that she and Cdr. Campbell came to this meeting to start the dialogue and would like to try producing a draft of some sort with the POB's input for the next OPA meeting in February.
- xi. Chair Kass commented that their plan to divide the policies into three tiers of priority is interesting because he wrote up a similar tiered plan for the subcommittee.
- xii. **Monitor Figure.** Ms. Luna added that part of their plan is to have someone in place to track the changes and the policies' timelines and who has the authority to keep the policies on track.
- xiii. Cdr. Campbell noted again that they are welcome and open to any ideas the board has.

**C. SOP 3-44.**

- i. Chair Kass read the purpose of SOP 3-44.
- ii. **Challenges.** Ms. McDermott described the changes she made to 3-44 and the challenges with making these changes. She explained that the document was changed before it was announced that things like FIT and CIRT are going to be scrapped. Additionally, since the

- POB approved the changes to 3-41, some of the language in 3-44 duplicates language in 3-41.
- iii. Director Harness stated that he believed this policy works conceptually however there will need to be specific adjustments once the new Use of Force policy is approved.
  - iv. Chair Kass told Cdr. Campbell and Ms. Luna that the nomenclature is up to APD so the changes Ms. McDermott made are changes that refer directly to the POB's and CPOA's roles and receipt of data.
  - v. **Role of POB.** Director Harness pointed out that the POB is not in the definitions section and the role of the POB is excluded completely from the process section. These issues need to be addressed.
  - vi. **Serious Use of Force and IOS Cases.** Director Harness added that they should consider writing how the board is going to handle the review of the Serious Use of Force and the IOS cases because they now come to the board after being reviewed by the Force Review Board, which is not yet in the policy.
  - vii. Chair Kass asked how they can contemplate what doesn't exist. Director Harness replied that that is why Ms. McDermott suggested they may need to wait on changing the policy.
  - viii. Member Cruz suggested they make the changes that are here for now and table the accepted document until the next meeting.
  - ix. Chair Kass proposed they make a motion and Member Cruz suggested they go over the document first.
  - x. **Duplicative Language.** Ms. McDermott asked again if they cared if there was duplicative language.
  - xi. Chair Kass wanted to know if the duplicative language was a problem for APD. Commander Campbell replied that she doesn't mind duplicative language because it could serve as a reminder of what the POB and CPOA are.
  - xii. Ms. Luna suggested they include language similar to, "also referenced in SOP 3-40."
  - xiii. Chair Kass pointed out that this is APD's SOP so APD can make any changes they want without needing to discuss it with the POB, though it is productive to talk about it so that the board can see APD's process.
  - xiv. **Section B. 1.** Member Cruz suggested they edit the first two changed sentences under 3-44-4 Section B. 1. Because they read like a contract.
  - xv. Ms. McDermott told Member Cruz that the language is pulled from the ordinance but it can be changed to sound better. Chair Kass added that part of the purpose of rewriting these policies is to get

away from ordinance language and move toward more specific, functional methods.

- xvi. Member Cruz suggested striking out that first changed sentence and then changing the subsequent sentence to start with, “APD mandates that its officers provide...” and resume from there.
- xvii. Member Cruz asked about the blank space on page 4. Director Harness explained that there is a flow chart on Power DMS that does not show up on their printed copies.
- xviii. Member Cruz asked Ms. McDermott what she intended the subcommittee to do with the note on page 5 G. 1. b.
- xix. **Section E.** Ms. McDermott pointed out that there is a similar note on the previous page under section E. that suggests they add something about how the CPOA’s recommendations are based on the chart of sanctions. Ms. McDermott added that they get a lot of questions about where recommendations come from so it is important to have a sentence that reflects that.
- xx. Member Cruz asked how they should reference the chart of sanctions. Ms. McDermott suggested they write, “The CPOA’s recommendations are based on the chart of sanctions as in SOP 3-4.” The Subcommittee Members agreed.
- xxi. **Section G.** Ms. McDermott pointed out the problem on page 5, section G. 1. b., which is that the language needs to be modified because the CPOA and POB are exceptions to that prohibition.
- xxii. Member Cruz asked why it is part of b. and not c. Ms. McDermott explained that she added sections c. and d. from the ordinance but they cannot leave b. as it is written because it leaves the CPOA and POB out and is therefore inaccurate.
- xxiii. Member Cruz suggested changing the first sentence of G. 1. b. to “Individuals outside the chain of command, with exception to the CPOA, are prohibited from viewing cases and records.” Director Harness pointed out that the POB needs to be included in that too. Member Cruz revised his suggestion to read, “with the exception of POB members and director and staff of the CPOA.”
- xxiv. Director Harness also recommended adding, “in accordance with the ordinance” so that it demonstrates the CPOA’s and POB’s authority to receive that information.
- xxv. Chair Kass asked who was making notes of these changes. Director Harness replied that Maria Patterson and Diane McDermott were taking notes.
- xxvi. Ms. McDermott clarified that they want the sentence to read, “Individuals outside of the chain of command, in accordance with the ordinance, except POB members and CPOA directors and

staff,” or a similar sentence that has been reworked for clarity.  
Member Cruz agreed.

- xxvii. **Other Additions.** Ms. McDermott reminded the subcommittee that how a section about how the board will review the Use of Force cases will need to be added. Ms. McDermott also brought up the topic of measurables.
- xxviii. **Non-concurrence Cases.** Director Harness explained that, generally, in a non-concurrence with the Force Review Board the POB will request an internal affairs investigation into what the board believes is an out-of-policy use of force. Then, the chief would say yes, he is going to open an IA, or no, he is going to go with what the Force Review Board decided.
- xxix. Chair Kass told Director Harness that he is relying on Director Harness’s expertise in this situation. Director Harness replied that in his opinion, the board’s non-concurrence with the Force Review Board states that an internal investigation should have occurred as a result of that out-of-policy use of force.
- xxx. Chair Kass asked for more direction on how that affects the language in the policy. Director Harness replied that there needs to be some reference to how these are completed administrative investigations and that if the board doesn’t concur, the case is not complete because the board disagrees with some of the findings or believes there should have been additional administrative investigation.
- xxxi. Director Harness added that that could all change when Use of Force investigations change and suggested that they come back and visit this after those changes have been made so that the board can add it to the policy.
- xxxii. Chair Kass agreed that they can’t write a policy now when they don’t know how it will change in the future. Ms. McDermott agreed and said that at least they understood what changes will need to be made later.
- xxxiii. Member Cruz motioned to accept the changes to 3-44 and table it for the next meeting. Member St. John seconded the motion. The motion was carried by the following:

**For: 3 – Cruz, Kass, St. John**

#### **D. SOP 3-4**

- i. Director Harness explained the main objective will be adding in the POB and CPOA.
- ii. Member Cruz asked for clarification about section 2. f. Ms. McDermott replied that it was supposed to say “APD is responsible for...” but “APD” got left out of the beginning of the sentence. She

- clarified that the section states APD is responsible for planning and making training available for the POB.
- iii. Member Cruz asked if that should go in its own section. Ms. McDermott replied that they added it because APD is responsible for everything, but it does not mention APD's responsibility to the board.
  - iv. Member Cruz asked for an example of training that is not from the City. Ms. McDermott told Member Cruz that Daigle is a good example of an outside training entity.
  - v. Chair Kass explained the relevance of this section to Cdr. Campbell and Ms. Luna by describing how POB members are required to have certain kinds of training that are mandated by APD but there have been long delays in getting access to those trainings which impinges the board's ability to function.
  - vi. Cdr. Campbell asked if cost is the issue. Chair Kass explained that the problem is that there are things that the ordinance says APD is required to provide mandatory training and the board read that to mean the board cannot function until they get that required training.
  - vii. Cdr. Campbell asked for an example. Chair Kass replied that the Citizen's Police Academy (CPA) is a good example. There hasn't been one for the last 8 months or so and board members are supposed to receive it within 6 months. There was also the question of whether CPAs were set up in a way that made it more difficult for board members to complete their training.
  - viii. **Academy Changes.** Cdr. Campbell told the subcommittee that a couple of years ago she had recommended APD do an executive, shortened CPA held on weekends or evenings so that it fit people's schedules better but those in charge of the academy at the time disagreed.
  - ix. Chair Kass reported that Cdr. Collins presented a CPA reform at the last POB meeting that is significantly shorter.
  - x. Ms. McDermott, Chair Kass, and Cdr. Campbell discussed other issues with the way the academy used to be held. Ms. McDermott recalled that they used to schedule the academy during POB meetings. Cdr. Campbell was disappointed that it was run in such a structured way that took all of the fun out of it and demanded a lot from citizens taking it. Chair Kass added that it was even worse for CPC or POB members who had no choice to take it but in that long format.
  - xi. Director Harness informed Cdr. Campbell that the academy is supposed to begin February 15 according to Dep. Chief Garcia. They are planning on having two versions including one tailored to the POB and CPC members that is shorter and has fewer sessions.

- xii. Director Harness wished APD would record the sessions so the academy could be taken remotely. Cdr. Campbell reminded Director Harness that they like the human interaction.
- xiii. **Changes to SOP 3-4.** Member Cruz noted that on the third page, they should strike out “The IAS acknowledges that” and start with, “The CPOA audits and monitors all...”
- xiv. Director Harness suggested adding “in accordance with 3-44,” where we outlined the contents of the weekly reports, to the first bullet of section C. b.
- xv. Member Cruz stated that the second bullet should be edited to match the other bullets and suggested changing it to, “The IAS shall provide redacted personnel records, including those of the Internal Affairs Unit, to the POB on demand.”
- xvi. **Action Plan.** Member Cruz asked if they should also wait to change this policy because it has CIRT language in it. Ms. Luna agreed that it would definitely have to be looked at again later. Director Harness added that the Accountability Bureau is also going through changes.
- xvii. **Motion.** Member Cruz motioned to accept and table 3-4 until the next meeting. Member St. John seconded the motion. The motion was passed with the following count:  
**For: 3 – Cruz, Kass, St. John**

## **VII. Report from CPOA – Director Harness**

### **A. Ordinance Amendment.**

- i. The ordinance amendment was approved by the board in July. Those changes were taken to City Council and their senior policy analyst drafted those changes, which were accepted.
- ii. Chair Kass asked for clarification about where the ordinance was in the process of adoption. Director Harness clarified that they are waiting for sponsors to bring it forward.
- iii. Director Harness added that it was taken to City Legal, though he does not know if they made any changes to it. Director Harness also noted that he and Jeramy discussed changing the chief’s deadline for informing the POB if there was a non-concurrence from thirty days to thirty days once discipline is imposed.
- iv. Member St. John said she received the email with the ordinance late and had not read it. Director Harness clarified that the document was from July and did not require a response.
- v. Chair Kass noted the next step forward is the legislative part which involves finding a sponsor by talking to Council members. In the December POB meeting Chair Kass was supposed to talk to Julian Moya about making those arrangements.



- vi. **Last Ordinance Change.** Director Harness informed the subcommittee that the last time they did an ordinance change, in June of 2016, it was a seamless process where a lot of it was handled by Mark Baker because of litigation issues with the APOA. They negotiated all the terms, they drafted it, they gave it to the board, the board approved it, and then it went to City Council and it was accepted. This ordinance change, however, has had hiccups.
- vii. Chair Kass suggested that the “hiccups” were caused by the increase in budget and the subpoena power in this ordinance change.
- viii. Director Harness countered that subpoena power is easy because it’s bringing the ordinance in line with the settlement agreement. He added that subpoena power wasn’t a problem when we discussed it with Chris Melendrez, Jon Zaman, and two councilors. The changes that were made in 2016 were quite significant and those changes came through without an issue so these changes should too.
- ix. **Next Step.** Member St. John mentioned that the meeting Mr. Moya said he would set up for board members to talk to city councilors will be a good place to start.
- x. Chair Kass replied that he was working with Julian Moya to get that set up. In their last exchange they decided to find a sponsor first and then talk to all the Council members.

**B. Serious Use of Force Discussion.** Director Harness sat in on the Serious Use of Force discussion with the monitors and IA.

- i. Conceptually, CIRT and FIT are going to go away and there’s no longer going to be a bifurcated process. They are no longer going to send FIT to every serious use of force so there’s not going to be those duplicative efforts.
- ii. The Use of Force Policy is going to be rewritten using three tiers; tier one will be investigated by the field and tiers two and three will be investigated by IA.
- iii. Because of those changes, all of the related policies will have to change.

**C. Meeting with Mr. Giaquinto.** Director Harness met with Mr. Giaquinto on January 17, 2018.

- i. The monitoring team was hoping that Dr. Ginger’s moving forward position would be accepted by the court. That would mean no more IMR-7 or real data that had to be submitted to the monitors. They would then determine whether the evaluation period for IMR-8 would be six months or one year.
- ii. They also wanted to make sure that they were fair to the department to comply with their obligations in 2-98, which are due in March.

- iii. The City's compliance plan is due on January 30, 2018. All the parties agree that they are going to need a six-week extension from that to redo of the city's action plan, which didn't get a lot of acceptance. The new compliance plan will have more measurables and steps for how the City is going to move forward and it will be submitted in March if they get their six-week extension.
- iv. Mr. Giaquinto is also evaluating the recommendations for discipline and why there's such a wide divergence between the CPOA/POB and APD. He is going to emphasize that APD needs to send cogent explanations as to why there was a non-concurrence. There's probably going to be some kind of reworking of 3-4, the discipline matrix.
- v. If APD wants the ability to have a variance besides aggravating or mitigating circumstances, it needs to be written into the policy because there was an overriding unspoken policy that if a certain act wasn't closely enough related to the first act it wouldn't be considered for progressive discipline. 3-46 might be rewritten for this reason.

**D. Compliance.** Chair Kass asked Cdr. Campbell what her relationship is to the new compliance department.

- i. Cdr. Campbell responded that, she is still at Southwest Area Command rewriting 3-52 is a collateral duty. Cdr. Campbell and Ms. Luna are not part of Compliance Department. SOP 3-52 is their latest endeavor.
- ii. Cdr. Campbell added that she has been part of other paragraphs in the past, including 2-48 which she had from the beginning. Cdr. Campbell then described the process of how they put names on paragraphs or people sign up to lead and then they are responsible for the SOP and work on it until they retire. This keeps these policies from being shifted around and forgotten.

**E. Main Issue.**

- i. Director Harness explained that the biggest problem the POB has had over the last three years is that the policy development process as drafted does not comply with the settlement agreement, which states that all CASA-related policies must be submitted to the POB for review.
- ii. Director Harness offered to send Cdr. Campbell and Ms. Luna the POB's position papers that were presented to the court. Cdr. Campbell agreed that that would be helpful.
- iii. Ms. Luna opined that rewriting 3-52 is important because it drives all of the other policies that are going to be changed. That is why it is important to get the CPOA's and POB's input and try to

compromise in that process. Director Harness told Ms. Luna he would send her what the POB proposes back with 3-29.

**VIII. Other Business:** None.

**IX. Next Meeting:** The next meeting will occur on Tuesday, February 13, 2018 at 5:00 p.m.

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

**For: 3 – Cruz, Kass, St. John**

Meeting adjourned at 6:23 p.m.

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Approved by:

William Kass, Chair  
Policy Review Subcommittee

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Date

CC: Julian Moya, City Council Staff  
Trina Gurule, Interim City Clerk  
Isaac Benton, City Council President (via email)

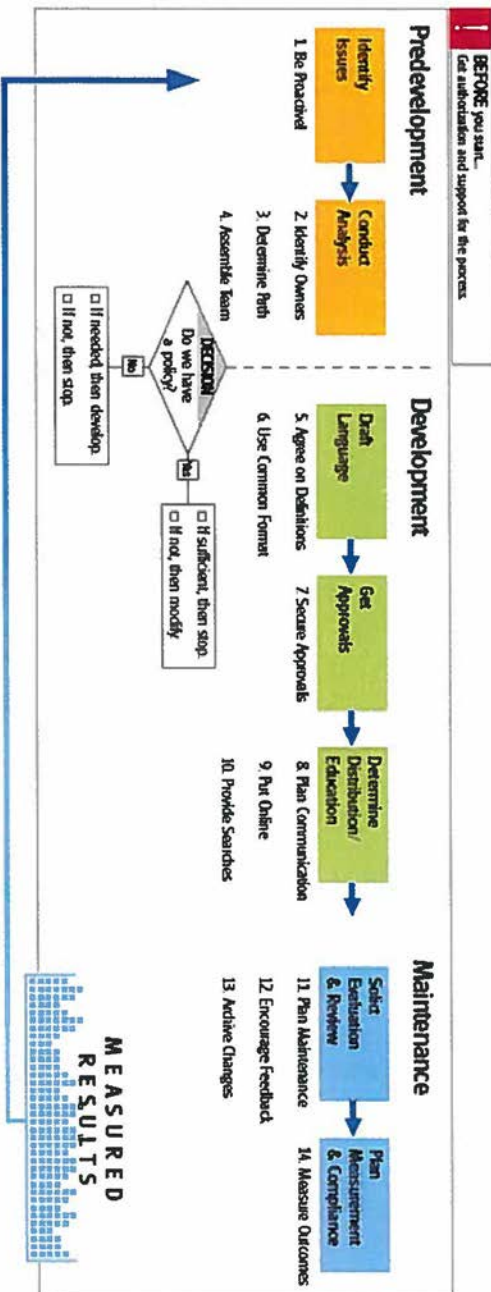
Minutes drafted and submitted by:

Maria Patterson, Temporary Administrative Assistant

# **Attachments**

DRAFT

# POLICY DEVELOPMENT PROCESS WITH BEST PRACTICES



## Attachment "A"

**ALBUQUERQUE POLICE DEPARTMENT ADMINISTRATIVE ORDERS**

**SOP 3-44 Effective: 06/16/16 Review Due: 12/13/16 Replaces: 03/16/11**

**3-44 REVIEW OF COMPLETED ADMINISTRATIVE INVESTIGATION CASES**

**3-44-1 Purpose**

This policy details the process that occurs upon the completion of an administrative misconduct investigation. It also sets out the procedure for reviewing a serious use of force investigation only for the purpose of imposing discipline. For a general review of use of force administrative investigations, refer to the Use of Force Reporting and Supervisory Force Investigation Requirements SOP and the Force Review Board SOP.

**3-44-2 Policy**

To maintain constitutional and effective policing, and to promote officer safety and accountability, the Department ensures that all findings in administrative misconduct investigations are supported by the appropriate standard of proof. The Department reviews recommendations from the Civilian Police Oversight Agency (CPOA) and the chain of command and ensures that an officer who commits misconduct is held accountable in a fair, consistent system of discipline.

**3-44-3 Definitions**

**A. Bureau Head**

This is a Deputy Chief or Major responsible for overseeing a Bureau within the department.

**B. Chart of Sanctions**

This is a matrix listing disciplinary sanctions based on the level of offense and the number of offenses committed within a given time period. The Chart of Sanctions is part of the Discipline System SOP. The chart identifies the specific violation and disciplinary penalty if there is culpability.

**C. CIRT**

Acronym for Critical Incident Response Team

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

Civilian police complaints are complaints originating externally from non-Department personnel.

**E. Civilian Police Oversight Agency (CPOA)**

This is an independent entity created by city of Albuquerque municipal ordinance Section 9-4-1 through 9-4-14 to provide an effective civilian oversight function for the Albuquerque city police so as to promote police officer accountability and to protect rights of Albuquerque's citizens. It maintains operational independence from both the City Council and the City of Albuquerque's administration, and is charged with the responsibility of investigating all citizen complaints concerning police conduct. **The CPOA is also charged with performing audits and monitors all incidences of use of force by police, and all matters under investigation by APD's Internal Affairs (IA) or other APD personnel tasked with conducting administrative investigations related to a use of force incident. The CPOA prepares proposed findings and recommendations on all officer involved shootings and serious uses of force as defined by Article III, Paragraph 12, Subsection (qq) of the court-approved DOJ Settlement Agreement with the City of Albuquerque ("Serious Uses of Force").**

**Attachment "B"**

#### F. Clear and Convincing Standard

A fact is established by a clear and convincing standard when the fact is highly and substantially more probable to be true than not and the reviewer must have a firm belief or conviction in its factuality.

#### G. Division Head

This is a Commander or civilian equivalent responsible for overseeing and operating a Department Division.

#### H. IAS

Acronym for Internal Affairs Section.

#### I. OIS

Acronym for officer involved shooting.

#### J. Preponderance of Evidence

A fact is established by a preponderance of evidence when it is shown that the fact is more likely true than not true. Preponderance means the greater weight of evidence, taking into consideration the quality and persuasiveness of the evidence, not the number of witnesses or exhibits.

### 3-44-4 Procedures

#### A. Timelines

An investigation conducted by the IAS or the by CPOA is completed within 90 days following initiation of the complaint investigation. The 90-day period does not include review time. An extension of time for completion of the investigation may be granted for a maximum of 30 days. The request for an extension must be in writing and approved by the Chief. Review and final approval of the investigation, and the determination and imposition of the discipline, is made within 30 days following completion of the investigation. 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.

#### B. Types of Investigations and Process

The process for review of an investigation depends on the type of complaint and the nature of the investigation.

##### 1. An administrative Investigation of Civilian Police Complaints (CPCs)

CPCs are investigated by the CPOA and forwarded to IAS to initiate a review by the chain of command and if the complaint is sustained, to impose discipline. **APD hereby agrees and understands that its full cooperation is necessary. 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. 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,**

## Attachment “B”



independent investigations of civilian complaints and reviews of serious uses of force and officer-involved shootings.

<flow chart>

#### 2. Administrative Investigations of Misconduct (other than a serious use of force)

An administrative investigation of misconduct that does not involve a serious use of force is investigated by IAS (or the chain of command in cases of minor misconduct) and reviewed by the chain of command before the Chief or designee imposes appropriate discipline, if discipline is warranted. **Internal Affairs shall provide a weekly update to the CPOA Director on all open internal investigations**

<flow chart>

#### 3. An administrative Investigation of Serious Use of Force (including OIS)

A serious use of force is investigated by CIRT. The IAS handles all aspects of the investigation relating to the imposition of discipline. A serious use of force investigation is forwarded to the CPOA for review and a recommendation as to discipline if discipline is warranted. The CPOA returns its recommendation to IAS for review by the chain of command and imposition of appropriate discipline by the Chief or designee.

<flow chart>

#### C. Role of Internal Affairs Section in Case Review

IAS is the record-keeper of administrative investigation records. IAS is the point of contact with the CPOA to ensure consistency and proper tracking of the investigation. **Redacted personnel records including those of the Internal Affairs Unit shall be made available to the POB on demand.** Upon completing the review of the administrative investigation, IAS updates required information into the early intervention system. Upon receipt of the final decision from the chain of command, IAS takes appropriate steps to impose discipline if discipline is warranted.

#### D. Review by CPOA Executive Director

1. The CPOA's review of investigations is not governed by this policy but instead by Section 9-4-1 Revised Ordinance of Albuquerque (1994) and CPOA Policies & Procedures. This policy discusses CPOA's review process for informational purposes and because of how that process impacts APD's functions and responsibilities.

2. The CPOA Executive Director reviews CPC investigations by CPOA investigators and CIRT investigations of serious use of force (including OIS cases).

3. The CPOA Executive Director proposes findings and recommendations regarding discipline against an officer involved in the incident. The Police Oversight Board reviews and makes a final decision adopting or rejecting the proposed findings and recommendation for discipline to the Chief.

4. The CPOA Executive Director routes the case and Police Oversight Board's decision and recommendation to IAS. **Imposition of the recommended discipline is at the discretion of the Chief of Police, but if the Chief of Police does not follow the disciplinary recommendation of the POB, the Chief of Police shall respond in writing, within 30 days, with the reason as to why the recommended discipline was not imposed.**

## Attachment "B"



E. Review by Chain of Command

1. All investigatory cases, once completed by a supervisor, IAS and/or CPOA, will be forwarded to the investigated employee's Division Head for review.

2. The Division Head reviews the SOP sections which refer to the alleged misconduct and may add additional SOP sections if appropriate.

3. The investigated employee's Division Head notes whether the Division Head does or does not concur that the findings are supported by a preponderance of the evidence (or for findings that allegations are unfounded, a clear and convincing standard). For investigations in which CPOA recommends discipline, the Division Head notes whether he or she agrees with the CPOA's recommended discipline. **(I would add something that the CPOA's recommendation is based on the chart of sanctions here as well)** For other cases, the Division Head recommends discipline based on the Chart of Sanctions. The Division Head consults with other members of investigated employee's chain of command regarding recommendations.

- a. The Division Head lists and considers all mitigating and aggravating circumstances.
- b. If the Division Head recommends discipline that deviates from the Chart of Sanctions, the Division Head includes a detailed justification for the recommended deviation.
- c. The Division Head considers whether non-disciplinary corrective action, such as counseling or re-training is also appropriate.
- d. The Division Head ensures that the investigation and report is complete, thorough, and impartial. If it is not, the Division Head will articulate any problems and send the case back to the investigator to address deficiencies.
- e. The Division Head forwards this recommendation, attached to the completed file, to the appropriate Bureau Head.
- f. The Bureau Head reviews the file and recommendation regarding findings and discipline.
- g. The Bureau Head ensures that the investigation and report is complete, thorough, and impartial. If it is not, the Bureau Head will articulate any problems and send the case back to the Division Head to address deficiencies.
- h. The Bureau Head makes the final decision regarding findings and discipline if he/she determines that the appropriate level of discipline is a level less than or equal to a 39-hour suspension, unless this decision is inconsistent with the IAS's findings or with CPOA's findings and recommendation.
- i. If the appropriate level of discipline is equal to or greater than a 40-hour suspension, or if the Bureau Head's decision is inconsistent with the findings of IAS or with the findings and recommendation of the CPOA, the final decision is made by the Chief or Assistance Chief, as explained below.
- j. If the Bureau Head issues a final decision, he/she routes the file and decision to IAS for its records and imposition of discipline if warranted.
- k. If the Bureau Head does not issue a final decision, he/she indicates concurrence or non-concurrence with the proposed findings and recommendation and forwards the file to the Chief or Assistant Chief for final disposition. The Bureau Head ensures that the file includes appropriate documentation regarding any mitigating and aggravating circumstances, deviations from the Chart of Sanctions, and any disagreement with IAS's or CPOA's findings or recommendation for discipline.

F. Review by the Chief or Assistant Chief

## Attachment "B"

1. For all cases in which the Bureau Chief does not issue a final decision, the Chief or Assistant Chief reviews the complete file and recommendations regarding findings and discipline. The Chief or Assistant Chief makes the final determination about findings and the appropriate level of discipline.
2. The Chief or Assistant Chief ensures that any mitigating and aggravating circumstances and any deviations from the Chart of Sanctions are documented appropriately.
3. The Chief or Assistant Chief ensures that the investigation and report is complete, thorough, and impartial. If it is not, the Chief or Assistant Chief will articulate any problems and send the case back to the Bureau Head to address deficiencies.
4. The Chief or Assistant Chief routes the file and decision to IAS for its records and imposition of discipline.
5. The Chief has discretion over, and whether, and at what level to impose discipline. If the Chief's decision differs from the CPOA's recommendation, the Chief sends a memo to the CPOA Executive Director within 30 days of the CPOA's recommendation, explaining the reasons the recommendation was not followed.
6. If a hearing is requested by the civilian complainant, within 30 days of receipt of the decision of the POB, the Chief of Police shall notify the POB and the original civilian complainant of his or her final disciplinary decision in this matter in writing, by certified mail. If a civilian complainant requests a hearing within 20 days of receipt of the decision of the POB, the Chief of Police shall notify the POB and the original civilian complainant of his or her final disciplinary decision in this matter in writing, by certified mail.

#### G. Confidentiality and Access

1. Supervisors are responsible for the security and confidentiality cases reviewed which are in their possession.
  - a. The cases and records are stored in secure area, such as a locked drawer or locked office, when not being reviewed.
  - b. Individuals outside the chain of command are prohibited from viewing cases and records. Employees are prohibited from releasing information about these cases outside the chain of command, except for IAS and Records employees who consult with the Legal Department. (this language should be modified to accommodate the following as the CPOA is an allowed exception)
  - 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. However, any material protected from disclosure by law shall remain within the custody and control of APD at all times and will be handled in accordance with the applicable legal restrictions.
  - d. Compelled statements given to the Director, CPOA staff or the designated independent investigator, by a police officer will be used only for the Director's investigation and the closed session review of the investigation file by the POB, if any. The actual statement will remain confidential and will not be included in a final report. The Director may summarize conclusions reached from a compelled statement for the investigation report and in the public record letter to the complainant.
2. An employee may review his/her own case file in IAS by contacting IAS.

## Attachment "B"

**ALBUQUERQUE POLICE DEPARTMENT ADMINISTRATIVE ORDERS**

**SOP 3-4 Effective 05/24/17 Review Due: 5/24/18 Replaces: 12/21/16**

**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**

Professional Accountability Bureau

Academy

Basic Training

Advanced Training/Range

Field Training/OJT

Recruiting/Background

Force Investigation Team (FIT)

Internal Affairs Division

Internal Affairs Unit

Critical Incident Review Team (CIRT)

*(the above is represented by a diagram in the policy)*

**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**

**Attachment “C”**

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

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.

### f. POB

Responsible for determining which portions of the APD Civilian Police Academy are necessary for the POB to have a sound understanding of the Department, its policies, and the work officers perform - for purposes of this training requirement, APD shall identify those portions of the standard APD Civilian Police Academy Program that are optional for POB members and shall make other aspects of the program available for POB members to complete independently;

Responsible for a briefing that identifies and explains the curriculum of all training received or to be received by APD officers, including any outside training not provided by the city.

## B. Force Investigation Team (FIT)

## Attachment “C”



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)

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. **The IAS acknowledges that the CPOA audits and monitors all incidences of use of force by police and all matters under investigation by APD's Internal Affairs (IA) or other APD personnel tasked with conducting administrative investigations related to a use of force incident. In order to assist in this task:**

- IAS will provide a weekly update to the CPOA Director on all open internal investigations.
- Redacted personnel records including those of the Internal Affairs Unit shall be made available to the POB on demand.
- IAS will ensure, for purposes of its audit function, the POB shall have full access to investigation files and may subpoena such documents and witnesses as relevant to its audit function.
- IAS will ensure the CPOA Director shall have access to any Police Department information or documents that are relevant to a civilian's complaint, or to an issue, which is ongoing at the CPOA.

## Attachment "C"