



CITY OF ALBUQUERQUE

Albuquerque Police Department
Office of Policy Analysis (OPA)

Meeting Minutes 18-21

DATE: October 18, 2018

TIME: 10:00 am – 12:00 pm

VENUE: Sherrif's Conference Room, 5th Floor, LEC

ATTENDEES:

Jolene Luna, Implementation Unit Mgr.
William Kass, POB
Ed Harness, CPOA Executive Director
Justin Montgomery, APOA Rep.
Kim Prince, SOP Liaison
Sara Haugaard, ISR-UNM
Sofia Torres/ Communications
E. Frank Galanis, Risk
Paul Skotchdopole, CPOA
Greg Mondragon, Transport Officer
Shaun Willoughby, APOA
Alyssa Ferda, USAO
Lindsay Van Meter, City Legal

Chelsea Van Deventer, POB
Danyel Mayer, City Legal
Felipe Garcia, Sgt. APD Field Services
James Lewis, Mayor's Office
Amanda Tapia, Sgt./Academy
Anna Ericksen, Intern Program/Academy
Jeramy Schmehl, City Legal
Fred Mower, APOA
Commander Rob Middleton, APD/IA
Robby Heckman, APD
Elizabeth Martinez, USAO/DOJ
Paul Heidle, ACLU

1. SOP 2-56 Use of Force – Reporting By Dept. Personnel	Presented by: Commander Middleton
Discussion:	Presenter gave a brief overview of the policy. There is a suite of policies that focus on Use of Force (SOP's 2-52, 2-53, 2-54, 2-55, 2-56, and 2-57). This policy is one of the last two requiring review and approval. This Use of Force suite has been under amendment since March 2018. This, as well as the other policies in the suite had to be reconciled with SOP 2-52 (approved by the Monitor and Parties on October 3, 2018) as part of their revision process. This policy shows the responsibility of all personnel to report any incident of Use of Force. This policy as well as many of the other Use of Force policies are guided by the Court Approved Settlement Agreement (CASA), much of the terminology is referenced in the CASA

paragraph 46.

The term “BlueTeam” is referenced throughout the policy as the program used to document a Use of Force incident. A recommendation by IA Force Division staff was made to utilize the term “IA database” rather than a specific program, as the program may change if an alternative program is identified and purchased.

It was noted, 2-56-2 relates to CASA paragraph 41, 2-56-3 is related to CASA paragraph 48, Force Investigation Section is related to paragraph 46 and 2-56-4A.1 relates to paragraph 41 of the CASA.

Looking at 2-56-4A.5, this language was added per a recommendation by Mr. Peter Cubra.

The sections 2-56-4A.6 and 7 relates to paragraph 45 of the CASA, having to do with the On Body Recording Device (OBRD). A member of the CPOA recommended that language be added to this section to address situations that are rapidly evolving where the officer does not have the ability to activate their OBRD. The Presenter stated that it is imperative for the OBRD to be activated per the CASA, paragraph 45 and these situations are addressed in training. The Presenter noted that 2-56-4A.8 is related to CASA, paragraph 51.

The section 2-56-5A.1.2. and 3, per City Legal, is directly from SOP 2-52-6F.1.2.3 which was approved by the Monitor. In reference to 2-56-5A.1.viii, a member of POB recommended deleting “with a hard object” because it seems that injurious striking should be checked out by medical personnel. City Legal advised that this language is direct from 2-52 and the definition of a hard object is defined in SOP 2-53. The Presenter added, the person investigating the Use of Force will ask if the individual is injured, and if the response is “yes”, medical attention will be given.

Guided by paragraph 44 in CASA, sections 2-56-5A.2.4 and 5 concerning an officer transporting an individual to medical facility was a topic of discussion. It was suggested by a member of the APOA that police officers should not be transporting individuals to medical facilities due to the fact that they are not trained medical professionals. The member recommended that the point, “only if an emergency”, should be added to this section. The Presenter referenced the language already present in section 2-56-5A.2, “if necessary.” The APOA member insists that it should be spelled out more clearly in the SOP and reiterated, it doesn’t spell things out in this policy and if someone is reading this, it needs to be clear.

Discussion pertaining to section 2-56-5B.1 and 2, a member of POB suggested, all witnessing officers upload their OBRD by the end of shift as it pertains to video of the Use of Force incident. It is too permissive to just have the supervisor access or should it be a requirement for supervisors to review and upload the video as well? City Legal commented, supervisor’s response to Use of Force depends on the level of Use of

	<p>Force, levels 2 and 3 are a different investigation, but SOP 2-8 addresses this issue in greater detail which is why it is not so much in this policy. It does say, don't leave the scene. The Presenter added, current practice is in serious Use of Force call out, larger section is about gathering evidence, all officers stay on scene and provide video, and reason they may not have stayed could be that they were chasing another individual, etc.</p> <p>As for sections 2-56-5C and D, the Presenter advised, these sections were added to make the Use of Force levels more clear. Section 2-56-5C.1 is from CASA paragraph 42. An Academy Sergeant asked if the word document would be different from the incident report. The Presenter said yes. The Sergeant also asked if there are two different functions between an officer and supervisor. The Presenter advised that the officer is responsible for giving the statement for BlueTeam and the sergeant is responsible for creating the BlueTeam entry.</p> <p>The section 2-56-5E, as per the Presenter, is a result of a recommendation from the Monitor. The Presenter advised that the Noise Flash Diversionary Devices (NFDD) needs to be recorded as Level One Use of Force to document the use of the device. If the device injures an individual, the use of the device will be reported as a Level Two or Three. Presenter also says the use of gas is reported as a Use of Force. A member of APOA inquired about the proximity of the flashbang and if that was applicable. Presenter responded, if used within close proximity, Level One, if it lands on someone this would be a Level Two. The range runs from hitting a person to zero contact. The level does depend on the proximity. City Legal noted that the DOJ says this has to do with the injury incurred once these tools are used.</p>
Action:	<ol style="list-style-type: none"> 1. The OPA Draft will be posted on PowerDMS for 7 Day Commentary. Recommendations from the Stakeholders will be accepted during this period.

2. SOP 2-57 Use of Force – Review and Investigation By Dept. Personnel	Presented by: Commander Middleton
Discussion:	<p>Presenter gave a brief overview of the policy. This policy addresses “All Personnel” because there are non-sworn PSAs and Transport Officers that may be affected by this policy.</p> <p>The second paragraph of 2-57-1 is related to CASA paragraph 48. This policy is the more restrictive in reference to how officers and supervisors treat the Use of Force.</p> <p>An issue was raised about the consistency of language regarding section 2-57-2 and whether it is an analysis for a court case, not the standard for investigation, lip service. City Legal discussed how this policy evolved by having 2-52 in mind and certainly the perspective of an officer is important and consider reasonable, necessary, proportional, minimum amount of</p>

force which is the approach taken by APD. The concept of 20/20 hindsight in a review of a Use of Force is a consideration of what happened. It is very unfair to go after an incident to create a fiction of what has just happened. APOA is correct, one must be fair and objective when reviewing the use of force incident. The policy can't be everything, it lays on top of training. The concept of 20/20 hindsight in a review of a Use of Force is a consideration of what happened. An APOA member discussed considering the officers on the scene and not second guessing the officer. APOA wants new language inserted and will submit written recommendations. APOA also commented, "Cannot apply a standard from someone who wasn't at the scene." The Presenter added that the language references "will consider" as there are guidance points to consider for supervisors. The Presenter, "will consider" is Graham language. There are nine pages guiding the officer with questions to better understand the Use of Force incident. Supervisors have to take it from the officers view point, there is no 20/20 vision, not second guessing the officers account. This is the only fair way to assess the situation.

The ACLU posed the question, "Is the goal of this policy to establish an SOP that drives an administrative review of a Use of Force?" He says that he is struggling to find a clear articulation of the standard and wonders how supervisory training helps establish these in the context of an administrative investigation. APOA responds, this is a part of a policy suite, it doesn't cover all aspects in and of itself, but that within the suite de-escalation strategies are addressed, striving to use the minimal amount of force necessary. He notes that Graham is best practice and must be considered, but using the minimum amount of force is the goal. This can only be assessed after receiving the officer's account. There are many aspects that come together once the investigation is complete. POB inquired about the practical difference between an investigation and a review? POB member also wanted to know what the independent work product of this policy is. The Presenter responded, if Graham wasn't in there the guideline would not be applicable and it would turn into black and white evidence based without interviewing the officer in a three dimensional environment. He also reminded OPA attendees that the backlog review is allowing APD to gather data to be used as lessons learned for future cases. Just viewing the video doesn't give the full account of the officer's perspective. It is the preponderance of the evidence that concludes the incident being in or out of policy. POB commented that he understands what is trying to happen with this policy language and considering the officer's perspective taken into account and he understands why it is confusing. He recommends reworking the paragraphs in section 2-57-2. He noted what is inflammatory is the citing of the Graham case. He suggests moving paragraph 5 which should be the 2nd paragraph and the language that states, "the officer's perspective will be considered" be changed. Should this be a mandatory part of policy? Graham should be a part of this policy, the standard of citing Graham. Graham takes the idea that the officer shall not be second guessed in his perspective. He notes, there is a higher standard applicable to Graham. The APOA comments that citing Graham as setting

the standard is something that needs to be there so we have a benchmark. Citing Graham should be part of the policy. What is considered to be objectively reasonable should be in policy to avoid any confusion. Graham takes the ideas that you must look at what happens at the scene from the perspective of a reasonable person at the scene. This policy is replete at nauseam of the process. City Legal added that reasonable, proportional, necessary have been weaved into 2-57, this policy speaks to obligations to reviewers and supervisors. Graham stops where this policy picks up. The POB asked that APD incorporate things that must be considered such as the officer's perspective and other facts in the situation and feels there is an over emphasis of a looser standard which is the first four paragraphs of this section of the policy. The CPOA suggests referencing SOP 2-52 at the top of the policy then cite Graham. This format would be consistent with other agencies and agreed to by other Monitoring Teams. It could be said that 2-52 is the driving force of this policy, but Graham should be considered. Other departments use the Graham Standard as a reference. POB member commented about the review process, what piece of paper documents whether the Graham Standard is being referenced in the investigation or if 2-52 is being measured during investigation. City Legal responded that if you do not take into account the officers point of view, you would only have a narrow view of the situation, not a perspective from the person who was there. The Monitors view is that APD has a hard time distinguishing between the criminal violation and the Graham standard of an officer's account. The APOA recited a draft policy of 2-57-2 in which the parties ranked the process. The CPOA added that you can have an outcome that considers Graham and still violates policy. The APOA added that Graham is not a blanket that you throw down and you are mysteriously protected. A member of APD Forward respectfully disagrees with the Parties ranking order. How would the backlog investigation go if you don't use 20/20 hindsight? He feels it is very confusing to have a criminal standard in a policy that is trying to establish an administrative review standard. POB noted there is a criminal evaluation that will happen. APD Forward member added, if you start with intermingling Graham it will be confusing. He referenced CASA paragraph 66, but later apologized for evoking this paragraph as it is a separate issue. He asked how we arrive at objectively reasonable. He noted the Monitor's review of APD force investigations and stated, from someone in the community and based on the Monitoring Reports, he isn't confident that the training curriculum will be good based on this confusing policy.

Many of the sections are referenced in the CASA such as; 2-57-3A.1 in paragraph 48; 2-57-3C in paragraph 52; and 2-57-3D.3 in paragraph 53.

A recommendation regarding section 2-57-3D.3 was made by POB, clarify that the Commander will have 10 days to complete the review of a Level One Use of Force after the Lieutenant reviews the case.

POB noted that the section 2-57-3D.6 places an unfair burden on supervisors. There should be another layer to run by someone else who is

specified in the policy. City Legal responded that adding another layer reduces efficiency in the review process.

It was noted that section 2-57-3D.6 relates to CASA paragraph 54, section 2-57-3D.7 relates to CASA paragraphs 55 and 56, 2-57-3E relates to CASA paragraph 55, and 2-57-3G relates to CASA paragraph 58.

A member of APOA commented that anytime there are significant steps taken in a Use of Force case review, the officer should be notified of what happens. For example, anytime the Chief reassigns the case to a higher level, the officer should be notified of these changes. He also suggests adding language to 2-57-3E and G that notifies the affected officer of the change in the Use of Force review.

The Presenter noted that 2-57-3G.5 language was added for clarity. He also commented on 2-57-3G.7, the Backlog Team is documenting concerns in Use of Force Investigations. Deficiencies will be recorded in work performance records. He has noticed supervisors are being more cognizant when reviewing Use of Force cases.

As a note, City Legal commented that section 2-57-4A.2 is not intended to indicate the Department is investigating themselves. APD is collecting evidence and sending it on to another agency. The Presenter added that criminal investigators support the Internal Affairs Force Division but they are assigned to the Criminal Investigations Division.

A CPOA member commented on 2-57-4B.1.e, wondering about privileged communication and whether you can restrict the officer's rights to privilege communications. APOA responded, officers should not be talking about the facts of the case. Officers should not tell anyone about what happened until there is control of the scene. Specifically, make sure the officer understands not to discuss this case until they have an attorney present. The Presenter added that facts should only be talked about to a detective. The officer can make general reference to others, wife, attorney, etc., but the facts cannot be talked about. There are procedures to guide the conversation of the officer after an incident. Although any conversation between wife and husband is privileged.

In reference to section 2-57-4B.3, CPOA asked if this should be two months or three months to complete a Level Two or Three investigation.

The Presenter commented about 2-57-4C.1.f, a file will be kept on officers as we get better with investigations.

An APOA member recommends adding language to section 2-57-4E.1 to notify the affected officer of case reassignment.

The Presenter clarified that anytime the Multi-Agency Task Force (MATF) is mentioned in the policy, the information is going to the APD detectives assigned to the MATF.

	<p>The APOA recommends changing language in section 2-57-4F.3 to remove the Chief of Police and indicate that the investigative report will be the means in which notification is made to another agency. The POB suggested leaving language open for conflicts using “prosecuting body” rather than specific agencies.</p> <p>In final discussion, POB asked what type of shifts the Force Investigative Section will work? The Presenter answered that the section will have shift work consisting of four teams of five detectives in each team. This schedule will be piloted in one of the area commands before being implemented throughout the Department.</p> <p>In closing, the OPA Coordinator noted that written comments will be reviewed by the Presenter and City Legal.</p>
Action:	<ol style="list-style-type: none"> 1. The OPA Draft will be posted on PowerDMS for 7 Day Commentary. Recommendations from the Stakeholders will be accepted during this period.