

# CITY OF ALBUQUERQUE



## CIVILIAN POLICE OVERSIGHT BOARD

Thursday, August 9, 2018 – 5:00 PM  
Vincent E. Griego Chambers, Basement Level  
City/County Government Center – One Civic Plaza NW  
Albuquerque, New Mexico

### Members Present:

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

### Members Absent:

None

### Others Present

Edward Harness, CPOA  
Katrina Sigala, CPOA  
Julian Moya, City Council  
Cdr. Michael Miller, APD  
Cdr. Robert Middleton, APD  
Cdr. Michelle Campbell, APD  
Jolene Luna, APD  
Jeremy Schmehl, Asst. City Atty  
James Lewis, Mayor's Office

### Meeting Minutes

- PO Box 1293  
Albuquerque  
NM 87103  
www.cabq.gov
- I. Welcome and call to order.** Chair Waites called to order the regular meeting of the Police Oversight Board at 5:03 p.m.
  - II. Pledge of Allegiance.** Member Kass led the meeting in the Pledge of Allegiance.
  - III. Mission Statement.** Chair Waites read the Police Oversight Board's mission statement.
  - IV. Approval of the Agenda.**
    - a) A motion was made by Vice-Chair Galloway to approve the agenda as written. Member St. John seconded the motion. The motion was carried by the following vote:  
**For: 6 – Waites, Galloway, Fine, St. John, Kass, Van Deventer**
  - V. Public Comments**
    1. Jeff Parsons
    2. Tony Pirard

**VI. Review and Approval of Minutes.** For more information about minutes from prior POB meetings, please visit our website here: <http://www.cabq.gov/cpoa/police-oversight-board/pob-agenda-meeting-minutes>

**a) Approval of the Minutes from July 12, 2018**

1. Copies of the draft minutes from the July 12, 2018 POB meeting were distributed to each member in their packets.
2. A motion was made by Member Fine to approve the minutes as written. Member St. John second the motion. The motion was carried by the following vote:

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

**VII. Reports from City Staff**

**a) APD – Commander Michael Miller with Internal Affairs gave the following report for APD:**

1. **Statistical Data.** Commander Miller read the Statistical Data for the month of July 2018. A document titled *Police Oversight Board, APD Internal Affairs: Statistical Data for the Month of July 2018* was distributed to the POB members. (see attached)
2. **Quarterly report.** Commander Miller will provide quarterly report of officer involved accidents at September 13, 2018 Police Oversight Board meeting
3. **Use of Force 2-54 and 2-55.**
  - a. Board Member Dr. Kass gave an introduction on the Use of Force Policy and how the Civilian Police Oversight Agency and Police Oversight Board’s involvement during this process.
  - b. Commander Middleton gave an overview of Use of Force 2-54 Intermediate Weapon Systems and 2-55 De-escalation.
4. **Public Questions and Comment on Use of Force 2-54 and 2-55**
  - a. Robert Heckman
  - b. Commander Campbell, Jolene Luna and Jeramy Schmehl discussed policy development process on Use of Force
  - c. Steve Allen
  - d. Rachel Smith
  - e. Tony Pirard

**b) City Council-**

1. **City Council Representative.** – Julian Moya presented his report.

**c) Mayor’s Office**

1. **Mayor’s Office Representative.** James Lewis presented his report

**d) City Attorney**

1. **Asst. City Atty.** – Jeramy Schmehl presented his report
2. **Email response.** Vice-Chair Galloway made a recommendation that board members are vigilant of their email and to respond in a timely manner.

**\*\*\*\* Vice-Chair Galloway left at 6:46pm \*\*\*\***

- e) **Community Policing Councils**
  1. Director Harness was asked by Chris Sylvan to pass along information pertaining to CPC report
- f) **Civilian Police Oversight Agency**
  1. **Executive Director** – Edward Harness presented his report
    - a. **Paragraph 298 Report.** Dr. Ginger provided an annual report on Use of Force and a copy was emailed to board members.
    - b. **Use of Force Backlog.** Project Status Report (see attached).

#### **VIII. Reports from Subcommittees**

- a) **Community Outreach Subcommittee – Chantal Galloway-**
  1. Next meeting August 28, 2018 at 2:30pm
- b) **Policy and Procedure Review Subcommittee – William Kass–**
  1. Met July 19, 2018 at 3:00pm
  2. Next meeting August 16, 2018 at 1:00pm
- c) **Case Review Subcommittee – Valerie St. John –**
  1. Met July 31, 2018 at 1:30pm
  2. Next meeting August 28, 2018 at 1:30pm
- d) **Personnel Subcommittee –**
  1. CPOA Executive Director’s contract will be heard by City Council on August 20, 2018.

#### **IX. Discussion**

- a) **Police Oversight Boards Policy and Procedure.**
  1. **Motion.** Member Van Deventer made a motion to defer the Police Oversight Boards Policy and Procedures to the next POB meeting September 13, 2018. Board Member Fine seconded the motion. The motion was carried by the following vote:  
**For: 5 – Waites, Fine, St. John, Kass, Van Deventer**

**b) Stipends for Police Oversight Board.**

**1. Motion.** Member Van Deventer made a motion to defer stipends for Police Oversight Board for a later agenda. Board Member Kass seconded the motion. The motion was carried by the following vote:

**For: 5 – Waites, Fine, St. John, Kass, Van Deventer**

**c) CPC 132-18 Extension letter for time waiver request.**

**1. Motion** by Member Fine that Director Harness will draft a letter to request a waiver for CPC 132-18 and signed by himself and Chair Waites. Member Kass second the motion. The motion was carried by the following vote:

**For: 5 – Waites, Fine, Kass, St. John, Van Deventer**

**d) APD Commanders recent resignation and demotion**

**1. Member Van Deventer** motioned to review the investigation that occurred on Commander Garcia’s IA issue. Board Member Kass seconded the motion. The motion was carried by the following vote:

**For: 5– Waites, Fine, Kass, St. John, Van Deventer**

**2. Member Van Deventer** motioned to conduct a preliminary investigation to determine whether or not we have a factual predicate for further investigation into testing practices, but not limited to testing practices alone of the Academy and make those request in the next 30 days and decide to take further action at the next board meeting. Motion amend by Board Member Van Deventer that the motion to include the two tiers – academy trainees train officers in training and Veterans in-service training for the year. Member Fine seconded the motion. The motion was carried by the following vote:

**For: 5– Waites, Fine, Kass, St. John, Van Deventer**

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

**a) Administratively Closed Cases**

<b>101-18</b>	<b>126-18</b>	<b>127-18</b>	<b>138-18</b>	<b>140-18</b>
<b>141-18</b>	<b>146-18</b>	<b>148-18</b>	<b>149-18</b>	<b>150-18</b>
<b>152-18</b>	<b>156-18</b>	<b>158-18</b>	<b>159-18</b>	<b>162-18</b>
<b>167-18</b>				

**b) Unfounded**

**053-18**

**1. Motion.** Member St. John motioned to approve the Administratively Closed and Unfounded cases presented. Board member Van Deventer seconded the motion and there was no discussion of any cases. The motion was carried by the following vote:

**For: 5 - Waites, Fine, Kass, St. John, Van Deventer**

**XI. Non-Consent Agenda.**

a) There was no Non-Consent Cases to present

**XII. Non-Concurrence Cases.**

a) There was no Non-Concurrence Cases to present

**XIII. Review of Appeals**

1. Motion made by Board Member St. John that CPC 038-18 was not granted for an appeal. Board member Fine second the motion. The motion was carried by the following vote:

**For: 5 - Waites, Fine, Kass, St. John, Van Deventer**

**XIV. Serious Use of Force/Officer Involved Shooting Cases.**

1. Director Harness gave his report on case I-50-17.

2. **Motion.** Member Kass motioned to approve the Serious Use of Force/Officer Involved Shooting case presented. Board Member Fine seconded the motion. The motion was carried by the following vote:

**For: 5 - Waites, Fine, Kass, St. John, Van Deventer**

**XV. POB's Review of *Garrity* Materials.**

a) There were no *Garrity Materials* to discuss.

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

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

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

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

**XVII. Other Business.**

No other business

**XVIII. Adjournment** – A motion was made by board member Fine to adjourn the meeting. Board member St. John second the motion. The motion was carried by the following vote:

**For: 5 – Waites, Fine, St. John, Kass, Van Deventer**

The meeting adjourned at 7:34 p.m.

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

# Attachments

# POLICE OVERSIGHT BOARD

## PUBLIC COMMENT

### SIGN IN

DATE: ~~2007~~ August 9, 2009

NAME (PLEASE PRINT)

1. Jeff Parsons

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

2. Tony Pirold

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

3. \_\_\_\_\_

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

4. \_\_\_\_\_

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11. \_\_\_\_\_

23. \_\_\_\_\_

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

24. \_\_\_\_\_



**POLICE OVERSIGHT BOARD**  
**INTERNAL AFFAIRS**  
**STATISTICAL DATA FOR THE MONTH OF JULY 2018**

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**APD 911 Communications Center**

**Dispatched calls for Service for JULY 2018: 44,152 (decrease from JUNE (622))**

**INTERNAL CASES FOR THE MONTH OF JULY 2018**

**I's**

**Total Internal Cases Completed the Month of JULY: 8**

**Comprised of:**

- **8-Internal Affairs Investigations**
- **0-Area Command Investigated case**

**Internal Cases Administratively Closed: 0**

**Internal Cases Mediated: 0**

**Discipline imposed for Internal Cases/ JULY 2018:**

4: Verbal Reprimand-Reporting for duty (2), OBRD (2)

2: Suspension (40 hrs.)- User of Force reporting (2)

3: Suspension (80hrs.)-Compliance with laws, rules & regulations, conduct, lethal force

3: Termination- Conduct, compliance involving department policy/personnel, reporting for duty

**EIRS FOR JULY 2018: 18 alerts distributed**

**Pending IA Cases for the Month of JULY 2018: 17**

**IA/IAC Cases opened in the month of JULY 2018: 7**



## **2-54 Intermediate Weapon Systems**

### **2-54-1 Purpose**

To identify the Intermediate Weapon systems utilized by officers of the Albuquerque Police Department and establish directives for officers in the use and deployment of those Intermediate Weapons.

### **2-54-2 Policy**

Intermediate Weapons are less-lethal options available to officers, executing lawful objectives, which are designed to produce pain and incapacitating effects. Intermediate Weapons are intended to overcome resistance or stop the threatening actions of an individual and/or control a situation without causing death or Serious Physical Injury. There is always a risk that an Intermediate Weapon will cause an unintended or unforeseen injury, or death, even when the weapon is deployed as intended. Officers must exercise restraint in the use of Intermediate Weapons, employing De-escalation techniques whenever possible.

The following list of Intermediate Weapons is not intended to establish an order of priority in their use by officers.

The use of Intermediate Weapons must be reasonable, necessary, and proportional, and permitted under Department policy.

### **2-54-3 Intermediate Weapons: Use and Considerations**

#### **A. Requirements to Carry and Qualify**

1. Officers shall carry only Intermediate Weapons that are issued by the Department.
2. Officers shall not be issued and carry any Intermediate Weapon unless the officer has been trained on the weapon and is certified.
3. Uniformed officers shall carry the Electronic Control Weapon (ECW) and Oleoresin Capsicum (OC) Spray on their duty belts.
4. The expandable baton is an optional Force tool.
5. Officers and supervisors assigned to specialized units may carry Intermediate Weapons as dictated by their responsibilities. The commander of each unit will ensure that officers carry Intermediate Weapons according to the unit's standard operating procedures.

#### **B. Use Guidelines**



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**Draft Post-OPA - July 26, 2018**

1. Intermediate Weapons shall be used in accordance with the Department's Use of Force policies (See, SOP 2-52 Use of Force—General and SOP 2-53 Use of Force—Definitions).
2. The use of an Intermediate Weapon must be reasonable, necessary, and proportional in order to bring about a lawful objective.
3. Officers shall issue a verbal warning to an individual and allow that person a reasonable time to comply with the warning prior to deploying any Intermediate Weapon, unless doing so would place an officer or other person at increased risk. (e.g., "Stop or you will be tased!").
4. Officers shall give a verbal announcement in order to notify officers on scene that an Intermediate Weapon is about to be used (e.g. "Taser, taser!", "Beanbag, beanbag!"). The purpose of the verbal announcement is to avoid the possibility of firearms discharge by other officers due to a sympathetic or startle reaction from other officers on scene.
5. Officers shall consider that there are individuals who are more susceptible to injury as a result of using an Intermediate Weapon. These high-risk individuals include visibly pregnant women, young children, elderly persons, frail persons, individuals exhibiting signs of excited delirium, and individuals with low body mass.

C. Reporting

Officers shall report the use of Intermediate Weapons in accordance with APD Procedural Order 2-56.

**2-54-4 Oleoresin Capsicum (OC) Spray**

A. OC Spray: Use Guidelines

1. Officers are authorized to deploy OC spray when such Force is reasonable, necessary, and proportional to control an actively resistant individual or to protect the officer or another party from an Immediate Threat.
2. Officers shall not use OC spray to overcome Passive Resistance by nonviolent and/or peaceful protestors, absent exigent circumstances, such as where there is imminent danger to life or property.
3. After deploying OC spray, officers shall avoid the risk of positional asphyxia caused by the individual being forced into a face-down position. Officers shall release pressure/weight from the individual and position the individual on their side or sit them up as soon as they are restrained, and it is safe to do so. Officers shall monitor the individual for any respiratory or breathing problems or change in mental status, e.g., loss of consciousness, confusion, difficulty speaking.



4. Officers shall direct OC spray at the specific individual(s) who are posing a threat, attempting to minimize exposure to others.
5. Officers shall consider other Intermediate Weapons options if OC spray appears to be ineffective.
6. Using OC spray on an animal is permissible to deter an attack or to prevent injury to an officer or others. Using OC spray on an animal shall be documented in an incident report.

**B. Medical Attention After the Use of OC Spray**

1. As soon as the scene is secure, and it is safe to do so, officers shall summon medics following the use of OC spray.
2. If the individual was exposed in a confined space, officers shall remove the individual as soon as possible from the contaminated area and expose the individual to fresh air.

**2-54-5 Electronic Control Weapon (ECW)**

**A. ECW Modes**

Officers have three options for ECW deployment. The choice of mode used shall depend upon the facts and circumstances at the time of deployment and the guidelines and restrictions set forth below. These are the three operational modes:

**1. Show of Force Mode (Reviewed)**

Drawing the ECW and using the laser sight to "paint" the individual and/or utilizing a warning arc. "Painting" involves intentionally pointing the device at an individual and utilizing the laser sight to target the individual.

A Show of Force by an officer will be reviewed by that officer's on-duty supervisor as set out in Department Procedural Order 2-56.

**2. Drive Stun Modes**

Pressing and holding the device against the individual as it is cycled. This can be done in two configurations:

- a. Drive stun only – This technique involves removing the cartridge from the device and pressing it against the individual while it's energized, causing pain but minimal or no neuro-muscular incapacitation. This technique is solely a pain compliance technique and is prohibited.



- b. Follow-up Drive Stun – This technique is used as a follow-up to a probe deployment and is conducted with the cartridge on the ECW. It can increase the effectiveness of the ECW by increasing the spread between the connections in the event of a close-quarter probe deployment, completing the circuit in the event of a clothing disconnect or when only one probe has made a connection with the individual.

### 3. Standoff Mode

Discharging the ECW with a cartridge on the device, which propels the probes towards the individual and, upon effective contact, is intended to cause neuromuscular incapacitation.

## B. ECW Use Guidelines

1. Officers shall issue a verbal warning to an individual, and allow that person a reasonable time to comply with the warning prior to deploying any ECW, unless doing so would place an officer or other person at increased risk. (e.g., "Stop or you will be tased!").
2. Upon using the device, the officer shall apply the ECW no longer than reasonably necessary, to accomplish a lawful objective. Upon applying the device, back-up officers should attempt to handcuff the individual during the cycle (i.e., handcuffing under power) to reduce the risk of injury to the individual and officers.
3. Officers shall independently justify the reasonableness of each standard ECW cycle (five seconds) or continuous cycle exceeding five seconds. After one standard ECW cycle, the officer shall re-evaluate the situation to determine if subsequent cycles are necessary.

Continuous cycling of ECWs is permitted only under exceptional circumstances, such as, where it is necessary to handcuff an individual under power (e.g., where the individual is armed and it would be unsafe to evaluate a subsequent cycle). Back-up officers should attempt hands-on control tactics during ECW applications, including handcuffing the individual during an ECW application (i.e., handcuffing under power).

4. Officers shall consider other available Force options before deploying an ECW on potentially at-risk individuals. ECWs should not generally be used against visibly pregnant women, elderly persons, young children, or visibly frail persons. In some cases, other control techniques may be more appropriate as determined by the individual's threat level to themselves or others.
5. In standoff mode, center mass of the individual's back should be the primary target area when possible. In situations where a frontal deployment is the only available option, low center mass and/or the legs should be the targeted area, if Feasible.



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Officers shall not intentionally target an individual's head, neck, or genitalia, except where Lethal Force would be permitted.

6. ECWs shall not be used solely as a pain compliance technique. ECWs may be utilized as a follow-up drive stun to a probe deployment in order to complete the circuit.
7. If an officer becomes involved in a physical confrontation with an individual which necessitates a close-quarter deployment of the ECW, the officer may utilize the ECW in drive-stun mode with the cartridge on the device in order to disengage from the individual, create distance, and consider other Force options.

C. ECW Restrictions

Using the ECW is considered a less-lethal level of Force unless other variables are present (as described below), which may increase the likelihood of Serious Physical Injury to the individual because of the secondary impact. Decisions to use an ECW must be reasonable, necessary, and proportional given the totality of the circumstances.

The following restrictions, considerations and conditions apply:

1. Officers must never use the ECW in a punitive or coercive manner.
2. Exposure to the ECW for longer than fifteen (15) seconds (whether due to multiple applications or continuous cycling) may increase the risk of death or Serious Physical Injury and is considered a Level 3 Use of Force. Officers shall also weigh the risks of subsequent or continuous cycles against other Force options.
3. Officers shall not use the ECW on a passively resistant individual.
4. Officers shall not use the ECW on handcuffed, restrained, or subdued individuals unless doing so is necessary to prevent them from causing Serious Physical Injury to themselves or others, and if lesser attempts of control have been ineffective.
5. As a result of the incapacitating effects of the ECW, individuals may lose the ability to protect themselves from injury in a fall. This increases the potential for Serious Physical Injury from the secondary impact.
6. ECWs shall not be used in any environment where an officer knows or reasonably should know that potentially flammable, volatile, or explosive materials are present (including but not limited to OC spray with volatile propellant, gasoline, natural gas, drug lab flammables, or propane).
7. Using the ECW based solely on the fact that an individual is fleeing an officer making a lawful detention or arrest is generally not authorized. However, the totality of the circumstances, including the severity of the offense, whether the individual is



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actively resisting or attempting to evade arrest and whether the individual poses an Immediate Threat to officers, others, or themselves, may justify ECW use under these conditions. (See Department Procedural Order 2-52). Officers shall consider all such factors before using an ECW on a fleeing individual.

8. ECWs shall not be used where such deployment poses a substantial risk of Serious Physical Injury or death from situational hazards, except where Lethal Force would be permitted. Situational hazards include falling from an elevated position, drowning, and losing control of a moving motor vehicle or bicycle.
9. An officer shall not simultaneously point both an ECW and a firearm at an individual.
10. Authorized devices shall consist only of those devices issued and approved by the Department. Personally owned ECWs are not authorized for duty carry.

**D. Holstering and Securing the ECW**

1. Under no circumstances shall the ECW holster be located on the duty belt next to, or on the same side as, an officer's firearm. The ECW shall be carried on the support side, also known as the "weak side," while on duty to reduce the chance of accidentally drawing and/or firing a firearm.
2. ECWs shall be secured in a Department-issued or approved personal holster.
3. All authorized sworn, uniformed officers, unless specifically exempted by the Chief of Police, shall carry the ECW in the holster on their person at all times while on duty.
4. All authorized sworn, non-uniformed personnel issued an ECW shall carry the device during the performance of any law enforcement function involving public contact unless otherwise exempted by their commander.

**E. ECW Post-Deployment Guidelines and Requirements**

1. The deploying officer shall immediately notify his or her immediate supervisor, or if unavailable, the next available on-duty supervisor, by radio dispatch as soon as practical after deploying the ECW. The supervisor shall respond to the scene.
2. Officers who deploy ECWs shall call Albuquerque Fire Rescue (AFR) personnel to the scene to provide medical treatment. AFR shall determine, per their protocol, if the individual needs to be transported to a medical facility for high-risk/sensitive probe removal and/or other medical care. If it is determined that the individual should be transported, transportation shall be provided as soon as practicable. Absent exigent circumstances, probes shall be removed only by medical personnel.



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3. If medical personnel determine that the individual requires medical transport, supervisors shall ensure that an officer accompanies the individual to the medical facility.
4. The primary officer or designee shall request a crime scene specialist to respond to the scene.
5. The deploying officer or designee shall monitor any individual who has received an ECW application while in police custody, scanning for impaired respiration and signs of positional asphyxia per current training guidelines. (See SOP 2-82 – Restraint and Transportation of Prisoners)
6. The deploying officer shall inform responding medics about any individuals who have been subjected to an ECW application that may be under the influence of drugs, are exhibiting symptoms associated with excited delirium, or have been kept in prone restraints after ECW use.
7. Officers shall independently justify the reasonableness of each cycle in the Use of Force Report.

F. Unintended Discharge of the ECW

1. In the event an officer experiences an unintended discharge of an ECW cartridge, the officer shall immediately notify his or her immediate supervisor or, if unavailable, the next available on-duty supervisor.
2. The ECW data shall be downloaded prior to the beginning of the officer's next shift.
3. The responding supervisor shall assume investigative responsibility for the unintentional discharge.
4. The officer shall document the unintended discharge in an offense/incident report, including the serial number of the ECW cartridge discharged.
5. If an individual is hit by an unintentionally deployed probe, the use shall be reported by the involved officer, documented and investigated as set out in Department Procedural Order 2-56.

G. Use of ECW on Dangerous Animals

1. Officers may deploy the ECW on dangerous animals that pose a threat to officers or others.
2. If an officer is required to deploy an ECW against a dangerous animal, the officer shall notify his or her immediate supervisor regarding the deployment once the scene has been secured.





3. The primary officer or designee shall immediately contact Animal Control when officers successfully deploy an ECW against an animal.

#### **2-54-6 Baton (Expandable/Straight or Bokken)**

##### **A. Baton (Expandable/Straight or Bokken): Use Guidelines**

1. Officers are authorized to deploy the baton when such Force is reasonable, necessary and proportional in order to protect the officer or another individual from an Immediate Threat.
2. The use of straight batons is authorized only during field Force deployments.
3. Officers shall not intentionally strike sensitive areas, such as the head, neck, or groin. Preferred target areas are the arms, legs, or torso.
4. Impact weapons other than the baton (Expandable/Straight or Bokken) are prohibited by the Department unless exigent circumstances exist.
5. Officers shall not intentionally strike the head, neck or throat of an individual with a hard object, except where Deadly Force is justified.
6. Officers shall not use their firearm as an impact weapon, due to the possibility of unintentional discharge and/or the possibility that it could result in the Serious Physical Injury or death to the officer, the individual, or others.

##### **B. Medical Attention After the Use of the Baton (Expandable or Straight)**

1. Following the use of an Expandable/Straight or Bokken baton officers shall first restrain the individual and then, once it is safe to do so, immediately call AFR to the scene to provide medical attention. Refer to APD Procedural Orders 2-52-4(6)(F).
2. If medical personnel determine that the individual requires medical transport, a supervisor shall ensure that an officer accompanies the person to the medical facility.

#### **2-54-7 Beanbag Shotgun**

##### **A. Beanbag Shotgun: Use Guidelines**

1. The beanbag shotgun may be deployed when an individual presents an Imminent Threat to an officer or others.
2. In potentially Lethal Force situations, officers shall have a lethal cover officer when deploying less-lethal impact munitions.
3. The optimal range for the 12-gauge beanbag round is 20 to 50 feet.



4. The maximum effective range for the 12-gauge beanbag round is 75 feet.
5. At distances between 50-75 feet, the effectiveness and accuracy of the beanbag shotgun start to diminish.
6. The beanbag shotgun shall be plainly marked with high visibility yellow or orange tape, or paint, on the buttstock and muzzle area of the barrel.

**B. Beanbag Shotgun: Restrictions**

1. Absent deadly Force situations, officers shall not intentionally target an individual's head, neck, or chest.
2. Officers must understand that there is an increased risk of Serious Physical Injury when deploying inside 20 feet.
  - a. At distances inside 20 feet, officer should consider transitioning to other Force options (i.e. expandable baton, TASER).
3. Officers shall consider other available Force options before deploying a beanbag round on potentially at-risk individuals. Beanbag rounds should not generally be used against visibly pregnant women, elderly persons, young children, or frail persons.

**C. Medical Attention After the Use of a Beanbag Shotgun**

1. Following the use of a beanbag shotgun officers shall first restrain the individual and then, once it is safe to do so, immediately call AFR to the scene to provide medical attention. Refer also to APD Procedural Orders 2-52-4(6)(F).
2. If medical personnel determine that the individual requires medical transport, a supervisor shall ensure that an officer accompanies the person to the medical facility.

**2-54-8 40mm Impact Munition Launcher**

**A. 40mm Impact Munition Launcher: Use Guidelines**

1. The 40mm Impact Munition Launcher may be deployed when an individual presents an Imminent Threat to an officer or others.
2. In potentially Lethal Force situations, officers shall have a lethal cover officer when deploying less-lethal impact munitions.
3. The optimal energy range for the 40mm impact munition is 5 to 120 feet.



4. The maximum effective range for the 40mm impact munition is 120 feet.
5. At distances beyond 120 feet, the effectiveness and accuracy of the 40mm impact munition starts to diminish.
6. The 40mm Impact Munition Launcher shall be plainly marked with high visibility yellow or orange tape, or paint, on the buttstock and muzzle area of the barrel.

**B. 40mm Impact Munition Launcher: Restrictions**

1. Absent deadly Force situations, officers shall not intentionally target an individual's head, neck or chest.
2. Officers must understand that there is an increased risk of Serious Physical Injury when deploying inside 5 feet.
  - a. At distances inside 5 feet, officer should consider transitioning to other Force options (i.e. expandable baton, TASER).
3. Officers shall consider other available Force options before deploying a 40mm impact munition on potentially at-risk individuals. 40mm impact munition should not generally be used against visibly pregnant women, elderly persons, young children, or visibly frail persons. In some cases, other control techniques may be more appropriate as determined by the individual's threat level to themselves or others.

**C. Medical Attention After the Use of a 40mm Impact Munition Launcher**

1. Following the use of a 40 impact munition launcher officers shall first restrain the individual and then, once it is safe to do so, immediately call AFR to the scene to provide medical attention. Refer also to APD Procedural Orders 2-52-4(6)(F).
2. If medical personnel determine that the individual requires medical transport, a supervisor shall ensure that an officer accompanies the person to the medical facility.

**2-54-9 Intermediate Weapons Approved For Use By Specialized Units (e.g., SWAT, ERT)**

Intermediate Weapons approved for use by specialized units shall be used in accordance with the Department Use of Force policies and their unit procedural orders.



## 2-55 Use of Force De-escalation

### 2-55-1 Purpose

To establish guidelines for officers of the Albuquerque Police Department regarding using de-escalation techniques during interactions with individuals in an effort to avoid unnecessarily escalating a situation, to gain voluntary compliance from an uncooperative individual, and to reduce or eliminate the need to use Force.

### 2-55-2 Policy

Officers shall use de-escalation techniques whenever Feasible. Policing, at times, requires An officer to exercise control of a violent or resistant individual, or an individual experiencing a mental health or behavioral crisis. At other times, policing may require an officer to serve as a mediator between parties, or defuse a tense situation.

### 2-55-3 Definitions

See APD Procedural Orders 2-53 and APD Procedural Orders 2-19

### 2-55-4 De-escalation Techniques and Guidelines

A. De-escalation techniques are proactive actions and approaches that officers shall use to gain voluntary compliance of individual(s) to reduce or eliminate the need to use Force. Officers shall De-escalate the amount of Force used as an individual's resistance decreases.

1. De-escalation techniques include:

- a. Use of distance, cover, concealment, and/or time. These techniques allow officers to assess the situation and their options, bring additional resources to the scene, and develop a plan for resolving the incident without using Force;
- b. Utilizing intermediate barriers;
- c. Request additional personnel, and wait for their arrival, when Feasible to do so;
- d. Use of active listening skills by an officer to indicate engagement in conversation with an individual;
- e. Verbal De-escalation, which may include:
  - i. Communicating with the individual(s) in a conversational tone of voice while considering additional resources (e.g., CIT officers, Mobile Crisis Teams,



City Social Services, Behavior Health Services) to best resolve the individual's crisis;

- ii. Beginning by asking questions rather than immediately issuing orders;
- iii. Advising the individual(s) of the actions that officers will take to end their crisis without the need to use Force; and
- iv. Warning the individual that disobeying orders and posing an Immediate Threat to officers or others may result in the need to use Force.

- B. When objectively reasonable and under the totality of circumstances, officers shall attempt to De-escalate and slow down situations without increasing the risk of harm to the officer or others.

Officers should:

1. gather information about the incident, when Feasible;
2. assess the risks to the individual(s), the officer(s) and others;
3. coordinate resources; and
4. communicate and coordinate a response.

- C. Should an individual fail to comply with lawful directions or commands, officers shall consider whether an individual's lack of compliance may be based upon an inability to comprehend in order to comply.

Where an officer identifies the presence of one of the following factors, they shall use de-escalation techniques in order to reduce or eliminate the need to use Force:

1. The influence of drugs and/or alcohol;
2. Known or reasonably apparent mental illness or developmental disability;
3. Individual is experiencing a crisis incident;
4. Known or reasonably apparent physical disability or other medical or physical condition, including visual or hearing impairment; and
5. Language barrier.

- D. An officer's approach to an individual can influence whether a situation escalates, resulting in a use of Force.

1. Officers shall avoid taking unnecessary actions that may escalate the need to use Force.
2. Officers shall recognize that their elevated stress levels can have a negative or adverse impact on individual interactions.

- E. In their interaction with individuals, officers shall use advisements, warnings, verbal persuasion, and other tactics prior to using Force.

- F. Supervisors will become involved as soon as practicable in the management of an



ALBUQUERQUE POLICE DEPARTMENT  
PROCEDURAL ORDERS

SOP 2-55

**Draft Post-OPA – July 26, 2018**

overall response to potentially violent encounters by coordinating resources and officers' tactical actions.

- G. If the individual is, or appears to be, in a mental or behavioral health crisis, officers should attempt to De-Escalate and shall otherwise follow APD Procedural Order 2-19 Response to Behavioral Health Issues.

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

DATE: August 9, 2018

NAME (PLEASE PRINT)

1. Robert Heckman

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

2. ~~Tony Pirard~~

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

3. Steve Allen

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

4. Rachel Smith

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

5. \_\_\_\_\_

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

6. \_\_\_\_\_

18. \_\_\_\_\_

7. \_\_\_\_\_

19. \_\_\_\_\_

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9. \_\_\_\_\_

21. \_\_\_\_\_

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22. \_\_\_\_\_

11. \_\_\_\_\_

23. \_\_\_\_\_

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

24. \_\_\_\_\_



# PROJECT STATUS REPORT

## THE GOAL

The goal is to assign two cases per detective per week until all cases in the backlog are reviewed.

## DISCLAIMER/NOTE

There are 315 incidents/cases that make up the backlog, which will be reviewed. Cases will be assigned to the detectives by incident. Show of Force and Use of Force incidents/cases will overlap.

## BACKLOG LISTING

ENTRY TYPE	STARTING TOTAL	CASES AT DETECTIVE	CASES AT SERGEANT	CASES CLOSED IN-POLICY	CASES CLOSED OUT OF POLICY	ORIGINAL FINDING IN-POLICY	ORIGINAL FINDING OUT OF POLICY
Use of Force	214	20	14	14	5	18	1
Show of Force	101	0	1	4	0	4	0
Serious Use of Force	STARTING TOTAL	CASES AT DETECTIVE	CASES AT SERGEANT	CASES CLOSED IN-POLICY	CASES CLOSED OUT OF POLICY	ORIGINAL FINDING IN-POLICY	ORIGINAL FINDING OUT OF POLICY
Pending Force Review Board	26	2	5	0	0	0	0

## TREND REFERRAL TO EMPLOYEE'S DEPUTY CHIEF

- NONE

## REFERRED TO CRIMINAL AND MISCONDUCT: 2 CASES

- 17-0045438
- 17-0043297

## CASES CLOSED WITH FORCE OUT OF POLICY

- 17-0034322
- 17-0036290
- 17-0030526
- 17-0056097
- 17-0043396

## INVESTIGATION TIMES

NUMBER OF TIME LOGS	MEAN TIME SPENT ON REPORTS	MEAN TIME SPENT ON VIDEOS	MEAN TIME SPENT ON DATA FORM	MEAN TIME SPENT ON NARRATIVE FORM	MEAN TOTAL TIME SPENT
34	3.7	6.7	4.8	8.5	17.2

**Total time spent on the 34 cases: 758.5 hours**



Minimum reported time spent: 8 hours  
Maximum reported time spent: 42 hours

**SUMMARY TOTAL**

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ENTRY TYPE	STARTING TOTAL	CASES IN REVIEW	CASES CLOSED	REMAINING TOTAL	% COMPLETED
Backlog Review Cases	315	39	23	292	7.30%

**CIVILIAN POLICE OVERSIGHT AGENCY**

**Police Oversight Board**

*Joanne Fine*

*Chelsea Van Deventer*

Edward Harness, Executive Director

*Leonard Waites, Chair*

*Dr. William J. Kass*

*Chantal M. Galloway, Vice Chair*

*Valerie St. John*

August 9, 2018

Michael Geier, Chief of Police  
C/O Internal Affairs Unit  
Albuquerque Police Department  
400 Roma NW  
Albuquerque, NM 87102

**Re: I-50-17**

Dear Chief Geier:

The shooting occurred on May 28, 2015. The Multi-jurisdictional investigation team completed its investigation August 3, 2015. APD's Internal Affairs Division concluded its investigation January 07, 2018.

As to the officer's use of force, the policy in place at the time of the incident stated:

*§2-52-4 Use of Deadly Force*

*A. "The decision to use Deadly Force still falls under the general requirements for all uses of force as outlines in 2-52-3 of this policy. Additionally, the reasonableness of the officer's decision will include:*

- 1. Reasonable belief the subject presents an immediate threat to cause serious physical injury to the officer, another officer, or another member of the public;*

*Or*

*Probable cause to believe the subject has just committed a violent felony inflicted/threatened infliction of serious physical injury to another and deadly force is necessary to prevent the escape of the subject and in order to protect the public or another officer(s).*

## *E. Deadly Force and Motor Vehicles*

*1. When the only means of assault on an officer is by motor vehicle, officers:*

*a. Should not fire upon the vehicle but must place themselves in the most tactically safe position possible.*

*b. Shall not knowingly place themselves into the path of a moving vehicle or into the likely path of a moving vehicle that is currently stopped but still under the immediate control of the driver*

**Finding:** The CPOA finds Lieutenant C.'s conduct "**Exonerated,**" regarding the allegation of a violation of this SOP, which means the investigation determined, by preponderance of the evidence that the alleged conduct did occur but did not violate APD policies, procedures, or training.

**Finding:** The CPOA finds Officer Bo.'s conduct "**Exonerated,**" regarding the allegation of a violation of this SOP, which means the investigation determined, by preponderance of the evidence that the alleged conduct did occur but did not violate APD policies, procedures, or training.

**Finding:** The CPOA finds Officer Bu.'s conduct "**Exonerated,**" regarding the allegation of a violation of this SOP, which means the investigation determined, by preponderance of the evidence that the alleged conduct did occur but did not violate APD policies, procedures, or training.

**Finding:** The CPOA finds Officer G.'s conduct "**Exonerated,**" regarding the allegation of a violation of this SOP, which means the investigation determined, by preponderance of the evidence that the alleged conduct did occur but did not violate APD policies, procedures, or training.

**Finding:** The CPOA finds Detective H.'s conduct "**Exonerated,**" regarding the allegation of a violation of this SOP, which means the investigation determined, by preponderance of the

evidence that the alleged conduct did occur but did not violate APD policies, procedures, or training.

**Finding:** The CPOA finds Officer K.'s conduct "**Exonerated**," regarding the allegation of a violation of this SOP, which means the investigation determined, by preponderance of the evidence that the alleged conduct did occur but did not violate APD policies, procedures, or training.

**Finding:** The CPOA finds Detective M.'s conduct "**Exonerated**," regarding the allegation of a violation of this SOP, which means the investigation determined, by preponderance of the evidence that the alleged conduct did occur but did not violate APD policies, procedures, or training.

**Finding:** The CPOA finds Officer M.'s conduct "**Exonerated**," regarding the allegation of a violation of this SOP, which means the investigation determined, by preponderance of the evidence that the alleged conduct did occur but did not violate APD policies, procedures, or training.

**Finding:** The CPOA finds Officer S.'s conduct "**Exonerated**," regarding the allegation of a violation of this SOP, which means the investigation determined, by preponderance of the evidence that the alleged conduct did occur but did not violate APD policies, procedures, or training.

**Finding:** The CPOA finds Sergeant W.'s conduct "**Exonerated**," regarding the allegation of a violation of this SOP, which means the investigation determined, by preponderance of the evidence that the alleged conduct did occur but did not violate APD policies, procedures, or training.

### **STATEMENT OF THE CASE**

On May 28, 2015 members of the Southwest Area were notified of the location of a stolen vehicle, by the owner. The vehicle a white Tahoe was involved in a Felonious Aggravated Assault on a Police Officer the day before. The operator of the stolen vehicle was identified as Rodrigo Garcia. Garcia was also a homicide suspect. Officers responded to the area of the call by the vehicle owner.

Officers made contact with the white Tahoe, the first sighting was by a member of the Auto Theft Unit. He observed the vehicle pull into a driveway at 62<sup>nd</sup> and Trujillo a male and female exited the vehicle. As other police squads came upon the scene, Det. E. pulled his F-150 truck

up to the bumper of the white Tahoe. The male and female initially ran behind the residence. Meanwhile officer are approaching the scene on foot.

The male, later identified as Rodrigo Garcia, turned back and reentered the Tahoe. On the passenger side of the vehicle is a waist high chain link fence. Garcia accelerated forward striking Det. E.'s F-150 and turning sharply to the right. This turn to the right caused the collapse of the chain link fence. The collapsing chain link fence struck the approaching Lt. C. Additionally, Lt C. was in the direct path of the Tahoe. All the above listed officers discharged their weapons at the vehicle and the driver.

Garcia continued to operate the vehicle north on 62<sup>nd</sup> colliding head-on with a marked APD police squad. He then put the Tahoe in reverse and began backing towards APD officers. Officers again began discharging their weapons at the vehicle and the driver. A short time later the vehicle stopped with Garcia slumped over the steering wheel.

My review finds the officers acted reasonably. The vehicle operated by Garcia posed an immediate threat of death or serious physical injury to an officer. Additionally, there's no evidence showing knowingly placed themselves into the path or likely path of a vehicle. This was a rapidly evolving situation that presented an imminent threat of death to an officer.

Review of the investigative file of Internal Affairs and any opinion expressed in this letter are pursuant to the duties of the CPOA as described in the POB Ordinance and are not intended for any other purpose.

Please contact me if there are questions or concerns. I look forward to your response to the concerns and recommendations contained in this letter.

Please ensure the findings are placed in the officers' retention file.

Sincerely,



Edward Harness, Esq.  
Executive Director  
Civilian Police Oversight Agency  
(505) 924-3770