CIVILIAN POLICE OVERSIGHT BOARD

Thursday, April 13, 2017 – 5:00 PM
Vincent E. Griego Chambers, Basement Level
City/County Government Center – One Civic Plaza NW
Albuquerque, New Mexico

Members Present:	**Members Absent**	**Others Present**
Joanne Fine, Chair	Eric Cruz	Edward Harness, CPOA
Dr. Carlotta Garcia, Vice Chair		Michelle Contreras, CPOA
Johnny J. Armijo (Came into the meeting late during item V)		Diane McDermott, CPOA
Susanne Brown		Amanda Bustos, CPOA
Rev. Dr. David Z. Ring III		Mark Baker, Esq.
Leonard Waites		Lt. Jennifer Garcia, APD
		Major Jessica Tyler, APD

Meeting Minutes

I. Welcome and call to order - Chair Fine called to order the regular meeting of the Police Oversight Board at 5:03 p.m.

II. Pledge of Allegiance – Vice Chair Garcia led the meeting in the Pledge of Allegiance.

III. Mission Statement – Chair Fine read the POB's Mission Statement.

IV. Approval of the Agenda

a) Copies of the Agenda were distributed to each Member in their packets.

b) A motion was made by Member Orick-Martinez to approve the agenda. Vice Chair Garcia seconded the motion. The motion was carried by the following vote:
For: 6 - Brown, Fine, Garcia, Orick-Martinez, Ring, Waites

Member Armijo came into the meeting during item V

V. Public Comments –

a) Jim Larson gave a summary to the Board regarding his concerns about the Chief's and the CPOA's recommendation in the Citizen Findings letters. (For more information for Mr. Larson's topics, please see diagram labeled Attachment "A" and the Case Review Subcommittee minutes from April 4, 2017 located here: http://www.cabq.gov/cpoa/documents/case-review-minutes-4-4-2017-draft.pdf).

1. Mr. Larson distributed his diagram to the Members prior to the start of the meeting. (See attachment "A")

2. Discussed that Mr. Larson gave a presentation at the Case Review Subcommittee.

3. Discussed that the Chief's response process to the Citizen regarding the civilian complaint procedures. Please refer to POB Ordinance Section 9-4-1-9

Paragraph "B" http://www.cabq.gov/cpoa/documents/civilian-police-oversight-agency-ordinance.pdf

4. Member Fine asked Attorney Mark Baker to write a letter to the Chief to clear up what is expected of everybody.
5. Members discussed that the POB will consider the changing of the findings letter to include the CPOA's recommendation for discipline in the Case Review Subcommittee report.

b) Ben Lovato who goes by the name of G.P. gave a public comment to board about his concerns about the POB's subpoena process and that he has been denied access to APD ride-a-longs.

1. Chair Fine clarified for Mr. Lovato that it is their recommendation to give the CPOA Subpoena power.

c) Tony Pirard gave a public comment to the board regarding the Citizen Police council (CPC) meetings in which he attended 3 out of the 6 meetings. He states that the CPC agenda are not posted online and that they are supposed to be posted within 72 hours of the meeting and are handed out at the meetings instead. He says that APD has too much control over these meetings.

1. Chair Fine clarified for Mr. Pirard that the POB cannot fix the CPC's but maybe the DOJ can. Members recommended to Mr. Pirard to write a letter to Dr. Ginger and Assistant US Attorney Elizabeth Martinez.
2. Director Harness stated that the CPCs were created before he arrived in his current position and that each individual CPC are to be formed as an individual entity. The manual is not something the CPCs have to follow but are only a suggestion. The CPCs are on not government entities and do not have to follow the Open Meetings Act.

VI. Review and Approval of Minutes

a) Minutes from March 16, 2017

1. Copies of the minutes from March 16, 2017 POB Meeting were distributed to each member in their packets.
2. Members discussed that several Members could not open the attachment that was emailed to them.
3. Members requested that the minutes be forwarded to them in a link instead of an attachment.
4. A motion was made by Vice Chair Garcia to table the minutes until the April meeting. Member Ring seconded the motion. The motion was carried by the following vote:
   For: 7 - Armijo, Brown, Fine, Garcia, Orick-Martinez, Ring, Waites

VII. Discussion

a) CIRT Case Review Process

1. Director Harness discussed that the POB will be receiving and have access to Serious Use of Force CIRT cases on a weekly basis and that the POB would have to decide how to deal with the backlog of these cases.
2. Members discussed that if each POB member has any suggestions for the CIRT cases they review, to take notes and email Director Harness directly.
3. FRB will be held on a weekly basis from May to November and they anticipate 4 to 5 cases per meeting.
4. Major Tyler clarified for the board that the FRB anticipates 4 to 5 cases per week a month out, depending on the how the soon the investigation get done.
5. Members discussed that the POB may have Special Meetings to deal with the back log.
6. Mark Baker to look at the CASA and clarify that what the POB are doing does not interfere with their goal for the CIRT cases.
7. Members discussed setting up a meeting with Major Tyler to work out some issues.

b) Chief's non-concurrence CPC 139-16

1. Copies of the Chief's Non-Concurrence letter dated March 28, 2017 and the CPOA's findings letter were distributed to the Members in their packets. (See attachment "B")
2. Director Harness read the Chief's Non-Concurrence letter dated March 28, 2017 regarding the Chief's non-concurrence findings in CPC 139-16.
3. Director Harness discussed the CPOA's rebuttal to the Chief's Non-Concurrence letter. Copies of the documents titled *Search/Arrest Warrant Service Risk Assessment Matrix,* and the *Albuquerque Police Department Investigative Bureau Orders SOP 3-01* with the *Search/Warrant Service Risk Assessment Matrix attachment* (See attachment "C").
4. Director Harness clarified that the non-concurrences are reviewed in every monitoring period and this case will be a part of the Independent Monitor's Report #6 (IMR6).

VIII. Independent Legal Counsel Contract

a) A motion was made by Member Waites to approve the renewal of Mr. Baker's contract. The motion was seconded by Member Brown. The motion was carried by the following vote:

For: 7 - Armijo, Brown, Fine, Garcia, Orick-Martinez, Ring, Waites

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

a) Administrative Closed Cases

005-17 006-17 010-17

A motion was made by Member Waites that the Administratively Closed are accepted. Vice Chair Garcia seconded the motion. The motion was carried by the following vote:

For: 7 - Armijo, Brown, Fine, Garcia, Orick-Martinez, Ring, Waites

b) Cases Investigated

157-16 171-16 172-16 189-16 193-16

A motion was made by Member Waites that the Cases investigated be accepted. Vice Chair Garcia seconded the motion. The motion was carried by the following vote:

For: 7 - Armijo, Brown, Fine, Garcia, Orick-Martinez, Ring, Waites

c) CIRT Cases – None

----Dinner break at 6:15 p.m. Meeting reconvened at 7: 04 p.m. ----

X. (Previously listed on agenda as Item XIII) - Meeting with Counsel re: Pending Litigation & Personnel Issues.

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

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

1. A motion was made by Chair Fine for the purposes of a closed discussion and to into executive session. [Chair Fine read the language from Item X, a and b]. Member Armijo seconded the motion. The motion was carried by the following vote:

For: 7 – Armijo, Brown, Fine, Garcia, Orick-Martinez, Ring, Waites

Roll call: Orick-Martinez, Garcia, Fine, Waites, Ring, Brown, Armijo

2. At 6:15 p.m., the POB went into an executive session/lunch break.

3. At 7:04 p.m., the POB came out of an executive session/lunch break.

4. A motion was made by Member Waites to come out of an executive session only having discussed matters of attorney-client privilege and personnel matters. Member Garcia seconded the motion. The motion was carried by the following vote:

   For: 7 – Armijo, Brown, Fine, Garcia, Orick-Martinez, Ring, Waites

   Roll call: Orick-Martinez, Garcia, Fine, Waites, Ring, Brown, Armijo

XI. (Previously listed on agenda as Item X) - POB's Review of Garrity Materials. After the Community Outreach Subcommittee report, Chair Fine revisited this item. There were no Garrity materials for the POB to view.

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

a) Community Outreach Subcommittee – *Rev. Dr. David Z. Ring III* - For more information regarding POB Community Outreach Subcommittee meetings for agendas and minutes, please refer to the website located here: http://www.cabq.gov/cpoa/subcommittees/outreach-committee Member Ring gave a report on behalf of the Community Outreach Subcommittee and discussed the following topics:

1. At the Community Outreach Subcommittee met on the 27th of March 2017, the meeting was spent discussing goals and strategies for doing outreach.
2. Ms. Amanda Bustos, CPOA Community Engagement Specialist, did a presentation and conducted a round table discussion at CNM Montoya Campus on April 11, 2017 at 5:30 p.m. Around 15 students from a communication class several CNM instructors attended.

b) Policy and Procedure Review Subcommittee – *Susanne Brown*

For more information regarding POB Policy and Procedure Subcommittee meetings for agendas and minutes, please refer to the website located here: http://www.cabq.gov/cpoa/subcommittees/policy-procedure-review-committee Member Brown gave the following report on behalf of the Policy and Procedure Subcommittee:

1. Member Brown, Member Waites, Director Harness and Attorney Mark Baker met with several members of City Council and discussed the POB's proposed amendments to the ordinance.
2. **Rules and Procedures for Non-Concurrence Hearing.** Copies of a document titled *Rules and Procedures for Non-Concurrence Hearing* was distributed and discussed. (See attachment "D". Attachment "D" was also the attachment "I" in the March 16, 2017 POB minutes).

i. Member Brown would like to see this procedure moved forward for the City Council regarding the POB Ordinance discussion.
ii. A motion was made by Member Ring to approve [the Rules and Procedures for Non-Concurrence Hearing]. Vice Chair Garcia and Member Waites seconded the motion. The motion was carried by the following vote:
For: 7 – Armijo, Brown, Fine, Garcia, Orick-Martinez, Ring
iii. Member Brown and Director Harness conducted interviews of job applicants for the CPOA Analyst.
iv. If any POB member has any policy suggestions from the Monitor's report, which will be public on May 2, 2017, to let her know.
v. Member Brown has not received any feedback from the Chief of Police nor City Council regarding the Chief of Police policy 3-1. Member Brown recommends that the POB write a letter requesting the Chief of Police and City Council's feedback. Director Harness to draft the letter.

c) **Case Review Subcommittee –*Leonard Waites.*** For more information regarding POB Case Review Subcommittee meetings and minutes, please refer to the website located here: http://www.cabq.gov/cpoa/subcommittees/case-review-committee-crc. Subcommittee Member Waites gave the following report on behalf of the Case Review Subcommittee.

1. At the April 4, 2017 Case Review Subcommittee, the following topics were discussed:
   i. Mr. Jim Larson and Mr. Charles Arasim discussed their concerns;
   ii. Director Harness discussed that the MOU for mediation was resent to Chief Eden for his review;
   iii. Subcommittee members agreed that the administrative investigations for the Hawkes matter but not the shooting portion of the case;
   iv. The Case Review Subcommittee approved the consent agenda.
   v. The Case Review Subcommittee next meeting will be held on May 9, 2017.
   vi. Discussed that the Case Review Subcommittee was to suggest to the board that the letters be changed to include discipline that we recommend to the complainant. A motion was made by Member Waites that we include that [sic]. Member Brown seconded the motion. The motion was carried by the following vote:
   For: 7 – Armijo, Brown, Fine, Garcia, Orick-Martinez, Ring, Waites

2. **Appeals -** The appeal process can be found at: http://www.cabq.gov/cpoa/appeal-process
    i. **084-15.** The Case Review Subcommittee had previously tabled this appeal for the reason that they wanted more information from CPOA Assistant Lead Investigator Paul Skotchdopole. After the discussion, the Case Review Subcommittee did not feel that this appeal met the requirements for an appeal.
    ii. A motion was made by Member Waites not grant the appeal [sic]. Member Armijo seconded the motion. The motion was carried by the following vote: For: 7 – Armijo, Brown, Fine, Garcia, Orick-Martinez, Ring, Waites

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

a) APD - APD Lt. Jennifer Garcia of Internal Affairs gave a report on Statistical Data for the Month of March 2017. Copies of the following documents were distributed **(See "Attachments E1, E2 and E3")**:

- **Attachment E1**-Police Oversight Board, APD Internal Affairs, Statistical Data for the Month of March 2017.
- **Attachment E2**- Graph: Internal Investigations, Year to Date (January through March), Received Cases Year to Date (2013-2017)
- **Attachment E3**- Graph: Internal Investigations January through March (Opened, Closed, Admin Closed).

1. Lt. Garcia clarified the following for the POB:
    i. One of the terminations listed on the report was for untruthfulness.
    ii. The EIS data includes all APD employees both sworn and non-sworn.
    iii. There was an increase of 4,166 dispatched calls for service from February, 2017.
    iv. All APD officers have to take frequently defensive driving courses online and must obtain a City Operator Permit.
    v. In respect to officers with repeat crashes, Lt. Garcia discussed that as part of progressive discipline, the department can take away take-home privileges for a period of time. Lt. Garcia has seen officers get a suspension for repeat crashes. POB Chair Fine would like to know the data.
2. Major Tyler gave the following report:
    i. That they have had some good conversations for the upcoming court date and look forward to working with the POB/CPOA to create better procedures for the letters for non-concurrence as well as the review of the cases.
    ii. The work flow chart is being fine-tuned.

iii. The operation of the CPC's is very difficult and they need to find a balance in order to support the CPC's but at the same time letting them be a stand-alone entity.

3. Member Fine wanted to remind the public that they are invited to attend the meeting with Judge Brack at the Federal Court on May 10, 2017 at 9:00 a.m. and that this event is a 6 month check in with the judge regarding the process.
4. Major Tyler clarified for Member Armijo the surveys were sent only to officers and supervisors to fill out. In addition, the union also sent out a survey.

b) City Council – No one present to give report.

c) Mayor's Office – No one present to give report.

d) City Attorney – *Jeramy Schmehl, Assistant City Attorney*. Mr. Schmehl stated that the meeting at the end of March was productive and that it was a way to build a dialog to problems and solutions.

e) CPOA – *Edward Harness, Executive Director* CPOA Report

1. CPOA Complaints and JWD Report:

i. For the month of March 2017, the CPOA office received 46 new complaints.

ii. For the month of March 2017, the CPOA office received 8 Job Well Done Reports.

2. **Force Review Board:** The Tactical Force Review Board met on April 12, 2017. There were 7 tactical activations during the month of March with no shots fired. Two of the activations resulted in 3 homicide arrests.
3. **CPOA Training:** The CPOA will be sending two CPOA investigators to a Video Analysis Training and Director Harness will be attending training for police lawyers.
4. Director Harness will be drafting their position paper to be submitted to the parties on April 18, 2017 in regards the boards insertion into the policy development process for the meeting to be held on 20th of April at 4 p.m.
5. The CPOA has hired Kara Garcia the CPOA data analyst position.
6. Director Harness clarified for Member Ring the reason for the increase of numbers for the complaints and job well done reports.

XIV. (Previously listed on agenda as item XIII) Meeting with Counsel re: Pending Litigation or Personnel issues. This agenda item was moved and addressed in agenda Item X.

XV. (Previously listed on agenda as item XIV) - Other Business – There was no other business.

XVI. (Previously listed on agenda as item XV) - Adjournment - A motion was made by Member Brown to adjourn the meeting. Member Armijo seconded the motion. The motion was carried by the following vote:
For: 7 – Armijo, Brown, Fine, Garcia, Orick-Martinez, Ring, Waites

Meeting adjourned at 7:46 p.m.

Next regularly scheduled POB meeting will be on
Thursday, May 18, 2017 at 5 p.m. in the Vincent E. Griego Chambers.

APPROVED:

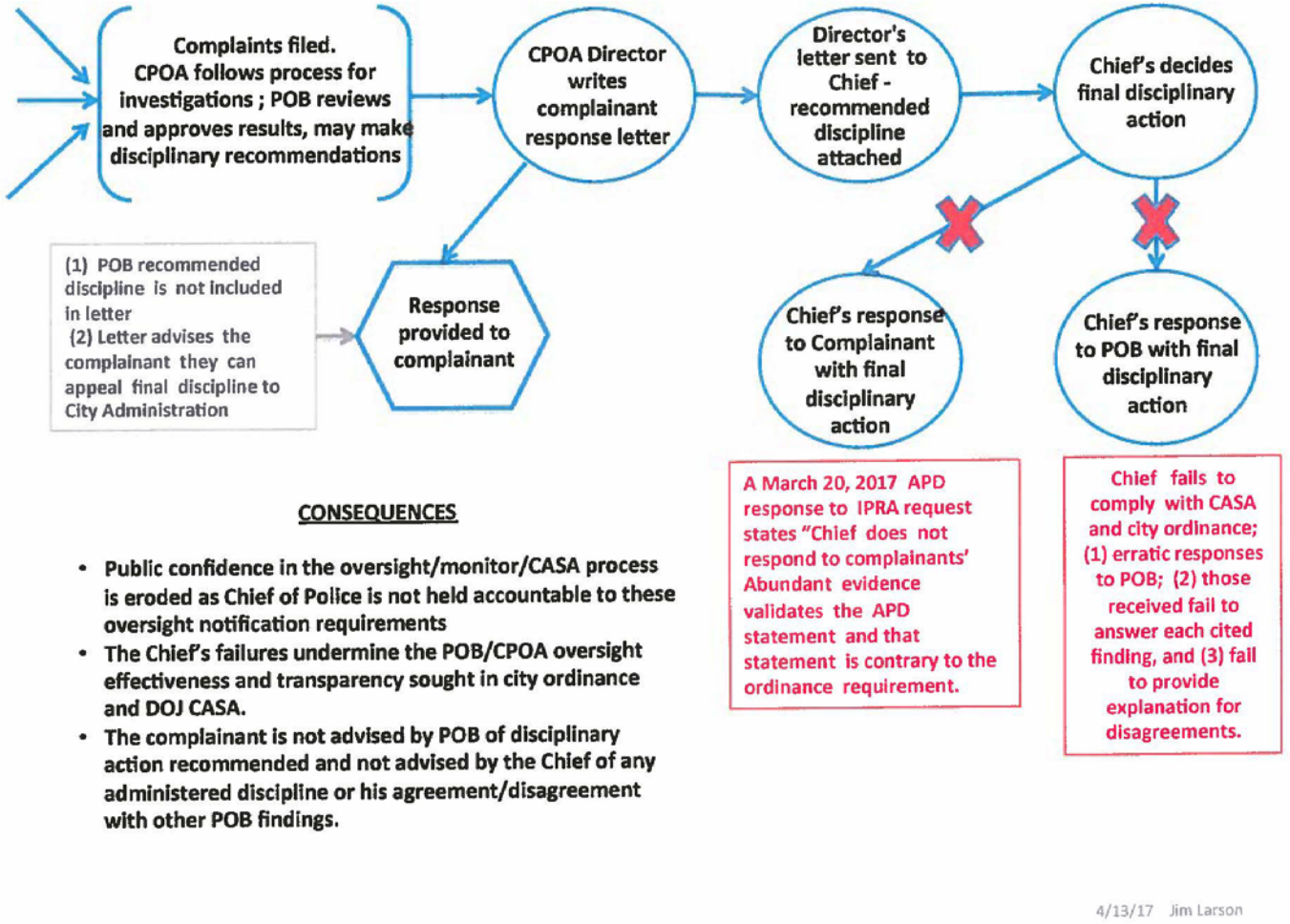
_____ _____

Joanne Fine, Chair Date
Civilian Police Oversight Agency

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

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

Attachments



Attachment "A"

CITY OF ALBUQUERQUE

Albuquerque Police Department

Gorden E. Eden, Jr., Chief of Police

March 28, 2017

Edward W. Harness, Esq., Executive Director
Civilian Police Oversight Agency
600 2nd NW
Room 813
Albuquerque, NM 87102
505-924-3770

RE: CPC 139-16 **Citizen:** [redacted]
Sgt. [redacted] **L** [redacted]
Det. [redacted] **M** [redacted]
Det. [redacted] **I** [redacted]

Dear Mr. Harness:

CPC 139-16 was reviewed and the recommendations for the non-concurrence are detailed.

400 Roma NW

Sergeant [redacted] **L** [redacted] **and Detective** [redacted] **M** [redacted]

SOP Violation 5-1-10D

Albuquerque

Upon review of the reports, video, CPOA investigation and statements, I do not concur with the investigators finding of sustained. Sergeant L [redacted] and Detective [redacted] M [redacted] did consult the Matrix as stated in their interviews and forms provided to investigator McDermott.

New Mexico 87102

SOP 5-1-10D states that **"unit supervisors are responsible for assessing each incident to determine if it requires a tactical response"** I conclude that Sergeant L [redacted] and Detective [redacted] M [redacted] both complied with this requirement.

www.cabq.gov

Sergeant L [redacted] stated that he felt the assessment did not require a tactical response, and I concur with his assessment. The matrix is a guideline that is to be used for determining possible tactical response. I do not see where the investigator reached a score of 25 that would have required a tactical response. Based on the events in this case, at no time were either of these suspects barricaded; and both subjects willingly exited the van when ordered by the sergeant and detectives. Officers are required to make split second decisions and this incident was no different. I feel both Sergeant L [redacted] and Detective M [redacted] exercised due diligence in serving these arrests warrants. I find this SOP violation to be exonerated.

Sincerely,

GORDEN E. EDEN, JR.
Chief of Police

Albuquerque - Making History 1706-2006

Attachment "B"

CITY OF ALBUQUERQUE

January 13, 2017
Via Certified Mail

Re: CPC #139-16

Dear Ms.

Our office received the complaint you filed on July 13, 2016 against Officers of the Albuquerque Police Department (APD), regarding an incident that occurred on June 28, 2016. A Civilian Police Oversight Agency (CPOA) Investigator was assigned to investigate your Complaint on August 9, 2016. The CPOA thoroughly and impartially investigated the complaint.

PO Box 1293

Albuquerque

New Mexico 87103

Upon completion of the investigation, the CPOA determined, based on a preponderance of the evidence, whether or not the APD Officer(s) involved violated Standard Operating Procedures (SOPs). A preponderance of the evidence means that one side has demonstrated a greater weight of evidence (more than 50%) that is more credible and convincing than the other side. If the credible evidence is 50-50, the proper finding is Not Sustained.

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

I. THE COMPLAINT AND INVESTIGATION

Ms. was not present for the actual incident and heard about it from her employees, and She was told the outreach syringe exchange van had just been raided by the Albuquerque Police Department. Ms. expressed concerns about the show of force used, the tactics used, the risks to her employees and the clientele, and the reputation damage the law enforcement interference caused to their outreach. Ms. questioned the officers' entry into the syringe exchange van. Mr. echoed many of Ms. 's concerns as well as some of the conduct he observed. Ms. initially stated she would comply with the investigative process, but ultimately never did.

Attachment "B"

The Executive Director of the CPOA reviewed the investigation conducted by the CPOA Investigator, which included a review of the applicable SOPs, the complaint, the police reports, the Computer Aided Dispatches (CAD), several lapel videos, state statutes, department of health reference materials, Ms. 's interview, Mr. 's interview, Sgt. L's interview, Detective M's interview, Detective I's interviewed, and Detective V's interview.

II. FINDINGS AND CONCLUSIONS REGARDING APPLICABLE STANDARD OPERATING PROCEDURES REGARDING SGT. L'S CONDUCT

A) The CPOA reviewed Standard Operating Procedural Order 2-54-3B2b regarding Sgt. L's conduct, which states:

A show of force shall also be investigated by the supervisor, using a Show of Force Report Form

Ms. was concerned about the show of force used. Ms. was very concerned with how the officers "swooped" in with weapons out and required individuals to lie on the ground in the heat. It was her understanding that the officers had weapons drawn, the officers yelled at individuals, and her staff had to exit with their hands up. Ms. knew Ms. had been pulled off the van at gunpoint. Mr. stated the officers had weapons pointed directly at the individuals. He did not think anyone pointed their gun specifically at him, but knew Ms. had a gun pointed directly at her head. He did not understand why officers pointed a gun at Ms. as she looked nothing like the client the officers were after. Mr. feared someone would be shot. Ms. did not cooperate with the investigative process.

Sgt. L explained the reason the detectives approached with guns drawn in the low ready position was due to the information that at least one of the subjects was armed and had a propensity for violence. Generally, drugs and weapons are commonly tied together. Sgt. L disagreed that any show of force occurred that required documentation. Sgt. L stated from a video that it might appear detectives had acquired a target, but in fact, the detectives had not. To be sure, he asked the detectives if anyone had raised their firearm or acquired a sight on someone to where a show of force would need to be documented. Everyone said he or she kept his or her weapons at low ready, therefore, a show of force report or investigation did not need to be completed. Sgt. L reviewed the videos after the fact and confirmed everyone kept their weapons at low ready, even when individuals were on the ground. Sgt. L stated his understanding of the policy was if someone was put in sights then that would be a reportable show of force, which did not happen that day.

The Settlement Agreement defines "Use of force" as "physical effort to compel compliance by an unwilling subject above unresisted handcuffing, including pointing a firearm at a person." It further defines "the pointing of a firearm at a person shall be reported in the same manner as a use of force and shall be done only as objectively reasonable to accomplish a lawful police objective." APD policy is more specific and defines "a show of force is the pointing of a firearm or ECW (sparking or painting with the laser) at a person and acquiring a

target." APD policy defines this is reportable as a show of force that is investigated by the officer's chain of command. According to APD policy 2-52-3E2f, drawing a firearm or ECW to the low ready position is considered a low-level control tactic and does not require a Use of Force Report. After careful review of the videos, the detectives did not commit a reportable use of force as defined by APD policy. The videos showed weapons were not pointed at the heads of anyone. When Ms. was taken off the van, the officer that assisted her had his rifle lowered. However, citizens understandably felt a show of force occurred in this incident and easily mistook the low ready position for being "pointed at them." The police report does not impress upon the reader the intensity of the situation. The difference between low ready and on target is very small and likely imperceptible to the average citizen. A reference photo will be included in the letter.

A recommendation is included with the report to determine if APD policy restricts the definition of a show of force beyond what the Settlement Agreement intended and if the Settlement Agreement in fact intended a situation like this to be documented and investigated as a reportable show of force. However, as it stands in APD policy, a reportable show of force did not occur and a show of force report was not required in this incident.

The CPOA finds Sgt. L's conduct to be **Exonerated** where the investigation determined that the alleged conduct did occur, but did not violate APD policies, procedures, or training.

B) The CPOA reviewed Standard Operating Investigative Bureau Orders 5-1-10D regarding Sgt. L's conduct, which states:

SID Detective consults the Matrix for guidance when conducting operations other than search warrants. Unit supervisors are responsible for assessing each incident to determine if it requires a tactical response. Unit supervisors are responsible for communication with tactical supervisors before conducting operations as well as when operations are in progress.

Ms. did not understand the tactic of waiting until these individuals were at the van before stopping them. It was her understanding the police had been surveilling the subjects for a while. Ms. felt the detectives put people in danger by waiting until the individuals were in a contained space. Mr. thought it was unnecessary to stop these individuals at the exchange and felt it placed others at risk. Mr. did not think it was necessary for everyone to get on the ground. Mr. learned later that the detectives knew where the individuals lived and were following the individuals so he did not understand why the detectives did not stop the individuals on the street or at their house. Both expressed concern that the clients were ordered to the ground. Mr. stated it took time for the clients to comply because the pavement was hot and there were ants.

Sgt. L stated one of his detectives received information about two individuals, both of which had felony warrants. The detective learned one subject often had a firearm in his possession. The detective received information about the whereabouts of these individuals for that specific day. Sgt. L expressed concern the opportunity may not be there if they delayed or if

Attachment "B"

there were plans to commit additional crimes. Sgt. L stated he utilized the search/arrest Risk Assessment Matrix, but Sgt. L stated the Matrix is generally inadequate for arrest warrant operations and more applicable for search warrant operations. He and Detective M discussed how to handle the operation. Sgt. L stated he made sure he had background checks on the two individuals and checked the CIT database for mental health concerns. He reviewed Detective M's operation to make sure it was within policy and tactically sound, but the situations evolve rapidly so fluidity in decision-making was necessary. He briefed the other participants. Sgt. L agreed the detectives followed the two subjects to several locations until they felt the situation was the safest and most optimal to take the individuals into custody. He did not want to rush the take down and these were calculated decisions on his part. Sgt. L explained the detectives could not take the subjects into custody at either of the two residences they stopped because the detectives could not get into positions before the subjects left and went mobile. The subjects stopped in a parking lot, but the detectives could not take them into custody there because of the positioning and the briefness of their stop. Sgt. L explained having a field unit conduct a traffic stop would be inappropriate and unsafe due to the likely presence of a gun and a possible pursuit risk. Detectives planned to use a vehicle-blocking maneuver, but both traffic and the subjects' direction thwarted that plan. At the parking lot at 60th and Central the subjects remained there for longer than they had been at any other location so the detectives were able to get into position. In his position, he did not see additional individuals. Sgt. L explained when both subjects exited the car that was the optimal time to take the subjects into custody. Since the detectives were in a tactically safe position even with other individuals present, his team could handle the situation. Sgt. L and the other detectives explained individuals were ordered to the ground for officer safety, which superseded the individuals' brief discomfort.

The CPOA does not specifically analyze tactics or determine if the best tactical call was made to apprehend the subjects. The CPOA instead looks at whether officers complied with policy in their development and execution of a plan. Based on the Risk Assessment Matrix the score these subjects would have received by policy required the specialized unit to contact the tactical Lt. for assistance in the execution of the warrant. Sgt. L should have assessed the incident for a possible tactical response. After his interview, Sgt. L provided the Risk Assessment Matrix he filled out for this operation, but it was lacking in detail. Whether the consultation with the tactical unit would have changed the tactics used or the operation is speculative, but the Assessment was not used correctly.

The CPOA finds Sgt. L's conduct to be **Sustained** where the investigation determined that the alleged misconduct did occur.

III. FINDINGS AND CONCLUSIONS REGARDING APPLICABLE STANDARD OPERATING PROCEDURES REGARDING DETECTIVE M'S CONDUCT

A) The CPOA reviewed Standard Operating Procedural Order 2-71-3F1a&f regarding Detective M's conduct, which states:

A warrantless search can be conducted pursuant to a lawful arrest. Such a search must be conducted during or very near the time and place of the arrest and must be limited in scope

to: a. Searching the arrested person and any containers discovered on his/her person, or within the arrested person's control if the officer has reason to believe the containers belong to or were used by the arrested person. f. An officer may request a voluntary statement (verbal or written) giving the officer permission to search the person and the vehicle in accordance with the Department SOP.

Ms. understood the van had been entered and inspected. Ms. stated the van was a health service facility and there were issues of confidentiality. Mr. also did not feel it was appropriate for Detective M to enter the van when all individuals had already been removed. Mr. stated he did not grant permission to detectives to enter, but after watching the video realized Ms. had. .

Detective M asked if he could enter the van and check for things possibly hidden by one of the subjects. Ms. granted him permission. Detective M stated he did not extensively search the van, just a cursory look in the area that one of the subjects had been. He looked in the one subject's property, but saw it was new needles and syringes so he did not have need to look further. Since Ms. had granted permission for him to enter, he did not consider it an issue.

The lapel videos showed Detective M asked for permission to check the van where one subject had been. Ms. granted permission. The lapel video showed Detective M briefly looked at the one subject's property, but saw they were new, sealed syringe boxes so he did not need to examine them further. He looked under the table because the subject had been seated there. In the circumstances, this was permitted and did not require a warrant.

The CPOA finds Detective M's conduct to be **Exonerated** where the investigation determined that the alleged conduct did occur, but did not violate APD policies, procedures, or training.

B) The CPOA reviewed Standard Operating Investigative Bureau Orders 5-1-10D regarding Detective M's conduct, which states:

SID Detective consults the Matrix for guidance when conducting operations other than search warrants. Unit supervisors are responsible for assessing each incident to determine if it requires a tactical response. Unit supervisors are responsible for communication with tactical supervisors before conducting operations as well as when operations are in progress.

Ms. did not understand the tactic of waiting until these individuals were at the van before stopping them. It was her understanding the police had been surveilling the subjects for a while. Ms. felt the detectives put people in danger by waiting until the individuals were in a contained space. Mr. thought it was unnecessary to stop these individuals at the exchange and felt it placed others at risk. Mr. did not think it was necessary for everyone to get on the ground. Mr. learned later that the detectives knew where the individuals lived and were following the individuals so he did not understand why the detectives did not stop the individuals on the street or at their house. Both expressed

concern that the clients were ordered to the ground. Mr. stated it took time for the clients to comply because the pavement was hot and there were ants.

Detective M explained he received information that two individuals had outstanding felony warrants for their arrest. He was advised these individuals sold narcotics and had a handgun in their possession. He utilized his resources, identified the true names of the individuals, and confirmed the individuals had felony warrants. According to Detective M, a Risk Assessment Matrix was only completed for search warrants and so he did not think one was completed for this incident, since this was an arrest warrant operation. Detective M agreed the detectives followed the two subjects to several locations until they felt the situation was the safest and most optimal to take the individuals into custody. Detective M explained their preferred time to take the subjects into custody was when both subjects were away from their car, which was the likely location of the gun. Detective M explained the detectives could not take the subjects into custody at either of the two residences they stopped because the detectives could not get into positions before the subjects left and went mobile. The subjects stopped in a parking lot, but the detectives could not take them into custody there because of the positioning and the briefness of their stop. Detective M explained having a field unit conduct a traffic stop would be inappropriate and unsafe due to the likely presence of a gun and a possible pursuit risk. Detectives planned to use a vehicle-blocking maneuver, but both traffic and the subjects' direction thwarted that plan. At the parking lot at 60th and Central the subjects remained there for longer than they had been at any other location so the detectives were able to get into position. Detective M stated both individuals then exited the car so that was the optimal time to take the subjects into custody. Since the detectives were in a tactically safe position even with other individuals present, the team could handle the situation. Detective M and the other detectives explained individuals were ordered to the ground for officer safety, which superseded the individuals' brief discomfort.

The CPOA does not specifically analyze tactics or determine if the best tactical call was made to apprehend the subjects. The CPOA instead looks at whether officers complied with policy in their development and execution of a plan. Based on the Risk Assessment Matrix the score these subjects would have received by policy required the specialized unit to contact the tactical Lt. for assistance in the execution of the warrant. Detective M should have consulted the Matrix, as it is not just for search warrants. Whether the consultation with the tactical unit would have changed the tactics used or the operation is speculative, but the Assessment was not used correctly.

The CPOA finds Detective M's conduct to be **Sustained** where the investigation determined that the alleged misconduct did occur.

IV. FINDINGS AND CONCLUSIONS REGARDING APPLICABLE STANDARD OPERATING PROCEDURES REGARDING DETECTIVE I'S CONDUCT

A) The CPOA reviewed Standard Operating Procedural Order 2-71-3F1d&e regarding Detective I's conduct, which states:

Attachment "B"

A warrantless search can be conducted pursuant to a lawful arrest. Such a search must be conducted during or very near the time and place of the arrest and must be limited in scope to: d. Conducting a protective sweep of the area adjoining the arrest. e. Conducting a sweep of any other area within the premises which officers reasonably suspect might harbor a person who could endanger them.

Ms. understood the van had been entered and inspected. Ms. stated the van was a health service facility and there were issues of confidentiality. Mr. also did not feel it was appropriate for Detective I to enter the van when all individuals had already been removed.

Detective I explained he entered and cleared the van of individuals to make sure there were no other individuals to pose a threat. The fact that it was a medical facility did not change any decision to perform a protective sweep. Sgt. L supported Detective I's decision to ensure no one posed a threat to the officers.

The lapel videos showed Detective I entered and looked briefly for additional people. He then exited as soon as he saw there were no others present. In the circumstances, this was permitted and did not require a warrant.

The CPOA finds Detective I's conduct to be **Exonerated** where the investigation determined that the alleged conduct did occur, but did not violate APD policies, procedures, or training.

B) The CPOA reviewed Standard Operating General Order 1-1-4D15 regarding Detective I's conduct, which states:

Personnel will treat the public with respect, courtesy, and professionalism at all times.

Mr. reviewed the videos provided to him by the ACLU of the incident. After he watched the videos, Mr. complained that some officers were rude to the clients and seemed unconcerned for their trauma. One of the clients revealed he had been shot by police before and was very upset by the events. Mr. felt Detective I made unnecessary jokes later, such as joking with one of the clients about being arrested to boost his arrest stats.

In the initial approach to apprehend the subjects, one of the uninvolved individuals constantly ranted that police had shot him before. Detective I agreed he told him they did not want to shoot him again and to "zip his pie hole." He agreed he told the man essentially to shut up so that things would go quicker. Detective I wanted to reassure the man that they did not want to shoot him so that was why he said what he said; it was not intended as any sort of threat. Once the situation was calm and under control, Detective I agreed he joked and bantered with some individuals present. Their operation was stressful, but once it was controlled, he did not need to maintain that commanding presence. He intended to alleviate stress from the individuals and that was why he joked around. He felt his joking with individuals improved their outlook on police, not harm it so he felt it was appropriate. The people he joked with joked back and they had a rapport.

Attachment "B"

On the initial apprehension, when one of the subjects repeatedly complained about having been shot before by police, Detective I responded, "We don't want to shoot you again so zip your pie hole and listen." The tone did not come across as reassurance and given the man's prior experience with police, was unnecessary and insensitive. The lapel videos showed after things were calm the subjects in custody and Detective I engaged in mutual friendly banter. Detective I provided water to the subjects as it was a hot day. An uninvolved client came by and Detective I asked jokingly if she had warrants. She happened to mention there had been a recurring problem with an old warrant and Detective I joked with her to allow him to improve his stats by arresting her. The woman seemed unoffended and understood Detective I to be joking. However, the conduct, particularly earlier, was disrespectful.

The CPOA finds Detective I's conduct to be **Sustained** where the investigation determined that the alleged misconduct did occur.

Additional Concern Reviewed:
Ms. did not know if the detectives knew they were interfering with a needle exchange, but, given their organization's community outreach and length of time at that location, she could not see how the detectives did not know about their presence. Ms. believed the APD Area Commands of all their outreach locations were aware. Ms. stated the detectives' actions created fear and confusion among the staff and the clients. Media articles quoted Ms. as saying; the arrest of two people seeking services was "shocking." Ms. expressed if the detectives knew the purpose of the van and acted anyway, that was of concern. Ms. did not understand why the fact that the arrest took place at the syringe exchange was not mentioned in the reports she later read. Mr. assumed the reason Detective M said he was not targeting the homeless was because Detective M realized "he messed up." Mr. felt the officers knew the purpose of the van before they made contact because their outreach had been around so long. Mr. believed arrested individuals would talk about it since they probably had many of the same clients. Mr. believed at least one detective knew it was a needle exchange, but the others may not have. He based this belief on the videos he saw after the fact, but he did not recall what specifically gave him that impression. Mr. stated if officers were staking out the area and saw people coming and going, their purpose was obvious. Both felt the officers should not have approached the exchange and should have known it was an exchange. Ms. stated their organization works with the Valley Area Command since their physical facility was located in that area, but meetings occur with other law enforcement entities as needed. Ms. did not think a formal schedule of their mobile exchanges had been provided to law enforcement. Mr. agreed their schedule was circulated primarily through word of mouth. Ms. stated their vans were not marked in order to avoid stigmatization for their clientele. There has not been outreach to the Narcotics Unit in APD over concerns about stigma and compromising clients' anonymity.

All of the detectives interviewed as well as the sergeant stated when they saw the van they had no idea it was a syringe exchange outreach; all they saw was an unmarked white van. Only one detective thought it provided some sort of service, but he thought it was a meals on

Attachment "B"

wheels. All the detectives and sergeant have several years of experience in the Narcotics unit and all of them stated their only knowledge about harm reduction was that the service existed, but they did not know the details. They all believed needle exchanges took place at physical buildings, not at mobile sites. All expressed consultation with APD Area Commands occurred with certain operations, but in this case, their final destination was unknown so they could not have consulted with Area Commands prior to the operation. Most of the detectives stated they either did not see the additional individuals because of their position or saw the people, but did not realize the individuals were there for a specific purpose. Most of the detectives did not mention the fact that the arrest took place at a needle exchange site in their reports because it was an immaterial detail. Detective M stated he did not mention it because he assumed the needle exchange wished to remain anonymous since the van was unmarked and therefore as a courtesy did not expose it in his report. Detective M informed the employees he was not targeting the homeless because of what he considered previously skewed media stories about law enforcement operations and certain populations. Sgt. L stated if he had known that was an outreach and that clients were present he would have waited for a different opportunity to apprehend the subjects. Sgt. L stated they were in the dark about how that organization operated and had not intended on interfering.

The lapel videos showed the radio chatter between all the detectives talked about the van in passing, but there was never anything mentioned about services or a syringe exchange occurring. The lapel videos showed the detectives did not know there were employees present until after they started the apprehension operation and the employees showed their badges. The lapel videos showed one of the employees immediately identified the purpose of their presence and the van to Detective M, hence a lack of surprise. APD policy does not prohibit taking action at a needle exchange site. The idea that syringe exchanges are "sacred spaces" is not expressed in APD policy or NMSA 1978 24-C Harm Reduction Act. The New Mexico Department of Health Harm Reduction Protocols state, "Program staff and volunteers must not interfere or obstruct law enforcement personnel who may be involved in a situation with a program participant while performing their duties." Based on the statements from both Albuquerque Healthcare for the Homeless staff and APD personnel, a lack of communication, understanding of purposes, and elements of mistrust from each of the parties contributed to the situation occurring. A recommendation is included in this report to modify APD policy and suggest appropriate liaisons be established to aid in education and communication.

You have the right to appeal this decision.

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

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

A) The APD policy or APD policies that were considered by the POB were the wrong policies or they were used in the wrong way; or,

Attachment "B"

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

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

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

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

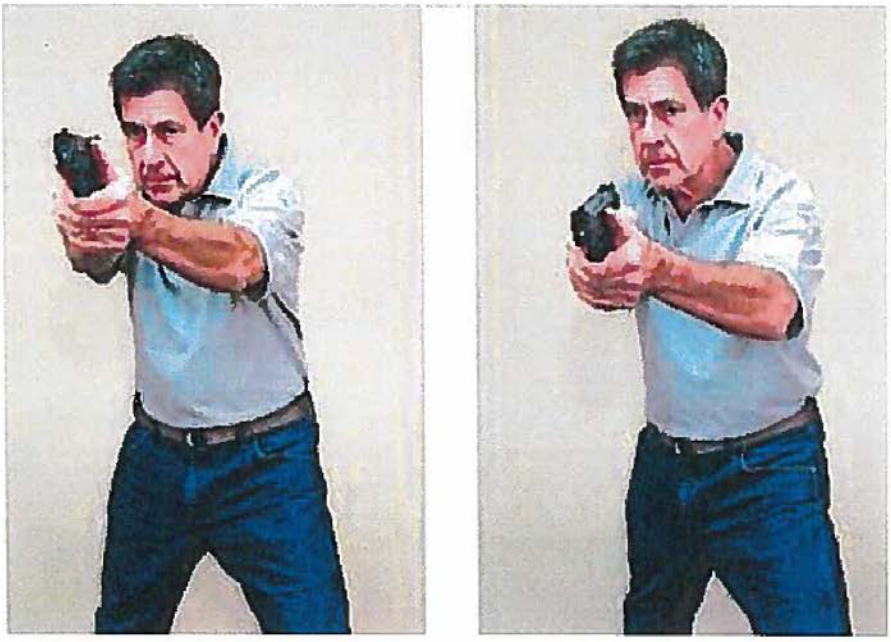
Sincerely,

The Civilian Police Oversight Agency by

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

cc: Albuquerque Police Department Chief of Police

Attachment "B"



Left: Gun on-target at suspect / Right: Low ready

Mroz, R. (2014, January). Ready Positions: What We Have Here Is A Failure To Differentiate. Retrieved from
http://americancopmagazine.com/ready-positions/

Attachment "B"

SEARCH/ARREST WARRANT SERVICE 6/28/2016

Risk Assessment Matrix

POINTS	FACTS	SCORE
	SEARCH/ARREST WARRANT:	
	Is the offense a felony? *If No, Consult Tactical Lieutenant*	
5	Arrest Warrant for a non-violent felony	____
2	Search warrant is for drugs	____
2	Search warrant is for evidence of a crime against a person	____
	LOCATION:	
5	Service of warrant requires the use of mechanical breaching tools	____
25	Location is fortified or requires special breaching tools	____
3	Location has known aggressive attack dogs	____
10	Verified firearms at location (UC or CI)	____
5	Size of location/ two or more levels	____
3	Location has counter surveillance equipment/people	____
25	Drug manufacturing location/large scale narcotics distribution	____
1	Sympathetic subjects near target location	____
	AUXILIARY SUBJECTS:	
5	4 or more subjects verified at location (UC or CI)	____
3	High probability of small children/elderly/ or physically challenged	____
	TARGET SUBJECT(S):	
1	Subject of warrant has property crimes history only	____
3	Subject of warrant has history of crimes against persons or has an outstanding warrant for a crime against persons.	
5	Subject has history of multiple Felony Arrests for non-violent crimes(within 10 years)	____
5	Subject of warrant has made statements about resisting arrest	____
2	Subject of warrant has history of Felony drug arrests (Within last 10 years)	____
10	Subject of warrant has violent criminal history (Within last 10 years)	____
15	Subject of warrant has history of using firearms in crimes (Past 10 Years)	____
15	Subject of warrant is known and verified to carry firearms (CI or UC)	____
15	Subject of warrant has previous conviction for firearms violation(Within 10 years)	____
10	Subject of warrant has history of assault on police/resisting arrest (Within 10 years)	____
25	Subject has outstanding warrant for Homicide, Rape, Felonious Assault, Aggravated Robbery, or Aggravated Assault/Battery and is barricaded in a structure	*
2	Target/Subject is unknown	____
15	Subject of warrant has a documented history of mental health issues	____
	TOTAL SCORE:	*

- Give the appropriate point value to each category that applies. If the total score is **25 or more, contact SWAT** for assistance in the execution of the warrant.
- Check all categories that apply.

* - AUTOMATIC SWAT RESPONSE FOR BARRICADE

SGT - 6/28/16

UNKNOWN ORIGIN

Attachment "C"

Risk Assessment Matrix		
Points	**Facts**	**Score**
	SEARCH WARRANT SERVICE	
	Is the offense a felony? *If No, Consult Tactical Lieutenant*	
5	Warrant for a non-violent felony	
2	Search warrant is for drugs	
2	Search warrant is for evidence of a crime against a person	
	LOCATION	
5	Service of warrant requires the use of mechanical breaching tools	
25	Location is fortified or requires special breaching tools	
3	Location has known aggressive attack dogs	
10	Verified firearms at location (UC or CI)	
5	Size of location / two or more levels	
5	Location has counter-surveillance equipment/people	
25	Drug manufacturing location/large-scale narcotics distribution	
1	Sympathetic subjects near target location	
	AUXILLARY SUBJECTS	
5	4 or more subjects verified at location (UC or CI)	
3	High probability of small children/elderly/or physically challenged	
	TARGET SUBJECT(S)	
1	Has property crimes history only	
5	Has history of crimes against persons or has an outstanding warrant for a crime against persons	
5	Has history of multiple felony arrests	
5	Have made statements about resisting arrest	
2	Has history of felony drug arrests (within 10 years)	
10	Has violent criminal history (within 10 years)	
15	Has history of using firearms during crimes (within 10 years)	
15	Is known and verified to carry firearms (CI or UC)	
15	Has previous conviction for firearms violation (within 10 years)	
10	Has history of assault on police/resisting arrest (within 10 years)	
25	Has outstanding warrant for Homicide, Rape, Felonious Assault, Aggravated Robbery, or Aggravated Assault/Battery	
15	Has a documented history of mental health issues	
2	Is unknown	
	TOTAL SCORE:	

Give the appropriate point value to each category that applies.
If the total score is 25 or more, contact SWAT for assistance in the execution of the warrant
Check all categories that apply.

Attachment "C"

SEARCH/ARREST WARRANT SERVICE

Location:

Risk Assessment Matrix

POINTS	FACTS	SCORE
	Search/ Arrest Warrant	
0	Is the offense a felony? If No, consult Tactical Lieutenant	
5	Arrest Warrant for a non-violent felony	
2	Search warrant is for drugs	
2	Search warrant is for evidence of a crime against a person	
	LOCATION	
5	Service of warrant requires the use of mechanical breaching tools	
25	Location is fortified or requires special breaching tools	
3	Location has known aggressive attack dogs	
10	Verified firearms at location (UC or CI)	
5	Size of location/ two or more levels	
5	Location has a counter surveillance equipment/ people	
25	Drug manufacturing location/ large scale narcotics distribution	
1	Sympathetic subjects near target location	
	AUXILIARY SUBJECTS	
5	4 or more subjects verified at location (UC or CI)	
3	High probability of small children/ elderly/ or physically challenged	
	TARGET SUBJECT(S)	
1	Subject of warrant has property crimes history only	
5	Subject of warrant has history of crimes against persons or has an outstanding warrant for a crime against persons	
5	Subject has history of multiple Felony Arrests	
5	Subject of warrant has made statements about resisting arrest	
2	Subject of warrant has history of Felony drug arrests (within last 10 years)	
10	Subject of warrant has violent criminal history (within last 10 years)	
15	Subject of warrant has history of using firearms during crimes (within 10 years)	
15	Subject of warrant is known and verified to carry firearms (CI or UC)	
15	Subject of warrant has previous conviction for firearms violation (within 10 years)	
10	Subject of warrant has a history of assault on police/ resisting arrest (within 10 years)	
25	Subject has outstanding warrant for Homicide, Rape, Felonious Assault, Aggravated Robbery or Aggravated Assault/ Battery	
2	Target/ subject is unknown	
15	Subject of warrant has a documented history of mental health issues	
	TOTAL SCORE:	0

- *Give the appropriate point value to each category that applies.*
- *If the total score is **25 or more, contact the Tactical Lt. for assistance in the execution of the warrant.***
- *Check all categories that apply.*

Attachment "C"

Rules and Procedures for Non-Concurrence Hearing:

A. If the POB and the Chief do not agree on their findings, the POB will wait until the civilian has decided whether or not to appeal. If the civilian does not exercise the right to appeal, then the POB will decide whether to appeal their disagreement with the Chief.
B. Not all disagreements must be appealed. The POB may exercise discretion and appeal or not as the POB decides.
C. Notice for the appeal hearing shall be given in the agenda for the POB. The Chief of Police will also be notified of the date of the non-concurrence hearing.
D. The hearing will include a report from the CPOA investigator on the reasoning and evidence used to decide on their recommended finding. As well as a report from the Chief or his designee on the reasoning and evidence for making an alternative finding.
E. Once CPOA and APD have described their justification for their finding the POB will make a final recommendation for finding or discipline.
F. If the CPOA/POB and the Chief do not agree on the findings of any civilian complaint after the public hearing, the Chief of Police will determine the final decision on discipline and findings, but the non-concurrence will be documented in the officer's disciplinary file. The Chief must notify the POB and the CPOA of their final determination and justification of their findings/discipline in response to the non-concurrence within 20 calendar days of the non-concurrence hearing.

Attachment "I"

Civilian Police Oversight Board
Minutes – March 16, 2017
Page 37

Attachment "D"

POLICE OVERSIGHT BOARD
INTERNAL AFFAIRS
STATISTICAL DATA FOR THE MONTHS OF MARCH 2017

APD 911 Communications Center
Dispatched calls for Service for March 2017: **43,220 (increase from February (4,166)**

INTERNAL CASES FOR THE MONTH OF MARCH 2017

I's

Internal Cases Received: 8
Comprised of:
- **4-Internal Affairs Investigated case**

Internal Cases Administratively Closed: 0

Internal Cases Mediated: 0

Total Internal Cases Completed the Month of MARCH: 14
Comprised of:
- **12-Internal Affairs Investigations**
- **2-Area Command Investigated cases**

Discipline imposed for Internal Cases/ MARCH 2017:

1:Verbal Counseling
2:Training
2:Verbal Reprimand
2:Termination
5:Letter of Reprimand
6: Suspension

Vehicle Crashes Received: 66
- **21-Pending Crash Review Board**

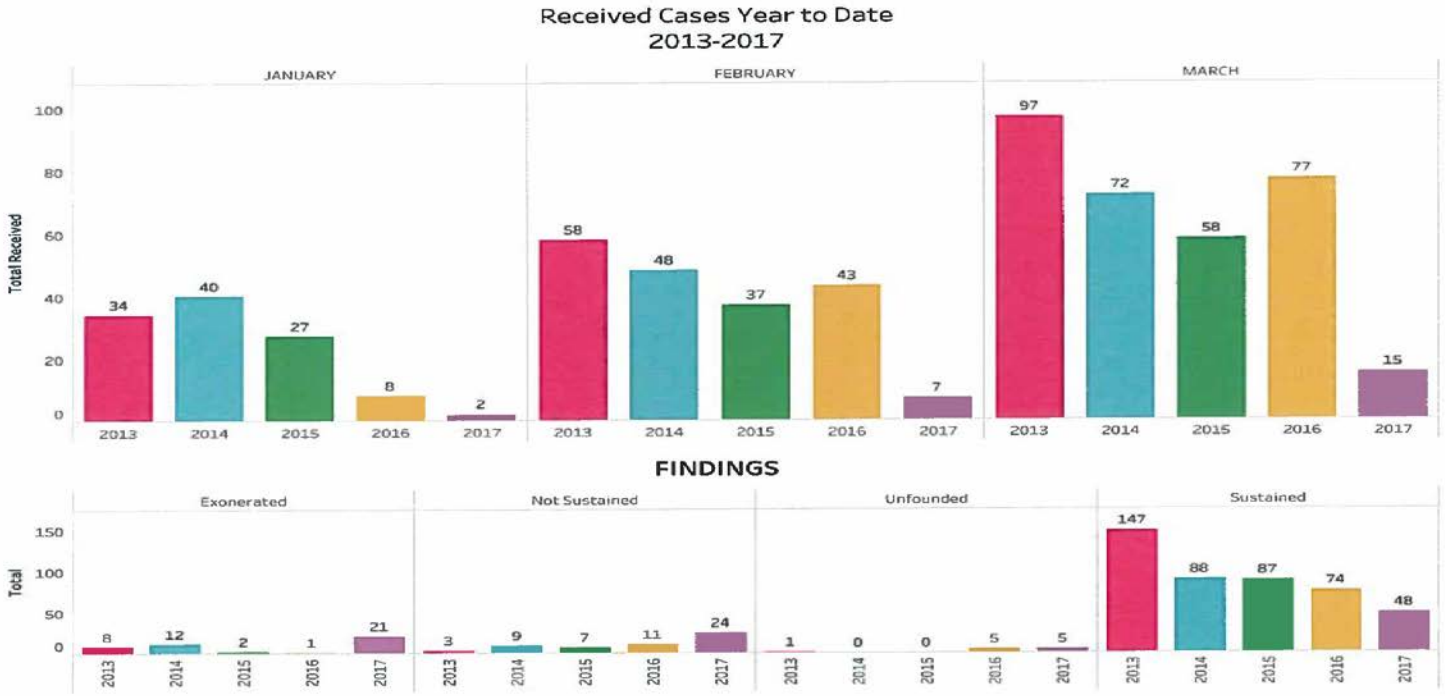
Vehicle Crashes Closed: 44
- **0-Preventable**

EIS MARCH 2017: 35 Alerts distributed

Pending Cases for the Month of MARCH 2017: 6*
***Is related to the number of cases opened within MARCH**

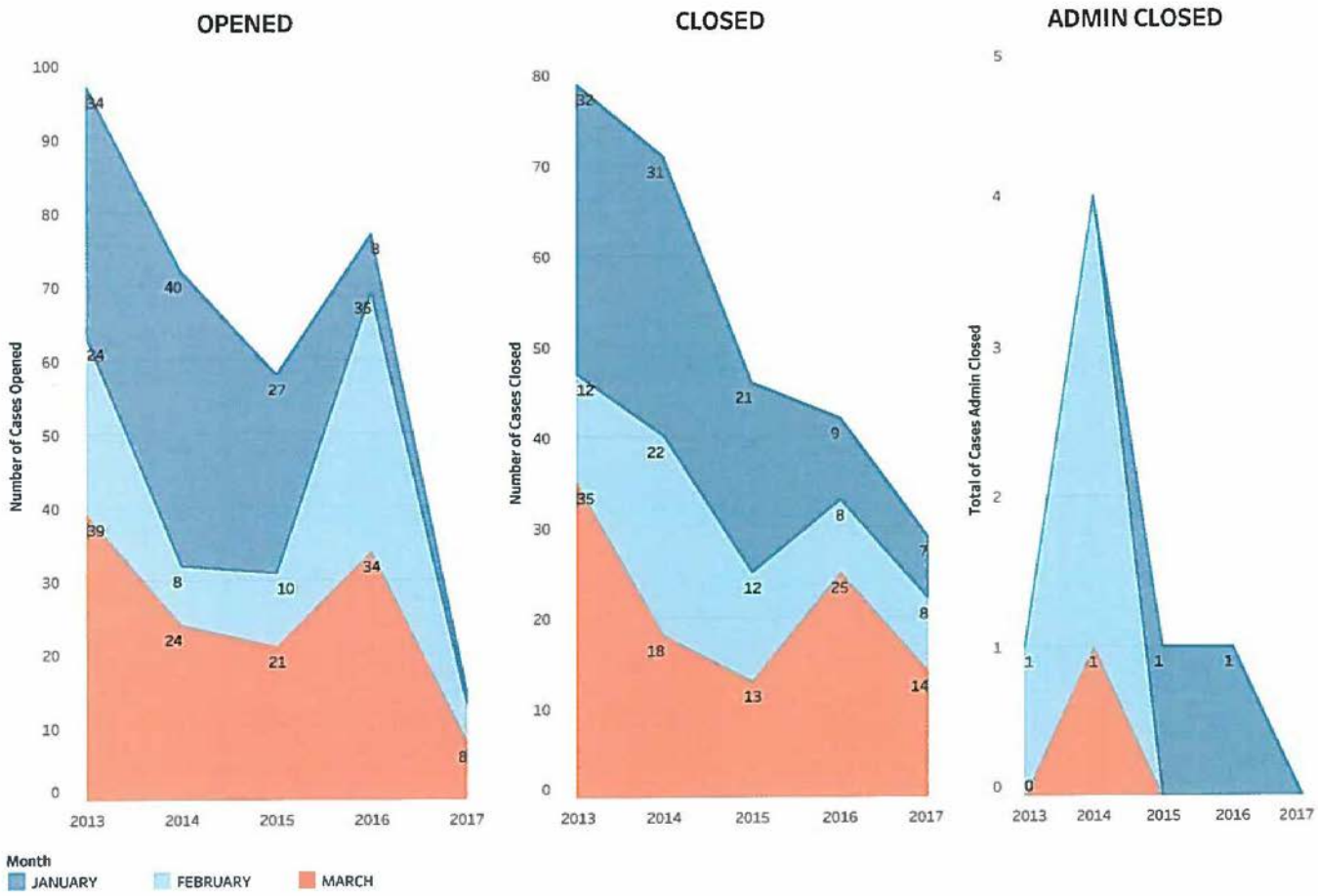
Attachment "E1"

INTERNAL INVESTIGATIONS
YEAR TO DATE
(JANUARY THROUGH MARCH)



Attachment "E2"

INTERNAL INVESTIGATIONS
JANUARY THROUGH MARCH



Attachment "E3"