

**MINUTES**  
Civilian Review Board  
Ruth Bascom Room, Eugene Public Library  
100 West 10th Avenue

March 12, 2019  
5:30 p.m.

PRESENT: Maurice Denner, Chair; Steve McIntire, Vice Chair; Rick Roseta, Carolyn Williams, Lindsey Foltz, Civilian Review Board members; Mark Gissiner, Leia Pitcher, Beatriz Hernandez, Vicki Cox, Police Auditor's Office.

AIC Captain Eric Klinko, Lieutenant Angie San Miguel, Sergeant Jason Berreth, Cindy Coleman, EPD; Serena Markstrom, HRC

ABSENT: None.

Mr. Denner convened the Civilian Review Board (CRB) at 5:33 p.m.

**1. AGENDA AND MATERIALS REVIEW**

There were no changes to the agenda.

**2. PUBLIC COMMENT**

No one from the public wished to provide comment.

**3. MINUTES APPROVAL – FEBRUARY 2019**

There were no changes to the minutes.

Mr. Denner deemed the minutes approved as presented.

**4. COMMENTS FROM BOARD MEMBERS, HUMAN RIGHTS COMMISSION LIAISON AND POLICE COMMISSION LIAISON**

Ms. Foltz recently listened to an NPR story discussing how California may change its rules around prosecuting officers and require de-escalation. She was unsure the legislative route was right and thought individual department policy would be more effective. Ms. Foltz was also curious to see data on how often people were using de-escalation skills since CRB didn't see that information.

Mr. Denner had been thinking about trainings on mindfulness and being situationally aware of what an officer was doing and where they were at. He thought de-escalation was important, as well as debriefing. Mr. Denner hoped that as more people became involved as training officers, that they could receive training on how to debrief trainees. It was good to discuss what happened.

Mr. Denner sold his home in Eugene; however, he was not ready to resign yet, and would consider telecommuting to one more meeting. He suggested Mr. McIntire run the meeting if he wasn't available.

Mr. McIntire read the same article as Ms. Foltz and had also contemplated de-escalation. Mr. McIntire had wondered many times how often the tactic was used successfully. He believed that sometimes, the issue could have been avoided. Police Commission met on February 12, 2019 but he was unavailable to attend. Another meeting was that week, which he would attend.

Mr. Roseta thanked Mr. Denner for his service and thought the community benefited from his involvement.

Ms. Cox attended the recent Human Rights Commission (HRC) meeting. There was a presentation on Guardian Trailers and how they were being used. There was also an Equity Panel on CAP 2.0, as well as a presentation on the Community Development Department's Housing Tools and Strategies recommendations.

Serena Markstrom was part of the HRC. There was a work group dealing with ethnic diversity and writing a letter about the Charlie Landeros shooting. The letter outlined what they hoped was happening during the process and what they hoped was being asked; it also pointed out the distrust between communities of color and police.

Mr. Denner wondered if the CRB's training on officer involved shootings, given to the board in February 2019, would be helpful for HRC. Sarena Markstrom said HRC had received a detailed presentation.

Mr. Gissiner asked if the work group was a subcommittee of HRC. Sarena Markstrom said more or less; there was one other work group called Whole Eugene Community United (WECU). The groups were meant to inform the Human Rights Commission.

Mr. Denner encouraged Serena Markstrom to invite commissioners and members of the public to provide comment at a CRB meeting, if their goal was to make people aware of the shooting and the investigation process.

## **5. TRAINING TOPIC: STREET CRIMES**

Eric Klinko Acting Patrol Captain, discussed street crimes. Captain Klinko discussed the mission of the unit, and how it was constituted. EPD had a street crimes team a number of years ago, that looked different than the current concept introduced by Chief Skinner. Prior, the patrol division was centered around responding to calls for service and conducting proactive police work; however, it was difficult to conduct in-depth investigations with satisfaction.

Chief Skinner's goal was to create a street crimes team of 10 officers who would respond to neighborhood problems in saturated areas (i.e. robbery series, problem houses). A challenge faced at EPD was finding staff. There were 22 officers in training, but EPD wouldn't begin to see those officers prepared for service until late May or early June 2019.

Klinko explained it would be important to identify the individual responsible for day-to-day care of the team. EPD would conduct a selection process for two sergeants. Sgt. Scott Vinje, the current Special Investigations sergeant, would assist Klinko in setting the team up. Sergeants Mike Ware and Terry Martin would also help in the interim.

Klinko continued that EPD underwent a selection process for the general team and identified eight officers who demonstrated the necessary energy and commitment. The design of the team would differ from EPD and would be driven by the wishes of Eugene citizens.

Mr. McIntire knew EPD tracked statistics in different neighborhoods. He wondered if any of that information helped prioritize where officers would monitor. Klinko said some work would be driven by complaints and crime statistics.

Klinko said the team would primarily work a set schedule, but it could be adjusted as needed. One goal of the street team was to ensure the Saturday Market was a safe, enjoyable place. Team members would be available to respond to emergency calls for service but would not routinely be dispatched. Hopefully, issues would be resolved creatively and through relationships.

Mr. Gissiner wondered if there was a formal, collaborative relationship with the District Attorney (DA). Klinko said the DA was hesitant to enter into such an agreement, but some officers had established relationships with different DAs. With those relationships, officers were able to hand walk cases over to attorneys interested in those types of cases, or who were working on other cases against the offender. It wasn't a formal agreement, but those relationships enhanced the prosecution process. Many cases would have community impact because they were festering problems that had drawn the attention of City Council.

Mr. Gissiner wondered if the team was disconnected from dispatch. Klinko said the Street Team operated on a different channel than the main operating line. The goal was to be an asset to patrol, not a burden.

Mr. Denner asked about relationships with Springfield PD and UOPD. Klinko said there was a certain level of contact with UOPD, depending on the problem. For example, areas like West University were high priority for UO. A lot of students lived there, and it negatively affected the school when the neighborhood was perceived as being unsafe. Springfield had its own unit, but information would likely still be shared.

Mr. Roseta asked how the street crimes team worked with the investigative unit. Klinko said that collaboration would be a central theme, however, most cases the team would work on wouldn't necessarily delve into the realm of investigation.

Klinko explained the team had bridge funding for 18 months, but it was an ongoing community justice effort. The hope was monies would be secured to keep the team up and running beyond 18 months. If funds weren't secured, officers would be absorbed into patrol, but Chief Skinner felt confident they would find funding one way or another.

Ms. Foltz asked who directed which projects the teams worked on. Klinko said multiple sources, but primarily from him, in consultation with Sergeant Vinje. The team was a work in progress, so it would likely look different in a year. Leadership would periodically evaluate its impacts on the department as a whole.

Mr. McIntire was struck that the team should track success to explain the team's value. Having that data could help secure additional funding. He was concerned that street team officers could be redirected from their main mission for other patrol reasons. Klinko said tracking data was required as part of the bridge funding. The team would then report back to City Council on how the money was spent, and how successful the initiative was. Mr. McIntire noted some things were not quantifiable, but still impactful.

Mr. McIntire wondered the goal behind working on problem homes. He asked if officers would follow up with home owners after being in jail, etc. to help them get into rehabilitation. Klinko said the team would try and help every person, but that probably was not possible. He didn't want to convey the team would act like the homeless outreach team; however, the officers could be a conduit for additional resources. EPD didn't want to arrest its way out of a particular problem.

Ms. Foltz hoped the team contemplated the question of how to quantify success. Klinko thought that was a great point. The team was still contemplating what success looked like and how to ensure it was statistically relevant.

Ms. Foltz said stories, not just data, were powerful in sharing success. But, that also required officers to capture those stories. Storytelling would be important in letting the community know about the street crimes team.

Klinko said press releases would occur. Also, the street crimes team uniforms were slightly different than traditional patrol uniform, and their cars were adorned with markings indicating it was the street crimes team and not a patrol vehicle. Hopefully, through proper messaging, people realized what was happening.

## 6. BREAK

CRB took a break from 6:25 p.m. to 6:35 p.m.

## 7. CASE REVIEW: INVESTIGATION INTO TASER USE

Mr. Denner disclosed he knew an officer involved. It wouldn't affect his comments, but he wanted to inform those present.

Ms. Pitcher presented a PowerPoint entitled, "Case Summary: CRB March 12, 2019."

### I. Summary of Facts

- Officer A was working a traffic assignment when he and Detective D noticed two LCSO reserve deputies physically struggling with a person who they were apparently attempting to take into custody.
- Officer A and Detective D approached the struggle. Officer A saw that the person was in handcuffs and ordered him to get on the ground or he would be tased.
- At the moment of the Taser warning, Detective D's body-worn video showed that the suspect was looking in the direction of the approaching EPD employees and that LCSO reserve deputies were holding his arms.
- Detective D started to utilize a hair-hold to try and move the suspect to the ground. About two seconds later, Officer A can be heard shouting "Taser, taser taser" and then Taser deployment can be heard.
- The suspect went to the ground during the Taser deployment, and Officer A notified dispatch. The suspect was instructed to relax, which he did, and Officer A kept the Taser on the suspect's right ankle. The Taser was not deployed a second time.
- A supervisor entered a use of force report into Blue Team. Upon review of the Use of Force report, this internal investigation was opened.
- Officer A maintained in his interview that other force options were not reasonable under the circumstances.

### II. Allegations

- a. **809 Taser Use:** That Officer A violated policy when he discharged his Taser against a handcuffed prisoner.

### III. Adjudication

- a. Taser Use
  - EPD chain of command recommendation: Within Policy
  - Auditor's Office recommendation: Sustained
  - Chief of Police: Within Policy

### IV. Issues for CRB Discussion

- Intake/Classification

There were no comments.

- Investigation and Monitoring

Mr. Denner had no problem within the investigation but had one question for Sgt. Berreth. He noted there were two civilians at the bus stop viewing the scene and wondered if their names were taken. Sgt. Berreth didn't recall them being mentioned in any reports. Mr. Denner said they were closer to the event than almost anyone else. He was unsure their testimony would have been helpful, but it could have supported the allegation. Mr. Denner thought the interviews and process of investigation were fine, and expediate.

Mr. Roseta would have been interested to know if there was a toxicology report done, in order to determine what was causing the person's violent reaction. Ms. Pitcher said an inventory of drugs was done within the person's backpack, and there were many. Narcan application was done many times during the process. She was unsure if medical records were part of the investigation. Mr. Roseta assumed opiates were involved because Narcan seemed to help the person's condition. He was unsure if the treatment helped with other drugs. Mr. Gissiner said it also helped fentanyl overdoses.

Ms. Williams thought the investigation was thorough. She thought the BWC was helpful, but it would be nice if officers were able to connect them to traffic vests, rather than underneath.

Ms. Foltz thought the investigation was well organized. It was unfortunate to not have BWC footage from Officer A due to his traffic vest. She noted Lane County sheriffs did not wear BWC, which was unfortunate.

Mr. Denner shared Ms. Foltz's concern about sheriff employees not having cameras. They were also on a different radio frequency.

- Relevant Department Policies and Practices

Mr. Denner said there were some challenges in communication between the four agencies present. There were Lane County Sheriff's Department, EPD, Fire, and Medical services. He thought as UOPD improved at managing large crowd situations, they could take more responsibility for football games and other events.

Mr. Denner was also impressed by the quality of after-care given by EPD employees. There was concern for the subject, follow through, and ensuring that Narcan was provided. The handcuffs were also taken off when it was appropriate.

Mr. Roseta agreed. He noted EPD officers moved the subject from off the concrete onto the grass for CPR, which was best practice.

Ms. Williams wanted to commend officers who were speaking with the subject's girlfriend; it was an impressive interaction.

Ms. Foltz added that in the hospital, there were moments when the subject was asking questions and the officers were being personable and kind. They couldn't answer all of the questions, but they treated the person very humanely. She appreciated the officers' demeanors.

- Policy and Training Considerations

Mr. McIntire said that after the person was tased and handcuff, he was face down. It reminded Mr. McIntire of a previous case dealing with positional asphyxia. The scene appeared to have similarities, so he wondered if there was any discussion about the possibility, and any talk about aftercare.

Ms. Pitcher said she could not recall an official discussion on that topic. With the presence of drugs in the subject's backpack, it appeared those were likely what caused him to lose consciousness, rather than his position. Mr. Gissiner said positional asphyxia was hard to diagnose unless done through autopsy.

Ms. Williams said it was hard for her to see how the officers knew to administer Narcan. She also brought up taser use. She understood they were the least harmful of methods available to officers in apprehending an individual, but wondered about their legality.

Sgt. Berreth said all officers received Narcan training. Officers were trained to provide Narcan when they didn't know why someone was unconscious and there was even a possibility of opioid overdose. It never hurt to administer Narcan.

Ms. Foltz wanted to learn more about the taser policy. She explained Officer A took the Taser out, pointed it at the individual, gave eye contact, and said, "I am going to tase you." She wondered if that was the protocol officers were supposed to use. Sgt. Berreth confirmed that, if officers were able to provide a verbal warning, then they should, as that provided the subject with a chance to comply.

Ms. Foltz said when looking at the situation, clearly, the Lane County deputies were struggling with the person. She wondered, from the officer perspective, what risk the person was to himself and others if the officers lost control. Sgt. Berreth said officers likely assumed the individual would run rather than fight. One priority was to keep the person away from traffic, as that could become a deadly situation in which officers were liable.

- Adjudication Recommendations

Mr. Roseta agreed with the adjudication, but also understood Ms. Foltz' analysis on 809.4.2, where it said, "a taser should not be administered absent of overly violent behavior that cannot reasonably addressed by other available means." Mr. Roseta noted it was a call that had to be made quickly. He chose to give benefit of the doubt to the officer. It was a charged situation, with unprepared officers from outside agencies.

Ms. Williams saw both sides of the argument. BWC would have made the event clearer. Ultimately, she thought it was within policy, but the situation definitely brought up questions about the policy.

Ms. Foltz agreed with previous comments. It was difficult to see exactly what was going on as it happened very fast. She was not sure the subject should have been classified as violent or combative. It did look like he was trying to get away, or at least have some control of the situation, but he wasn't quite violent. Ms. Foltz thought other measures being used were in the process of being effective, and that the officer didn't leave enough time to assess the efficacy. She thought the use of the Taser appeared to be premeditated but agreed with the Police Auditor's adjudication.

Mr. Denner came on the side of Chief Skinner after listening to the interviews with the two sheriffs, twice. One was highly experienced in the profession and in martial arts, and they thought the Taser made a difference in the situation.

Mr. McIntire agreed there could have been more time. After watching the BWC and reading the policy, he thought it was a stretch to say the subject's behavior was violent. He measured the officer's conduct against the policy that existed, and he didn't believe the officer was within current policy.

- Additional Comments

Ms. Williams said it was a fine line. Within the policy, it read a person fleeing should not be the sole justification for discharge of a taser. She thought the subject running was the officer's main concern, not violence. Ms. Williams changed her opinion and believed that the allegation should have been sustained.

Mr. Denner had one other consideration. He thought there was a point where the reaction wasn't based on training, but experience; knowing the history of the two officers, who were long-time employees that had dealt with many people in similar situations.

Mr. Roseta returned to policy. He thought the danger in cases was that those analyzing the situation had the benefit of time and knowing the ultimate result. It was easy to say something else should have been

done in the moment -- there could have been lots of scenarios. It was easy to use hindsight, and it was one danger of making judgement on things happening kinetically in the field.

Ms. Pitcher thought Mr. Roseta made a good point. She noted no other policies included anything nearly as restrictive as the phrase, "use only if less intrusive means are unavailable." Ms. Pitcher thought the wording invited folks to consider what else could have been done.

Mr. Gissiner said the policy was shaped by how courts looked at tasers. They were highly critical and elevated tasers to one step below shooting someone.

Mr. Denner added the officer explained they were unable to get the subject to the ground with other methods of force. He took the officer's word.

Mr. McIntire asked if the subject was drive stunned. Sgt. Berreth confirmed it caused a full muscle lock up. Mr. McIntire noted how the subject was tased (deploying the taser probes rather than a drive stun) was not within policy. Ms. Pitcher stated that she hadn't performed a written analysis on that topic because the policy wording read, "should consider using drive stun."

## **8. AUDITOR REPORT**

Mr. Gissiner provided a report. At the time, there are four CRB vacancies to be filled in the current recruitment process. Mr. McIntire's term was up, and he didn't plan to reapply. Mayor Vinis and Mr. Gissiner needed to create a sub-committee to review applicants and make recommendations to City Council by April 10, 2019. Board and commission interviews would take place in mid-April 2019.

Ms. Hernandez was working on compiling annual reports. She sent a draft CRB annual report to Mr. Denner and Mr. McIntire for review. Ms. Hernandez would send the draft to other members upon request.

Mr. Gissiner reported the Latinx public safety forum was planned for February 2019 but was moved to May 21, 2019. He also stated that a review of EPD's use of deadly force on Charlie Landeros was planned for Tuesday, April 2, 2019. He mentioned that whether to make that case a community impact case was still a consideration.

Mr. Denner had concerns because community impact cases were meant to review and tell the department it made a mistake, without changing the adjudication. There was community concern about police conduct, but the victim's family (who had a chance to reflect), expressed they didn't want it to be a public event. It was important to balance those issues.

## **9. DISCUSSION: CASE SELECTION FOR APRIL 2019**

There was no discussion.

## **10. ADJOURN - NEXT MEETING APRIL 9, 2019**

Mr. Denner adjourned the CRB meeting at 7:40 p.m.

*(Recorded by Marina Brassfield, LCOG)*