

MINUTES

Civilian Review Board
Bascom Room, Eugene Public Library
100 W 10th Ave, Eugene, OR 97401

October 8, 2019
5:30 p.m.

PRESENT: Lindsey Foltz, Carolyn Williams, Rick Roseta, Bernadette Conover, Susan Gallagher-Smith, Michael Hames-Garcia, Awab Al-Rawe, Civilian Review Board members; Leia Pitcher, Vicki Cox, Beatriz Hernandez, Police Auditor's Office; Lt. Angie San Miguel, Sgt. Jason Berreth, Eugene Police Department; Tamara LeRoy, Sexual Assault Support Services; Ela Kubok, Human Rights Commission.

ABSENT: Mark Gissiner, Police Auditor's Office.

Chair Lindsey Foltz convened the Civilian Review Board (CRB) at 5:37 p.m.

1. AGENDA AND MATERIALS REVIEW

There were no changes to the agenda.

2. PUBLIC COMMENT

There was no public comment provided.

3. MINUTES APPROVAL – SEPTEMBER 2019

Ms. Foltz noted her name was spelled incorrectly as "~~Lindsay~~." It was spelled **Lindsey**.

Motion: Ms. Conover moved to approve the September 2019 minutes as amended. Ms. Williams provided the second.

Vote: The vote passed 4:0. Mr. Al-Rawe, Mr. Hames- Garcia, and Ms. Gallagher-Smith arrived after the vote.

Ms. Foltz declared the minutes approved.

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

Ms. Conover attended the September 2019 Police Commission meeting. During the meeting, members discussed the process for how the Eugene Police Department (EPD) dealt with illegal car camping (i.e. how it was reported, how contact was made, how agencies worked with the individual, and the process for repeat offenders).

Ms. Foltz asked who enforced laws around car camping. Ms. Conover replied mostly St. Vincent de Paul (SVDP).

Police Chief Chris Skinner also provided a hiring report to the Police Commission. There was discussion about what hiring looked like (i.e. the balance of gender, language fluencies, etc.). Finally, commissioners discussed content of some EPD policies.

Mr. Hames-Garcia arrived at 5:42 p.m.

Ela Kubok, Human Rights Commission (HRC) Liaison, introduced herself. She provided a brief report on the September 2019 HRC meeting, during which all liaisons were approved. Ms. Kubok had a designated representative to attend CRB meetings if she was unavailable.

5. ELECTION OF OFFICERS

Ms. Pitcher provided an overview on the election process for officers (chair and vice chair) and committee liaisons, as well as position responsibilities. HRC and PC met once a month. There were some additional time commitments for the positions.

Ms. Gallagher-Smith arrived at 5:47 p.m.

Ms. Conover nominated Ms. Foltz as Chair of CRB. Mr. Roseta seconded the nomination. All were in favor. Ms. Foltz accepted the position of Chair.

Mr. Roseta nominated Ms. Williams as Vice Chair. Ms. Conover seconded the nomination. All were in favor. Ms. Williams accepted the position of Vice Chair.

Ms. Foltz asked if there was a volunteer for the HRC position. There were none. Ms. Pitcher offered that folks could wait a month and attend one meeting to see if they were interested.

Staff would attend the October 2019 HRC meeting, and CRB would wait until the November 2019 meeting to continue the conversation.

Mr. Hames-Garcia and Ms. Foltz volunteered to serve on PC. Each spoke on why they were interested in the position.

CRB conducted a voting process for the PC position. Ms. Foltz would serve as the liaison for PC.

6. TRAINING TOPIC: SEXUAL ASSAULT SUPPORT SERVICES

Mr. Al-Rawe arrived at 5:55 p.m.

Tamara LeRoy presented a PowerPoint on Sexual Assault Support Services (SASS), a 501c3 nonprofit located at 591 W19th Avenue in Eugene.

Ms. LeRoy was a privileged advocate with SASS. She explained the organization was within an older remodeled home, meant to create a welcoming space to meet with small support groups.

Ms. LeRoy shared SASS's mission: *"The mission of SASS is to provide services to survivors of past and present sexual assault, and to change societal conditions that allow oppression, especially sexual violence, to exist. We create social change by providing direct services; by empowering survivors; through organizing; educating; and outreach."*

Ms. LeRoy shared services SASS provided. She explained when a victim was in the hospital, an advocate was called to help navigate the complex legal system.

Services provided by SASS included:

- 24-hour Crisis/Support Line
- Drop-In Center 9 – 4 p.m. Tuesday – Thursday
- 24-hour Emergency Medical & Law Enforcement Response
- Services in Spanish/English & ASL by appointment
- Counseling
- Support Groups
- Systems advocacy
- Outreach to underserved communities
- Legal/Medical Advocacy
- Transportation & Accompaniment
- Information & referral

Services were provided in Spanish, English, and some indigenous dialects (via a translation phone line).

Ms. Conover asked if advocates went to the hospital in Cottage Grove. Ms. LeRoy said not necessarily, but sometimes. Generally, victims were referred into Eugene anyway.

Ms. LeRoy said SASS had an in-house counselor, as well. Mr. Hames-Garcia asked if SASS would refer clients outward. Ms. LeRoy responded sometimes, but there was a shortage of counselors who were trauma informed and survivor centered in their practice. Jen Donovan was often recommended.

Ms. Williams asked if support groups were drop in. Ms. LeRoy said yes, all except closed groups which required an application.

Ms. LeRoy explained the empowerment philosophy at SASS:

- SASS did not give advice.
- SASS believed everyone has the ability and power to make their own decisions and to help themselves.
- Instead, SASS wanted to help survivors tap into their own potential and strengths so that they can become self-reliant, self-confident, and regain a sense of personal power.

Ms. LeRoy explained what advocate privilege meant:

- Statutorily protected communications with survivors
- Advocates were not mandatory reporters
- Advocates couldn't communicate with anyone outside of agency without expressed, written and informed consent of survivors
- Exceptions

Ms. Conover asked if advocates made a report when someone was a danger to themselves or others. Ms. LeRoy said no, an advocate would encourage the person to go to the hospital. Privileged advocates were prohibited from reporting, but the people SASS worked with generally worked with mandatory reporters daily.

Ms. LeRoy shared some statistics (2018):

- Last year, SASS responded to nearly 3,000 requests for support from survivors of sexual assault and their partners, family and/or friends.
- In the first half of 2019, SASS advocates have responded to 87 requests for emergency medical advocacy.

Ms. Conover asked about emergency medical advocacy. She wondered if that was indicative the event just happened. Ms. LeRoy said most people would report the assault within 5 days in order to receive paid services including an emergency room trip, a medical exam, and a forensic exam. Evidence collected followed a chain of custody.

Ms. LeRoy stated the State of Oregon had finally worked through its backlog of forensic kits. Additionally, in 2018 legislation was passed which allowed victims to have evidence stored for up to 60 years, without engaging in law enforcement immediately.

Mr. Roseta asked if there were similar agencies in other counties. Ms. LeRoy said yes, however, sometimes rural areas lacked such services. Mr. Roseta asked if other agencies had a similar structure. Ms. LeRoy responded that some agencies encompassed different services in one place, such as a shelter and advocacy services.

Mr. Roseta wondered if SASS emanated from one state statute. Ms. LeRoy said SASS was created by Eugene community members in response to the closure of the community rape crisis line. She noted the organization's funding stream was now very diverse.

Ms. LeRoy explained why privileged advocates were important:

- Strongly value partnering with other service providers in the community
- Want to ensure survivors have access to as many resources as possible
- Strive to be as inclusive as possible and elevate awareness of agency and our services to broader community

Ms. LeRoy shared statistics, specifically from January 2019 through July 2019:

- 87 Medical Advocacy Responses
- 19 Reports to Law Enforcement
- 9 Law Enforcement Reports with EPD

Ms. LeRoy explained the Forensic Experiential Trauma Interview (FETI), which survivors partook in. She explained:

- Advocates used trauma informed interviewing practices that dovetailed with community-based advocacy practices
- The FETI mitigated impacts of secondary trauma
- The FETI improved outcomes

Ms. LeRoy stated there were improved outcomes with advocate engagement. She shared more statistics:

- 59% vs. 41% (Survivors filing police reports)

- 29% vs. 57% (reports that are no actioned)
- 93% vs. 88% (Victims who show for trial)
- 11% vs. 14% (recanted statements)
- 33% vs. 10% (Convictions due to victim appearing)

Ms. LeRoy shared what individuals could do to help survivors. She summarized that a positive disclosure experience mitigated trauma. It was important to support and validate the survivor as well as refer them to services.

Ms. Conover clarified whether clients came to SASS when wanting to submit a police report. She wondered if patrol officers were FETI trained. Ms. LeRoy said yes, an officer would come to the SASS office. SASS largely worked with people who were from marginalized communities and didn't necessarily want police involvement. In those cases, it helped to have an advocate present.

In response to Ms. Conover, Lt. San Miguel said officers were not necessarily trained on FETI, but EPD did occasionally offer the training. Lt. San Miguel advised that she would work on instituting FETI training for EPD patrol officers.

Mr. Roseta asked if Ms. LeRoy thought it would be helpful to have a statewide system rather than county. Ms. LeRoy preferred a county model, as communities differed widely from one another at the local level.

In response to Mr. Hames-Garcia, Ms. LeRoy stated it was important to serve those with the highest needs, as then everyone benefited.

Ms. LeRoy concluded her presentation by reading a blurb from the SASS brochure, highlighting outcomes from services and agencies such as SASS.

7. BREAK

CRB took a break and returned at 6:52 p.m.

8. CASE REVIEW

Ms. Pitcher presented a PowerPoint entitled, "*Case Summary: Civilian Review Board, October 8, 2019.*"

1. Summary of Facts

- Reporting Party called 911 to report that he was following an apparent hit and run driver.
- Officer A was dispatched to the scene and found a vehicle that fit the description given in the call.
- Officers contacted RP, who was waiting in a vehicle nearby. Officer A interviewed RP about what RP had seen, and then advised RP that he was free to go. As RP returned to his vehicle, he asked Officer A if it was ok to visit his sister, who lived in the same apartment complex. Officer A indicated that it was ok, and RP continued to his vehicle.
- Officer A then asked RP for his sister's name. RP did not provide it, and Officer A appeared to become suspicious. Officer A ordered RP out of the vehicle.

- RP ultimately got out of the vehicle, and Officer A conducted a pat-down. RP stood by with officers, and ultimately another officer stepped in to speak with RP further.
- RP then filed a complaint with the Police Auditor's office related to Officer A's actions during the stop.
- Officer A stated in an administrative interview that they became suspicious of RP due to some inconsistencies in RP's story. Officer A stated that they believed reasonable suspicion existed to support detention of the RP to determine whether he was actually the suspect in the incident.
- Officer B and Officer E stated in their administrative interviews that they agreed with Officer A's suspicion.

2. Allegations

- a. 322 Search and Seizure: That Officer A lacked reasonable suspicion to detain RP during a police contact.

3. Adjudication

- a. Search and Seizure
 - EPD chain of command recommendation: Unfounded/Within Policy
 - Auditor's Office recommendation: Sustained
 - Chief of Police: Sustained

4. Issues for CRB Discussion

- Complaint Intake and Classification

Ms. Williams was always impressed with EPD and the Police Auditor's process for reviewing external complaints.

Mr. Roseta had some issues with intake and classification. He noticed an email report from Sgt. Berreth, explaining the complaint should be classified as supervisor action/service complaint, and Mr. Roseta was in agreement. He had questions about what caused the disregard of Sgt. Berreth's comments.

Sgt. Berreth explained his thought pattern. The assault complaint was invalid, but he thought the detainment was problematic. The officer was also very new to the profession so there could be additional training opportunities.

Ms. Foltz appreciated that EPD and the Auditor still reviewed the complaint to see if anything happened against policy even though, based on Body Worn Camera (BWC) footage, the complainant reported something that didn't appear to have occurred.

- Complaint Investigation and Monitoring

Ms. Gallagher-Smith thought the investigation was thorough.

- Relevant Department Policies and Practices
 - 322 Search and Seizure

Ms. Gallagher-Smith thought officers turning off BWC microphones created a nuanced issue. She understood it would not be resolved by CRB's comments, but she suspected the situation would be exponentially clearer if there weren't four minutes of footage without audio.

Mr. Roseta explained audio and video was discoverable for criminal cases, and officers didn't want to share tactical thinking to a defense lawyer. It was a legitimate concern for officers, however, he agreed it was nuanced.

Ms. Foltz noted that the officers muted their audio simultaneously without verbal or physical cue, which made her think it was common practice. Policy stated video could be muted when discussions involve tactics, instruction and coaching. Ms. Foltz asked if EPD representatives present could possibly describe the type of conversation had.

Lt. San Miguel assumed they were discussing how to approach the case.

Mr. Al-Rawe read within the policy that officers needed to verbalize why they were deactivating audio. Ms. Foltz had concerns because the officers did not explain why it was put on mute. Muting could be misused.

Ms. Foltz asked about Baker Units and why there were two officers per car. Lt. San Miguel said there were various reasons. On Wednesdays, EPD was sometimes short on cars, and other times, a recruit and trainer rode together.

Ms. Foltz thought Officer D did an awesome job de-escalating the situation. During the interviews, they were asked why they decided to end the interaction, and Officer D responded the conversation was no longer productive.

Ms. Foltz asked about being detained. It appeared that the reporting party was not free to leave even though they were not in handcuffs and restrained. As a civilian, that seemed confusing. Additionally, she wondered if the reporting party had a right to not provide any additional information, such as their sister's name.

Ms. Pitcher said that once the officer asked the person to stay, they were technically detained.

- Policy and/or Training Considerations

Mr. Roseta thought training consideration might tie in with supervisor action on explaining best practices for those types of interactions.

Mr. Al-Rawe was curious about current training regarding constitutional rights and search and seizure.

Lt. San Miguel said officers had several days of training in Salem at the state academy and also at the EPD academy.

Mr. Al-Rawe thought, based on video footage viewed, the officer involved had very little knowledge on what constituted a reasonable search. He noted a hunch that something was off constituted a reasonable

detainment and search, but it seemed this officer made an assumption with zero grounds. He thought it was a serious violation of the reporting party's constitutional rights.

Mr. Hames-Garcia agreed with Mr. Al-Rawe. It was unclear to him why the officer made the reporting party stay. He thought the officer said they became suspicious because of where the sister was located, and the fact license plates were not running right. There were reasons to be suspicious, but the officer's actions didn't necessarily follow protocol. Once the officer went down that road, the reporting party became more defensive.

Ms. Williams wondered how much of the issue was due to a young career and how much of it was being retaught the idea of subjective versus objective and that a suspicion didn't equal evidence. She hoped EPD would continue to train on the issue. Lt. San Miguel added that the City Attorney came to provide legal training on case law twice yearly. Case law changed all the time.

Mr. Roseta said case law was difficult as it still needed interpretation. For example, a tiny issue litigated in one case that wouldn't show up in another.

Ms. Gallagher-Smith felt conflicted. In her line of work, when she got the sense something was off, she called full stop. So, she had some compassion for officers as they noticed things weren't adding up. It was a situation where Ms. Gallagher-Smith would encourage additional training. Some parts were handled with finesse, but other areas needed fine tuning.

Ms. Conover pointed out that if the officer was hired a year ago, they had been on their own for only three months, as there were nine months of training to complete. She hoped the officer would take it as a learning opportunity.

Ms. Foltz summarized comments. She heard the group didn't think the officer had malintent and noted that re-watching videos was another good training option for teaching and training the officer.

- Adjudication Recommendations
 - Chain of Command and Auditor disagreed
 - Chief concurred with Auditor's office

Mr. Al-Rawe, Ms. Williams, Mr. Hames-Garcia, Ms. Gallagher-Smith, and Ms. Conover agreed with the Police Auditor's office.

Mr. Roseta thought the officer's actions were within policy. He agreed with the chain of command. Mr. Roseta pointed out the reporting party lied about the officer injuring him. It significantly affected that person's credibility, and the officer knew he was lying. Then the reporting party refused to provide their name, and information on the car in question. To Mr. Roseta, the refusal was an indication that he was hiding something. Additionally, the reporting party looked intoxicated and was offended about the officer's conduct to a fault, which Mr. Roseta thought showed a consciousness of guilt. According to wife, sister drove blue BMW.

Ms. Gallagher-Smith thought amiss when reporting party wasn't linear in their story. They were obviously not thinking clearly.

Ms. Williams thought Ms. Gallagher-Smith's comments showed the reporting party was a bad witness, but she didn't know there was evidence to indicate a crime was committed.

Mr. Roseta stated the officer acted reasonably given the situation presented to him. However, he agreed the officer should have called off detention once they had the reporting party's name, address, and phone number. It was not unreasonable to ask the person to stay for ten more minutes.

Mr. Al-Rawe asked for a list of bullet points as to why the officer was within policy. He pointed out that anything that happened after detainment didn't matter in the decision, as it was hindsight. Anything preceding the detainment could be considered grounds for detainment, but the officer did not have solid reasoning.

CRB was over its allotted meeting time and chose to stop discussion and would return to the item during the November 2019 meeting.

- Additional Comments/Concerns

None.

9. AUDITOR REPORT

Ms. Pitcher reported there was an upcoming public safety forum on November 6, 2019 at Cesar Chavez Elementary School from 6:00 p.m. to 8 p.m.

10. ADJOURN

Ms. Foltz adjourned the meeting at 7:50 p.m.

(Recorded by Marina Brassfield, LCOG)