

## **Complete Testimony and Supporting Documents from Civilian Review Board Chair Lindsey Foltz for the Ad-hoc Committee: 10/6/2020**

In this testimony I speak on behalf of myself based on my experience as a member of the Civilian Review Board. I want to draw your attention to three cases connect to all the policy recommendations that I would like for this committee to consider proposing.

I have broken my concerns down into two separate categories: polices related to civilian oversight, and broader concerns based on witnessing cases. This document includes the minutes from these cases, the involved policies, my suggested changes, how they connect to Campaign Zero, supporting documents, and implementation paths.

### **In terms of civilian oversight my concerns include policies and practices related to:**

Body worn video

Lack of transparency in discipline for sustained cases of misconduct

Lack of recourse when auditor and CRB disagree with Chief's adjudication

Restrictions on public comment at CRB meetings

Timelines for filing complaints with the auditor's office

### **Broader concerns based on witnessing cases:**

De-escalation

Transparency in Public Records

## **Three Illustrative Cases**

I would like to highlight three cases involving mothers who were bereaved or aggrieved by EPD who have shared their testimony with me. The first two were shared in public forums. I have received permission from the third to share our conversations with you all in this public setting.

### **Body Worn Video**

All three of these cases occurred before body-worn cameras were implemented at EPD and were negatively impacted by the lack of footage. So, I'll start by praising the implementation of body worn cameras and their usefulness is civilian oversight. However, one of my recommendations is to improve the body-worn camera policy and implementation practices. I will summarize here:

- no muting
- no selective disabling
- permanent retention of footage
- mandating use on ALL sworn personnel including SWAT

## **Veteran with PTSD Shot by Police**

The first case involved a veteran with PTSD who was shot and killed by police. He was shot by an officer from the hatch of an armored vehicle shortly after being hailed by loudspeaker to come out of his house with his hands up. The officer saw the man shoulder his gun at the armored vehicle which had driven into the man's yard. In this case, at the time of the shooting the force was ruled as reasonable. I agreed with the adjudication that the officer had not violated policy. However, that was the beginning of my advocacy for de-escalation as a centerpiece of our public safety strategy. The current de-escalation policy is from May 2018 and was influenced by this case. But there is still more to do. We urgently need to improve skill, reward, and accountability to de-escalate. In addition, this man's family was prevented from providing public comment at the CRB meeting where his case was discussed because of a CRB protocol. I advocate for this protocol to be amended, which will require agreement from the police union.

The minutes from the CRB meeting discussing this case are here: <https://www.eugene-or.gov/ArchiveCenter/ViewFile/Item/3930>

## **Mother Tackled after Calling for Mental Health Crisis Response for Her Son**

The second case mother called 911 in the middle of the night requesting help from CAHOOTS for her son who was in a mental health crisis and had been turned away from the hospital earlier that day. This incident was captured by audio recording devices which made some details impossible to verify (since it was before body-worn cameras). There was an officer at the scene who was working with the mother and her son to get him help with some success. When the supervising sergeant arrived on the scene, he escalated the situation. The mother, fearing for her son's life, wrapped her body around her son and refused orders to let go of him. She was tackled to the ground and put in handcuffs to separate her from her son, who was tazed. Neither of them was provided medical care, against policy.

While the use of force was determined to be within policy by Chief Kerns at the time it was deployed, the sergeant's behavior escalated the situation necessitating the level of force. This case was before the current de-escalation policy was in place, but as of this date I have not yet seen one case classified by the auditor as a violation of that de-escalation policy. I have reason to believe that is about to change and I hope it does because I am weary of justified force due to unjustified escalation. De-escalation should be a set of skills that we hire and promote for. Those who are in charge of training and supervising officers should be highly skilled in de-escalation.

This case also brings up questions that I have regarding discipline and civilian oversight. The CRB and the auditor's office are not allowed to know anything about the disciplinary outcomes, even in cases where misconduct is sustained. There are certain officers who appear in complaints many times, are repeatedly found to have violated policy, and yet are obviously still employed and in some cases given promotions or more authority. I think greater transparency

in the disciplinary process would create an environment more conducive to accountability and would improve our current civilian oversight system.

The final frustration that I will note from this case was that the auditor and CRB's recommended adjudications varied from the Chief's. There is no recourse in these situations for ordinary complaints beyond what amount to strongly worded letters. Again, this impairs accountability and erodes my trust in the usefulness of civilian oversight.

The minutes from the CRB meeting discussing this case are here: <https://www.eugene-or.gov/ArchiveCenter/ViewFile/Item/4490>

### **Grieving Mother Denied Access to Complaint Process**

The third mother is someone I have only recently met. Her baby son died when he was less than a year old. When she buried him, she didn't know that there was a reason to suspect her son's death wasn't natural, in part because DHS wasn't properly notified of his death by EPD. She went through lengthy legal processes with several involved agencies and eventually submitted a complaint to the auditor's office with her concerns about EPD's investigation into her son's death. However, her complaint was dismissed because it was beyond the 60-day window established in the City of Eugene ordinance for minor complaints and the 6-month window for allegations of serious misconduct. Though there is a statement in the ordinance that cases can be reviewed by the auditor beyond these windows with "good cause" the City Attorney, at the time, advised that threshold had not been met. Though dismissals for timeliness are not common, they do occur. I think the 60 day and 6-month window are too short and the interpretation of the "good cause" is not sufficiently broad to reasonably meet the needs and expectations of our community. This mother deserves to have her son's case fully reviewed by the auditor's office, through the robust process that we have in place to provide transparency.

I bear witness to these three illustrative cases. They are by no means the only cases related to the policies that I am recommending changes to, but they provide a sense of the stakes and human costs of policies, practices and procedures that need to change right here in Eugene.

They also allude to needs beyond policing to achieve community safety. We need to do everything we can to fully and robustly fund upstream solutions, things which have already been identified in the Public Safety Payroll tax ordinance such as: prevention and homeless services, adding emergency shelters, a day center and funding after school programs at Title 1 schools along with diversion programs such as expanding community court and mental health court. Police, CAHOOTS, and EMS are all crisis response and sometimes they are the right tool for the job. However, we also need to find a way to center care in our public systems to PREVENT and STOP CREATING crisis. *I do not think we will be moving toward broader public safety, regardless of the size of the police department or the civilian oversight system, until we also choose to systematically fund and address upstream issues.*

## **Specific Policy Recommendations, Relationship to Campaign Zero and Supporting Documents:**

**Body Cameras:** These are critical records and I am thankful that body-worn cameras have been implemented for most officers, but we can do more and need to clarify practices and procedures for capturing behavior and safeguarding this footage. There should be extremely limited muting of body-worn cameras and no selective turning off cameras unless there is a clear and defensible law-enforcement purpose. It is entirely possible that this footage could contain evidence related to crimes for which there is no statute of limitations. On these grounds I recommend permanent retention of the footage. Otherwise officers or administrators are choosing to erase evidence. Video can always be redacted, but erasing, muting, and turning off cameras destroys evidence that cannot be recovered. I am not sure the procedural route to change the retention period for the footage, and I know that in the past there has been concern about expense. However, there are increasingly inexpensive ways to store massive amounts of highly confidential data in perpetuity (particularly in cold storage) which should eliminate the barrier of expense.

In terms of muting, particularly in the past year, I have noticed that in many cases the CRB has reviewed there are large segments of video where officers have muted their cameras and do not have a clear law enforcement purpose for doing so and have not followed POM police 1203 to verbalize why muting was commencing. Not just one officer was muting in these cases (often we get several officers' footage) but all officers at the scene mute and all at the same time (which signals to me it is a common practice for which there is a non-verbal cue to mute which occurs off camera). In one specific case I recall the intentionally muted conversations contained critical information which was disputed by involved parties later. Not having the audio greatly impacted adjudication of the case. In other cases it was less clear that it critically impacted the investigation, but the policy and practice should be very clear: severely limit or eliminate muting.

### Police Operations Manual Policies to Review

- 1203 Body-Worn Video <https://www.eugene-or.gov/ArchiveCenter/ViewFile/Item/4804> 12032
- 1202 Audio and Video Recordings <https://www.eugene-or.gov/ArchiveCenter/ViewFile/Item/4281>

### Implementation Route

- EPD policy change in collaboration with Police Commission
- EPD communication and training of officers regarding any new expectations
- EPD

## Relates to Campaign Zero Solution:

### 6. Body cameras

Due to a range of research studies finding no evidence that body cameras reduce police use of force, we caution cities *against* adopting new body camera programs. ***Places that have already implemented body cameras should ensure they are governed by the following policies reinforcing accountability*** (emphasis added):

- ***require officers with body cams to record all law enforcement interactions and prevent officers from having discretion to turn the cameras off*** (emphasis added)
- notify subjects that they have the option to remain anonymous and stop recording/storing footage if they choose this option
- ***allow civilians to review footage of themselves or their relatives and request this be released to the public and stored for at least two years*** (emphasis added)
- require body and dash cam footage to be stored externally and ensure district attorneys and civilian oversight structures have direct access to the footage
- require police departments, whenever they want to deny a Freedom of Information Act (FOIA) request for body or dash cam footage, to prove in court that the footage constitutes a legitimate FOIA exemption (Ex: [Illinois House Bill 4355](#))
- include a disciplinary matrix clearly defining consequences for officers who fail to adhere to the agency's body camera policy.
- consider whether cameras or mandated footage are tampered with or unavailable as a negative evidentiary factor in administrative and criminal proceedings
- prevent officers from reviewing footage of an incident before completing initial reports, statements or interviews about an incident
- prohibit footage from being used in tandem with facial recognition software, as fillers in photo arrays, or to create a database or pool of mugshots. (Ex: [Baltimore PD Body Cam Policy](#))
- update privacy laws to protect civilians from having video or audio recordings released publicly that do not contain potential evidence in a use-of-force incident, misconduct incident, discharge of a weapon or death. (Ex: [ACLU Model Policy](#))”

(<https://www.joincampaignzero.org/film-the-police> , accessed 10/6/2020)

**Timeliness:** Extend the 60-day window in section (k) and the 6-month window in section (l) from the time a complainant had reason to believe there was a policy violation and/or broaden the definition of “good cause” to better serve the needs and expectations of the community.

City of Eugene Ordinance 2.456 1 (k) and (l)

“(k) Except for good cause, complaints of minor misconduct involving courtesy, communications, and minor rules violations that might be handled as service complaints shall be filed within 60 days of the incident.

(l) Except for good cause, complaints of serious misconduct including, for example, excessive force that causes substantial physical injury, egregious acts of disparate treatment, or major rules violations shall be filed within 6 months of the incident”

<https://eugene.municipal.codes/EC/2.456> (accessed, 10/6/2020)

Implementation Path

City Council is the appropriate body to amend the ordinance.

The EPEA will have to agree to the change.

The City Attorney can clarify “good cause” and suggest alternative language if Council agrees that the current interpretation is too narrow.

**De-escalation:** De-escalation should be a central element of training, explicitly called out in the training policy. It should be used as a success metric at the department level and used as part of performance evaluations and promotions at the individual officer level. This would require routine (annual) and robust performance evaluations, similar to those conducted for other city employees, integrating de-escalation metrics. Those who train new officers should demonstrate proficiency and skill in de-escalation. There should also be more accountability for not de-escalating which would require more frequent classification by the auditor.

Police Operations Manual Policies to Review

- 208: Department Training (particularly 208.4 and 208.5) <https://www.eugene-or.gov/ArchiveCenter/ViewFile/Item/4298>
- 436: Field Training and Evaluation Program <https://www.eugene-or.gov/ArchiveCenter/ViewFile/Item/4344>
- 437: Probation Review Committee <https://www.eugene-or.gov/ArchiveCenter/ViewFile/Item/4345>
- 800: Use of Force <https://www.eugene-or.gov/ArchiveCenter/ViewFile/Item/4358>

- 820: De-escalation <https://www.eugene-or.gov/ArchiveCenter/ViewFile/Item/5165>

### Implementation Path

Eugene Police Department: These are internal practices and policies which could be implemented by the Chief and could be developed or reported in collaboration with the Police Commission:

- changes to training
- re-tooling Field Training Officer program
- identifying ways to measure de-escalation skill and deployment at the individual officer level, tie to performance review and promotion processes
- routine and robust performance evaluations for individual officers

### Auditor's Office

- close consideration of de-escalation policy when classifying use of force complaints

### Relates to Campaign Zero Solutions:

#### 7. Training

“The existing research literature is inconclusive on the effectiveness of training at reducing police violence...we caution cities against emphasizing more training as a solution. ***Rather, existing training programs should be replaced with programs that de-emphasize firearms and use of force and that empower communities to design and implement new training paradigms*** (emphasis added) for first responders including, but not limited to, the following topics:

- Procedural justice
- Relationship-based policing
- Crisis intervention, mediation, and conflict resolution
- Appropriate engagement with youth
- Appropriate engagement with LGBTQ, transgender and gender nonconforming individuals
- Appropriate engagement with individuals who are english language learners
- Appropriate engagement with individuals from different religious affiliations
- Appropriate engagement with individuals who are differently abled
- ***De-escalation and minimizing the use of force***” (emphasis added)

(<https://www.joincampaignzero.org/train> , accessed 10/6/2020)

### 3. Limiting Use of Force

#### “Revise and strengthen local [police department use of force policies](#)

Revised police use of force policies should protect human life and rights. Policies should include guidance on reporting, investigation, discipline, and accountability and increase transparency by making the policies available online. This use of force policy should require officers to:

- restrict officers from using deadly force unless all reasonable alternatives have been exhausted (Ex: [Philadelphia PD Policy](#))
- use minimum amount of force to apprehend a subject, with specific guidelines for the types of force and tools authorized for a given level of resistance (Ex: [Seattle PD Policy](#))
- ***utilize de-escalation tactics (verbalization; creating distance, time and space; tactical repositioning, etc.) whenever possible instead of using force (Ex: [Seattle PD Policy](#)) (emphasis added)***
- carry a less-lethal weapon (Ex: [Seattle PD Policy](#))
- ban using force on a person for talking back or as punishment for running away (Ex: [Cleveland PD Policy](#))
- ban [chokeholds](#), strangleholds (i.e. carotid restraints), hog-tying and transporting people face down in a vehicle (Ex: [NYPD Policy](#))
- intervene to stop other officers who are using excessive force and report them to a supervisor (Ex: [Las Vegas Metro PD Policy](#))
- have first aid kits and immediately render medical assistance to anyone in police custody who is injured or who complains of an injury (Ex: [New Baltimore PD Policy](#))”

(<https://www.joincampaignzero.org/force>, accessed 10/6/2020)

**Public Comment at CRB Meetings:** Current CRB protocols prohibit people from commenting on the case being reviewed publicly at that meeting. I have been uncomfortable in two of the above cases telling people they would have to come back to give their testimony on the case. I think public comment should not be restricted in this way.

Implementation Path:

My understanding is that this is bargained for and would require the agreement of the EPEA to modify along with a majority vote of the CRB to amend.

**Public Records Transparency:** more information to the public at large, Oregon Public Records law would need to change, I think it is wrong that the CRB members and staff in the Auditor's office are the only citizens in Oregon who can routinely see this information.

Implementation Path:

I would like the Eugene City Council to collaborate with other cities advocating for reform to the State of Oregon public records law. For a detailed argument I agree with see this article in the Oregonian:

<https://www.oregonlive.com/opinion/2020/06/opinion-fix-oregons-public-records-law-to-allow-scrutiny-of-police.html>