

CITY OF EUGENE

Eugene Civilian Review Board Annual Report

2013



EUGENE CIVILIAN REVIEW BOARD

2013 ANNUAL REPORT

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Introduction

Ordinance 20374 which enables Eugene's Civilian Review Board, requires the Board to "...prepare and present an annual report to the city council that:

- (a) Summarizes the civilian review board's activities, findings and recommendations during the preceding year;
- (b) Assesses the performance of the police auditor...; and,
- (c) Evaluates the work of the auditor's office, including whether the office is functioning as intended." [ORD 20374; 2.246 (7)]

Eugene's Civilian Review Board (CRB) is designed to provide transparency and help ensure public confidence in the police complaint process. The Board evaluates the work of the independent Police Auditor, and reviews complaints to provide a community perspective about whether complaints are handled fairly and with due diligence.

During case reviews, Board members discuss, deliberate and analyze the Internal Affairs investigation, Auditor's monitoring of the Eugene Police Department's (EPD) internal administrative investigations and have the opportunity to discuss, agree or disagree on the supervisor's recommended adjudication, the chain of command's recommended adjudication, the Auditor's recommended adjudication and the Chief's final adjudication. The review of the investigations may include, but are not limited to: reviewing investigative files, listening to digital recordings of interviews and live audio from the scene of an incident, and observing videos related to complaints. We decide whether we agree with the classification of the complaint and have the opportunity to review policy and service complaints classified as something other than an allegation of misconduct. Service Complaints are complaints about: "...Police employee performance or demeanor, customer service and/or level of police service" [ECC 2.452]. Generally, service complaints are referred to an involved officer's supervisor who reviews the issue and follows up with both the complainant and the officer. The supervisor prepares a memo detailing their review of the complaint and contact with the involved parties. The OPA reviews the materials for completeness and thoroughness, and then contacts the complainant for a follow-up and a survey. The CRB's reviews of service complaint files do not contain the same level of detail found in the investigative files related to allegations of misconduct. Nonetheless, we try to make a practice of reviewing service and policy complaints during at least one meeting per year. Further, each month we receive information regarding all complaints received by the OPA (including inquiries, service complaints, and policy complaints). Questions regarding the classifications of such complaints are posed to the Auditor during board meetings.

Our meetings are open to the public and provide an opportunity to learn about the complaint process. While we are committed to maintaining the confidentiality of the involved parties, discussing complaints in public allows the community to learn about the complaint intakes, classifications, investigations and determinations as they are discussed openly and critically.

In addition to case reviews, the CRB engages in continuous learning associated with police practices, civil rights, constitutional based policing practices, and interactions with vulnerable communities. The efforts in continuous learning prove beneficial to the Board's overall approach to its mission by

ensuring a comprehensive understanding of relevant processes and community factors influencing various decision makers and affected parties.

Finally, the Board also considers and discusses current policies and practices and whether or not revisions seem appropriate. These policy recommendations are channeled to the Police Commission and the Police Chief through the CRB's appointed representative to the Police Commission. As a result of the CRB's recommendations, a number of policy changes have been implemented by EPD over the years.

Please allow us to express our appreciation to the City Council, the Police Auditor, the Eugene Police Department, and the larger Eugene community for the confidence entrusted in us. All of us on the Board are proud to participate because we believe in the strength and the potential of Eugene.

Thank you for the opportunity to be of service.

Sincerely,

Steve McIntire
Board Chair

Bernadette Conover
Board Vice-Chair

Mission Statement

It is the mission of the Civilian Review Board to provide fair and impartial oversight and review of internal investigations conducted by the City of Eugene Police Department into allegations of police misconduct, use of force and other matters that have an impact on the community. The Board will strive to build trust and confidence within the community and to ensure that complaints are handled fairly, thoroughly and adjudicated reasonably. The Board will encourage community involvement and transparency in order to promote the principles of community policing in the City of Eugene.

2013 Overview

The CRB is required to meet four times a year. The CRB met nine times in 2013, all public meetings including a joint meeting with the Police Commission and one meeting in which the CRB reviewed the performance of the Auditor's office. The CRB reviewed ten case files involving **allegations** of use of force, constitutional rights violations, courtesy, misconduct, integrity, judgment, abuse of position, and performance. Some cases involved multiple allegations and/or multiple officers.

The Board (with the help of the Office of the Police Auditor) identified policy concerns and communicated such to the Police Commission and the Eugene Police Department.

Case Review Summaries

In preparing for a case review, Board members have complete access to the Internal Affairs investigative file. These materials include call logs, correspondence, in-car videos and digitally recorded interviews of complainants, officers, witnesses and others with potentially relevant information.

Board members review file materials, the fact-finding report prepared by the Internal Affairs investigating officer, along with the Adjudication recommendations of the Auditor, the Supervisors and the Chief of Police. During our reviews, the IA investigator is available to answer questions about the complaint investigation. The Lieutenant who supervises Internal Affairs is also available to answer questions regarding department practices, policies and procedures.

The Board follows a case review process delineated in its Policies and Procedures Manual. The Board reviews each case by evaluating and commenting on the complaint handling through the following steps:

1. Auditor's case presentation,
2. Complaint intake and classification,
3. Complaint investigation and monitoring,
4. Relevant department policies and procedures,
5. Policy and/or training considerations,
6. Adjudication recommendations, and
7. Additional comments and/or concerns.

A brief summary of the 2013 individual case review follows.

FEBRUARY CASE REVIEW—The CRB reviewed a citizen complaint that officers allowed the Reporting Party's ex-husband (father of one of the children) and her ex-husband's boyfriend to enter her apartment and assume custody of her minor children even though she had restraining orders

against him. She also alleged that her ex-husband damaged the apartment and took money and food. She also claimed that the officers used excessive force.

Summary: Officers responded to the Reporting Party's (RP) residence regarding a dispute. Officer A developed probable cause to arrest the male, and eventually developed probable cause to arrest the RP for interfering. Officer A and Officer B arrested RP, handcuffed her, and transported the RP to Officer B's vehicle. Officers A and B stated that the RP resisted going to and getting into the patrol vehicle. The in-car video (ICV) did not show the RP complaining of any injury nor any significant force used to control her. Officer A contacted a Department of Human Services (DHS) caseworker for assistance in placing RP's children, and was advised that it was appropriate to release the children to Child 2's father/ex-husband of complainant. Officer A was unaware of a restraining order or parenting agreement between RP and the father/ex-husband, and the DHS case worker was not aware of a restraining order. The parenting agreement of the restraining order provided full visitation for the father/ex-husband with Child 1 and Child 2, and limited the amount of unsupervised time between father/ex-husband and Child 3 and Child 4. After officers left the scene, the father/ex-husband took keys to RP's apartment and van from a neighbor. The neighbor stated the father/ex-husband returned to the house twice.

The RP called the Police Auditor's office and complained that:

- Officers used excessive force against her.
- Officers should not have released her children to the father/ex-husband.
- Officers should not have allowed the father/ex-husband in her residence.

Allegations:

- **Use of Force (Officer A):** The Supervising Lieutenant, Supervising Captain, Police Auditor, and Chief of Police determined the Use of Force was within policy.
- **Judgment:** Officer A allegedly demonstrated poor judgment when he released the reporting party's minor children to the father/ex-husband, who was restrained from being unsupervised with them. The Police Auditor's office determined that it was reasonable for the officers to contact DHS for advice on releasing the children to the father/ex-husband. DHS advised the officers it was appropriate to release the children to the father/ex-husband. Recommended adjudications: The Supervising Lieutenant, Supervising Captain, Police Auditor and Chief of Police determined the complaint was unfounded. While the decision to allow the ex-husband into the house was not well thought out, it was determined that this decision should not have been an allegation of misconduct. Coaching of the sergeant seemed to be the best approach.

The CRB, after a lengthy discussion, agreed with the recommended and final adjudications. There was a brief discussion about leading questions being asked by Internal Affairs investigators. However, these questions did not affect the adjudication decisions.

MARCH CASE REVIEW—The CRB reviewed an internally generated complaint that an officer used more force than was reasonable to remove a woman from the back of his patrol car, causing injury to her head, and that an officer performed unsatisfactorily when he failed to take appropriate action after being spit on by the arrested person who was handcuffed in the back of a patrol car. This case was reported by a sergeant and an allegation of excessive use of force was opened by the

Auditor. The case was first conducted as a criminal investigation. The District Attorney's office determined that there was insufficient evidence to support a criminal charge.

Summary: Officers responded to the arrested person's residence regarding a dispute. They contacted the arrested woman and conducted a welfare check. Officer A learned of a valid arrest warrant for the arrested person. Officer A placed the arrested person in the back of his patrol car after a search incident to the arrest and a short struggle. The arrested person was verbally abusive toward the officers. The car window was partially opened a few minutes after the arrested person was placed in the car. Officer A walked past the car, and the arrested person spat out the window, with the spit landing on his back. Officer A forcefully removed the arrested person from the patrol car. Her head struck the car frame and the pavement, causing a laceration. Officer A dropped his knee onto the arrested person's back, told her not to do that again, and asked assisting officers for a spit hood. Officer A applied a mask to the arrested person's face. A few minutes later, the arrested person was complaining about needing air to breath; Officer B removed her handcuffs (he and Officer C controlled her arms) and removed her mask. Medics arrived on scene to treat the arrested person; medics rendered aid and transported the arrested person to the hospital. A sergeant who responded to the scene reported the incident to IA.

Allegations: Use of Force – That Officer A used more force than was reasonable to remove the arrested person from the back of his patrol car, causing injury to her head. The allegation was recommended sustained by the chain of command and the Auditor. The Chief sustained the allegation.

Unsatisfactory Performance – That Officer A performed unsatisfactorily when he failed to take appropriate action after being spit on by the arrested person, who was handcuffed in the back of his patrol car. The allegation was recommended sustained by the chain of command and the Auditor. The Chief sustained the allegation.

The CRB expressed some concerns, shared by the Auditor, about the IA interview, in that the investigator asked witness officers whether they thought the force was reasonable under the circumstances. While the reasonable officer perspective is the basis for determining whether force is reasonable, that should be determined by adjudicators, not witness officers in IA interviews.

There was also discussion about the questions asked by the union representative as some felt the union representative was serving as defense counsel for Officer B. One board member asked what the role was for the union representative. Ms. Pitcher stated the union representative was entitled to ask clarifying questions. CRB members asserted that the union representative continued to put forth facts and ask leading questions of Officer B. Ms. Pitcher added that Oregon Revised Statutes (ORS) required that the officer and the union have sufficient information to be able to prepare for the investigation.

One CRB member was bothered by the ability of the officer being able to look at the other reports prior to meeting with the IA investigator, because it may influence his responses. Mr. Gissiner stated ORS indicates that an officer was allowed access to discovery of information about an allegation if a sustained allegation could have a negative impact on an officer's compensation.

One CRB member said if the officer truly believed what he did was the reasonable officer standard, he needed to be corrected, because what the officer did was simply not reasonable.

APRIL CASE REVIEW— Constitutional Rights/Discrimination--The CRB reviewed a citizen complaint that Officer A conducted a stop based on the race of the detained individual.

Allegation: Officer A conducted a stop based on his race. Allegation of Constitutional Rights – Discrimination. Adjudication recommendations were unfounded and the Chief determined that the complaint was unfounded.

Summary: The basis of the complaint was that a teenager was detained because a neighbor had reported an unknown person in the neighborhood where burglaries have occurred. The mother of the complainant initiated the complaint because she was concerned her son was being racially profiled, which led to the complaint being based on constitutional rights. The reporting mother was not open to participating in mediation, which may have led her to better understand what had occurred. One CRB member stated the reporting mother did not know the facts, and based on a historical perspective of Eugene, racial profiling occurs and people believe it still occurs. Another CRB member concurred that the reporting party did not have all of the information, including not being aware Officer A had been told by a friend about seeing the reporting son. The officer provided information to them that there had been burglaries in the area. She opined that the reporting son and reporting mother may have reacted differently if they had known the officer was responding to a report from a neighbor. Apparently, neither the reporting mother nor reporting son were aware there had been a call to an officer about a suspicious person. Beyond data lead policing, the officer received information from a resident in the neighborhood about the behavior of this young man. Mr. Gissiner stated bias based cases were very important and very difficult to resolve. The EPD was getting a new records management system which could help the department improve demographically tracking.

Policy and/or Training Considerations: The IA Lt. explained that patrol officers had received specific direction from Chief Pete Kerns regarding pretext stops. Property crimes were a high priority in areas identified as having significant property crimes. Officers were directed to use stops and aggressive policing to reduce the number of property crimes. This was a legal stop on a pedestrian violation. The stop was used as a reason to talk to someone to determine if there was more going on than what there appeared to be. The law clearly allowed officers to tell people they were not free to go when they observed a citable offense such as a pedestrian violation and that they needed to talk to the officer. One CRB member asked what training could prevent a citizen from jumping to conclusions when stopped. She said the officer had been very forthright in stating how offended she had been by the complaint. She asked how the department could communicate to the community that the officers were doing their jobs and not stopping people based on race. One board member opined profiling would be with us forever, either through the fear of being profiled or actually being profiled.

JUNE CASE REVIEW—The CRB reviewed a case involving an alleged improper detention/violation of constitutional rights in personal relationship based situations. This event was the culmination of events that had occurred over a long period of time, which caused enough alarm by the reporting party to finally come forward. The documentation in the file illustrated the impetus for the reporting party to come forward.

Allegations (4): Abuse of Position, Judgment, Unbecoming Conduct, Person Stops and Contacts. The allegations were recommended sustained by the chain of command and the Auditor. The Chief sustained the allegations.

Issues for the CRB: Complaint Intake and Classification: The Auditor indicated that the intake was done through EPD and the classification of the four allegations was a collaboration between Internal Affairs (IA) and the Auditor's office. The administrative investigation was suspended until the criminal investigation was completed. The criminal investigation was not part of the CRB's review this evening. Mr. Gissiner said the adjudication memorandum was background and brought together several incidents.

The CRB concurred with the complaint intake and classification.

The CRB debated the relevance of material in the file, questions asked of the subject of the investigation and the length of some of the answers.

One CRB member said he had an issue with a memorandum in the file that explained one incident, and had provided a lot of background. After reading the adjudication memorandum, he had a different perspective on the incident, which, in another case, may have created some bias on his part. He opined there was enough information in the investigation to enable him to conclude that the reporting party had been badly treated by a police officer, without the need for the information provided in the background memorandum. Another CRB member agreed, that it was not necessary for the background memorandum to be provided to CRB members, although it was on the CD and it was satisfactory for it to be on the CD. Another CRB member said the answers to several questions were long, illogical, and did not address the questions asked of the officer during the investigation. The answers tended to go off in a direction that had nothing to do with the case. He would have preferred more direct responses. Another CRB member said the IA sergeant's technique in letting the officer provide long answers was effective. She opined not getting a yes or no answer often said more than the actual answer did. Another CRB member said the interview technique in this situation was excellent. The technique allowed sufficient information to come out that created inconsistencies in statements throughout the questioning. The interview was also well done in looping back to prior statements and comparing prior statements to more current statements. Mr. Gissiner said the depth of the investigation was overwhelming at times. It was challenging to provide the CRB with sufficient information to make a decision while not overwhelming them with information about other incidents that were not directly related to the case before the CRB.

Relevant Department Policies and Practices: The CRB discussed AIRS, records and warrants checks, which were standard practice for officers when stopping someone. When the officer said he was concerned about the behavior of a subject in the front of the building, it was apparent an AIRS check had not been done. The IA Lt. stated the Police Operations Manual (POM) addressed conducting personal business while on duty. He stated policy 1101.1.18.B stated "You will not to engage in personal business or any other activity which makes you neglectful or inattentive to duty." In response to a question, the IA Lieutenant stated there were audits of department issued phones, but personal phones were not audited.

Policy and/or Training Considerations: In response to a question, the IA sergeant stated the use of personal devices while on duty policy was being reviewed. Mr. Gissiner said supervisors were

responsible for evaluating employee performance and use of time, and it was up to them to recognize and address inappropriate use of personal devices.

A CRB member said he did not expect police officers in Eugene to be perfect, but he did expect that if they messed up, it would be acknowledged and addressed. The Eugene Police Employees Association (EPEA) was initially supportive of an oversight model and police auditor because they felt line officers were being disciplined for things less severe than what supervising officers were getting away with, which they felt was unfair. While he did not expect perfection from officers, by acknowledging mistakes, particularly in stressful circumstances, officers were held to a higher standard because they had the power of arrest and the power to cause severe physical harm if not death in extreme cases. He also expected that if the department became aware of misbehavior, it would act in a clear, consistent and forceful fashion, up to and including suspension and dismissal. He was glad to see that happened with this case, and that it does happen to a supervising officer. It was important and essential to maintaining and enhancing public trust in the EPD.

JULY CASE REVIEWS (2)

The CRB reviewed a case involving an allegation of bias policing during a traffic stop in which the passenger was patted down.

Summary: A vehicle with a driver and passenger were stopped by EPD after a federal law enforcement agency called EPD and identified it as a vehicle that left an alleged drug house with a driver who was possibly DUII. An EPD officer stopped the vehicle as the federal agents began to arrive on the parameter. The vehicle was stopped for a broken taillight. The EPD officer determined that the driver was not DUII but did not have insurance. The driver was removed from the vehicle and patted down. The officer indicated he made furtive movements that caused her to have reasonable suspicion that he was armed and dangerous. The passenger was then ordered from the vehicle and patted down by the officer.

Allegations: Constitutional Rights—That Officer A searched the passenger, who was the reporting party (RP) on a traffic stop without reasonable suspicion to do so and; Constitutional Rights—That the duration of the traffic stop was longer than reasonable, in violation of the driver and passenger’s constitutional rights.

Recommended adjudications:

Allegation: Constitutional Rights—Pat Down Search

- Supervising Sergeant: Unfounded
- Supervising Lieutenant: Unfounded.
- Supervising Captain: Within Policy
- Police Auditor: Sustained.
- Chief of Police: Sustained.

Allegation: Constitutional Rights—Duration of Stop; all parties found that the officer acted Within Policy. The Chief’s adjudication decision was Within Policy.

Issues for the CRB:

Complaint Intake and Classification: A CRB member reviewed the Chief's conclusion that a variety of factors may have led to an inadequate police report. She asked if there was policy language related to report writing and inquired if that was a potential allegation.

Mr. Gissiner said the failure to articulate reasonable suspicion that a person was armed and dangerous was not a violation of report writing, but a failure to articulate why the officer suspected that the person was armed and dangerous. The officer's report indicated the reasons for the stop and pat down, which were insufficient, as opposed to leaving out information that would otherwise turn it. The officer validated what she put in the report during her interview. Mr. Gissiner opined that the passenger did nothing to cause a reasonable officer to suspect that the passenger was armed and dangerous.

A CRB member said this was not the first case reviewed by the CRB where federal law enforcement officials were involved and the EPD was held responsible and viewed negatively by the public. This was a significant issue with this complaint. It was frustrating when the EPD officer was doing the best job she could but could not do her job appropriately because another agency was hindering her and putting obstacles before her. The problem with reviewing this case was it was asking the CRB to make a legal analysis of case law, and whose legal analysis was going to prevail. She did not believe that was the CRB's purview. The CRB's role was to determine if officers followed policy and comported with their training. If that did not occur, the CRB was charged with determining what the officers should have done, or if policy was wrong, how should it be corrected.

Mr. Gissiner's position, as he interpreted the case law and validated by EPD counsel, was that when the policy violation occurred was in the pat down. The debate about acquiescing when the federal government gets involved went back to decision making and training. He believed the officer reacted to the presence of external factors, not to the behavior of the individual, and the behavior of the individual was what should determine whether or not a reasonable officer would consider that person armed and dangerous.

Complaint Investigation and Monitoring: A CRB member understood that EPD did not want to get in between federal authorities and their activities. However, the RP was not being investigated by the federal agency. He asked why the administrative investigation could not move forward related to the RP's experience, who was not implicated in the federal agency investigation.

The IA sergeant said he had talked with the agent and the U.S. Attorney. He noted the EPD wanted to move forward but because the federal government had an ongoing investigation, EPD could not legally share information with the complainant until the federal investigation was completed, although he would have preferred to move it forward.

Mr. Gissiner noted nine months, in the police oversight industry, was typically pretty good. From a completion time standpoint, this case was an aberration for his office and IA. In some jurisdictions, five years would pass before the cases were done. The IA Sergeant stated the officer was notified of the complaint when it was made by the RP. However, the investigation was suspended following the direction of the U.S. Attorney's office. He said EPD regularly received requests from federal agencies to conduct stops. When EPD did get involved, it did not receive much information from the

federal agencies, which resulted in EPD writing a generic report, because EPD did not want to jeopardize the federal investigations.

A CRB member disagreed with Mr. Gissiner on his assertion that the RP was just there and Officer A should ignore everything around her. He hoped the officer was aware that there was backup, which was there because there were a lot of unknowns. He believed Officer A was thrown under the bus. The CRB member asserted that a reasonable and prudent officer would think there was a reason for the backup, and would be extra cautious. A CRB member opined that the agents were on a fishing expedition, and he was unsure their allegation of intoxicated driver was legitimate, thus manipulating Officer A to stop the driver for a damaged tail light. He asked if it was EPD's policy to do whatever they were told to do by federal agencies.

The IA Sgt. said it was common for EPD to be contacted by federal authorities to conduct stops on vehicles and to identify vehicle occupants. There was no way for EPD to determine if what the federal agents told EPD officers had actually happened. EPD had developed its own probable cause for vehicle stops based on direction from federal agents. A CRB member noted case law was always changing and it was difficult to train officers in case law under such dynamic circumstances. A CRB member stated although Mr. Gissiner was not present at the stop, Officer A was, and she observed many unmarked vehicles. Officer A was being asked to do a pretext stop by agents. The CRB member said under the circumstances, if he was the officer, he would be afraid and would have searched both the RP and the driver of the car. He added although Officer A had reasonable suspicion that something could happen as she approached the vehicle, it did not mean that she had reasonable suspicion to pull out a gun. He said the officer would do everything possible to protect herself and her partner.

Mr. Gissiner stated the courts determined that there had to be a reasonable suspicion, and a person had to do something to indicate there was reasonable suspicion that the person was armed and dangerous. Another CRB member said this case came to the CRB because the reporting party felt there had been a case of bias or discrimination in handling the case. He said if Officer A had treated this like a felony stop, drawn her gun, pulled people out of the car and handcuffed them with the assistance of other officers, and the RP subsequently found out this was a fishing expedition, there would be a much stronger case of police misconduct than what the CRB was discussing, which was the least intrusive form of search. Ms. Pitcher asserted she may have done the same thing as Officer A did. She added if she was scared, she could understand Officer A's actions. The problem was, it did not meet the legal standard of specific, articulable facts, of reasonable suspicion that RP was armed and dangerous. She averred that the reason the Supreme Court said specific, articulable facts was to prevent things like this where fears drove you to do something that was a violation of constitutional rights.

A CRB member said Officer A knew that driver was under surveillance for drugs, that a duffle bag had been dropped off, and there were cars coming from everywhere, but she did not know who the people in the cars were, or whether they were supporting the drug dealers. Officer A observed the driver of the car making a furtive motion. There was not one isolated event occurring, but a combination of multiple events. He said reasonable suspicion carried a high burden and Officer A should have explained this more thoroughly in her report.

In response to a question, the IA Sgt. said the need to ask for consent varied depending on the circumstances and the situation. He added he generally asked permission before patting a person

down. This was discussed in the field training program, but there were many circumstances and situations which made it difficult to have a policy that provided the correct response for every situation. One board member said the fact that Officer A did not ask for consent was an indication that she did not feel the need to ask consent. She added there were also issues if the officer asked for consent and the person said no. A CRB member stated Officer A felt she had reasonable suspicion for the driver, but he did not believe Officer A had reasonable suspicion to frisk the passenger without a request. Another CRB member said the person was not patted down by Officer A because she was a person of color. He thought Officer A was fearful. Mr. Gissiner said at the end of the day, the issue was, whether the pat down was reasonable under whatever circumstance might have occurred. To separate the allegation as bias based on the RP's skin color was too narrow of a focus. The issue was whether the pat down was reasonable under the circumstances.

Adjudication Recommendations

Constitutional Rights—Duration of Stop: the Chair noted no disagreement that the duration of the stop as within policy.

Constitutional Rights—Pat Down of Passenger

Four CRB members agreed that the allegation was Within Policy, one CRB member- Unfounded, And two CRB members said the allegation should be sustained.

2ND CASE REVIEW

The CRB reviewed a case involving an allegation of bias policing during an investigation at a shopping center.

Summary: Two men of color left a store around midnight and were stopped by two officers who questioned them about stealing items. They denied stealing the items in question. After an involuntary pat down for the items, no items were found. It is uncontroverted that the men were detained and not free to go. The investigation revealed that that the only description given to officers by store personnel was a man in a tan jacket. Because there were few customers at midnight on a foggy night, and one of the men was wearing a tan jacket, the officers stopped the men. Later review of the in store video indicated that a second man (the thief) in a tan jacket left the store and ducked into the recycle area just as the officers arrived.

Allegations: Constitutional Rights/Discrimination—That Office A and Officer B stopped and questioned RP 1 and RP 2 on the basis of their race.

Recommended adjudication: Allegation: Constitutional Rights--Discrimination All parties recommended Unfounded as the adjudication. The Chief adjudicated the case as Unfounded.

Issues for the CRB: CRB members commended the IA Sgt. for an outstanding job. He had talked with both reporting parties and had showed the film to them. The Sgt. went above and beyond what was expected of his position in having a conversation with both of the men, and explaining what happened. They thought it was great that the reporting parties had an opportunity to look at the video. He opined it would be nice if people could be shown the videos more often. He did have a problem with the way the men were approached related to courtesy. The men said the police officer approached them and accused them. Another member asserted the men were accused, but not convicted.

Policy and/or Training Considerations: A CRB member said the officers should have approached the men and explained the issue to them in a courteous manner. He said officers, one of whom was a recruit and one of whom was a Field Training Officer (FTO) were doing their jobs. The lack of courtesy exhibited by the FTO set the stage for the whole encounter. The men became defensive, and felt they were being approached because they were black. Although in the end, it was a misunderstanding, it should have been approached much differently from the start. He noted the men were relatively nice, and the situation could have been much different. Ms. Pitcher said the courtesy issue could be a performance issue that could be discussed with the officer. Mr. Gissiner stated the philosophy to gain community trust was to immediately tell people why they were approached and to give people the opportunity to explain their situation. There was room for improvement with this effort. This issue did not rise to the level of a serious misconduct policy violation, but it did speak of community trust. The IA Sgt. said the officer could have used a better approach. The officers were convinced they had stopped the right person.

Relevant Department Policies and Practices: A CRB member said it was important to slow down and ask for all relevant information, and not base an investigation only on the clothing worn by the people. One other inquiry likely may have kept the officer from going after the two reporting parties.

SEPTEMBER CASE REVIEW (Joint Meeting of CRB and Police Commission)

Allegation: That a sworn EPD employee mishandled property from the police property room without the knowledge or consent of his supervisors.

Summary: An employee of the Property Control office was attempting to locate paperwork and a motorcycle. The detective informed her the motorcycle was being stored at an employee's house and a boat at a storage facility. The property control specialist notified a supervisor about the situation. The supervisor checked the paperwork which stated the boat had been transferred to a vehicle broker, not the city's contracted broker/auction house for later sale held at EPD property control. The supervisor was able to locate emails indicating that the involved employee planned on taking the boat and motorcycle to be detailed and taken to the private dealer in hopes of obtaining a higher price so that the funds would go to the victims' restitution fund, and advised subordinates of same. The supervisor notified the chain of command and informed the Auditor's office of the situation. The supervisor also contacted the officer involved. The employee had been directed to return the property to Property Control immediately. The involved employee said the boat was currently at the city shops garage. The involved employee ultimately brought the motorcycle back to Property Control on the day that he was contacted by a supervisor. He stated that the motorcycle had sustained damage while it was stored there and he was concerned the damage would result in the motorcycle losing value. The employee was dissatisfied with the current storage situation of the motorcycle and the boat, that weather was causing depreciation of the two items. He also expressed dissatisfaction with the contracted broker/auctioneer in that the storage process for the boat and motorcycle caused deterioration. The employee took it upon himself to get them in operating condition so that they would have more value when they were sold at auction. The involved employee charged city time in repairing and transporting the property without knowledge of his supervisors.

Allegations: Misconduct. The adjudication recommendations of the chain of command and the Auditor were to sustain the allegation. The chief sustained the allegation that the officer violated policy.

CRB members agreed with the adjudication and recommendations.

OCTOBER CASE REVIEW - The CRB reviewed a case in which an officer alleged that another officer used a racial slur.

Allegations:

- Conduct—Unbecoming Conduct—That involved Officer A while riding in a Eugene patrol car with officer B, referred to a group of African-American males using a racial slur.
- Courtesy—That involved Officer A while riding in a Eugene patrol car with Officer B, referred to a group of African-American males using a racial slur.

Recommended adjudications and the Chief's final adjudication decisions were all for adjudications of sustained.

Summary: Officer B reported that his patrol car partner, Officer A, directed a racially offensive remark and a gang name about a group of people standing on a street corner. Officer B reported the remark. The subject officer denied making such a comment. During the investigation, a third officer, Officer C, was interviewed regarding an earlier situation in which Officer A used an insensitive remark. Officer A surmised that there were two possible reasons that Officer B would accuse him of using a slur, that Officer A refused Officer B's request that Officer A drive the patrol vehicle; and that during an arrest, Officer B criticized Officer for damaging the patrol vehicle. The investigation and adjudications were based in large part on the credibility of Officer A and B, respectively.

One Board member was concerned whether there was a history that was not addressed in the hiring process and Officer A needed training. The Internal Affairs and Police Auditor investigations were thorough. He believed Officer A lied to protect himself. He was bothered that some time had passed between the actual event and when Officer B reported it.

Complaint Investigation and Monitoring: One CRB member noted the initial questioning of Officer A was closed, emitting only yes/no answers. As the questioning became more opened ended, the officer provided more information. She would have liked to have a video of Officer A when he was being interviewed which may have provided information related to Officer A's body language and credibility. One CRB member was curious about the ride along since Officer A had applied to be a Eugene police officer. He noted a racial comment was made during the ride along and reported, but it did not make it into information available for the hiring process. IA concurred the racial comment should have been passed on to the hiring process but it had not been included as a result of a miscommunication. Mr. Gissiner opined the comment may have been caught sooner in a very structured background check during the hiring process. CRB members were concerned about the depth of the hiring process and background investigations.

A CRB member stated it took about two weeks for Officer B to come forward, and it was probably one of the most difficult things he ever did while with the EPD. He suggested Officer A had “gone fishing” to see if Officer B thought like Officer A did. It was important to reinforce EPD’s zero tolerance for that type of conduct. He concluded Officer A should not be a police officer or in a position of power.

The Chair said it was extremely brave of Officer B to come forward. He set an example for others within the department. He stated that additional comments and the adjudication would be deferred to the November 2013 meeting.

NOVEMBER CASE REVIEW—The CRB reviewed a case in which a highly intoxicated person alleged to a sergeant that an officer kissed her when he dropped her off. The IA and Auditor proceeded with several additional allegations regarding the officer’s responsibility for care of the person, using the AIRS system to access personal information, turning off his ICV before the end of the contact, and attempting to establish a personal relationship with the person while still conducting official business after he was notified of a criminal allegation related to his contact with her.

Summary: Officer A gave a courtesy ride to the woman after gaining permission from his sergeant. The sergeant advised him to make sure his ICV was on. She was staying with a relative. Officer A drove her to within sight of the building but did not accompany her to the door to see her enter the building. The person was later found lying adjacent to a street in the early morning hours. Officer A did not ensure that the woman was in the care of a responsible individual prior to leaving. Officer A turned off ICV before terminating his contact with the woman, and then left for a burglary incident. Officer A later sent a text message to the woman, asking if she had made it home safe. Officer A exchanged three later text messages with the woman. The woman alleged to Sergeant D that Officer A kissed her when he dropped her off. Officer A ran the woman’s information through AIRS after he was notified of a criminal allegation related to his contact with her, and allegedly sent a personal text to her while conducting official business with her.

Allegations:

- Conformance to Laws—that Officer A assaulted the woman or made other unwanted physical contact with her. Recommended adjudications by all parties including the Auditor: Unfounded. The Chief determined the allegation to be Unfounded.
- Unsatisfactory Performance—that Officer A dropped off the woman, who was highly intoxicated and had sustained minor injuries in an earlier fight, without ensuring she was home safe and/or with others who could care for her. Recommended adjudications by all parties including the Auditor: Sustained. The Chief determined the allegation to be Sustained.
- Unsatisfactory Performance—that Officer A sent a text message of a personal nature while still engaged in providing police services in an official capacity. Recommended adjudications by all parties including the Auditor: Sustained. The Chief determined the allegation to be Sustained.
- Judgment—that Officer A ran the woman’s information through AIRS after being notified and interviewed regarding a criminal allegation where she was the alleged victim and he was the alleged suspect. Recommended adjudications by all parties including the Auditor: Sustained. The Chief determined the allegation to be Sustained.

- Area Information Records System—that Officer A ran the woman’s name in AIRS without an apparent criminal justice purpose. Recommended adjudications by the Lieutenant: Within Policy. Recommended adjudication by the Captain: Insufficient Evidence. Recommended adjudication by the Auditor: Sustained. Chief’s adjudication decision: Sustained.
- In-Car video/Audio Recording System—that Officer A disengaged the ICV system in violation of policy before the completion of the transport of the woman. Recommended adjudications by all parties including the Auditor: Sustained; except for the Captain who recommended Insufficient Evidence. The Chief determined the allegation to be Sustained.

Issues for CRB Discussion:

Complaint Intake and Classification: Reported to Communications, who contacted Sergeant D. Following Sergeant D’s report, classified as Allegation of Criminal Conduct. Following Oregon State Police (OSP) investigation, investigation as an Allegation of Misconduct. The criminal allegation portioned was dismissed after the OSP investigation.

One Board Member expressed concern that details about the Emergency Medical Transport (EMT) evaluation of the woman’s injuries were not included. She had a head injury exacerbated by intoxication. He wondered whether the officer received information about her physical status. Because of the head injury, she should have been taken to Buckley House. The IA Sergeant said EMT staff could have taken her to the emergency room (ER) regardless of her refusal. However, the information available for adjudication was sufficient to find that she should not have been left alone.

One CRB member expressed appreciation that more than one person in the investigation addressed the officer’s labeling of the woman as a “stupid broad” and “this stupid sh*t.”

A CRB member noted that the Supervising Lieutenant thought access to AIRS was within policy and the Supervising Captain thought there was insufficient evidence. He questioned Officer A’s access necessity because the officer should not have been in contact with her at all. He was concerned the officer was trying to find out where she lived.

Relevant Department Policies and Practices

- 1101.1.B.5 Conformance to Laws
- 1101.1.B.9 Unsatisfactory Performance
- 1101.1.B.17 Judgment
- 201.4.1.A.1 Automated Records System
- 301.4.B In-Car Video/Audio Recording System

A CRB member commented that the repetitive use of “Intoxicated Female” in the investigative report became a defining characteristic and inferred guilt. He said he would prefer use of Person A. It was determined that the term “Intoxicated Female” was used in the redacted report as a find/replace function, otherwise her name was used. A CRB member said the fact that he was an experienced police officer made the situation worse. An officer with one year of experience may have thinking and judgment errors, but with an experienced officer that brought into question his motives.

Policy and/or Training Considerations: A CRB member confirmed that a policy of ensuring a person was in a safe environment was essential, not dropping them close by and driving off.

The IA Sergeant said he was not absolutely sure if there was or was not a written policy about courtesy rides, but the practice was not uncommon. Previous to ICV, the supervisor was provided the beginning and ending mileages and had radio records. Now contact with the supervisor was made and the transport was captured on ICV.

Adjudication Recommendations: The Chair emphasized the responsibility of officers in ensuring a person's safety. He was frightened at the level of danger this person ended up in, and was thankful that the woman was not hit by a vehicle.

A CRB member commended the IA Sergeant on an excellent, very thorough investigation and report. There was consensus in support of adjudication as recommended.

DECEMBER CASE REVIEW—The CRB reviewed a case in which it was alleged that during the course of an alleged use of force by Officer D, that Acting Supervisor A attempted to persuade Officer D to amend his report to reflect that the incident that occurred was partially an accident rather than an entirely intentional use of force.

Summary: Officer A was acting in the capacity of a supervisor when Officer D used his vehicle to stop a suspect on a bicycle. Officer D briefed Officer A at the scene that he intended to tap the bicycle but when he hit the brakes the cruiser slid on the gravel and struck the bicyclist harder than he intended. Officer D said that Officer A met with him later to talk over his report; Officer D said that Officer A appeared to believe that Officer D was unduly emphasizing his intent to strike the bicyclist. Officer D stated that he did not feel that Officer A wanted him to be dishonest. From the scene, Officer A reported to Lieutenant B that Officer D had inadvertently struck a bicyclist who he was attempting to arrest. Officer A, when interviewed for the investigation of use of force, described the incident as more of an accident than a use of force. Officer A also stated that he had viewed the incident as a use of force and he would not have changed how he handled the call. Lieutenant C advised the Deadly Force Review board of his conversation with Officer A. The Auditor opened an investigation of Officer A's conduct. During an interview for this investigation, Officer A stated that he believed the incident was an aborted use of force that turned into an accident, not an intentional use of force. Officer A also stated during this investigation that he did not try to influence Officer D to change his report.

Allegations:

- **Conduct—Integrity**—that Officer A, acting in capacity as a supervisor, attempted to persuade Officer D to completed a report that did not accurately reflect the incident as it occurred. All parties recommended adjudications of Unfounded; the Chief's decision was Unfounded.
- **Unsatisfactory Performance: Judgment**—that involved Officer A failed to recognize and accurately report the details of an incident to his chain of command when a reasonable employee would have recognized and reported those details. All parties sustained this allegation; the Chief's decision was Sustained.

Complaint Intake and Classification: This allegation arose during investigation into the use of deadly force and was internally reported. Classification: Allegation of Misconduct; Relevant

Department Policies and Practices: Integrity and Judgment. CRB members agreed integrity and judgment were appropriate policies.

Policy and/or Training Considerations: CRB members agreed the officer learned from experience and self-reported his use of force. They noted the AIC sergeant (Officer A) had not taken the sergeant training, which possibly contributed to his actions.

Adjudication Recommendations: CRB members agreed with the adjudication and recommendations.

Additional Comments and/or Concerns: Mr. Gissiner noted he learned of this case during a meeting with command staff.

Civilian Review Board Training

Members of the Eugene Civilian Review Board have differing life, cultural, professional and educational backgrounds and varying degrees of exposure to law enforcement and corrections professionals, municipal government operations, the criminal justice system, and the full and diverse range of communities served by local law enforcement agencies. The Board recognizes it is important to receive balanced training from a variety of sources both inside and outside the law enforcement.

In 2013 our training came from a variety of sources. Generally a training session occurs at regular meetings and the topics and presenters are selected by the Board in advance. Other training occurs during case reviews when legal and policy discussions occur. The training sessions included:

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| February: | Officer Involved Shootings |
| March: | Blue Team (Use of force reporting database system) |
| April: | Ethics Training |
| December: | Communicable Diseases and Environmental Health |

Identified Policy, Procedure and Training Concerns

Eugene's model of oversight includes the CRB as a quality assurance oversight body to evaluate and comment on the work of Office of the Police Auditor and review and comment on some Internal Affairs investigations arising out of complaints and allegations of misconduct. It also includes providing a CRB as a representative to the Eugene Police Commission as a policy body to evaluate and address policy concerns, some of which have been identified by the CRB arising out of its work. The CRB has a representative on the Human Rights Commission. In 2013 both the Auditor's office and the department helped the Board identify concerns that were passed along to the Police Commission and the Chief.

Key issues that surfaced during case reviews included the opportunity for an patrol officers union representative to ask "clarifying questions." At times, we felt that the questions went beyond "clarifying questions" and were at times, "leading questions." We also found some interviews awkward as the Auditor or Deputy Auditor are obliged to ask patrol officers questions, but must do so in writing through the IA investigator even though state statute permits up to two interviewers. (This does not occur with non-represented employees.)

We recognize that the Auditor ultimately decides the classification of a complaint; notwithstanding the input of police command staff. We also recognize that ultimately a decision must be made based on the totality of circumstances. The CRB does debate these classifications, take the issues seriously and actively engages the Auditor and Deputy Auditor as to the decision-making that occurs with these classifications, recognizing the potential impact to an employee's job status.

The Board regularly seeks clarification regarding procedures and practices that evolve out of case reviews and training discussions. On occasion these result in suggestions to the department for improving services.

In 2012 the CRB discussed several policy issues for consideration by EPD and/or the Police Commission. Appendix A is the written response from EPD with regard to those policy discussions.

Evaluation of the Office of the Police Auditor and the Auditor's Performance

By ordinance, the CRB "shall evaluate the work of the auditor's office..." and shall "establish criteria by which to evaluate the work of the police auditor." Six members of the CRB completed written reviews of the police auditor and the work of the Office of the Police Auditor, as did Lieutenant Fellman and Nate Reynolds of the EPD Office of Professional Standards and the Chief of Police. At a special meeting the Board discussed those evaluations with Mr. Gissiner in executive session. The evaluation criteria were along seven dimensions.

The OPA and the Auditor's performance were rated in each dimension and individual comments and suggestions for improvement were included in the evaluation. The 2013 evaluation is included in the evaluation for Council in its evaluation of June 2013.

The Board previously sent the information to the Council in its performance evaluation packet in June 2013. The entire package is available upon request. Overall eight dimensions were evaluated. In those dimensions the Auditor's office met or exceeded expectations. Points of emphasis include continued efforts to strategize how to get additional community engagement in the processes.

Conclusions

We have an engaged and thoughtful civilian review board that invests considerable personal time to participate in and evaluate the police oversight processes in Eugene. They are the community's representatives in analyzing the internal administrative personnel processes of EPD and the external monitoring and complaint intake processes of the Auditor's office. The CRB conducts open and transparent public meetings on case review, policy considerations and training issues. As one example of their dedication, in 2013, the CRB met 5 more times than the minimum requirements of the Ordinance. At most meetings, the entire board is present. The CRB must evaluate difficult personnel and policy issues that impact community members and sworn police personnel. They have been complimentary, critical, inquisitive and decisive. It is an honor and privilege to serve the community of Eugene. In 2013 Eugene's system of civilian oversight continued to evolve and develop. We look forward to continuing our work and we are committed to improving our processes in service of the community.



Protection from self-inflicted injuries: Officers at the Eugene Police Department are trained on how to safely restrain a person in custody. This includes not only proper handcuffing, safe application of a Flexible Restraint Device (FRD), and methods on how to safely move a person in handcuffs from one location to another if they refuse to walk or move for themselves. This training also includes seat-belting a person in custody for their safety and the safety of the officer. Officers are trained that if a subject in custody is injuring themselves or damaging property in a patrol vehicle, to remove the subject and apply whatever restraints are reasonable or necessary to prevent harm to the officers or the person in custody.

Patrol vehicles by their design offer the most protection for both the person in custody and the officer, but they do not offer **absolute** protection from any injuries the person in custody may choose to subject themselves to. There are few reasonable options an officer may use to restrain a person beyond properly applied handcuffs and seatbelt. There are no alternatives for officers to transport a person to jail – a patrol vehicle serves as the only proven safe and defensible method of transport. *If the person is suffering from mental illness, and has been detained by an officer for purposes of a crisis evaluation, and the person is combative, an officer may REQUEST a medic unit for transport; however, the decision to transport the person in custody lies with the medic unit supervisor.*

In addition to knowing how to safely keep a person in custody from continuing to injure themselves, officers also know they are responsible for that person's care and must provide access to medical treatment for all persons in custody if it reasonably appears they require medical care.

By virtue of our job and dealings with persons, we will never eliminate the unpredictable, violent, and tumultuous outbursts of behavior by persons in custody; however, the Department is committed to providing safe and consistent service to the persons we transport and the community as a whole.

Use of Facilities: The Department routinely contacts and arrests persons who have recently, and often excessively consumed alcohol prior to their arrest; in order to provide the best service to the persons arrested and to efficiently use resources paid for and provided by the citizens, the Department has looked at ways to provide facilities without interrupting the efficient workflow that is necessary to police a city the size of Eugene. Over the course of this year, the Department has begun developing a policy for the use of the Jail Van. One of the issues consistently encountered is the varying transport times of the Jail Van and the need by the persons transported to use bathroom facilities. The draft policy (to be reviewed and approved in the coming weeks) provides clarity to officers on this issue who likely want to provide restroom facilities but also feel compelled by their charge as police officers to use resources efficiently and complete timely investigations. Here is an excerpt of DRAFT LANGUAGE:

451.5.1 CUSTODY RESTROOM FACILITIES

The Jail Van is often used when large disorderly groups are reasonably expected (UofO Football games, Disorderly Parties, etc). Alcohol and its excessive use are more often than not associated with these events as well. If a custody requests to use restroom facilities, do the following:



- Explain the current timeline and process to the custody. For example, if they know there is only one more pickup and you expect it to take less than 20 minutes, they may be able to standby until you make it to the jail.
- If they cannot wait the expected time, safely and efficiently finish whatever tasks are necessary to get the Jail Van en route to the Lane County Jail. Try and seat the custody as close to the rear door as possible.
- At the jail, remove the custody(s) needing to use the restroom. Have one Jail Van operator remain where he can see the van and one accompany the custody to the port-a-potty stationed in the jail Sally Port. Attempt to contact Jail Control and let them know you will momentarily have an unsecured prisoner.
- Remove their flexible cuffs and allow them a reasonable time to use the restroom. You may allow the restroom door to remain open if under the totality of the circumstances you believe the suspect is a danger to themselves, or may be attempting to destroy evidence or contraband.
- Replace the flexible handcuffs and return to normal jail drop off protocols.

Any disorderly or resistive custody who you reasonably believe will continue their disorderly or resistive behavior that needs to use the restroom facilities should immediately be handed over to jail staff. The supervisor who is assigned to assist and monitor Jail Van operations should facilitate this quick transaction.

Arrests for misdemeanors without observation: Every action the Eugene Police Department takes while enforcing laws is supported by Oregon law. ORS 133.310 grants officers the authority to arrest any person, day or night, without a warrant, when the officer subjectively believes probable cause exists that the person did commit a felony, a misdemeanor, or any unclassified crime or offense for which the maximum penalty allowed by law is equal or greater to the maximum penalty allowed for a Class C misdemeanor. State law does not require crimes be committed in the presence of the officer, only that they can develop probable cause (a burden akin to more reasonable than not) that the person did commit the crime.

The Department understands that in this day and age, some “low level” misdemeanors are not considered anything substantial enough to merit a trip to the Lane County Jail; however, while the officer holds the ultimate decision and responsibility on when and if a person will be arrested, they must also take into account the statements made by the complainant and evaluate whether or not the suspect in the misdemeanor is likely to provide their voluntary compliance in the future. It is just as likely that the Citizen’s Review Board would hear as many or more complaints from citizens and business owners frustrated over the lack of action by the Police Department’s lack of action on behavioral misdemeanors as there would be over the perception that officers are making lawful arrests for crimes that don’t seem to rise to the level necessary to merit taking the suspect to jail. The Department understands and encourages its officers to make calm, prudent, and lawful decisions around the substantial Constitutional encroachment of taking persons into custody; however, the Department will never restrict its officers from taking actions that are supported by good faith, reasonableness, and Oregon state law.

De-Escalation Techniques: The Department has long trained its officers to use de-escalation techniques in its approach to problem solving, particularly when dealing with mental health issues or intoxicated persons. In the last 12 months the Department has trained de-escalation

techniques three times: January 2014, October 2013, and April 2013. The training events consisted of classroom instruction, scenarios, and de-briefing from instructors about de-escalation techniques utilized in the scenarios. Some of the scenarios included persons with mental illness, suicidal subjects, government extremists, and armed subjects. Some of the scenarios dealt with enforcement situations and others dealt with mental crisis evaluation holds.