TUCSON POLICE DEPARTMENT

Ready to Protect, Proud to Serve

CRITICAL INCIDENT REVIEW BOARD

OPERATIONS PAMPHLET

Tucson Police Department
Chris Magnus
Chief of Police
270 South Stone Avenue
Tucson, Arizona 85701-1917

	TUCSON POLICE DEPARTMENT **CRITICAL INCIDENT REVIEW BOARD** **OPERATIONS PAMPHLET**	**Issued:** January 2017 **Revised:** February 15, 2018

CONTENTS

1.0 OVERVIEW

The Critical Incident Review Board (CIRB) is convened to conduct an administrative review of circumstances surrounding any critical incident, officer-involved shooting, or collision resulting in death or serious injury to a person. The Chief of Police may direct CIRB to review matters of heightened community interest. CIRB seeks to promote trust and legitimacy with our community by including community representation, fostering transparency in department actions, constantly striving to improve police services, and holding the agency and its members accountable.

1.1 Authority and Responsibility

The authority of CIRB comes from the Chief of Police. CIRB will not conduct criminal investigations and shall not take action in any manner that impedes or interferes with a criminal investigation.

1.2 Powers and Duties of CIRB

CIRB may interview witnesses and members involved in the matter under consideration, and shall review documents, reports, files, audio and/or video recordings, or any other items/evidence pertaining to an incident. CIRB may request the appearance of and feedback from any non-department person that is beneficial to the review process.

1.2.1 Duties

Unless otherwise directed, CIRB shall:

- review and evaluate all pertinent facts and information, including all reports, statements, documents, and evidence;
- request additional investigation, if necessary;
- review all applicable policies, procedures, and directives for adequacy, completeness, and relevancy;
- ensure training is adequate and identify areas for improvement;
- review all patrol and investigative methods;
- review and assess whether actions taken throughout the event were based upon appropriate critical decision-making;
- prepare a written report to the Chief of Police; and
- render findings of compliance or noncompliance with Department policies.

1.2.2 Office of Professional Standards

The Office of Professional Standards (OPS) shall act as the investigative body for CIRB.

1.2.3 Subpoena authority

CIRB has no subpoena authority.

1.3 Confidentiality

Until issuance of the written report and findings, all information and material disclosed to Board members in the course of CIRB duties are confidential.

2.0 BOARD MEMBERSHIP

2.1 Voting Members

- Chairperson – Deputy Chief of Police
- Assistant Chairperson – SALETC Academy Captain
- FSB and ISB Lieutenants
- Audit and Best Practices Lieutenant
- Peer-rank member(s)
- Department Legal Advisor
- Police Communications Supervisor
- City Attorney
- Independent Police Auditor
- Community Representatives
- CPARB Member
- Ward Office Representative (optional participation)

2.2 Non-voting members:

- Department Subject Matter Expert in the area under review, as directed by the Chairperson
- Office of Professional Standards Representative

2.3 Observers

- Labor Representative

CIRB review is administrative in nature, so a member whose actions are subject to CIRB review is entitled to labor representation at the

formal Board proceedings. Representation by legal counsel is not permitted. The labor representative may record member testimony and may ask clarifying, non-investigative questions at the conclusion of questioning by CIRB. The Chairperson shall determine the scope of clarifying questions. Labor representation is not permitted at pre-board discussions or during CIRB deliberations.

3.0 CONVENING A CIRB

Unless otherwise directed by the Chief of Police or designee, a CIRB shall automatically convene for any of the following situations:

- A use of deadly force, regardless of whether the member's actions resulted in injury or death, except as provided below.
- A death or serious injury resulting from, or involving, Department actions.
- A pursuit resulting in serious injury or death.
- A member-involved collision resulting in death or serious injury.
- Large-scale event response review (i.e. NCAA, public demonstrations, etc.).
- Matters of an unusually serious nature involving Department members.

In cases of an accidental firearm discharge, dispatch of an animal, or other similar discharge of a firearm, the on-scene Incident Commander (IC) shall notify the Chief of Staff, who will determine if an OPS response and/or CIRB review is appropriate, or if the incident should be referred to the member's chain-of-command for review and recommendation.

3.1 CIRB Callout

The on-scene IC shall notify the Chief of Staff or designee as soon as possible after the occurrence of any of the above-listed events. The Chief of Staff, in consultation with the Chief and/or Deputy Chief, shall determine if a criminal investigation regarding any member's conduct or involvement is warranted, and initiate appropriate callout procedures.

Depending on the circumstances, the Chairperson has the discretion to convene, delay, or decline an on-scene response of CIRB members at the time of notification. In consultation with the CID Commander, the OPS Commander will facilitate the administrative briefing and scene walk-through with CIRB separate from the criminal investigation. Where possible, and without interference with the criminal investigation, as necessary in complex scenes, CIRB will receive a crime scene walk-through similar to that of the criminal investigation. The crime scene walk through may be convened at a later time and date, or as requested by CIRB.

In coordination with, and approval from the Chairperson or Assistant Chairperson, voting member professional staff and community members of CIRB have the discretion to respond to a scene for a callout.

3.2 Purpose of Callout

CIRB will be convened at incident scenes that are complex in nature, where a walk through is beneficial to orient members with the facts and physical circumstances of the incident under review. Where possible, CIRB members should avoid contact with department members conducting the criminal investigation and any focus member(s) at the scene.

4.0 CIRB MEETINGS

CIRB will convene on a monthly basis as needed. Depending on the status of matters pending review, CIRB may meet for the following purposes:

- Training
- Dissemination of OPS administrative investigation materials
- Pre-Board discussion
- Formal Board
- Review and completion of CIRB reports

In consultation with OPS personnel, the Assistant Chairperson will set the agenda for CIRB meetings. To help facilitate the monthly CIRB, OPS will provide the Chairperson with investigative and administrative assistance.

4.1 Training

Members will be provided with training on topics relevant to the review process, to include use of force, constitutional law, department *General Orders,* and other subjects as appropriate.

4.2 Dissemination of OPS Administrative Investigations

Ordinarily, at least forty-five days is necessary to complete the criminal and administrative investigation of a CIRB matter. At the next CIRB meeting after completion of the OPS case, members will receive a complete case file for review. Until the Board has concluded its review and issued a report to the Chief, information and materials provided to members are confidential and must not be shared with anyone outside of CIRB or OPS. Materials will be collected at

the conclusion of a review, and CIRB members shall not retain any information provided.

CIRB members shall be aware of the legal concerns related to simultaneous criminal and administrative investigations. Legal restrictions based upon constitutional rights necessitate a clear delineation of the criminal case from the administrative investigation. The administrative investigation may include and consider information obtained during the criminal investigation, but the criminal investigation must be "walled off" and cannot include information obtained in the administrative investigation.

4.3 Pre-Board Investigation and Discussions

At a pre-Board meeting, members are expected to be prepared to discuss the details of the incident. The purpose of the pre-Board is to determine:

- which Lieutenant will act as the scribe;
- whether, additional investigation is necessary or desirable;
- a schedule of member(s) to appear before the CIRB; and
- an outline of the issues identified for CIRB inquiry.

The outline of issues and other information relevant for the Formal Board shall be sent to CIRB members in advance of the proceedings.

4.4 Formal Board

The Chairperson, with assistance from the OPS Administrative Assistant (AA), will schedule the Formal Board. The AA will provide all affected personnel, observers, and witnesses, including labor representatives, with the date and time of the Formal Board.

A member who is the focus of a CIRB review shall not be interviewed or questioned by a CIRB member about a matter under review unless CIRB is in session. The proceedings of a CIRB are confidential and shall not be divulged to other parties without authorization from the Chief of Police, Chairperson, or OPS.

4.5 CIRB Reports

CIRB will use a standardized template for the report to the Chief that provides findings and recommendations in the following areas of review:

- Policy, which includes findings of compliance of violations of Department *General Orders*

- Tactics
- Decision-making
- Communication, including de-escalation efforts
- Supervision
- Training
- Equipment

Members will seek to arrive at a consensus for CIRB report, to promote cohesive application of policy and minimize uncertainty among members. In the event that a consensus cannot be achieved after extensive and thorough deliberations, a dissenting member may submit a written memorandum detailing the specific concerns supporting their dissenting opinion.

5.0 CIRB MEMBER RESPONSIBILITIES

5.1 Deputy Chief of Police

The Deputy Chief is the CIRB Chairperson and may delegate this role, depending on the circumstances and with the authorization of the Chief of Police, to the Assistant Chairperson. The Chairperson will manage and direct the review process, allowing or limiting the scope and questioning from CIRB members and labor representatives.

Upon receipt of a completed investigation, the Chairperson will ensure the timely completion of CIRB review and submission of the final report to the Chief.

Once the Chief has reviewed CIRB's findings and recommendations, a closure form noting the chief's approval, disapproval and any additional action items will be noted and the CIRB function is complete. In cases where department policies and practices are found to be deficient, the Chairperson will forward the results to the Audit Captain for CIRB recommendation tracking.

The Chairperson is responsible for ensuring the involved member(s) of the review are notified of the CIRB review outcome.

5.2 Assistant Chairperson

The current SALETC Academy Captain will act as the Assistant Chairperson for CIRB and will report directly to the Chairperson in this capacity. The Academy Captain is selected for this role in order to ensure that identified training needs arising from the various inquiries are expeditiously incorporated into current basic and AOT training regimens.

Working closely with the Chairperson and OPS, the Assistant Chairperson will convene the Board at incidents, coordinate additional investigation, set the agenda for CIRB meetings, and schedule members to appear before CIRB.

5.3 CIRB Lieutenants

Most incidents that require CIRB review will occur in the Field Services Bureau (FSB), so FSB representation should be significant. To avoid a personnel conflict, the CIRB Lieutenant assigned to the division where an incident occurred will be recused from that matter. The Chairperson will assign responsibility for each matter to a lieutenant to act as a scribe during the Formal Board proceedings and draft the final report. CIRB lieutenants are responsible for notifying the Assistant Chairperson of dates they are assigned but unavailable.

5.4 Peer Members

CIRB will be staffed with a peer member of equivalent rank to the focus employee(s). A peer member's role is to provide CIRB with the unique perspective of each rank within the organization.

5.5 Department Legal Advisor

The Legal Advisor has a critical role helping CIRB operate within an accurate and current legal framework, in accordance with best practices, and with a thorough understanding of contractual obligations, policies, and relevant training.

5.6 City Attorney's Office

Many incidents reviewed by CIRB also present liability concerns and may involve potential litigation for the City. Accordingly, a representative of the City Attorney's Office will serve on the Board to take into account the broader legal interests of the City.

5.7 Independent Police Auditor (IPA)

The IPA works directly for the City Manager and provides critical oversight and transparency of police investigations. They ensure investigations of critical police incidents are thorough, complete, and impartial.

5.8 Community Representatives

The Community Representatives are expected to add another layer of oversight, accountability, and transparency in police operations, and to provide a

community perspective to CIRB. Selection of the Community Representatives will be made through the Office of the Chief of Police.

5.9 Department Subject Matter Experts (SMEs)

SMEs will be called, as necessary, to provide testimony on and information related to their field of expertise.

5.10 Audit and Best Practices

Occasionally, review of a critical incident will identify deficiencies within Department policy, current operational practices, training, or equipment. Although participating on the Board in a non-voting capacity, the Audit lieutenant's role is to research those gaps, identify best practices, and bring forward new policies to the Executive Leadership Team (ELT). Recommendations in the final CIRB report are the responsibility of Audit for tracking and implementation. The Audit & Analysis Division Captain will author a closing memorandum to the Chairperson when all CIRB recommendations have been completed.

5.11 Ward Office Representative

Ward office participation on the Board is at the discretion of the City Council Member, in whose Ward the critical incident occurred. Ward participation provides another layer of transparency, accountability, and oversight.

5.12 Office of Professional Standards (OPS)

OPS provides investigative support to CIRB. Completed OPS investigations are submitted to CIRB for pre-board analysis and formal board review. If necessary, the Chairperson will direct further investigation from OPS. The OPS AA will serve in the same capacity as the CIRB AA.

In cases where CIRB finds sustained *General Order* violations, the Chairperson will send the completed reports to OPS. OPS will track and coordinate imposition of discipline through the affected member's chain-of-command.

6.0 FORMAL BOARDS

- If a Council Member will be attending the formal proceedings, the Chairperson shall meet with the Council member prior to the formal proceedings to inform him/her of the purpose of CIRB and to answer any questions he/she may have regarding the incident.

- All sworn and professional staff participating in a CIRB, either as a member, a focus, or a witness, will wear their uniform of the day or business attire.

- All members coming before a CIRB shall review the transcript of any recorded statement(s) they gave prior to giving testimony before the Board. They are also encouraged to re-listen to the radio audio recordings of the event under review. Members may also request to review related video through OPS.

- The Chairperson shall precede the questioning of any witness or focus member with a statement regarding the scope, focus, and purpose of their appearance before the Board (see template).

- The Chairperson or Assistant Chairperson may limit the response to any follow up question if she/he feels the question is inappropriate or outside of the scope of CIRB.

- Questions should be specific and relevant, and should pertain to facts of the incident as well as any input they might have regarding training, equipment, supervision, tactics, and policy.

- A focus crime is allowed to have a representative of the bargaining unit with them during the formal board. The representative may ask CIRB or the focus member clarifying questions. The Chairperson shall determine if a question is an appropriate clarification, and may limit advocacy or leading questions.

6.1 CIRB Interview Template

The following statement is intended to serve as a guideline for use at the beginning of an interview of any Department member coming before a CIRB to give testimony. Witnesses and focus members shall be asked specific questions to provide or clarify information given during the investigative interview.

- Introduction of Board members

- Pre-interview Statement:

  Officer _____, this is an Administrative Investigation into (state the incident). The purpose of the Critical Incident Review Board is to ensure the Department's response and actions in this incident were appropriate. The Board is also tasked with evaluating Department policies, tactics, supervision, equipment, decision-making, and training as it relates to this incident, for the purpose of ensuring compliance, evaluating effectiveness, and establishing best practices. Your

appearance before CIRB is directly related to assisting CIRB with these endeavors by responding to any questions we may have of you, and by providing your input and perspective.

Do you have any questions before we begin?

Have you had the opportunity, if you chose to do so, to review the statement you gave to detectives following the (state the incident under review, giving location and date)?

Based on the review of your statement, do you have any corrections, additions, or clarifications you feel need to be made to your statement?

7.0 TRAINING FOR CIRB MEMBERS

7.1 Criminal versus Administrative Investigations

In many critical incidents that will undergo CIRB review (e.g. an Officer Involved Shooting), the department will conduct two separate and simultaneous investigations; an investigation to establish whether the officer may be criminally culpable; and an administrative investigation to determine whether the officer violated department policy. CIRB reviews these investigations to make administrative findings and recommendations.

There are important distinctions between criminal and administrative investigations and Board members should understand these concepts.

7.1.1 The evidentiary standard to establish a basis for arrest (criminal culpability) is *"probable cause."* This is a higher standard of proof than *"preponderance of the evidence,"* which is necessary to sustain *General Order* violations.

7.1.2 Deference and priority is given to the criminal investigation.

7.1.3 The Central Investigations Division (CID) conducts criminal investigations. OPS conducts administrative investigations. At the outset, the criminal and administrative investigators may work together. Prior to conducting an interview in the criminal investigation, the criminal investigator provides the member with *Miranda Warnings.* If the member invokes the right to remain silent, the two cases will be separated, and the criminal investigators will cease any questioning, including further involvement in any interview. When this occurs, the administrative investigation will take over in another location and the investigators may proceed with a *Garrity* interview. Administrative investigators may use

information gleaned in the criminal investigation, but the criminal investigators are precluded from learning of information obtained in the administrative investigation.

7.1.4 Department members can be compelled to provide an administrative statement to OPS and CIRB. Compelled statements commence with a "Notice of Internal Investigation" and include the *Garrity* advisement. Under *Garrity v. New York,* information obtained from a compelled administrative investigation cannot be used against the employee in a criminal prosecution. In a criminal case, members, like any member of the public, have a right under the 5th Amendment against self-incrimination, and may decline to provide a statement to criminal investigators.

7.1.5 When CIRB reviews a department member's direct involvement in the outcome of an incident, that employee is administratively referred to as the "focus" employee. In a criminal case, they are a "suspect."

7.1.6 In a criminal investigation, the focus member's labor organization may provide their member with a defense attorney. In administrative cases a focus employee is entitled to the presence of a labor representative, but not an attorney.

7.1.7 In all instances, if any pertinent evidence of possible criminal conduct not initially investigated by police should arise, CIRB shall suspend its review and the Chairperson shall notify the CID and OPS Commander. CIRB may reconvene at the direction of the Chief of Police or Chairperson when it is appropriate to do so.

7.2 Crime Scene Management

The proper collection and analysis of evidence at crime scenes is entirely under the control of CID. Access into working crime scenes by members of CIRB and OPS are solely with the permission of the CID Commander or ISB Chief. Typically, criminal detectives process a crime scene from the periphery and work into the center of the scene. Such a technique ensures all evidentiary items are located and photographed in-place for collection and analysis.

7.3 Interviewing Techniques

The interviewing of victims, witnesses, suspects, and focus employees follows the same strategy as crime scene management. Ideally, detectives will work "outside in" by first interviewing peripheral witnesses, then victims, and at the end, the suspect(s). This

strategy allows a detective to "learn" all the versions of the incident in order to properly interview/interrogate a suspect. In the same way, OPS investigators will interview "outside in" and conclude with the focus employee(s).

When conducting interviews, investigators will ask open-ended, non-leading questions. This strategy allows the investigator to gain more information from the interviewee, and not taint the statement or suggest answers. When a person being interviewed is asked to expound on what they saw, heard, or what they knew at the time of the incident their answers provide more information than a one-word answer that would be obtained from a leading question.

During concurrent criminal and administrative investigations, an OPS investigator will be present during the criminal interview of the focus officer. At the main station, OPS will observe the interview via a video monitor. If the focus employee invokes their right to remain silent, the criminal investigator shall terminate the interview and cease his or her involvement with the focus officer. OPS investigators shall then initiate the administrative interview process.

7.4 Investigative Timelines

Ordinarily, thirty to forty-five days are necessary to complete both the criminal and administrative investigations in complex cases. Completed criminal investigations are sent to a prosecutorial entity (e.g. the Pima County Attorney or Tucson City Prosecutor) for review. Depending on the complexity of the incident, it is not uncommon for several months to pass before a decision is rendered regarding whether prosecution is warranted. A decision to proceed with criminal charges in a case is known as an "indictment." A decision that criminal charges are not warranted is referred to as a "declination."

The prosecutorial entity makes a decision independently of the department's administrative investigation. Historically, the department awaited a decision from the relevant prosecutor before commencing with a departmental review. However, since charging decisions are independent of CIRB's administrative conclusions, CIRB will not delay review and may render a report in advance of such a decision. It is also in the best interest of involved members to complete an administrative review without unnecessary delay.

7.5 Department General Orders

Since CIRB will be evaluating members' performance and making findings regarding department policy, the OPS AA will ensure that all members of CIRB have access to a current copy of the department's *General Orders.*

8.0 CIRB FINDINGS

After considering all the facts and circumstances surrounding the incident under review, CIRB shall render findings and recommendations utilizing the categories listed below when reviewing force:

8.1 Justified, Within Department Policy

The member's use of force or action was justified. During the course of the incident, the focus employee did not violate any departmental policy.

8.2 Justified Policy Violation

The member's actions were justified. However, during the course of the incident, the subject employee violated a department policy.

8.3 Justified, Tactical/Training Improvement Opportunity

The member's actions were justified and during the course of the incident, no violations of departmental policy occurred. However, the investigation revealed tactical errors that could be addressed through non-disciplinary, tactical, or training improvement endeavors.

8.4 Not Justified, Not Within Departmental Policy

The member's actions were not justified and during the course of the incident the focus employee violated a departmental policy. In instances where CIRB has found policy violation(s), CIRB will not make disciplinary recommendations.

9.0 USE OF FORCE CONSIDERATIONS

9.1 Lawful Purpose

Use of force must be for a lawful purpose. Officers may use force options in the performance of their duties if the use of force is immediately necessary under the following circumstances:

- To effect a lawful arrest, detention, or search.
- To overcome resistance or to prevent escape.
- To prevent the commission of a public offense.

- In defense of others or in self-defense.

- To gain compliance with a lawful order.

- To prevent a person from injuring him/herself. However, an officer is prohibited from using lethal force against a person who presents only a danger to him/herself and does not pose an imminent threat of death or serious bodily injury to another person or officer.

When evaluating a use-of-force, consistent with evolving best practices, CIRB will consider and apply the concepts of *de-escalation*, *proportionality* and *provocation* into their findings.

9.2 De-escalation

At times an officer must exercise control of a violent or resisting subject to make an arrest, protect him/herself, other officers, or members of the public from risk of imminent harm. Clearly, not every potential violent confrontation can be de-escalated, but officers do have the ability to impact the direction and the outcome of many situations they handle based on their decision-making and the tactics they choose to employ.

De-escalation means taking action, or communicating verbally or non-verbally, during a potential force encounter in an attempt to stabilize the situation and to reduce the immediacy of the threat so that more time, options, and resources are available to resolve the situation without the use of force. De-escalation can also mean an officer reduces or ends the use of force after a threat has ceased or diminished.

When reasonable under the totality of circumstances, officers will gather information about the incident, assess the risks, assemble resources, attempt to slow the momentum of the incident, and communicate/coordinate a response. In their interaction with subjects, officers should use advisements, warnings, verbal persuasion, and other tactics that are alternatives to higher levels of force. Officers should recognize that when feasible, they should withdraw to a position that is tactically more secure or allows them greater distance in order to consider or deploy a greater variety of force options.

9.3 Proportionality

Proportional force means the level of force applied reflects the totality of circumstances, including the nature and immediacy of any threats posed to officers and others. In applying force, officers shall balance the severity of the offense committed

and the level of resistance based on the totality of the circumstances known to or perceived by the officer at the time. Proportional force does not require officers to use the same type or amount of force as the subject. The more immediate the threat and the more likely that the threat will result in death or serious physical injury, the greater the level of force that may be proportional, objectively reasonable, and necessary to counter it. It is particularly important that officers apply proportionality and critical decision-making when encountering a subject who is armed with a weapon other than a firearm.

9.4 Provocation

Provocation means any pre-force actions by the officer that created or contributed to what may otherwise be a permissible use of force. An unconstitutional search, detention, entry or other act done intentionally or recklessly, including verbal communication that is unnecessarily inciting or goading, that has the effect of provoking the subject, or contributing to the need for the application of force, must be documented and considered in determining the reasonableness of the force used.