

Title: 06.13
This version date: 08-23-2010
Date Effective:
Supersedes: 06.12

**CITY OF KEY WEST
CITIZEN REVIEW BOARD
POLICES & PROCEDURES**

I. Purpose

To establish guidelines for the receipt and processing of allegations of sworn police officers misconduct in compliance with the Charter of the City of Key West Article I, Chapter 1.07, and applicable Florida law.

II. Scope

These guidelines are applicable in addressing allegations of misconduct by sworn officers of the Key West Police Department.

III. Amendment

These Policies and Procedures may be amended by a majority vote of the Citizen Review Board (CRB) at a regularly scheduled and noticed meeting where the item appears on the published agenda for discussion and/or action.

IV. Definitions

Absent: Failure of a Member to appear at a regularly scheduled CRB meeting or not appearing telephonically at said meeting or arriving after 15 minutes after the start of a regularly scheduled meeting.

Board: Citizen Review Board

CRB: Citizen Review Board

Complaint: Allegation(s) of misconduct against a sworn police officer of the Key West Police Department.

Complainant: The person filing the complaint.

Excessive Force: The unreasonable force used by a sworn police officer of the Key West Police Department against a person or persons.

False Arrest: Arrest made without probable cause that a crime has been committed and that the person in question has committed that crime.

Independent Investigator: The persons retained by the CRB to investigate, at the direction of the CRB, allegations police misconduct.

Inquiry: A query to collect information to assess the merit and substance of the complaint to determine if there is need for further action.

Internal Affairs: The Bureau of Professional Standards – Office of Internal Affairs is responsible for recording, registering and investigating all complaints of alleged misconduct on the part of any sworn police officer of the Key West Police Department.

Internal Investigation: A formal administrative or criminal investigation authorized by the Chief of Police and conducted by, or in conjunction with, the Key West Police Department on one of its sworn officers as a result of an allegation or suspicion of possible misconduct.

KWPD: Key West Police Department

Misconduct: Actions or inaction on the part of a sworn police officer of the Key West Police Department, that if substantiated, would constitute a violation of state or federal laws, local ordinances, City of Key West Policy and Procedures, or Departmental written directives.

Probable Cause: A condition where facts and circumstances known to the sworn police officer warrant a reasonable person to believe that the suspected person has committed a crime.

V. Appointments/Terms/Vacancies

A. Appointments

1. Original Members

a) The CRB was created by a majority vote of the citizens of Key West on November 5, 2002 through an amendment to the City Charter. The CRB consists of seven citizens, and receives, reviews and investigates allegations of misconduct filed against sworn police officers of the Key West Police Department as well as other functions as defined in the Charter of the City of Key West.

b) The City Commission selected the first four of seven board members in March 2002 who then selected the final three board members.

2. Chair & Vice Chair

a) The CRB Chairperson and Vice-Chairperson are nominated and elected by the majority of the board.

b) The Chairperson and the Vice-Chairperson in his or her absence shall preside over meetings of the CRB. Neither the Chairperson nor Vice-Chairperson shall have autonomy separate from the CRB, nor the power to bind or commit the CRB in the absence of express consent from the board.

B. Terms

1. All Board Members

The terms of office for all members is four (4) years, except for the initial terms that are staggered over four years in accordance with the Charter.

2. Chair & Vice-Chair

The terms of office for the Chairperson and Vice-Chairperson shall be one year, with the term of office expiring on June 30. Upon expiration of the terms of the Chairperson and Vice-Chairperson, or should either or

both resign their offices, then at the next regularly scheduled meeting of the CRB, or at such other date as the CRB may select, the CRB shall elect a replacement based on a majority vote of those Board members in attendance at such meeting. There shall be no limit on the number of terms that a Board member may serve as the Chairperson or Vice Chairperson and either or both shall have the right to serve consecutive terms if duly reappointed by the Board.

3. Member Absenteeism

Members shall make every effort to attend CRB meetings either in person or by telephone. A Member that appears telephonically will be considered present, but cannot vote and a telephonic appearance does not count towards the quorum needed for a meeting. Any member who is Absent four regularly scheduled meetings during any calendar year (Absent Member), shall appear before the Board at: (a) the next scheduled meeting after the fourth absenteeism to explain their failure to appear at the subject meetings and; (b) every time thereafter that the Member is absent after the fourth absenteeism in a calendar year period to explain their failure to appear at meetings. If, by majority vote of the other Board members, the Board feels that the Member has not provided good cause for his/her absenteeism, then the Board may: (1) refer the matter to the City Commission with a written recommendation to the City Commission to remove the Member from the CRB due to absenteeism and replace him/or her if it is a City Commission Appointed position; (2) remove the Member if he or she is a Board appointed position and commence a replacement search forthwith for a new Board member; or (3) advise the Absent Member that any future absenteeism will be result in one of the above actions.

C. Vacancies

1. City Commission Appointees

If a vacancy occurs among the four members of the CRB appointed by the City Commission, that vacancy shall be

filled by the City Commission from nominations submitted by community-based organizations within ninety (90) days from the time the vacancy is announced. Every nomination must be accompanied by an application from the potential member. The Executive Director of the CRB will coordinate the nominating process including noticing the organizations, soliciting nominations, and ensuring that nominations are complete and the qualifications of prospective members meet membership criteria specified in this ordinance before they are submitted to the City Commission.

2. CRB Appointees

If a vacancy occurs among the three members appointed by the CRB, the CRB, by majority vote, shall fill that vacancy from nominations from the general public. The Executive Director of the CRB will coordinate the nominating process.

VI. Complaint Categories

A. Written Complaints

All complaints shall be reduced to writing in a letter format or using the CRB approved complaint form. It is preferred that the Complainant use the CRB approved format.

B. Anonymous Complaints

The CRB reserves the right to investigate an anonymous complaint when the CRB deems it appropriate.

VII. The Review Process/Options

A. Status Determination

Consulting with the Key West Police Department and the States Attorney's Office, the CRB Executive Director and attorney will determine if an investigation related to the complaint is already underway. The existence of an ongoing investigation does not preclude the CRB from opening its own investigation

(1.07 Citizen Review Board Charter). However, the Executive Director shall take appropriate steps to advise the Complainant that the written and oral communications by the Complainant and all other matters pertaining to the CRB's investigation of the Complaint will become public record, and that the Complaint and written and oral communications between the CRB and the Complainant may be used against the Complainant in any criminal prosecution. The Executive Director shall attempt to determine whether a Complainant is represented by an attorney in connection with the subject matter of the Complaint, and if so, the Executive Director shall advise the Complainant to consult with his or her attorney prior to filing the complaint.

B. Internal Affairs Investigation and Confidentiality

Any complaint received by the CRB against a Key West police officer will be forwarded to the Internal Affairs office within 2 working days of the CRB receipt of the complaint and a written receipt by KWPD/IA of said complaint shall be secured by the Executive Director. The complaint and all supporting documents, recordings, videos and evidence presented to the CRB by the Complainant at the time of filing the complaint shall be treated as public records and subject to public review in accordance with Florida Public Records laws upon request.

IA is required by State Statute to complete an investigation within 45 days and forward findings to the Chief of Police or provide a valid reason to extend the proceedings. The Chief of Police will forward the finding to the CRB within three (3) working days after they are sent to the Chief.

C. The CRB Review

All complaints filed with the CRB will be brought before the CRB for review and determination. All KWPD internally generated complaints, or complaints filed by the public directly with the KWPD and not with the CRB (KWPD Internal Complaints), shall be subject to routine public records examination and copying by CRB Executive Director and forwarded to the Board members for their individual review.

Should any Board member wish that the KWPD Internal Complaint be formally reviewed by the CRB, then the Board member will request the Executive Director to place that particular file as an CRB Agenda item for formal CRB review. All KWPD internal complaints, once public record under Florida law, shall be secured by and through a “Working Agreement” arrangement with the KWPD or through public records requests, copied and retained by the CRB Executive Director at the CRB office.

1. The CRB will review IA’s findings to determine if the file is complete and if the investigation is thorough, complete and fair.
2. The CRB will also review the Complainant’s response to IA’s findings. The Executive Director will contact the Complainant to find out if the Complainant is satisfied with the results of IA’s investigation. A letter affirming the Complainant’s position will be mailed to the Complainant. Failure of the Complainant to timely respond or appear before the Board relative to the CRB review of their Complaint and/or IA findings shall not prevent the CRB from proceeding with its review functions.
3. The CRB will determine if mediation is appropriate, if there is a need for further investigation, inquiry or finally, a hearing.
4. The CRB chairperson may assign a member or committee to review internal affairs reports and make a recommended finding for full board discussion.
5. Findings

At the conclusion of each review or investigation, the CRB shall render one of the following findings based on the preponderance of the evidence:

- a) Unfounded – where the review or investigation shows that the act or acts complained of did not occur or there is not credible evidence to support it;
- b) Exonerated – where the acts that provide the basis for the complaint occurred, but the review or investigation shows

such acts were proper and consistent with Departmental written directives;

c) Not Sustained – where the review or investigation fails to disclose sufficient facts to support the allegation made in the complaint;

d) Sustained – where the review or investigation discloses sufficient facts to prove the allegations made in the complaint and the action by the member is inconsistent with Departmental written directives;

e) No Finding – where the Complainant failed to produce information to further the investigation, the review or investigation revealed that another agency was responsible and the complaint has been referred to that agency, the Complainant withdrew the complaint, or the CRB did not reach a conclusion.

f) Not Involved – although the event in question may have occurred, the member accused or suspected was determined to not be involved.

g) Policy Deficiency – The allegation/suspicion is true, however, the member's actions were consistent with Departmental written directives, which appear to provide insufficient or incorrect guidance and therefore, in need of amendment.

6. Disposition

At the conclusion of the review or investigation, the CRB shall forward its written findings and conclusions to the Chief of Police and to affected officers and, to the extent permitted by law, to the Complainants. The Chief of Police shall respond to the CRB within 30 days.

D. Other Review Options

1. Deferral

a) In order to protect the Complainants rights, it is the policy of the CRB to defer review of a complaint while there is pending criminal prosecution against the Complainant arising

out of or relating to the allegations of the complaint. However, by majority vote, the CRB retains the right to review a complaint notwithstanding that criminal charges are pending against the Complainant.

b) If the subject matter of the complaint is being litigated between the Complainant and the involved officer, KWPD or the City of Key West, then the CRB, by majority vote, can defer the matter until the resolution of the civil litigation.

c) If the subject matter of the complaint is under investigation by the Key West Police Department Internal Affairs department or agency having jurisdiction, or if it is the subject of pending criminal judicial proceedings, the complaint may be deferred by majority vote of the CRB, and the matter shall remain pending until such proceedings have reached final disposition. The Executive Director shall attempt to determine whether or not a Complainant is represented by an attorney in connection with the subject matter of the Complaint, and if so, the Executive Director shall advise the Complainant to consult with his or her attorney prior to filing the complaint.

d) The Complainant shall be advised that if he or she is dissatisfied with the ultimate disposition of the matter by any such agency, department or governmental process, he or she may request the CRB to review the matter further. The CRB reserves the right to review all Complaints that are filed with the CRB regardless if the Complainant wants to withdrawal and/or settle their complaint.

e) Notwithstanding the above provisions, the CRB shall not be required to continue deferral of a complaint if such administrative investigation or proceedings have not reached final disposition within (90) days from the CRB's receipt of the complaint. This section does not apply to criminal investigations by the State Attorney or to judicial proceedings.

2. Mediation

a) Mediation provides the Complainant and the subject officer an opportunity to meet in the presence of an

independent, trained mediator, to express their concerns about an incident, to explain their view and to hear the other side. Participation in mediation is, in no way, intended to imply wrongdoing on the part of either individual; it merely provides a forum through which each can describe their perceptions of the interaction and explain their actions. The mediation process is completely voluntary and if the Complainant requests mediation the CRB will attempt to facilitate the same.

b) The CRB reserves the right to dismiss or continue its inquiry into the Complaint even if all parties come to a mediated settlement, but the CRB will take in consideration the parties' desires to end the CRB inquiry at its next scheduled CRB meeting.

c) Any type of amicable meeting or conference offered by the KWPD or IA, involving the officer(s) and complainant, and not through the CRB sponsored mediation, will not obligate or bind the CRB in anyway as to any pending complaint but will be considered by the CRB if completely recorded with the permission of all the participants and the entire recording provided to the CRB for review.

3. Hearing

A hearing shall be conducted in accordance with the following:

a) The administrative hearing shall be open to the public.

b) The proceedings at the hearing shall be recorded and may be transcribed at the expense of the party requesting the transcript.

c) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if the board finds it competent and reliable, regardless of the existence of any common law or statutory rule, which might make improper the admission of such evidence. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall be insufficient in itself to support a finding unless it would be

admissible in civil actions. The rules of privilege shall be effective to the same extent that they are or may be recognized in civil actions. Irrelevant and unduly repetitious evidence shall be excluded.

d) Absent the affirmative vote of the CRB to the contrary taken reasonably in advance of the hearing, only the CRB members and the CRB attorney will examine witnesses who testify at the hearing.

e) In an appropriate case as determined by the CRB by majority vote taken reasonably in advance of the hearing, the CRB may permit the officer complained against or the officer's representative, the Complainant or the Complainant's representative, and the KWPD or its representative to: (1) call and examine witnesses; (2) introduce evidence; (3) cross examine witnesses, and with respect to the officer complained against, offer evidence in rebuttal to evidence presented against the officer. At least ten days prior to the hearing, the Complainant, the police officer and the KWPD shall be advised in writing of the CRB's decision to conduct the hearing in accordance with this subparagraph.

f) During the hearing, the Chairperson, or in his or her absence the Vice-Chairperson, shall preside over the hearing, and shall make evidentiary rulings with the advice and counsel of the CRB attorney. Each Board Member shall be afforded a reasonable opportunity to examine witnesses

g) The CRB may subpoena witnesses and documents upon approval of the CRB attorney.

h) A decision shall be made by the Review Board by a majority of the entire board immediately following the close of the hearing.

i) The CRB shall send its finding to the City Manager and the Police Chief.

VIII. Independent Investigation

The CRB has the option to investigate a complaint even if the Complainant accepts the findings of IA. If the CRB determines the need for further investigation, a letter advising of this decision will be sent to all parties. The CRB Executive Director will so notify all parties concerned so that the CRB will be afforded an opportunity to complete its investigation prior to the City acting upon the IA's investigation. When a decision is made to commence an independent investigation of a complaint or, after review of an internal affairs report, the CRB may:

Request that the Chief of Police conduct a further investigation; or

Obtain further case-specific information from the Chief of Police, including written materials, audio or videotapes and related documents and conduct an independent investigation. Such investigation to be concluded within 180 days or within a time period set by the CRB; or

Notice and hold a hearing to gather evidence if the CRB deems it necessary.

IX. Taser Data Collection

The CRB Executive Director will collect, on a quarterly basis, statistics from the KWPD on the number of displays of Tasers in the field and the number of discharges (drive-stun and prong discharges) and report to the CRB this data via the CRB File Tracking Chart in a manner to be comparable with past/future quarterly data.

X. Coexistence with Police Benevolent Association

It is the policy of the CRB to conduct its affairs in harmony with the applicable collective bargaining agreement; however, the CRB, whose existence predates the current collective bargaining agreement, reserves the right to take such action and adopt such procedures as are consistent with its authority under the City Charter, applicable Florida Law, and the intent and purpose of the citizens who created the CRB.