

# Officer-Involved Shootings, Deaths, and Serious Injury

## 305.1 PURPOSE AND SCOPE

The purpose of this policy is to establish policy and procedures for the investigation of an incident in which a person sustains substantial bodily harm, great bodily harm, or dies as the result of an officer-involved shooting or as a result of other action of an officer.

In other incidents not covered by this policy, the Chief of Police may decide that the investigation will follow the process provided in this policy.

Substantial bodily harm and great bodily harm are defined by RCW 9A.04.110:

"Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part.

"Great bodily harm" means bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ.

## 305.2 POLICY

The policy of the Olympia Police Department is to ensure that officer-involved shootings, deaths, and serious injuries are investigated in a thorough, fair, and impartial manner. For incidents occurring from the issue date of this policy through July 1, 2022, the primary investigation agency will be the Capital Metro Independent Investigation Team (CMIIT). For incidents occurring after July 1, 2022, the primary investigating agency will be the Washington State Office of Independent Investigations. (HB1267)

## 305.3 TYPES OF INVESTIGATIONS

Officer-involved shootings, deaths and incidents resulting in substantial bodily harm, or great bodily harm to the suspect involve several separate investigations. The investigations may include:

- a. A criminal investigation of the suspect's actions.
- b. An independent criminal investigation of the involved officer's action utilizing the Washington State Office of Independent Investigations (OII) or Capital Metro Independent Investigation Team (CMIIT).
- c. An administrative investigation as to policy compliance by involved officers. (see Use of Force Review Boards policy)
- d. A civil investigation to determine potential liability.

## **305.4 CONTROL OF INVESTIGATIONS**

In an officer-involved shooting incident, death, or action which results in substantial bodily harm, or great bodily harm the Washington State Office of Independent Investigations (OII) has primary jurisdiction for the investigation. The OII may decline to investigate a case. In this circumstance, investigators from surrounding agencies will be assigned to work the independent criminal investigation of through CMIIT.

Jurisdiction is determined by the location of the shooting or death and the agency employing the involved officer. The following scenarios outline the jurisdictional responsibilities for investigating officer-involved shootings and deaths.

### **305.4.1 CRIMINAL INVESTIGATION OF SUSPECT ACTIONS**

The investigation of any possible criminal conduct by the suspect is controlled by the agency in whose jurisdiction the suspect's crime occurred. For example, the Olympia Police Department would control the investigation if the suspect's crime occurred in Olympia.

If multiple crimes have been committed in multiple jurisdictions, identification of the agency that will control the investigation may be reached in the same way as with any other crime. The investigation may be conducted by the agency in control of the criminal investigation of the involved officer, at the discretion of the Chief of Police and with concurrence from the other agency.

### **305.4.2 CRIMINAL INVESTIGATION OF OFFICER ACTIONS**

The control of the independent criminal investigation into the involved officer's conduct during the incident is with the Washington State Office of Independent Investigations (OII). Should the OII decline to investigate the incident, the Capital Metro Independent Investigation Team (CMIIT) will conduct the investigation. When an officer from this department is involved, the criminal investigation will be handled according to the Criminal Investigation section of this policy.

The Washington State Office of Independent Investigations (OII) is intended to assume responsibility for investigations of serious use of force incidents and refer the reports on the investigation to the prosecutorial entity to determine if the action was justified, or if there was criminal action such that criminal charges should be filed. This is the same criminal investigative inquiry that is currently conducted when there is an officer-involved incident. The OII's creation is intended to change only who investigates the incident. It does not change the nature of the investigation and involves only an investigation to determine justification or whether criminal charges are appropriate. (HB1267)

Requests made of this department to investigate a shooting or death involving an outside agency's officer shall be referred to the Chief of Police or the authorized designee for approval.

### **305.4.3 ADMINISTRATIVE AND CIVIL INVESTIGATION**

Regardless of where the incident occurs, the administrative and civil investigation of each involved officer is controlled by the respective employing agency.

## 305.4.4 OFFICER/DEPUTY USE OF FORCE INVESTIGATIONS

Where the use of deadly force by an officer results in death, substantial bodily harm, or great bodily harm, an investigation shall be completed by an independent investigative team that is independent of the Department and meets the independent investigations criteria of the Criminal Justice Training Commission (RCW 10.114.011; WAC 139-12-020; WAC 139-12-030). The Washington State Office of Independent Investigations (OII) is the primary agency that will investigate these incidents. Should the OII decline to investigate the incident, the Capital Metro Independent Investigation Team (CMIIT) will conduct the investigation.

## 305.5 INVESTIGATION PROCESS

The following procedures are used in the investigation of an officer-involved shooting incident, death, or action which results in substantial bodily harm, or great bodily harm.

### 305.5.1 UNINVOLVED OFFICERS RESPONSIBILITIES

Upon arrival at the scene of an officer-involved shooting incident, death, or action which resulted in substantial bodily harm, or great bodily harm, the first uninvolved OPD officer will be the officer-in-charge and will assume the responsibilities of a supervisor until properly relieved. This officer should, as appropriate:

- a. Secure the scene and identify and eliminate hazards for all those involved.
- b. Provide and facilitate lifesaving first aid to persons at the scene who have life-threatening injuries.
- c. Coordinate a perimeter or pursuit of suspects.
- d. Check for injured persons and evacuate as needed.
- e. Brief the supervisor upon arrival.

### 305.5.2 SUPERVISOR RESPONSIBILITIES

Upon arrival at the scene, the first uninvolved OPD supervisor should ensure completion of the duties as outlined above, plus:

- a. Attempt to obtain a brief overview of the situation from any uninvolved officers.
  1. In the event that there are no uninvolved officers who can supply adequate overview, the supervisor should attempt to obtain a brief voluntary overview from one involved officer.
- b. If necessary, the supervisor may administratively order any OPD officer to immediately provide public safety information necessary to secure the scene, identify injured parties and pursue suspects.
  1. Public safety information shall be limited to the information contained in Olympia Police Public Statement.
  2. The initial on-scene supervisor should not attempt to order any involved officer to provide any information other than public safety information.
- c. Provide all available information to the Shift Sergeant and TCOMM. If feasible,

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sensitive information should be communicated over secure networks.

- d. Take command of and secure the incident scene with additional OPD members until properly relieved by another supervisor or other assigned personnel or investigator.
- e. As soon as practicable, ensure that involved officers are transported (separately, if feasible) to a suitable location for further direction.
  1. Each involved OPD officer should be given an administrative order not to discuss the incident with other involved officers or OPD members pending further direction from a supervisor.
  2. When an involved officer's weapon is taken or left at the scene for other than officer-safety reasons (e.g., evidence), ensure that they are provided with a comparable replacement weapon or transported by other officers.

The Washington State Office of Independent Investigations must be immediately contacted once the scene has been rendered safe and first aid has been administered.

The supervisor will ensure all officers or employees at the scene of the incident take all lawful measures necessary for the purposes of protecting, obtaining, or preserving evidence relating to the incident until an investigator from the Washington State Office of Independent Investigations, or the CMIIT, takes charge of the scene. The primary focus must be the protection and preservation of evidence in order to maintain the integrity of the scene until it is turned over to independent investigators. The following types of evidence are of particular importance for protection and preservation:

- a. Physical evidence that is at risk of being destroyed or disappearing and cannot be easily reconstructed, including evidence which may be degraded or tainted by human or environmental factors if left unprotected or unpreserved.
- b. Identification and contact information of witnesses to the incident.
- c. Photographs and other methods of documenting the location of physical evidence and location and perspective of witnesses. (HB1267)

### 305.5.2 TURNING OVER THE SCENE AND RESPONSIBILITIES

When the investigator from the Washington State Office of Independent Investigations (OII) or Capital Metro Independent Investigation Team (CMIIT) arrives at the scene, control of the scene will be relinquished to them upon their request. The Olympia Police Department has a duty to comply with the requests of the OII and/or CMIIT.

If the Capital Metro Independent Investigation Team (CMIIT) takes control of the scene at the request of the Washington State Office of Independent Investigations (OII), the CMIIT shall relinquish control of the scene and investigation at the request of the OII when the office is on the scene or otherwise provides notice that the office is taking control of the scene. The CMIIT may continue to engage in the investigation conducted at the scene if requested to do so by the lead OII investigator, director, or the director's designee. The involvement of the CMIIT is limited

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to activities requested by the OII and must terminate following the securing of the scene and any evidence preservation or other actions as determined necessary by the office at the scene. The CMIIT may not continue to participate in the ongoing investigation.

Once the scene has been relinquished, no member of the Olympia Police Department may participate in any way in the investigation, with the exception of the use of specialized equipment that is necessary for the investigation and where no alternative exists. If there is any equipment of the Olympia Police Department used in the investigation, steps must be taken to appropriately limit the role of agency personnel in facilitating the use of that equipment or their engagement in the investigation. (HB1267)

### 305.5.3 NOTIFICATIONS

The following persons shall be notified as soon as practicable:

- a. Chief of Police
- b. Deputy Chief(s)
- c. Lieutenants
- d. Washington State Office of Independent Investigations rollout team
- e. Capital Metro Independent Investigation Team should the Washington State Office of Independent Investigation decline to investigate
- f. Professional Standards Unit supervisor
- g. City Attorney (liability response team)
- h. Psychological/peer support personnel
- i. Chaplain
- j. Coroner (if necessary)
- k. Involved officer's agency representative (if requested)
- l. Public Information Officer

All outside inquiries about the incident shall be directed to the Department PIO or PIO of the Washington State Office of Independent Investigations or the Capital Metro Independent Investigation Team PIO as appropriate.

### 305.5.4 INVOLVED OFFICERS

The following shall be considered for the involved officer:

- a. Any request for legal or union representation will be accommodated.
  1. Involved OPD officers shall not be permitted to meet collectively or in a group with an attorney or any representative prior to providing a formal interview or report.
  2. Requests from involved non-OPD officers should be referred to their

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employing agency.

- b. Discussions with licensed attorneys will be considered privileged as attorney-client communications.
- c. Discussions with agency representatives/employee groups will be privileged only as to the discussion of non-criminal information.
- d. A licensed psychotherapist shall be provided by the Department to each involved OPD officer. A licensed psychotherapist may also be provided to any other affected OPD members, upon request.
  - 1. Interviews with a licensed psychotherapist will be considered privileged.
  - 2. An interview or session with a licensed psychotherapist may take place prior to the member providing a formal interview or report. However, involved members shall not be permitted to consult or meet collectively or in a group with a licensed psychotherapist prior to providing a formal interview or report.
  - 3. A separate fitness-for-duty exam may also be required (see the Fitness for Duty Policy).
- e. The Department will consider communications between qualified peer counselors and involved officers to be privileged (RCW 5.60.060).

Care should be taken to preserve the integrity of any physical evidence present on the involved officer's equipment or clothing, such as blood or fingerprints, until investigators or lab personnel can properly retrieve it.

Each involved OPD officer shall be given reasonable paid administrative leave following an officer-involved shooting or death. It shall be the responsibility of the Shift Sergeant to make schedule adjustments to accommodate such leave.

### **305.6 CRIMINAL INVESTIGATION**

In an officer-involved shooting incident, death, or action which results in substantial bodily harm, or great bodily harm the Washington State Office of Independent Investigations (OII) has primary jurisdiction for the investigation. The OII may decline to investigate a case. In these instances, the Capital Metro Independent Investigation Team (CMIIT) will conduct the investigation.

Once public safety issues have been addressed, criminal investigators should be given the opportunity to obtain a voluntary statement from involved officers and to complete their interviews.

The following shall be considered for the involved officer:

- a. OPD supervisors and Professional Standards Unit personnel should not participate directly in any voluntary interview of OPD officers. This will not prohibit such personnel from monitoring interviews or providing the criminal investigators with topics for inquiry.
- b. If requested, any involved officer will be afforded the opportunity to consult individually with a representative of their choosing or an attorney prior to speaking with criminal investigators. However, in order to maintain the integrity of each involved officer's statement, involved officers shall not consult or meet with a

representative or an attorney collectively or in groups prior to being interviewed.

- c. If any involved officer is physically, emotionally or otherwise not in a position to provide a voluntary statement when interviewed by criminal investigators, consideration should be given to allowing a reasonable period for the officer to schedule an alternate time for the interview.
- d. Any voluntary statement provided by an involved officer will be made available for inclusion in any related investigation, including administrative investigations. However, no administratively coerced statement will be provided to any criminal investigators unless the officer consents.

### 305.6.1 REPORTS BY INVOLVED OPD OFFICERS

In the event that suspects remain outstanding or subject to prosecution for related offenses, this department shall retain the authority to require involved OPD officers to provide sufficient information for related criminal reports to facilitate the apprehension and prosecution of those individuals.

Nothing in this section shall be construed to deprive an involved OPD officer of the right to consult with legal counsel prior to completing any such criminal report.

Reports related to the prosecution of criminal suspects will be processed according to normal procedures but should also be provided to the OII or CMIIT for reference in the investigation of the officer-involved shooting or death.

### 305.6.2 Post Use of Force Procedures - Shootings, Death, Substantial, or Great Bodily Harm

The employee involved in a shooting incident of other use of force incident which results in death or substantial bodily harm will be assigned to Administrative Leave. Station duties may be offered as an alternative to Administrative Leave at the discretion of the Chief. The assignment to Administrative Leave or station duties is not to be construed as punishment or that the employee has acted improperly. Employees will only return to full duty after the review process has been completed.

All employees involved in a shooting incident or other use of force incident which results in death or substantial bodily harm shall make an official police report. The current Collective Bargaining Agreement shall be followed as to when the involved officer(s) will provide statements. It is an option for the involved employee to waive the 48-hour time period and provide a recorded statement to investigators. Involved employees may provide additional information at any time during the investigation. If the involved officer chooses to make a complete, thorough recorded statement to the Officer-Involved Critical Incident Investigation Team, this will suffice as the officer's report.

In all cases where any person has substantial bodily injuries or is killed as a result of force used by an employee, the involved employee will be requested to undergo a critical incident interview as soon as practical after the incident. The debriefing shall not be related to any departmental investigation of the incident. Nothing discussed in the interview will be reported to the

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department. The involved employee and their family may request the services of the department psychologist.

In all cases where any person has been injured or killed as a result of a firearm discharge by an employee, all associated employees (Officers, Fire Department, and Dispatch) will be encouraged to attend a post shooting trauma interview which is separate from the one attended by the involved employee.

### 305.6.3 INFORMATION SHARING

No information about the ongoing independent investigation under the jurisdiction of the OII may be shared with any member of the Olympia Police Department, except limited briefings given to the Chief of Police about the progress of the investigation. (HB1267)

### 305.6.4 INVESTIGATIVE PERSONNEL

All related department reports, except administrative and/or privileged reports, will be forwarded to the designated Investigation Unit supervisor for approval. Privileged reports shall be maintained exclusively by members who are authorized such access. Administrative reports will be forwarded to the appropriate Deputy Chief. Once approved, all police reports written regarding an incident covered by this policy will be provided to the independent investigating agency.

In conducting the investigation the OII or CMIIT shall have access to reports and information necessary or related to the investigation in the custody and control of the Olympia Police Department and any law enforcement agency responding to the scene of the incident including, but not limited to, voice or video recordings, body camera recordings, and officer notes, as well as disciplinary and administrative records except those that might be statements conducted as part of an administrative investigation related to the incident. (HB1267)

## 305.7 ADMINISTRATIVE INVESTIGATION

In addition to all other investigations associated with an officer-involved shooting or death, this department will conduct an internal administrative investigation of involved OPD officers to determine conformance with department policy. This investigation will be conducted under the supervision of the Professional Standards Unit and will be considered a confidential peace officer personnel file.

Interviews of members shall be subject to department policies and applicable laws.

- a. Any officer involved in a shooting or death may be requested or administratively compelled to provide a blood sample for alcohol/drug screening. Absent consent from the officer, such compelled samples and the results of any such testing shall not be disclosed to any criminal investigative agency.
- b. If any officer has voluntarily elected to provide a statement to criminal investigators, the assigned administrative investigator should review that statement before proceeding with any further interview of that involved officer.
  1. If a further interview of the officer is deemed necessary to determine policy



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compliance, care should be taken to limit the inquiry to new areas with minimal, if any, duplication of questions addressed in the voluntary statement. The involved officer shall be provided with a copy of his or her prior statement before proceeding with any subsequent interviews.

- c. In the event that an involved officer has elected to not provide criminal investigators with a voluntary statement, the assigned administrative investigator shall conduct an administrative interview to determine all relevant information.
  1. Although this interview should not be unreasonably delayed, care should be taken to ensure that the officer's physical and psychological needs have been addressed before commencing the interview.
  2. If requested, the officer shall have the opportunity to select an uninvolved representative to be present during the interview. However, in order to maintain the integrity of each individual officer's statement, involved officers shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.
  3. Administrative interviews should be recorded by the investigator. The officer may also record the interview.
  4. The officer shall be informed of the nature of the investigation. If an officer refuses to answer questions, they should be given their Garrity rights and ordered to provide full and truthful answers to all questions. The officer shall be informed that the interview will be for administrative purposes only and that the statement cannot be used criminally.
  5. The Professional Standards Unit shall complete all relevant information and reports necessary for the Department to determine compliance with applicable policies.
  6. Regardless of whether the use of force is an issue in the case, the completed administrative investigation shall be submitted to the Use of Force Review board, which will restrict its findings as to whether there was compliance with the Use of Force Policy.
  7. Any other indications of potential policy violations shall be determined in accordance with standard disciplinary procedures.

### **305.8 CIVIL LIABILITY RESPONSE**

A member of this department may be assigned to work exclusively under the direction of the legal counsel for the Department to assist in the preparation of materials deemed necessary in anticipation of potential civil litigation.

All materials generated in this capacity shall be considered attorney work product and may not

be used for any other purpose. The civil liability response is not intended to interfere with any other investigation but shall be given reasonable access to all other investigations.

### **305.9 DEBRIEFING**

Following an officer-involved shooting or death, the Olympia Police Department should conduct both a critical incident/stress debriefing and a tactical debriefing.

#### **305.9.1 CRITICAL INCIDENT/STRESS DEBRIEFING**

A critical incident/stress debriefing should occur as soon as practicable. The Support Services Deputy Chief is responsible for organizing the debriefing. Notes and recorded statements should not be taken because the sole purpose of the debriefing is to help mitigate the stress-related effects of a traumatic event.

The debriefing is not part of any investigative process. Care should be taken not to release or repeat any communication made during a debriefing unless otherwise authorized by policy, law or a valid court order.

Attendance at the debriefing shall only include those members of the Department directly involved in the incident, which can include support personnel (e.g., dispatcher, other non-sworn). Family or other support personnel may attend with the concurrence of those involved in the incident.

The debriefing shall be closed to the public and should be closed to all other members of the Department, including supervisory and Professional Standards Unit personnel.

#### **305.9.2 TACTICAL DEBRIEFING**

A tactical debriefing should take place to identify any training or areas of policy that need improvement. The Chief of Police should identify the appropriate participants. This debriefing should not be conducted until all involved members have provided recorded or formal statements to criminal and/or administrative investigators.

### **305.10 MEDIA RELATIONS**

Any media release shall be prepared with input and concurrence from the supervisor and department representative responsible for each phase of the investigation. Releases will be available to the Shift Sergeant, Operations Deputy Chief and Public Information Officer in the event of inquiries from the media.

No involved OPD officer shall make any comment to the media unless they are authorized by the Chief of Police or a Deputy Chief.

Department members receiving inquiries regarding officer-involved shootings or deaths occurring in other jurisdictions shall refrain from public comment and will direct those inquiries to the agency having jurisdiction and primary responsibility for the investigation.