

Officer-Involved Shootings and Deaths

305.1 PURPOSE AND SCOPE

This policy and establishes guidelines for the investigation of an incident in which a person is injured or dies as the result of an officer-involved shooting or dies as a result of other action of an officer.

In other incidents not covered by this policy, the Chief of Police has the discretion and authority to decide that the investigation will follow the process set forth in this policy.

305.2 POLICY

The policy of the Santa Ana Police Department is to ensure that officer-involved shootings and deaths are investigated in a thorough, fair and impartial manner.

305.3 TYPES OF INVESTIGATIONS

Officer-involved shootings and deaths involve numerous separate and independent investigations that may include:

- A criminal investigation of the suspect's actions.
- A criminal investigation of the involved officers actions.
- An administrative investigation as to policy compliance by involved officers.
- A civil investigation to determine potential civil liability.

305.4 CONTROL OF INVESTIGATIONS

Investigators from surrounding agencies may be assigned to work on the criminal investigation of an officer-involved shooting and/or death. This may include at a minimum one investigator from the agency that employs the involved officer.

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 Santa Ana Police Department would control the investigation if the suspect's crime occurred in Santa Ana.

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.

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305.4.2 CRIMINAL INVESTIGATION OF OFFICER ACTIONS

The control of the criminal investigation into the involved officer's conduct during the incident will be determined by either the Orange County District Attorney's office or the California Department of Justice. When an officer from this department is involved, the criminal investigation will be handled according to the Criminal Investigation section of this policy.

Requests made of this department to investigate an officer involved shooting or death involving an officer from an outside agency 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 all involved officers is controlled by the respective employing agency.

305.5 INVESTIGATION PROCESS

The following guidelines should be used in the investigation of an officer-involved shooting or death.

305.5.1 UNINVOLVED OFFICER RESPONSIBILITIES

Upon arrival at the scene of an officer-involved shooting, the first uninvolved SAPD 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) Take reasonable steps to obtain emergency medical attention for apparent injured individuals.
- (c) Request additional resources from the Department or other agencies.
- (d) Coordinate a perimeter or if applicable, pursuit of suspects.
- (e) Check for injured persons and evacuate as needed.
- (f) Brief the supervisor immediately upon arrival.

305.5.2 SUPERVISOR RESPONSIBILITIES

Upon arrival at the scene, the first uninvolved SAPD 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 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) The supervisor shall administratively order any SAPD officer to immediately provide a Public Safety Statement necessary to secure the scene, identify injured parties and pursue suspects.

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1. The Public Safety Statement shall be limited to such things as outstanding suspect information, number and direction of any shots fired, perimeter of the incident scene, identity of known or potential witnesses and any other pertinent information.
 2. The initial on-scene supervisor should not attempt to order any involved officer to provide any additional information other than the Public Safety Statement set forth above.
- (c) Provide all available information to the Watch Commander and Communications Division. If feasible, sensitive information should be communicated over secure networks.
- (d) Take command of and secure the incident scene with additional SAPD 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 SAPD officer should be given an administrative order not to discuss the incident with other involved officers or SAPD 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 he/she is provided with a comparable replacement weapon or transported by other officers.
 3. Take custody and secure all Body Worn Cameras of involved officers. For further details, refer to Body Worn Camera Procedures.

305.5.3 WATCH COMMANDER RESPONSIBILITIES

Upon learning of an officer-involved shooting or death, the Watch Commander shall be responsible for coordinating all aspects of the incident until he/she is relieved by the Chief of Police or a Bureau Commander. All outside inquiries about the incident shall be directed to the Watch Commander.

305.5.4 NOTIFICATIONS

As Soon as practicable, the following person(s) shall be notified following an officer-involved shooting or death::

- Chief of Police
- Investigations Bureau Commander
- Officer Involved Shooting Investigation Crimes Against Persons - Homicide Sergeant
- Orange County District Attorney - OIS Team
- Internal Affairs Commander
- Legal Advisor to the Department and/or the City Attorney's Office
- Psychological/peer support personnel
- Chaplain

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- Coroner (if necessary)
- Involved officer's agency representative (if requested)
- Public Information Officer

For further details refer to the Major Incident Notification procedure.

305.5.5 NOTIFICATION TO DEPARTMENT OF JUSTICE

The California Department of Justice (DOJ) is required to investigate an officer-involved shooting resulting in the death of an unarmed civilian. The Watch Commander should promptly notify the DOJ in all incidents involving an officer-involved shooting resulting in the death of an unarmed civilian, including where it is undetermined if the civilian was unarmed.

For purposes of notification, pursuant to Government Code § 12525.3 the following definitions apply:

- **Unarmed Civilian:** Anyone who is not in possession of a deadly weapon.
- **Possession:** A civilian is in "possession" if the weapon is under the civilian's dominion and control at the time of the shooting. Possession usually requires that the weapon is available for use. Where a civilian attempts to take control of an officer's firearm, the civilian is not in possession unless the officer loses control of the firearm.
- **Deadly Weapon:** A "deadly weapon" includes, but is not limited to, any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged, or a switchblade knife, pilum, ballistic knife, metal knuckle knife, dagger, billy, blackjack, plastic knuckles, or metal knuckles." All firearms, and BB/pellet guns, even if unloaded or inoperable, are deadly weapons. Objects that have a legitimate non-weapon purpose are considered deadly weapons only when, based on all the circumstances, they are actually being used in a manner likely to produce death or great bodily injury. The following are examples of objects that have been considered a deadly weapons when used in that manner: knives, box cutters, screwdrivers, bottles, chains, automobiles, rocks, razor blades, and iron bars. Replica firearms are not considered deadly weapons unless they are used in some particular manner likely to produce death or great bodily injury (e.g., as a bludgeon).

305.5.6 INVOLVED OFFICERS

The following shall be considered for the involved officer:

- (a) Any request for legal or union representation will be accommodated.
 1. Involved SAPD 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-SAPD officers should be referred to their employing agency.
- (b) Discussions with licensed attorneys will be considered privileged as attorney-client communications.

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- (c) Discussions with agency representatives/employee groups will be privileged only as to the discussion of non-criminal information (Government Code § 3303(i)).
- (d) A licensed psychotherapist shall be provided by the Department to each involved SAPD officer. A licensed psychotherapist may also be provided to any other affected SAPD 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) Communications between the involved officer and a peer support member are addressed in the Wellness Program Policy.

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 SAPD officer shall be given reasonable paid administrative leave following an officer-involved shooting or death. It shall be the responsibility of the Watch Commander to make schedule adjustments to accommodate such leave.

305.6 CRIMINAL INVESTIGATION

The District Attorney's Office is responsible for the criminal investigation into the circumstances of any officer-involved shooting or death.

If available, investigative personnel from this department may be assigned to partner with investigators from outside agencies or the District Attorney's Office to avoid duplicating efforts in related criminal investigations.

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) SAPD supervisors and Internal Affairs personnel should not participate directly in any voluntary interview of SAPD 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 his/her choosing or an attorney prior to speaking with criminal investigators (Government Code § 3303(i)). 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

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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 SAPD OFFICERS

In the event that suspects remain outstanding or subject to prosecution for related offenses, the department shall retain the authority to require the involved SAPD officer(s) provide sufficient information for related criminal reports to facilitate the apprehension and prosecution of those individuals (Government Code § 3304(a)).

While the involved SAPD officer may write the report, it is generally recommended such reports be completed by assigned investigators, who should interview all involved officers as victims/witnesses. Since the purpose of these reports is to facilitate criminal prosecution, statements of involved officers should focus on evidence to establish the elements of the suspect's criminal activities. Care should be taken not to duplicate information provided by involved officers in other reports.

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

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

305.6.2 WITNESS IDENTIFICATION AND INTERVIEWS

Because potential witnesses to an officer-involved shooting or death may become unavailable or the integrity of their statements compromised with the passage of time, a supervisor should take reasonable steps to promptly coordinate with criminal investigators to utilize available personnel for the following:

- (a) Identification of all persons present at the scene and in the immediate area.
 - 1. When feasible, a recorded statement (audio) or video recorded statement (via BWC) should be obtained from those persons who claim they did not witness the incident even though they were present at the time it occurred.
 - 2. Any potential witness who is unwilling or unable to remain available for a formal interview should not be detained absent reasonable suspicion to detain or probable cause to arrest. Without detaining the individual for the sole purpose of identification, officers should attempt to identify the witness prior to his/her departure.
- (b) Witnesses who are willing to provide a formal interview should be asked to meet at a suitable location where criminal investigators may obtain a recorded statement. Such witnesses, if willing, may be transported by a member of the Department.

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1. A written, verbal or recorded statement (audio or via BWC) of their consent should be obtained prior to transporting a witness. When the witness is a minor, consent should be obtained from the minor's parent or guardian, prior to transportation.
- (c) Promptly contacting the suspect's known family and associates to obtain any available and untainted background information about the suspect's activities and state of mind prior to the incident.

305.6.2 INVESTIGATIVE PERSONNEL

Once notified of an officer-involved shooting or death, it shall be the responsibility of the designated Investigative Bureau supervisor to assign appropriate investigative personnel to handle the investigation of related crimes. Department investigators will be assigned to work with investigators from the District Attorney's Office and may be assigned to separately handle the investigation of any related crimes not being investigated by the District Attorney's Office.

All related department reports, except administrative and/or privileged reports, will be forwarded to the designated Investigative Bureau supervisor for approval. Privileged reports shall be maintained exclusively by members who are authorized such access. Administrative reports will be forwarded to the appropriate Bureau Commander.

305.7 ADMINISTRATIVE INVESTIGATION

In addition to all other investigations associated with an officer-involved shooting or death, the department will conduct an internal administrative investigation of SAPD officers to determine conformance with department policy. The investigation will be conducted under the supervision of the Internal Affairs and will be considered a confidential officer personnel file.

Interviews of members shall be subject to department policies and applicable laws (see the Personnel Complaints Policy).

- (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 the statement prior to proceeding with any further interview of the involved officer.
 1. If a further interview of the officer is deemed necessary to determine policy 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/her first statement prior to proceeding with a subsequent interview.
- (c) In the event an involved officer has elected not to provide criminal investigators with a voluntary statement, the assigned administrative investigator shall conduct an administrative interview to determine all relevant information.

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1. The interview of the involved officer shall take place within 24 hours of the incident unless the Chief of Police or his designee determines exceptional circumstances exist that would justify a delay. The Chief of Police shall determine when an exceptional circumstance exists.
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 (Government Code § 3303(i)).
3. Administrative interviews should be recorded by the investigator. The officer may also record the interview (Government Code § 3303(g)).
4. The officer shall be informed of the nature of the investigation. If an officer refuses to answer questions, he/she should be given his/her *Lybarger* or *Garrity* rights and ordered to provide full and truthful answers to all questions. The officer shall be informed the interview will be for administrative purposes only and the statement cannot be used criminally.
5. The Internal Affairs shall compile all relevant information and reports necessary for the Department to determine compliance with applicable policies. Regardless of whether the use of force is an issue in the case, the completed administrative investigation shall be submitted to the Shooting Review Board at the Chief of Police's direction, which will restrict its findings as to whether there was compliance with the Use of Force Policy.
6. 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 AUDIO AND VIDEO RECORDINGS

For direction with regard to audio and video recordings, refer to the Body Worn Camera Procedures.

305.10 DEBRIEFING

Following an officer-involved shooting or death, the Santa Ana Police Department should conduct both a Critical Incident Stress Debriefing and a tactical debriefing. See the Wellness Program Policy for guidance on Critical Incident Stress Debriefings.

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305.10.1 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.

305.11 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 Watch Commander, Investigations Bureau Commander and Public Information Officer in the event of inquiries from the media.

The Department shall not subject any involved SAPD officer to visits by the media (Government Code § 3303(e)). No involved SAPD officer shall make any comment to the media unless he/she is authorized by the Chief of Police or a Bureau Commander. 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.

305.12 REPORTING

If the death of an individual occurs in the Department's jurisdiction and qualifies to be reported to the state as a justifiable homicide or an in-custody death, the Internal Affairs Commander will ensure that the Records Manager is provided with enough information to meet the reporting requirements (Penal Code § 196; Penal Code § 13022).