
Officer-Involved Deadly Force

310.1 PURPOSE AND SCOPE

The intent of this policy is to establish policy and procedures for the investigation of an incident in which a person is injured as the result of a police shooting and to ensure that such incidents be investigated in a fair and impartial manner.

310.2 INVESTIGATION RESPONSIBILITY

This department conforms to the Santa Clara County Police Chief's Association Officer Involved Incident Guidelines.

Nothing in this policy is intended to increase, modify, or in any way affect the current legal standards nor shall any deviation from these guidelines be considered a breach of any legal standard.

310.3 TYPES OF INVESTIGATIONS

Officer-involved shootings involve several separate investigations. The investigations may include:

- (a) A criminal investigation of the incident by the agency having jurisdiction where the incident occurred. This department may relinquish its criminal investigation to an outside agency with the approval of the Police Chief or a Captain
- (b) A criminal investigation of the involved officer(s) conducted by an outside agency
- (c) A civil investigation to determine potential liability conducted by the involved officer's agency
- (d) An administrative investigation conducted by the involved officer's agency, to determine if there were any violations of department policy

310.4 JURISDICTION

Jurisdiction is determined by the location of the shooting and the agency employing the involved officer(s). The following scenarios outline the jurisdictional responsibilities for investigating officer-involved use of deadly force:

310.4.1 MOUNTAIN VIEW POLICE DEPARTMENT OFFICER_DEPUTY WITHIN THIS JURISDICTION

The Mountain View Police Department is responsible for the criminal investigation of the suspect's and officer's actions, the civil investigation, and the administrative investigation. Independent oversight of the criminal investigation of the officer-involved use of deadly force will be conducted by the District Attorney's Office.

310.4.2 ALLIED AGENCY'S OFFICER WITHIN THIS JURISDICTION

The Mountain View Police Department is responsible for the criminal investigation of the suspect's and officer's actions. Independent oversight of the criminal investigation of the officer involved use

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of deadly force will be conducted by the District Attorney's Office. The officer's employing agency will be responsible for any civil and/or administrative investigation(s).

310.4.3 MOUNTAIN VIEW POLICE DEPARTMENT OFFICER_DEPUTY IN ANOTHER JURISDICTION

The agency where the incident occurred has criminal jurisdiction and is responsible for the criminal investigation of the incident. That agency may relinquish its criminal investigation of the suspect(s) to another agency. The Mountain View Police Department will conduct timely civil and/or administrative investigations.

310.4.4 INVESTIGATION RESPONSIBILITY MATRIX

The following table identifies the possible scenarios and responsibilities for the investigation of officer-involved use of deadly force:

	Criminal Investigation of Suspect(s)	Criminal Investigation of Officer(s)	Administrative Investigation
Mountain View Officer in the City	Mountain View Detectives	Mountain View Detectives	Mountain View Professional Standards Unit
Another Agency's Officer in The City of Mountain View	Mountain View Detectives	Mountain View Detectives	Involved Officer's Agency
Mountain View Officer in Another Jurisdiction	Agency where incident occurred	Decision made by agency where incident occurred	Mountain View Professional Standards Unit

310.5 THE INVESTIGATION PROCESS

The following procedures are guidelines used in the investigation of an officer-involved use of deadly force.

310.5.1 DUTIES OF INITIAL ON SCENE SUPERVISOR

Upon arrival at the scene of an officer-involved use of deadly force, the first uninvolved supervisor should:

- (a) Take all reasonable steps to obtain emergency medical attention for all apparently injured individuals.
- (b) Attempt to obtain a brief overview of the situation from any officer(s) not involved in the use of deadly force
 1. In the event that there are no non-involved officers, the supervisor should attempt to obtain a brief voluntary overview from one involved officer.
- (c) If necessary, the supervisor may administratively order any officer from this department to immediately provide publicsafetyinformation necessary to secure the scene and pursue suspects.

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1. Public safety information shall be limited to such things as outstanding suspect information, number and direction of shots fired, parameters of the incident scene, identity of known witnesses and similar information.
- (d) Absent a voluntary statement from any officer(s), the initial on scene supervisor should not attempt to order any officer to provide other than public safety information.
- (e) Provide all available information to the Watch Commander and Communications. (If feasible, sensitive information should be communicated over secure networks).
- (f) Take command of and secure the incident scene with additional personnel until relieved by a detective supervisor or other assigned personnel.
- (g) As soon as practical, involved officers should respond or be transported (separately, if feasible) to the station for further direction.
 1. Each involved officer should be given an administrative order not to discuss the incident with other involved officers pending further direction from a supervisor.
 2. When feasible, when an officer's weapon is taken or left at the scene (e.g. evidence), the officer will be provided with a comparable replacement weapon or transported to the station by other officers.

310.5.2 FIELD SUPERVISOR DUTIES

Upon learning of an officer-involved use of deadly force, the Watch Commander shall be responsible for coordinating all aspects of the incident until relieved by a Commanding Officer.

310.5.3 NOTIFICATIONS

The following person(s) shall be notified as soon as practical:

- Command Staff see Policy Manual § 358 Major Incident Notification
- On-call District Attorney and investigators
- Professional Standards Supervisor
- Psychological/Peer Support Personnel
- Coroner (if necessary)
- Officer Representative through the POA (if requested)

All outside inquiries about the incident shall be directed to a Patrol Lieutenant.

310.5.4 MEDIA RELATIONS

A single press release shall be prepared with input and concurrence from the supervisor and agency representative responsible for each phase of the investigation. This release will be available to the Command Staff and the Community Action and Information Officer in the event of inquiries from the media.

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It will be the policy of this Department to not release the identities of involved officers absent their consent or as required by law. Moreover, no involved officer shall be subjected to contact from the media (Government Code § 3303(e)) and no involved officer shall make any comments to the press unless authorized by the Chief of Police or a Division Captain.

Law enforcement officials receiving inquiries regarding incidents occurring in other agency jurisdictions shall refrain from public comment and will direct those inquiries to the agency having jurisdiction and primary responsibility for the investigation.

310.5.5 INVOLVED OFFICERS

Once the involved officer(s) have arrived at the station, the Watch Commander should admonish each officer that the incident shall not be discussed except with authorized personnel or representatives. The following shall be considered for the involved officer:

- (a) Any request for department or legal representation will be accommodated, however, no involved officer shall be permitted to meet collectively or in a group with an attorney or any representative prior to providing a formal interview or report (Government Code § 3303(i)).
- (b) Discussions with licensed attorneys will be considered privileged as attorney-client communications.
- (c) Discussions with department representatives (e.g., employee association) will be privileged only as to the discussion of non-criminal information however.
- (d) A psychotherapist shall be provided by the Department to each involved officer, or any other officer, upon request.
 - 1. Interviews with a licensed psychotherapist will be considered privileged and will not be disclosed except to the extent that the officer is or is not fit for return to duty.
 - 2. An interview or session with a licensed psychotherapist may take place prior to the involved officer providing a formal interview or report, but the involved officers 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.
- (e) Although the Department will honor the sensitivity of communications with peer counselors, there is no legal privilege to such. Peer counselors are cautioned against discussing the facts of any incident with an involved or witness officer.

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

Detectives shall make reasonable accommodations to the officer's physical and emotional needs (Government Code § 3303(d)).

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

310.6 THE SHOOTING INCIDENT CRIMINAL INVESTIGATION

310.6.1 DETECTIVE PERSONNEL

Once notified of an officer-involved use of deadly force, it shall be the responsibility of the Investigative Services Division Captain to assign appropriate detective personnel to handle the department's investigation of related crimes.

All related departmental reports except administrative and/or privileged reports will be forwarded to one designated detective supervisor for approval. Privileged reports shall be maintained exclusively by those personnel authorized such access. Administrative reports will be forwarded to the appropriate Division Captain.

310.6.2 CRIMINAL INVESTIGATION

It shall be the policy of this Department to utilize the District Attorney's Office to conduct independent oversight of our investigation of any officer-involved use of deadly force involving death.

Once public safety issues have been addressed, criminal investigators will be given the next opportunity to interview involved officers in order to provide the officer(s) with an opportunity to give a voluntary statement. The following shall be considered for the involved officer:

- (a) Supervisors and Professional Standards Unit personnel should not participate directly in any voluntary interview of officers. (This will not prohibit such personnel from monitoring such interviews or indirectly providing areas for inquiry)
- (b) If requested, any involved officer will be afforded the opportunity to consult with a representative of his or her choosing or an attorney, prior to speaking with criminal investigators
- (c) Any voluntary statement provided by the officer(s) will be made available for inclusion in the administrative or other related investigations
- (d) Absent consent from the involved officer or as required by law, no administratively coerced statement(s) will be provided to any criminal investigators

310.6.3 REPORTS BY INVOLVED OFFICERS

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

While the involved officer may write the report, it is generally recommended that such reports be completed by assigned investigators who should interview involved officers as victims/witnesses.

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Since the purpose of these reports will be to facilitate criminal prosecution, statements of involved officers should focus on evidence to establish the elements of criminal activities by involved suspects. 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 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 included for reference in the investigation of the officer-involved use of deadly force.

310.6.4 WITNESS IDENTIFICATION AND INTERVIEWS

Because potential witnesses to an officer-involved shooting or other major incident 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) Identify all persons present at the scene and in the immediate area.
 1. When feasible, a recorded statement should be obtained from those persons who claim not to have witnessed the incident but who 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 department personnel.
 1. A written, verbal or recorded statement of consent should be obtained prior to transporting a witness in a department vehicle. When the witness is a minor, consent should be obtained from the parent or guardian, if available, prior to transportation.
- (c) Assign available personnel to promptly contact 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 contact with officers.

310.7 ADMINISTRATIVE INVESTIGATION

In addition to all other investigations associated with an officer-involved shooting, this department will conduct an internal administrative investigation 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.

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- (a) Any officer involved in a shooting may be 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 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 interview(s) (Government Code § 3303(g))
- (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 (Government Code § 3303(i)). 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 interview(s) should be recorded by the investigator (the officer may also record the interview) (Government Code § 3303(g)).
 - 4. The officer shall be informed of all constitutional *Miranda* rights (Government Code § 3303(h)) and, assuming no voluntary waiver, will then be given an administrative order to provide full and truthful answers to all questions (Government Code § 3303(e)). The officer shall be informed, however, that the interview will be for administrative purposes only and that the statement cannot be used criminally (The *Lybarger* or *Garrity* admonishment).
 - 5. The administrative interview shall be considered part of the officer's confidential personnel file.
 - 6. The Professional Standards Unit shall compile all relevant information and reports necessary for the Department to determine compliance with applicable policies.
 - 7. The completed administrative investigation shall be submitted to the Use of Deadly Force Review Board, which will restrict its findings as to whether there was compliance with the Department use of deadly force policy.

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8. Any other indications of potential policy violations shall be determined in accordance with standard disciplinary procedures.

310.8 AUDIO AND VIDEO RECORDINGS

Any officer involved in an incident may be permitted to review available Mobile Audio Video (MAV) or other video or audio recordings prior to providing a recorded statement or completing reports.

Upon request, non-law enforcement witnesses who are able to verify their presence and their ability to contemporaneously perceive events at the scene of an incident may also be permitted to review available MAV or other video or audio recordings with approval of assigned investigators or a supervisor.

Any MAV and other known video or audio recordings of an incident should not be publicly released during an ongoing investigation without consulting the District Attorney or City Attorney's Office as appropriate.