



SANTA CLARA COUNTY POLICE CHIEFS' ASSOCIATION

Officer-Involved Incident Guidelines Revised by Santa Clara County Police Chiefs' Association, September 2021

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FOREWORD

Investigations of Officer-Involved Incidents are frequently more complex and demanding than other incidents which do not involve peace officers or custodial officers. Applicable administrative, criminal statutory and case law is complex and often contradictory. The collection of evidence and its analysis is at issue long after the incident. Questions arise about the propriety of a law enforcement agency conducting an investigation wherein one of its own officers is involved. Public and news media attention is intense.

The potential social, civil, administrative, and criminal consequences of Officer-Involved Incidents are profound and affect many parties. If adequate safeguards are not delineated in advance, the public's "right to know" may well conflict with the progress of the investigation and the "right to a fair trial." When several agencies are involved, differences in policy, procedure, personnel, resources, and interests may conflict, hamper, or delay the investigative process.

As a result of these factors, these guidelines have been developed to guide individual agencies conducting investigations of Officer-Involved Incidents. The goal of these guidelines is to help assure that such cases are fully and fairly investigated, and that proper dispositions of such cases are made based upon all the legally available, relevant evidence.

This document represents the consensus of member agencies as to how such cases are to be investigated. The guidelines permit individual agencies to make modifications in order to meet individual agency regulations. The guidelines are not intended to increase the civil or criminal liability of member agencies or their employees and shall not be construed to create any mandatory obligations to, or on behalf of, third parties. Agencies represented should review their related policies and make every effort to modify them to avoid conflict with these guidelines. Each agency's individual policy may be attached to these guidelines.

A. GENERAL POLICY STATEMENT

Investigations of Officer-Involved Incidents will be conducted to develop all available relevant information about the incident. They will be performed in a manner that provides for a thorough and credible investigation that is free from conflicts-of-interest.

Such investigations are designated "Incident Investigations", the goals of which are to determine:

1. The identity of the person(s) responsible;
2. The existence or non-existence of conduct constituting a criminal act; and
3. If it is determined that a criminal act has been committed, then the following are to be determined:
 - a. Any legal or factual defenses to the crime;
 - b. The existence of any factors which might mitigate or aggravate punishment for the criminal conduct.

The investigations shall be performed in a manner consistent with the rules of evidence in a criminal proceeding. Any administrative or civil investigation shall be separate and distinctly different from the Incident Investigation.

The investigation of each Incident will commence as promptly as practicable after the occurrence.

B. DEFINITIONS

For the purpose of these guidelines the following definitions are offered:

"Officer-Involved Incident"

An "Officer-Involved Incident" is any incident in which a peace officer or custodial officer (both herein referred to as "Officer"), acting under color of authority, is directly involved in the following:

1. Any discharge of a firearm by an Officer which proximately causes the death of, or injury to another.
2. An intentional use of any other deadly or dangerous weapon by an Officer which proximately causes the death of, or injury likely to produce death to another.
3. An intentional act on the part of an Officer that proximately causes the death of, or injury likely to produce death to another.

4. Any death of person while in custody, or under Officer control.
 - a. Excluded from mandatory protocol investigations are post-booking deaths of prisoners, which occur in jails, hospitals or other facilities, while the prisoner is under the custody and care of a Law Enforcement Agency's (LEA) medical care provider for diagnosed diseases or conditions which have been known and monitored and/or treated by the LEA's medical care provider prior to death, but only when the deaths were medically expected and when custodial suicide, trauma, accident, or use of intoxicants was not involved.

"Peace Officer" and "Custodial Officer"

1. Local law enforcement officers defined by Penal Code § 830.1 et seq. (e.g., Municipal Police, Sheriff, D.A. Investigators, and Reserve Officers and Reserve Deputies defined by Penal Code §830.6).
2. Custodial Officers defined by Penal Code § 831.5 (e.g., DOC Correctional Officers).
3. Probation Officers defined by Penal Code § 830.5.
4. State Officers (e.g., CHP, DOJ, University Police, Parole Officers).
5. Federal Agents (e.g., FBI, BATFE, U.S. Marshall, I.C.E., DEA);
6. Welfare Fraud and Coroner Investigators defined by Penal Code§ 830.35.

"Primary Agency"

The agency, or agencies, with geographic jurisdiction over the incident.

"Employing Agency"

The agency which employs the Involved Officer.

"Officer-Involved"

1. The Officer whose act may be a "proximate cause" of the injury to another person; or
2. The Officer who may intend that his/her act be a "proximate cause" of the injury to another person.

"Proximate Cause"

A cause which, in a natural and continuous sequence, produces the injury, and without which the injury would not have occurred.

"Incident Investigator"

An investigator assigned to the Incident Investigative Team.

"Incident Investigative Team"

Incident Investigators assigned by the Primary Agency(cies) and the District Attorney's Office to conduct the to conduct the Incident Investigation. Persons from an outside agency may also be part of the Incident Investigative Team upon mutual agreement of the Primary Agency and the District Attorney's Office and upon concurrence from the Case Management Team.

"Case Management Team"

The team responsible for managing the Officer Involved Incident and for the supervision of the investigators assigned to the Incident Investigative Team.

C. INVESTIGATIVE RESPONSIBILITY

The responsibility for conducting the Incident Investigation rests with the Incident Investigative Team. The Primary Agency has responsibility for the preservation and security of the scene(s), collection of evidence at the scene(s) and from the Involved Officer(s), including their equipment and/or vehicles, when appropriate.

1. Initial officers at the scene will make all reasonable efforts to preserve and secure the scene, pending the arrival of the Incident Investigators.
2. The Incident Investigative Team usually will conduct the investigation. However, they may seek investigative assistance from other agencies or by those agencies otherwise noted in this protocol.
3. If investigative assistance is obtained from another agency, the Incident Investigative Team may maintain control of the investigation itself, or it may relinquish the primary responsibility for the investigation to the agency from which it obtained the assistance.
4. The District Attorney Crime Lab or the crime scene unit of another jurisdiction may be called upon for assistance at the discretion of the Incident Investigative Team.
5. In Incidents where a vehicular collision or other vehicular movement is involved, another agency may be called upon for investigatory assistance in that phase of the Incident Investigation.

Until agreement regarding investigative responsibility is reached among the various Involved Agencies in a specific case, immediate investigative responsibility is determined in this order:

1. Incident Investigative Team.

2. The agency whose on-duty employee, acting apparently for a law enforcement purpose, was an Involved Officer.
3. The agency within whose jurisdiction the decedent's body was first discovered after infliction of the injury.

If an on-duty peace officer is involved in an Incident within the geographical jurisdiction of another agency, but was acting in the performance of his/her duties in connection with a criminal matter originating in his/her own jurisdiction, the Primary Agency may defer its investigative authority to the officer's own agency, which will then investigate the Incident as part of the Incident Investigative Team.

The Sheriff's Office maintains jurisdictional responsibility for the investigation of criminal conduct that occurs at certain locations within the county. As such the Sheriff's Office shall be part of the Incident Investigative Team and the Incident Management Team for Incidents that occur or emanate from the below listed locations or any other location as noted in the current "Mutual Protocol entered by and between the City of San Jose, on behalf on the San Jose Police Department and, the Office of the Sheriff – Santa Clara County":

1. Within the buildings or secured grounds of detention or correctional facilities, including:
 - a. AIB, 875 North San Pedro Street, San Jose
 - b. Elmwood Correctional Center (including grounds), 701 South Abel Street, Milpitas
 - c. Juvenile Hall, 840 Guadalupe Parkway, San Jose
 - d. Main Jail, 180 West Hedding Street, San Jose
2. Within the buildings or secured grounds of Superior Court Facilities, including:
 - a. Family Justice Center Courthouse, 201 N. First St., San Jose
 - b. Hall of Justice (East and West), 190 West Hedding Street, San Jose
 - c. Juvenile Justice Court, 840 Guadalupe Parkway, San Jose
 - d. Downtown Superior Courthouse, 191 North First Street, San Jose
 - e. Old Courthouse, 161 North First Street, San Jose
 - f. Palo Alto Courthouse, 270 Grant Avenue, Palo Alto

- g. Santa Clara Courthouse, 1095 Homestead Road, Santa Clara
 - h. South County Courthouse, 301 Diana Ave., Morgan Hill
3. On Santa Clara Valley Transportation Authority (VTA) equipment and property, including:
- a. VTA light-rail trains;
 - b. VTA busses;
 - c. VTA light rail stations and platforms; and
 - d. VTA parking lots.
4. Within the facilities or grounds of Stanford University.
5. Within the facilities or grounds of the County hospital facility including:
- a. Valley Medical Center, 751 S. Bascom Ave., San Jose;

D. ROLE OF THE DISTRICT ATTORNEY¹

During an Incident Investigation, the District Attorney's Office will:

- 1. Participate in the management of the incident along with assigned command from the Primary Agency.
- 2. Assist and advise the Incident Investigative Team on the various legal issues that may arise, including search and seizure, *Miranda*, identification procedures, arrests, elements of crimes, immunity, and voluntariness.
- 3. Assist in the writing of search warrants and arrest warrants.
- 4. Monitor the Incident investigation.
- 5. Ultimately determine if criminal liability exists.

¹ In the event the Involved Officer is a District Attorney Investigator, District Attorney Investigators will not participate on the Incident Investigative Team. Rather, investigators from another Santa Clara County police department or Sheriff's Office, and not part of the Primary Agency, will assume the role of the District Attorney Investigator(s) on the Incident Investigative Team. Such investigators will be selected by the Incident Management Team upon approval of the respective Chief of Police, Sheriff or command staff designees.

E. MANAGEMENT OF AN OFFICER INVOLVED INCIDENT

A Command staff member from the Primary Agency and the District Attorney's Office Bureau of Investigation, along with the assigned Deputy District Attorney, shall comprise the membership of the "Case Management Team (CMT)" for an Officer-Involved Incident as defined in this protocol. Their function in this regard is to co-manage the incident and to ensure the following:

1. The provisions of this protocol are followed
2. The CMT members are co-equal in their authority
3. The CMT works together to manage the criminal investigation to ensure the best investigative outcome

In the event the Primary Agency or the District Attorney's Office defers their responsibilities to another law enforcement agency (e.g. the 'Employing Agency'), the outside agency command staff member shall also replace the respective member on the Case Management Team.

Generally, the officials assigned to the Case Management Team should hold the approximate rank of lieutenant, or if holding lesser rank, should be given lieutenant-level authority by their agencies for their participation on this Team.

These individuals should be experienced and knowledgeable in Officer-Involved Incident investigations; should have supervisory authority over investigators from their respective agencies; and should have sufficient knowledge and authority to make a variety of decisions pertaining Officer-Involved Incidents.

Officials assigned to the Case Management Team work together as a team and the members are co-equal. While their primary function is to work with each other to manage and coordinate the Criminal Investigation, occasionally one or more members may need to perform some Criminal Investigative functions.

Should a conflict occur amongst members of the Case Management Team that cannot be resolved and such conflict would have a material and adverse effect on the investigative outcome of the Officer-Involved Incident, the primary agency's Chief or Sheriff, or designee, shall be consulted along with the District Attorney or his/her designee.

F. NOTIFICATIONS

Upon identifying an occurrence as being an "Officer-Involved Incident", the Employing Agency shall make the following notifications as promptly as possible:

1. Intra-department, as required by that agency's procedures;
2. Primary Agency (If different from the Employing Agency); and

3. District Attorney's Chief Investigator or designee (via County Communications).
4. On-Call Homicide Deputy District Attorney (via County Communications).

The Primary Agency shall make the following confirmations and notifications as promptly as possible:

1. Confirm the on-call Homicide Deputy District Attorney and the District Attorney's on-call Chief Investigator, or designee, has been notified; and
2. Upon confirmation of a fatality, notification of the Coroner's Office.

G. SCENE PROCEDURES AND SECURITY PENDING ARRIVAL OF INVESTIGATORS

Emergency life saving measures have the first priority. If a person is transported to a medical facility with injuries, an officer should accompany that person in the same vehicle for the following purposes:

1. Preserve, safeguard, and maintain the chain of evidence;
2. Obtain witness statements and document any spontaneous statements made to medical personnel;
3. Maintain custody if the person is under arrest, ensuring the preservation of his/her clothing and possessions; and
4. Provide information to and from the medical personnel. (If airlifted, immediate response to the hospital is required).

Pending arrival of the Incident Investigative Team and the Case Management Team, the scene(s) should be secured immediately, with a perimeter established for each scene a sufficient distance away to safeguard evidence.

1. Access should be limited to only those who must enter for official reasons;
2. When not needed for life saving efforts, entry by fire and ambulance crewmembers should also be limited to those whose presence is necessary; and
3. A log, started as soon as possible, should be kept of the identities of all persons entering the scene, the time of their entry and exit, and the reason for the entry of each.

Whenever possible, all witnesses and Involved Officers should be separated as soon as practical after the incident to ensure that statements and recollections of events are independent.

1. In cases of a death in a jail or detention facility, all persons, including prisoners, who may have witnessed events leading up to the death shall be identified and separated pending interviews by the Incident Investigative Team.

Ultimately, the Primary Agency has the responsibility for securing and processing the crime scene, including the Involved Officers, however, shall do so under the direction of the Incident Investigative Team.

1. Evidence collection, witness coordination and general crime scene processing will be under the authority and follow the procedures of the Primary Agency, as authorized by the Incident Investigative Team. The Primary Agency may defer its investigative authority on the Incident Investigative Team to the Employing Agency;
2. Physical evidence at the scene which is in danger of being contaminated, destroyed, or removed must be promptly and effectively observed, recorded and then protected for subsequent collection.

H. INCIDENT INVESTIGATION VS. ADMINISTRATIVE/CIVIL INVESTIGATION

This protocol is intended as an interagency guideline for Incident Investigations (as defined on page 1) of Officer-Involved Incidents. This protocol is not intended to address issues concerning the administrative investigation of the incident.

1. The administrative or civil investigation is the function of the agency employing the Involved Officer and will include administrative and non-criminal matters that are not within the scope of the Incident Investigation.
2. At the onset of the investigation of an incident, there must be an immediate and clearly defined distinction between the Incident Investigation and the administrative and civil Investigation.
3. The agency employing the Involved Officer, whether it is the Primary Agency or not, has an interest in the outcome of the Incident Investigation and may utilize the results of that investigation for its own non-criminal purposes (e.g., determination of possible violations of departmental regulations, establishing suitability for duty, training for use in civil suits or administrative claims brought by or against the agency).

I. INTERVIEWS WITH PEACE OFFICER AND CUSTODIAL OFFICER EMPLOYEES

Interviews with officer and custodial officer employees should be conducted by the investigator(s) from the Incident Investigative Team. The Incident Investigative Team will determine who will participate in the interview of any Involved Officer(s) or witnesses and where the interview(s) will take place.

1. Prior to the interview of an Involved Officer, investigators from the Primary Agency should review all available audio/video recordings from police vehicle in-car cameras, personal body-worn cameras by responding officers and/or an Involved Officer,

independent third parties, and independent sources.

2. Interviews of an Involved Officer and witnesses to an Incident should be recorded.
3. Whenever practical, interviews should be video recorded.
4. The assigned Deputy District Attorney investigator and Employing Agency representative, if not physically present during the interview, will be permitted to monitor the interview or have immediate access to any recording made of the interview.

The initial interview of an Involved Officer should occur before the officer has reviewed any audio/video recordings of the incident. An Involved Officer will have an opportunity to review recordings after the initial statement has been taken. Investigators should be mindful that audio/video recordings have limitations and may depict events differently than the events recalled by an Involved Officer. If the investigator shows any audio/video recordings to an Involved Officer after the initial interview, the investigator has the discretion to admonish an Involved Officer about the limitations of audio/visual recordings.

The following is an example of an admonishment that would be appropriate in a case involving video evidence:

In this case, there is video evidence that you will have an opportunity to view after you have given your initial statement. Video evidence has limitations and may depict the events differently than you recall, and may not depict all the events as seen or heard by you. Video has a limited field of view and may not capture events normally seen by the human eye. The "frame rate" of video may limit the camera's ability to capture movements normally seen by the human eye. Lighting as seen on the video may be different than what is seen by the human eye. Videos are a two-dimensional medium and may not capture depth, distance, or positional orientation as well as the human eye. Remember, the video evidence is intended to assist your memory and ensure that your initial statement explains your state of mind at the time of the incident.

Investigators may ask an Involved Officer to view the incident scene during a "walk-through." The investigator will determine the timing of the "walk-through," however, it should not occur prior to the initial statement of an Involved Officer. Only one Involved Officer at a time will be permitted to do a "walk-through" of the scene.

If, prior to or during the interview, it is deemed that an Involved Officer may be charged with a criminal offense, and the interview becomes custodial, the Involved Officer shall be immediately informed of his/her constitutional rights pursuant to the *Miranda* decision.

To ensure the voluntariness of an interview with an Involved Officer, that has not reached the level of a custodial interrogation, the investigator may wish to advise him/her as

follows:

1. The Involved Officer is not in custody and is free to leave the interview.
2. The Involved Officer is not obligated to answer incriminating questions, and answers that are given may be used against him/her in court.

The Involved Officer may consult with a representative prior to being questioned by the Incident Investigators. Some or all of these considerations may be applicable:

1. The consultation should not be allowed to materially impede the investigation.
2. The representative should be permitted to consult with only one Involved Officer at a time.
3. To ensure the integrity of each interview, it is important that statements about the incident not be relayed through such representatives; rather, the Involved Officer and other officer witnesses should answer the questions directly even if they need to consult with their representative prior to answering.

J. INTOXICANT TESTING

If the Incident Investigators determine that an Involved Officer's state of sobriety is relevant to the Incident Investigation, they shall proceed as they would with any civilian person in a similar situation. Their options are to:

1. Obtain a blood sample for alcohol and/or drug testing, and/or a urine sample for alcohol and/or drug testing, with the Involved Officer's valid consent; or
2. Obtain a blood sample for alcohol and/or drug testing and/or a urine sample for alcohol and/or drug testing, incidental to the arrest of that person for a crime; or
3. Obtain a blood sample for alcohol and/or drug testing and/or a urine sample for alcohol and/or drug testing, pursuant to a search warrant.

In the event appropriate physiological samples are not obtained from an Involved Officer as part of the Incident Investigation, the Employing Agency (whether or not it is also the Primary Agency) may wish to obtain such sample(s) for administrative employment-related purposes. The options are to:

1. Obtain the sample(s) with the employee officer's valid consent; or
2. Obtain the sample(s) by ordering the employee officer to provide such sample(s) based upon the employer-employee relationship.

Departments may establish administrative policies regarding intoxicant testing of any employee involved in an incident.

1. If the Employing Agency asks for a physiological fluid sample for administrative purposes after the Incident Investigators have either been unable to obtain a sample or have decided against obtaining one, the Employing Agency will be accommodated as much as possible. The Employing Agency's efforts to obtain a sample should not interfere with the Incident Investigation.

An employee officer may volunteer to provide a physiological fluid sample for intoxicant testing even if the Incident Investigators and Employing Agency have not ordered one. Similarly, a person from whom the Incident Investigators or the Employing Agency has taken a sample may wish to have a second sample taken for independent testing. Such requests should normally be accommodated, with the understanding that the employee officer will bear any expense for sample collection and testing.

K. AUTOPSY

In the interest of independent review and per Government Code section 27522 (f)(2), the Medical Examiner's Office does not allow law enforcement investigators or crime-scene investigators from the agency directly involved in the death of an individual to be present in the autopsy suite during Officer-Involved Incident post-mortem examinations. The assigned Medical Examiner will brief the incident investigator(s) after the post-mortem examination occurs and/or may allow investigators from a non-involved law enforcement agency to be present during the post-mortem examination. Irrespective of who is present during said examination, the following should occur:

1. The Medical Examiner has the responsibility for the collection and documentation of physical evidence discovered during the autopsy.
2. The Incident Investigative Team should coordinate with the Medical Examiner any external examination and/or forensic testing of physical evidence discovered during the autopsy to ensure the chain-of-custody is preserved.
3. The Incident Investigative Team should coordinate with the Medical Examiner to ensure any evidence maintained by the Coroner's Office is properly handled, secured and packaged.

A member from the Incident Investigative Team should provide the Medical Examiner a full and complete briefing prior to the post-mortem examination. The briefing should include all relevant information available at that time which may tend to aid in determining cause, manner and means of the decedent's death.

In addition to said briefing and in order to comply with Government Code section 27522(g), within 30 days of an Officer Involved Incident, the Medical Examiner's Office will be provided with the following items by the Case Management Team for the Officer Involved Incident, if they exist:

- 911 recordings

- Photos of the scene of the incident
- Body Worn Cameras or dashboard camera video that shows the incident
- Recordings of interviews with the involved officer or officers
- Other video (surveillance, civilian phone video, etc.) that shows the incident

There may be occasions where the specific facts of the case may require additional items to be produced, and in such instances, the Medical Examiner's Office will confer with the incident's Case Management Team to determine those items.

There may be occasions where the nature of the incident will necessitate viewing of body worn camera video or other items sooner than 30 days where such items are crucial to determining the cause and manner of death, and in such instances, the Medical Examiner's Office will confer with the incident Case Management Team to determine an accelerated delivery of these items.

L. NEWS MEDIA RELATIONS

A representative of the Incident Investigative Team is in the best position to comment about the facts of the case and the progress of the investigation. When multiple agencies are involved or have knowledge of an Incident, the following information release guidelines should be followed:

1. The Primary Agency will assign a particular individual to be the sole contact with the news media to manage the release of information and to minimize interruptions to the Incident Investigative Team. If this is not feasible, a particular job assignment (e.g., Watch Commander) should be designated.
2. Any release of information to the news media should be reviewed by the Case Management Team prior to such release.
3. If the Incident Investigative Team or the Case Management Team determine that the release of a specific piece of information would materially jeopardize the investigation, they shall notify those agencies possessing that knowledge of the hazards of releasing it.
4. Agencies and individuals that are not well informed and intimately involved with the investigation's results and progress should not make statements to the press. As in all other instances, care must be taken to insure that intentionally misleading, erroneous or false statements are not made
5. The interest of the public's right to know what occurred must be balanced with the requirements of the investigation and with the right of the accused to receive a fair trial.

Other agencies may also be contacted by the news media for information about the Incident, including:

The Employing Agency

1. If the Employing Agency is not also the Primary Agency, it should coordinate any information release with the Case Management Team and limit its comments to the following areas:
 - a. The employer-employee relationship, however, the names of the Involved Officer(s) will not be released until 24 hours after the incident to allow time for appropriate notifications to be made.
 - b. Information which has been cleared for release by the Case Management Team.

The District Attorney

1. The District Attorney will not disseminate any of the following information while the case is under investigation for review:
 - a. That an uncharged individual is "under investigation."
 - b. An Involved Officer's statement, confession or refusal to give a statement.
 - c. The subject of any gag order.
 - d. The prior criminal history of any Involved party, unless it is part of the criminal pleading or crime under investigation.
 - e. The result of any examinations.
 - f. The pendency of a search warrant.
 - g. Any statement that has a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.
2. In cases where a criminal complaint is filed, the judicial record, such as a probable cause declaration, or preliminary hearing is open to the public. Additionally, the District Attorney may disseminate the following:
 - a. Name of defendant.
 - b. Area of residence.
 - c. Occupation.
 - d. Physical description.
 - e. Age.

- f. Sex.
- g. Time, date, and location of arrest.
- h. Factual circumstances of the crime.
- i. Amount of bail.
- j. Location held.
- k. All charges including warrants.
- l. Parole or probation holds.
- m. Schedule and explanation of the judicial process.
- n. Penalty range.

The Coroner's Office

Information obtained from the Incident Investigators or from the Involved Agencies will not be released by the Coroner's Office without prior clearance from those agencies. Release of information will generally be limited to the following:

1. Autopsy findings, including the condition of the deceased, the cause of death, and toxicology test results, after the Involved agencies have received this information and, if applicable, only after receiving clearance from the District Attorney's Office. The Coroner's Office will not release any information to the media where there is a pending criminal prosecution
2. The general role of the Coroner's Office in the investigation of any death.

M. ACCESS TO REPORTS AND EVIDENCE

Material created or collected by the Primary Agency and the Incident Investigative Team investigators, as well as by any other assisting agencies, will be made available in a timely manner to those agencies which have a "need to know" and which are legally authorized to receive the information. The material may include:

1. Reports written and collected.
2. Physical evidence obtained.
3. Photographs and diagrams.
4. Recordings.

The agencies with an interest in the Officer-Involved Incident Investigation may include:

1. Investigating agencies.
2. The employer of any Involved Officer.
3. The District Attorney.
4. The Crime Laboratory.
5. The Coroner's Office.

N. FINAL ACTION

The Officer-Involved Incident Investigation should be completed, and all reports submitted to the Office of the District Attorney within 90 days of the Incident, absent unusual circumstances.

At the conclusion of the investigation, the Office of the District Attorney will review and analyze all the evidence to determine whether the officer acted lawfully.

The crime charging standards are the same for civilians and peace officers. The District Attorney's policy regarding crime charging is as follows:

"The prosecutor should charge only if the following four basic requirements are satisfied:

- 1) The prosecutor, based on a complete investigation and a thorough consideration of all pertinent facts readily available, is satisfied that the evidence proves that the accused is guilty of the crime to be charged;
- 2) There is legally sufficient, admissible evidence of a corpus delicti;
- 3) There is legally sufficient, admissible evidence of the accused's identity as the perpetrator of the crime charged; and
- 4) The prosecutor has considered the probability of conviction by an objective fact finder and has determined that the admissible evidence is of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact finder after hearing all the evidence available to the prosecutor at the time of charging and after considering the most plausible and reasonably foreseeable defenses."

In all fatal incidents where no charges are filed, the District Attorney will issue a closing report summarizing the results of the investigation and analyzing the evidence. This report will address the question of whether there is proof beyond a reasonable doubt that an

officer, deputy, or any other person committed a crime. It is not the purpose of the District Attorney's investigation or report to determine if any officer or deputy violated police policy or procedure or committed any act that would be subject to civil sanctions. The District Attorney's Office will make every effort to issue a closing report containing its findings and conclusion within 90 days of the receipt of the completed investigative package. This report shall be sent to the Involved police agencies, the decedent's family and then released to the public.

In all non-fatal incidents where the injured party is the subject of an underlying and related criminal prosecution, the District Attorney will conclude his review of the involved-officer's conduct at the conclusion of the other party's criminal case. If no charges are filed, the District Attorney will issue a closing report addressing whether there is proof beyond a reasonable doubt that the involved officer committed a crime. The District Attorney will make every effort to issue that closing report within 30 days of the disposition of the related criminal case.

O. INCIDENTS WITHOUT A FIREARM RESULTING IN SERIOUS BODILY INJURY BUT ARE NOT LIKELY TO CAUSE DEATH

1. The law enforcement agency which employs the peace officer(s) who used force against an individual resulting in serious bodily injury (SBI)², will conduct an investigation of the underlying incident in accordance with their internal accountability procedures which would involve a review of the officer's report, statements of any other witnesses to the event including officers and/or civilians, review of body camera evidence or other video evidence, and review of injury information to the individual arrested.

When a supervisor or command officer believes, based on the initial investigation of the force that resulted in SBI, that the force in question may be unlawful, they will as soon as practicable notify the Office of the Chief (to determine if a District Attorney PLEI (Public and Law Enforcement Integrity) Team notification is appropriate.

If notification is not required, the agency will conduct an internal review, and or investigation, as appropriate through their administrative process. If an incident meets the criteria set forth in this guideline, the notification process will be followed as outlined in this guideline.

2. In the event the employing agency concluded that an officer's use of force was potentially unlawful, the matter would be referred to the PLEI Team by the agency, which would also provide the DA's Office with its entire investigative report, video evidence, medical reports, etc.
3. The PLEI Team would thereafter analyze the investigation and determine whether a criminal complaint is appropriate.

² Serious bodily injury is defined under Government Code Section 12525.2(d)

4. In the event the employing agency interviewed the subject officer (s), following the admonition of a *Lybarger Warning*, neither the officer's statement nor any "fruits" of that statement; nor opinions by the agency based upon the statement, would be provided to the DA's Office.

During an administrative inquiry, a law enforcement agency is authorized by law to compel its officers to give statements regarding matters that are subject of the administrative investigation - Public Safety Officers Procedural Bill of Rights Act ("POBRA"), Government Code §§ 3300-3313. However, the law limits the admissibility of such a compelled statement in a criminal prosecution. Therefore, the administrative investigation must be separate from the criminal investigation.

P. SPECIAL PROCEDURES FOR DEATH OF UNARMED CIVILIANS

On September 30, 2020, Assembly Bill 1506, which enacted Government Code section 12525.3, was signed into law and requires the California Department of Justice (DOJ) to investigate incidents of an OII resulting in the death of an unarmed civilian. This mandate became effective on July 1, 2021.

According to DOJ Guidelines³ interpreting AB 1506, DOJ will work collaboratively with the respective Incident Investigative Team in conducting an OII investigation. This will involve investigators from DOJ and respective agencies working cooperatively in all aspects of the investigation, which will entail the sharing of all investigative information and all duties related to the OII.

DEFINITIONS

Under AB 1506, DOJ is required to investigate "incidents of an officer-involved shooting resulting in the death of an unarmed civilian." (Gov. Code, § 12525.3, subd. (b)(1).) The following is DOJ's understanding of the terms used in this statute, and is to be used as guidance for all law enforcement partners in determining whether a case falls within the ambit of AB 1506. These definitions are meant to apply only in the context of AB 1506, and these terms may have different meanings in other contexts or in different statutes. Notwithstanding these definitions, DOJ may elect to assume jurisdiction in cases where jurisdiction is unclear, or based on other extenuating circumstances, as determined by the Attorney General. (See Cal. Const., art V, § 13 [Attorney General is "chief law officer of the State" and has a duty "to see that the laws of the State are uniformly and adequately enforced"].)

1. "Officer-involved"

A shooting is "officer-involved" if the death to the unarmed civilian is caused by a California peace officer, within the meaning of Penal Code section 830, acting under color of authority. All shootings committed by officers while on duty are officer-involved shootings. Shootings committed by officers while off-duty are considered officer-involved shootings only if the officer is acting under color of authority. Officers are acting under "color of authority" when

³ For more details on AB 1506 and DOJ's policies, go to <https://oag.ca.gov/ois-incidents>.

they are performing an act that is made possible only because they are clothed with the authority of law, or when they are acting under pretense of law. Conversely, officers are not acting under “color of authority” when they commit private acts in furtherance of personal pursuits. Shootings by correctional officers as defined in Penal Code section 830.55 are excluded.

2. “Shooting”

A “shooting” is the discharge of a metal projectile by a firearm. A “firearm” is a “device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion.” (Pen. Code, § 16520.) A “shooting” does not include incidents involving the use of electronic control devices, stun guns, BB, pellet, air, gas-powered guns, or weapons that discharge rubber bullets or beanbags.

3. “Unarmed civilian”

An “unarmed civilian” is “anyone who is not in possession of a deadly weapon.” (Gov. Code, § 12525.3, subd. (a)(2).)

4. “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.

5. “Deadly weapon”

“‘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.” (Gov. Code, § 12525.3, subd. (a)(1).) 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 weapon when used in that manner: knives, box cutters, screwdrivers, hammers, baseball bats, 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).

6. “Death”

Death occurs when “[a]n individual ... has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem[.]” (Health & Safety Code, § 7180.) DOJ may assume responsibility for cases where death appears to be imminent.

NOTIFICATIONS

Agencies responding to an incident falling within section 12525.3 shall promptly notify the 24-hour call center at LA Clear (800-522-5327). LA Clear notifies the Department of Justice (DOJ) Division of Law Enforcement (DLE), which contacts the reporting agency to confirm the incident falls within the scope of section 12525.3. DLE informs DOJ's Criminal Law Division through a Supervising Deputy Attorney General (SDAG). The SDAG may provide legal advice on whether a particular case falls within the scope of section 12525.3. The SDAG provides further notice to the Senior Assistant and Chief Assistant.

REVIEW OF INVESTIGATION

Once a thorough and complete investigation has been concluded by DLE agents and any collaborating law enforcement agency, DLE will present all the evidence, including reports, and video and audio recordings, to the Criminal Law Division. The Office of the Attorney General, led by the Division of Criminal Law, reviews, analyzes the reports and evidence to determine if criminal charges are warranted against the involved law enforcement officer(s). The determination does not include whether administrative or civil actions are warranted.

If the Attorney General determines that the investigation has yielded sufficient legally admissible evidence to sustain a conviction by an unbiased jury weighing all relevant evidence and plausible defenses to a standard of beyond a reasonable doubt, criminal charges will be authorized and announced at the time of filing.

If the Attorney General determines that criminal charges are not warranted, attorneys in the DLE will prepare a report stating the facts of the incident with a detailed analysis and conclusion for each investigatory issue. When completed, the report will be posted and maintained on the Attorney General's public website.

Q. TRAINING

All affected agencies are strongly encouraged to provide training to their members regarding these guidelines, including:

1. The responsibilities of the Incident Investigators and first responders to the scene of an Officer-Involved Incident.
2. The investigative process of an Officer-Involved Incident, including the specific process relative to the actual officer(s) involved.
3. The psychological effect which may be experienced by the Involved Officer and/or officers who were involved in the incident.

The employing agencies are encouraged to provide some form of critical incident stress debriefing to their affected employees.