

Officer-Involved Shootings and Deaths

305.1 PURPOSE AND SCOPE

Best Practice

The purpose of this policy is to establish policy and procedures 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 another action of an officer.

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

305.2 POLICY

Best Practice MODIFIED

The policy of the California Department of State Hospitals (DSH) is to ensure that officer-involved shootings and deaths are investigated in a thorough, fair and impartial manner.

305.3 TYPES OF INVESTIGATIONS

Best Practice

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

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

305.4 CONTROL OF INVESTIGATIONS

Best Practice MODIFIED

Investigators from surrounding agencies may be assigned to work on the criminal investigation of officer-involved shootings and deaths. This may include at least one investigator from the department that employs the involved officer.

Jurisdiction is determined by the location of the shooting or death and the department 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

Best Practice MODIFIED

The investigation of any possible criminal conduct by the suspect is controlled by the department in whose jurisdiction the suspect's crime occurred. For example, DSH would control the investigation if the suspect's crime occurred within a DSH facility, or on hospital grounds.

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

305.4.2 CRIMINAL INVESTIGATION OF OFFICER ACTIONS

Best Practice **MODIFIED**

The control of the criminal investigation into the involved officer's conduct during the incident will be determined by the employing department's protocol. When an officer from OPS is involved, the criminal investigation will be handled according to the Criminal Investigation section of this policy.

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

305.4.3 ADMINISTRATIVE AND CIVIL INVESTIGATION

Best Practice **MODIFIED**

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

305.5 INVESTIGATION PROCESS

Best Practice

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

305.5.1 UNINVOLVED OFFICER RESPONSIBILITIES

Best Practice **MODIFIED**

Upon arrival at the scene of an officer-involved shooting, the first uninvolved OPS 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 injured individuals.
- (c) Request additional resources from OPS and/or other agencies.
- (d) Coordinate a perimeter or pursuit of suspects.
- (e) Check for injured persons and evacuate as needed.
- (f) Brief the supervisor upon arrival.

305.5.2 SUPERVISOR RESPONSIBILITIES

Best Practice **MODIFIED**

Upon arrival at the scene, the first uninvolved OPS 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.

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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 OPS 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 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 information other than public safety information.
- (c) Provide all available information to the Watch Commander and the Communications Center. If feasible, sensitive information should be communicated over secure networks.
- (d) Take command of and secure the incident scene with additional OPS employees 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 OPS officer should be given an administrative order not to discuss the incident with other involved officers or OPS employees 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.

305.5.3 WATCH COMMANDER RESPONSIBILITIES

Discretionary **MODIFIED**

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 Hospital Police Chief or designee.

All outside inquiries about the incident shall be directed to the Hospital Police Chief.

305.5.4 NOTIFICATIONS

Discretionary **MODIFIED**

The Hospital Police Chief will coordinate the notifications of the following person(s) as soon as practicable:

- Facility Executive Director
- Facility Hospital Administrator
- Chief of Law Enforcement

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- Hospital Police Chief
- Officer-involved shooting protocol rollout team
- Outside department investigator (if appropriate)
- Professional Standards Unit
- DSH Legal Services
- Psychological support personnel
- Coroner (if necessary)
- Involved officer's OPS representative (if requested)
- Facility Public Information Officer and DSH Office of Communication

305.5.5 INVOLVED OFFICERS

State

The following shall be considered for the involved officer:

- (a) Any request for legal or union representation will be accommodated.
 - 1. Involved OPS 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-OPS officers should be referred to their 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 (Government Code § 3303(i)).
- (d) A licensed psychotherapist shall be provided by the OPS to each involved OPS officer. A licensed psychotherapist may also be provided to any other affected OPS 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.

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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 OPS 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.

305.5.6 NOTIFICATION TO DEPARTMENT OF JUSTICE

State

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, "unarmed civilian" means anyone who is not in possession of a deadly weapon (Government Code § 12525.3).

305.6 CRIMINAL INVESTIGATION

Best Practice

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 OPS 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) OPS supervisors and Professional Standards Unit personnel should not participate directly in any voluntary interview of OPS 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 the officer's 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,

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no administratively coerced statement will be provided to any criminal investigators unless the officer consents.

305.6.1 REPORTS BY INVOLVED OPS OFFICERS

State **MODIFIED**

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

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

305.6.2 WITNESS IDENTIFICATION AND INTERVIEWS

Federal **MODIFIED**

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 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 OPS employees.

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1. A written, verbal or recorded statement of consent should be obtained prior to transporting a witness. When the witness is a minor, consent should be obtained from the parent or guardian, if available, 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.

305.6.3 INVESTIGATIVE PERSONNEL

Best Practice **MODIFIED**

Once notified of an officer-involved shooting or death, it shall be the responsibility of the designated Investigations supervisor to assign appropriate investigative personnel to handle the investigation of related crimes. OPS 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 OPS reports, except administrative and/or privileged reports, will be forwarded to the designated Investigations supervisor for approval. Privileged reports shall be maintained exclusively by employees who are authorized such access. Administrative reports will be forwarded to the Hospital Police Chief.

305.7 ADMINISTRATIVE INVESTIGATION

State **MODIFIED**

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

Interviews of employees shall be subject to OPS 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 department.
- (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/her prior statement before proceeding with any subsequent interviews.

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- (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.
 - (a) 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.
 - (b) 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 (Gov. Code, § 3303, subd. (i).)
 - (c) Administrative interviews should be recorded by the investigator. The officer may also record the interview (Gov. Code, § 3303, subd. (g).)
 - (d) 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 that the interview will be for administrative purposes only and that the statement cannot be used criminally.
 - (e) The Professional Standards Unit shall compile all relevant information and reports necessary for DSH to determine compliance with applicable policies.
 - (f) 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. For additional information, reference OPS Policy 300 (Use of Force – patient), and Policy 301 (Use of Force – Non-Patient).
 - (g) Any other indications of potential policy violations shall be determined in accordance with standard disciplinary procedures.

305.8 CIVIL LIABILITY RESPONSE

Best Practice **MODIFIED**

A DSH employee may be assigned to work exclusively under the direction of the legal counsel for DSH 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

Best Practice **MODIFIED**

Any officer involved in a shooting or death may be permitted to review available body-worn video, or other video or audio recordings prior to providing a recorded statement or completing reports.

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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 body-worn video, or other video or audio recordings with approval of assigned investigators or a supervisor.

Any body-worn and other known video or audio recordings of an incident should not be publicly released during an ongoing investigation without consulting the prosecuting attorney or Legal Services, as appropriate.

305.10 DEBRIEFING

Best Practice

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

305.10.1 TACTICAL DEBRIEFING

Best Practice **MODIFIED**

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

305.11 MEDIA RELATIONS

Best Practice **MODIFIED**

Any media release shall be prepared with input and from the Hospital Police Chief and Executive Director by the facility Public Information Officer. The facility Public Information Officer will communicate directly with the Office of Communications at DSH, Sacramento for final approval of all media inquiries.

DSH shall not subject any involved OPS officer to visits by the media (Gov. Code, § 3303, subd. (e).) No involved OPS officer shall make any comment to the media unless he/she is authorized by the Office of Communications at DSH-Sacramento. DSH employees receiving inquiries regarding officer-involved shootings or deaths occurring in other jurisdictions shall refrain from public comment and will direct those inquiries to the department having jurisdiction and primary responsibility for the investigation.

305.12 REPORTING

State **MODIFIED**

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