

## Officer-Involved Shootings and Deaths

### 310.1 PURPOSE AND SCOPE

To establish policy and procedures for the investigation of an officer-involved shooting that causes injury or death to any individual. The intent of this policy is to ensure that such incidents be investigated in a fair and impartial manner.

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.

### 310.2 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 Chief of Police or a Division Commander.
- (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.
- (e) Deadly Force Review Board (See Policy #302).

### 310.3 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 shootings:

#### 310.3.1 BARSTOW POLICE DEPARTMENT OFFICER WITHIN THIS JURISDICTION

The Barstow Police Department is responsible for the criminal investigation of the suspect's actions and the administrative investigation. The criminal investigation of the officer-involved shooting will be conducted by the San Bernardino County Sheriff's Department and/or the San Bernardino County District Attorney's Office.

#### 310.3.2 ALLIED AGENCY'S OFFICER WITHIN THIS JURISDICTION

The Barstow Police Department is responsible for the criminal investigation of the suspect's actions. The criminal investigation of the officer-involved shooting will be conducted by the Barstow Police Department. The officer's employing agency will be responsible for any civil and/or administrative investigation(s).

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#### 310.3.3 BARSTOW POLICE DEPARTMENT OFFICER IN ANOTHER JURISDICTION

The agency where the incident occurred has criminal jurisdiction and is responsible for the criminal investigation of the incident, which may include the suspect's actions, as well as the actions of the officer. That agency may relinquish its criminal investigation of the suspect(s) to another agency. The Barstow Police Department will conduct any civil and/or administrative investigations.

#### 310.4 THE INVESTIGATION PROCESS

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

##### 310.4.1 WATCH-COMMANDER / SUPERVISOR DUTIES

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

- (a) Take all reasonable steps to obtain emergency medical attention for all apparently injured individuals.
- (b) Obtain a brief overview of the situation from any involved officer(s) for safety information only.
- (c) If necessary, the supervisor may administratively order any officer from this department to immediately provide public safety information necessary to secure the scene and pursue suspects.
  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 safety information to responding officers and the Dispatch Center. 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 Division Commander or the Chief of Police.
- (g) As soon as practical, shooter 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 an officer's weapon is taken or left at the scene (e.g., evidence), the officer will be transported to the station, or other designated location, and provided with a comparable replacement weapon, as soon as practical.

##### 310.4.2 ADDITIONAL SUPERVISOR RESPONSIBILITIES

The Watch-Commander or responding supervisor shall also consider and take the following actions:

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- (a) Separate involved officer(s) and move him/her away from the immediate crime scene.
- (b) Establish a perimeter and protect the crime scene. Considerations should be taken for conditions that may affect the crime scene (e.g. weather, subjects in immediate area, potential for additional violence or attacks, destruction of evidence).
- (c) Request additional personnel and/or equipment, as needed.
- (d) Make certain all involved vehicles and evidence are left in place, when practical. If any item is moved for safety purposes or to protect the evidentiary value, that item(s) shall be photographed in place prior to removal.
- (e) Direct a search for additional suspects and/or witnesses, if necessary and when practical.
- (f) Supervise medical assistance as necessary, including the assignment of an uninvolved officer(s) for the guarding of any suspect transported for immediate medical attention.

#### 310.4.3 NOTIFICATIONS

The following person(s) shall be notified as soon as practical by the Watch-Commander/Supervisor on-scene:

- Chief of Police
- Patrol Division Commander
- Administrative Division Commander
- Detective Division Sergeant/Supervisor
- Officer representative (if requested by involved officer(s))

The following person(s) shall be notified as soon as practical, and at the discretion of the Incident Commander:

- San Bernardino County Sheriff's OIS Investigations Team (if applicable)
- Psychological or Peer Support Personnel
- Coroner (if necessary)
- District Attorney's OIS Team, or On-Call District Attorney

\*\* All immediate outside inquiries relating to the incident shall be directed to the on-scene Watch-Commander/Supervisor, Incident Commander, or his/her designee.

#### 310.4.4 MEDIA RELATIONS

A single press release shall be prepared by the Administrative Division Commander and should be approved by the Chief of Police. No statements will be made to the media by the Watch Commander, Detective Division Sergeant/Supervisor, Public Information Officer, or any other department personnel without prior approval from the Chief of Police 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 Commander.

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.

#### 310.4.5 INVOLVED OFFICERS

Once an officer involved shooting has occurred, the involved officer(s) shall do the following:

- (a) Immediately notify the police dispatcher of the incident. Request additional officers, if necessary, and a supervisor to the scene. request medical assistance, if necessary.
- (b) Render immediate medical assistance prior to fire/ambulance personnel arrival on scene.
- (c) Provide "Safety Information" only, to any responding additional units, supervisors, or the police dispatcher.
- (d) Involved officer(s) are not permitted to discuss the incident with other officers, witnesses, or members of the media.
- (e) Involved officer(s) shall maintain his/her weapon(s) "as is". Involved officer(s) shall not reload, unload, or otherwise manipulate any involved weapon, unless absolutely necessary to avoid further injury or when such weapon(s) pose an immediate safety risk.
- (f) Involved officer(s) shall attempt to protect the crime scene and shall not remove or move any vehicle or evidence.

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 officer(s) shall

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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)).

Each involved officer shall be given a minimum five (5) calendar days of paid administrative leave following an officer-involved shooting resulting in injury or death to another person, which may be extended at the discretion of the Chief of Police, or his/her designee. Any need for additional manpower to fill the involved officer's regular scheduled shift during administrative leave shall be the responsibility of the involved officers immediate supervisor or the Division Commander.

#### 310.4.6 ADDITIONAL POST-SHOOTING PROCEDURES

##### Post-Shooting Procedures

- (a) The involved officer(s) will be removed from the scene and taken to the station, or other designated location.
- (b) Involved officer(s) should remain in the presence of an officer or supervisor that was not part of the incident, when practical.
- (c) Administrative investigator(s) may, when deemed necessary, obtain blood or urine samples from all involved officer(s).
- (d) The weapon(s) used in an officer-involved shooting incident will be turned over to the lead criminal investigator or an administrative investigator at their request.
- (e) Involved officer(s) will be given reasonable time to obtain and consult with legal counsel prior to any interview by criminal investigator(s) or administrative investigator(s).
- (f) Involved officer(s) shall be placed on paid-administrative leave for a minimum five (5) calendar days starting the first day after the incident, which may be extended by the Chief of Police or his/her designee. The Chief of Police may require a "Fit for Duty" examination of the involved officer(s) prior to the officer(s) return to duty. If the involved officer(s) is determined to be a danger to themselves or others, he/she may be placed on extended administrative leave and their police officer powers may be suspended.

#### 310.5 THE SHOOTING INCIDENT CRIMINAL INVESTIGATION

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#### 310.5.1 DETECTIVE PERSONNEL

Once notified of an officer-involved shooting, it shall be the responsibility of the detective division supervisor to assign appropriate detective personnel to handle the investigation of related crimes. Detectives may be assigned to work with investigators from the San Bernardino County Sheriff's Department and/or the San Bernardino County District Attorney's Office and may be assigned to the investigation of any related crimes.

All related departmental reports except administrative and/or privileged reports will be forwarded to the 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 Commander.

#### 310.5.2 CRIMINAL INVESTIGATION

It shall be the policy of this department to utilize the San Bernardino County Sheriff's Department to conduct an independent criminal investigation into the circumstances of any officer-involved shooting involving injury or death that occurs within the City of Barstow.

If available, detective personnel from this department may be assigned to partner with investigators from the San Bernardino County Sheriff's Department so as to not duplicate efforts in related criminal investigations.

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

- (a) Supervisors and management police 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 individually with a representative of his/her choosing or an attorney, prior to speaking with criminal investigators. 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.
- (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.

#### 310.5.3 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)).

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It is generally recommended that criminal reports be completed by assigned investigators, and not involved officers, who should interview 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 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 shooting.

#### **310.5.4 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.
- (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.

#### **310.6 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 Administrative Lieutenant or assigned police management staff member as assigned by the Chief of Police and will be considered a confidential peace officer personnel file.

- (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.

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- (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 Administrative Lieutenant or police management staff member 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 Chief of Police, or his/her designee.
  8. Any other indications of potential policy violations shall be determined in accordance with standard disciplinary procedures.



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#### **310.7 REPORTING**

If the death of an individual occurs in the Barstow Police Department jurisdiction and qualifies to be reported to the state as a justifiable homicide or an in-custody death, the Patrol Division Commander will ensure that the Police Services Supervisor is provided with enough information to meet the reporting requirements (Penal Code § 196; Penal Code § 13022; Government Code § 12525).

#### **310.8 AUDIO AND VIDEO RECORDINGS**

Any officer involved in a shooting or death may be permitted to review available Mobile Audio/Video (MAV), body-worn video, 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, body-worn video, or other video or audio recordings with approval of assigned investigators or a supervisor.

Any MAV, 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 City Attorney's Office, as appropriate.