

Carlsbad Police Department

Policy Manual Special Order 2022-07

Pursuant to Carlsbad Police Department Policy 204, this Special Order becomes effective June 13, 2022.

Updated Policy: Officer Involved Shootings and Deaths

Policy
310

Officer-Involved Shootings and Deaths

310.1 COUNTYWIDE PROTOCOL FOR INVESTIGATION AND REVIEW OF OFFICER-INVOLVED SHOOTINGS AND OTHER DEADLY FORCE INCIDENTS

The law enforcement agencies of San Diego County recognize the need for transparent and independent criminal investigations and reviews of all peace officer-involved shootings, use of force incidents resulting in death, and "in custody" related deaths occurring outside of the jail setting. The Carlsbad Police Department has a desire to cooperate to achieve this goal and has entered into a Memorandum of Understanding (MOU) with other law enforcement agencies.

For purposes of this MOU, the San Diego Police Department (SDPD) will be the investigating agency if a member of the Carlsbad Police Department (CBPD) is involved in the above qualifying circumstances. This agreement applies solely to criminal investigations and does not address or impact the CBPD's ability to conduct its own concurrent or subsequent investigation for administrative or civil litigation purposes.

310.2 PURPOSE AND SCOPE

The purpose of this agreement is to conduct independent investigations, provide consistency in inter-agency investigations within San Diego County and outline the circumstances for conducting criminal investigations and independent review of all law enforcement related:

- (a) a. Discharges of a firearm (excluding discharges that are deemed unintentional, training related, of less lethal munitions, or conducted during the euthanization of an animal)
- (b) Use of force incidents that result in death or imminent death.

This agreement applies solely to criminal investigations and does not address or impact an agency's ability to conduct their own concurrent or subsequent investigation for administrative or civil litigation purposes.

This agreement is not intended to transfer investigative responsibility for all deaths occurring in a custodial setting. Deaths in a County Custodial setting will only be investigated in accordance

with this agreement when they are the apparent result of a use of force by an officer or custodial staff.

310.3 DEFINITIONS

- a) "AB1506 Qualifying Event" means an officer-involved shooting incident where the subject shot by officers is killed and deemed "unarmed" based on the guidelines established by the California Department of Justice and California Attorney General's Office.
- b) "Deadly Force" means any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm.
- c) "Incident" is defined as 1) any discharge of a firearm by a peace officer, excluding discharges that are deemed unintentional, training related, or conducted during the euthanization of an animal, 2) any use of deadly force by a peace officer resulting in death, or 3) the death of a person while "in custody" of a peace officer. For purposes of this MOU, an "incident" does not include the death of a person incarcerated in a County or City detention facility/jail (except when it stems from a use of force).
- d) "In-Custody" is defined as a detention or arrest coupled with a use of physical force and/or some sort of physical restraint (e.g., handcuffing, placed in a police vehicle). "In-Custody" means more than being chased or contained by officers.
- e) "Involved Agency" means the agency employing the peace officers involved.
- f) "Investigating Agency Liaison" means the employee, supervisor, or manager of the investigating agency tasked with being a liaison between the investigating agency and the jurisdictional agency to facilitate the comprehensive and independent investigation of the incident.
- g) "Involved Agency Liaison" means the employee, supervisor, or manager of the involved agency tasked with being a liaison between the involved agency, the jurisdictional agency (if different than the involved agency), and the primary investigating agency to facilitate the comprehensive and independent investigation of the incident.
- h) "Jurisdictional Agency" means the police agency with primary law enforcement jurisdiction over the area where the incident occurred.
- i) "Jurisdictional Agency Liaison" means the officer, supervisor, or manager tasked with being the resource conduit between the jurisdictional agency, the involved agency (if different than the jurisdictional agency), and the investigating agency to ensure facility, information, evidentiary, and other logistical access for investigators handling the incident.
- j) "Officers Involved" means peace officers who have fired their weapons, used force, or were participants in an incident as defined.
- k) "Primary Investigating Agency" means the agency with investigative responsibility for a qualifying incident.

310.4 PRIMARY INVESTIGATING AGENCY

The Primary Investigating Agency is decided using the following criteria:

- a. Incidents where officers involved are employed by the San Diego Police Department will

- be investigated by the San Diego Sheriff's Department.
- b. Incidents where deputies/officers involved are employed by the San Diego Sheriff's Department or any of the other agencies participating in this agreement by signature below (except the San Diego Police Department), will be handled by the San Diego Police Department.
 - c. Incidents where both the San Diego Sheriff's Department and the San Diego Police Department have deputies/officers involved, will be investigated by the Chula Vista Police Department.
 - d. Incidents meeting the definition of an "AB1506 Qualifying Event" will be investigated as detailed under the header below.
 - e. Uses of deadly force, aside from the discharge of a firearm by a peace officer, that do not result in death will be investigated by the involved agency unless there is an independent MOU with another agency to handle those investigations.

For incidents involving a predicate criminal investigation and an associated officer-involved shooting investigation, the jurisdictional agency of the original incident will handle the criminal investigation and apprehension of any related suspects, while the primary investigating agency will specifically investigate the officer-involved shooting. The lead case agents from each investigative team will confer to ensure investigatory needs, such as evidence collection and processing, scene processing and documentation, and interviews are met, and take into consideration the needs of both investigations. Appropriate laboratory personnel will be utilized for each investigation.

In situations where an officer is seriously injured or killed, other than traffic collisions, and an officer-involved shooting occurs, the incident will be investigated by the primary investigating agency utilizing their laboratory personnel. In some instances, the primary investigating agency and jurisdictional agency may consider separating the investigations. This decision will be made by the primary investigating agency, who will consider factors which may include the jurisdictional agency's interests, case integrity and other applicable consideration when making a decision to separate the cases.

Incidents meeting the definition of an AB1506 Qualifying Event will initially be handled as outlined above; however, once California DOJ is notified, responds, and determines the incident is a qualifying event, they will assume the role of primary investigating agency and the former primary investigating agency will take a secondary, collaborative role. The process for handling these events is outlined in the California Department of Justice – Division of Law Enforcement California Police Shooting Investigations Teams (CaPSIT) Investigation Protocol Procedures.

Incidents involving federal law enforcement or any state or local agency electing not to participate in this MOU will be handled by the jurisdictional agency or in accordance with other existing agreements. This is further outlined below.

310.5 POLICY

When a peace officer, whether on or off duty, is involved in an incident, the jurisdictional agency shall contact the appropriate primary investigating agency, via their Communications Centers, as outlined above. The agency that employs the officer(s) involved, or other designated investigating agency, may conduct a concurrent or subsequent investigation of the incident;

however, the intent of the parties to this agreement is that these types of investigations be conducted by the primarily investigating agency, independently and without interference or undue influence from the agency that employs the involved officer(s) or deputy(s).

All information or reports developed by the primary investigators shall be made available to all involved agencies, as needed, and as permitted by law. Except as outlined in AB1506, or for incidents involving Federal Law Enforcement, the primary investigating agency shall submit investigative documentation of qualifying incidents, as defined herein, to the District Attorney's Office for review.

All AB1506 cases will be submitted by the California Department of Justice investigators to the charged Deputy Attorney General for review in accordance with their review process and the law.

310.6 RESOURCES

The primary investigating agency will utilize their own laboratory personnel, unless impractical to do so. If the primary investigating agency laboratory personnel are not to be used, the primary investigating agency will make arrangements to provide laboratory personnel.

310.7 JURISDICTIONAL AGENCY'S INITIAL RESPONSE

Officers who used force in incidents, as defined above, and officers identified as key witnesses shall be removed from the scene as soon as possible. Officers who used force shall be transported, as determined by the primary investigating agency, to a law enforcement facility within a reasonable distance from the scene, with resources deemed adequate for the separation of witnesses, accommodates investigative procedures, and affords a reasonable degree of personal comfort, convenience, and privacy for the parties involved.

Officers involved in incidents, as defined above, should brief the first responding supervisor, or other officer responsible for securing the incident scene, of the general facts of the incident and other matters as they relate to public safety. Within the guidelines of law and department policy, officers involved should cooperate fully with supervisors and advise them of the following via a public safety statement that captures the following:

- Are there any outstanding suspects; if so, please describe them and any vehicles and their last known direction of travel?
- Are there any injured persons; if so, please advise of their whereabouts and the nature of their injuries?
- Where were you when you fired and in what approximate direction were you pointing your weapon when you fired? If you were fired at, from what direction was the suspect firing?
- How many rounds do you think you fired and how many rounds were fired at you?
- Are there any outstanding weapons, and if so, do you know what type?

This information will enable the responding staff to take appropriate emergency action, to secure evidence and to isolate the scene.

Following the initial briefing with the first responding supervisor, and except as permitted below, officers involved should not discuss the incident with other persons, or among themselves, before being interviewed by the investigators from the primary investigating agency.

Investigators shall seek voluntary statements from officers involved in the incident. Officers involved in the incident shall be permitted to speak with a legal representative, peer support representatives, chaplain and/or mental health professionals before submitting to an interview by incident investigators. Under no circumstances will the primary investigating agency compel a statement from an involved officer. Should an involved officer decline to provide a voluntary statement, an involved agency may elect to follow their Department's Policy and Procedure to obtain a statement for their internal use.

310.8 INCIDENT SCENE

Officers at the scene, regardless of agency affiliation, shall secure the scene pending arrival of representatives of the jurisdictional agency and the primary investigating agency.

The security of the incident scene shall be handled by the jurisdictional agency, as directed by the primary investigating agency, for the duration of the time they are on scene.

310.9 AGENCY LIAISONS

When the primary investigating agency is dispatched to handle an incident, they shall, immediately upon arriving on scene, identify who the involved agency liaison will be and, if applicable, a jurisdictional agency liaison to coordinate the sharing of necessary information.

The primary investigating agency liaison, or their designee, shall brief the involved agency and jurisdictional agency as requested. This will facilitate on scene logistical operations and allow the involved agency to complete necessary administrative and operational reviews.

The involved agency liaison shall also be responsible for providing any necessary agency-specific information to the primary investigating agency, such as mobile data/CAD information, BWC footage, and employee record information to include date of hire, assignment etcetera.

310.10 EVIDENCE

Evidence, including personal belongings of the officers involved, shall not be unnecessarily moved or altered. Evidence in the personal possession of the officers involved, such as firearms or other equipment, shall be surrendered upon request of investigators representing the primary investigating agency. Replacement of equipment taken for evidence will be handled as outlined in the involved officer's Department policy and the law.

310.11 ON SCENE BRIEF

Prior to beginning the investigation of the incident, members of the primary investigating agency, the involved agency, the assigned District Attorney Investigator, and where applicable,

the jurisdictional agency liaison, shall receive a joint briefing on the facts known to that point. The primary investigating agency is not required to delay the briefing or subsequent investigation to accommodate unavailable involved or jurisdictional agency members, so as not to delay the onset of the investigation. Additional briefings may take place as time allows or as necessitated as the investigation unfolds.

310.12 MEDIA RELEASES

The release of information concerning any incident as defined herein will be handled by the primary investigating agency, in coordination and collaboration with the involved agency, and when appropriate, the jurisdictional agency. The release of video or information related to these investigations shall be in compliance with Government Code section 6254(f) and SB 1421. Any other agency receiving media inquiries about the incident shall refer them to the primary investigating agency for coordination and distribution with the involved agency, and if appropriate, the jurisdictional agency. Once the primary investigating agency submits the case to the District Attorney's Office for review, media requests should generally be referred to the District Attorney's Office. The Countywide Protocol MOU is not meant to restrict the head of an agency from making public statements or releasing video that he or she deems necessary to the interests of justice or to protect public safety.

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 their designee.

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 primary responsibility for the investigation.

310.13 NOTIFICATIONS

The primary investigating agency shall be responsible for notifying the Medical Examiner and coordinating all necessary evidentiary information and collection with the Medical Examiner's Office.

The primary investigating agency shall be responsible for coordinating family notifications with the Medical Examiner's Office, as necessary.

The primary investigating agency shall notify the designated representative of the District Attorney, and/or representatives from the California Department of Justice as outlined below, immediately upon learning of the occurrence of any incident as defined herein.

310.14 DISTRICT ATTORNEY'S OFFICE INITIAL RESPONSE

A District Attorney Investigator (DAI) may respond to the scene of incidents, as defined herein, which occur within the County of San Diego.

The DAI will contact the supervisor in charge of the investigative agency at an incident scene. A briefing of the incident and a familiarization of the incident scene will be given as soon as practical. The DAI will be permitted access to the incident scene to the extent possible, without contaminating evidence or otherwise disturbing the scene.

The DAI may participate in the interview of witnesses, if invited by the primary investigating agency. They will identify any potential witnesses they discover and point out any item of evidence they observe to the officer in charge of the investigation. The DAI will not interview witnesses and will not gather evidence at the initial scene but may provide any advice or other assistance sought by the primary investigating agency.

The assigned DAI may attend the autopsy of any decedent involved in a fatal incident.

310.15 "THREE DAY" INITIAL BRIEF

In any incident, as defined herein, the primary investigating agency, or former primary investigating agency if the incident is an AB1506 Qualifying Event, shall provide a briefing to representatives of the involved agency and the District Attorney's Office, or the Attorney General's Office, generally no later than the third working day following the incident. The briefing shall include a verbal review of the evidence, witness statements, and the status of the investigation. Included in this review should be selected representatives of the involved agency, representatives from the Federal Bureau of Investigation, the United States Attorney's Office, and legal representatives for the involved agency.

310.16 REPORTING

Upon completion of the investigation of an incident, as defined above, or no later than 90 days, the investigating agency shall provide copies of all investigative reports, witness statements, recordings, video evidence, photographs, diagrams, autopsy reports, and all other relevant documents to the California DOJ or the District Attorney for review as appropriate. The primary investigative agency shall also make available for inspection any item of evidence.

In cases where there is a use of deadly force that is not a qualifying discharge of a firearm or does not result in death, they will be investigated by the involved agency unless there is an independent MOU with another agency to handle those investigations. Submission of these cases for review by the District Attorney's Office for potential criminal liability will be determined by the investigating agency.

310.17 DISTRICT ATTORNEY RESPONSIBILITY

The District Attorney may request supplemental investigation of an incident by the primary investigating agency or conduct additional investigation through District Attorney personnel. Copies of any investigative reports prepared by the District Attorney will be provided to the primary investigating agency as soon as possible.

The District Attorney shall conduct an independent assessment of the circumstances surrounding an incident, as defined herein. The District Attorney will issue written findings to the head of the primary investigating agency and the head of the agency employing the officer(s) involved within 90 days of receiving all relevant reports, such as the Medical Examiner's reports and laboratory findings.

The District Attorney's Office will be responsible for releasing their findings to the media/public after first issuing the findings to the head of the primary investigating agency and the head of the agency employing the involved peace officer. The time and manner of release shall be determined by the District Attorney's Office with notification being made to the affected agencies beforehand, to ensure involved parties are prepared for that release of information.

In the event of an officer-involved shooting where an officer is wounded and a person is charged with a crime, the District Attorney reserves the option to waive the review set forth herein. In such a case, the District Attorney will send the requesting agency a letter memorializing the absence of state criminal liability on the part of the officer(s) involved.

310.18 VIDEO AND AUDIO EVIDENCE RELEASES

Law enforcement agencies will endeavor to release video and audio evidence from an incident within 45 days of an incident or sooner, pursuant to Government Code section 6254(f)(4) and in accordance with Penal Code section 832.7. However, video and audio evidence will not be released if:

1. Release will substantially interfere with an active criminal investigation.
2. The safety of a witness or confidential source will be endangered, and redaction of the video or audio will not protect the safety of the individual.
3. Release will violate the reasonable expectation of privacy of a subject depicted in the recording which outweighs the public interest in the video, and redaction of the video or audio will not protect the privacy of the individual.

310.19 INCIDENTS INVOLVING NON-PARTICIPATING LAW ENFORCEMENT AGENCIES

When an employee of a state, local, or out-of-county law enforcement agency not participating in this agreement is involved in an incident as described above, the jurisdictional agency shall conduct the primary investigation of the incident unless there is an independent MOU between that non-participatory law enforcement agency and another agency to conduct those investigations. The agency that employs the involved officer may conduct a concurrent or subsequent investigation of the incident.

310.20 INCIDENTS INVOLVING FEDERAL LAW ENFORCEMENT PERSONNEL

This MOU does not generally apply to incidents involving federal law enforcement personnel; therefore, incidents involving them will be handled by the appropriate federal investigatory agency or as outlined in an independent MOU/agreement.

310.21 INCIDENTS INVOLVING PEACE OFFICERS ASSIGNED TO A FEDERAL TASK FORCE

If the involved officer is a peace officer under California law and assigned to a federal task force (i.e., a Task Force Officer, aka TFO), then the primary investigating agency shall be determined based on the agency the Task Force Officer works for, and pursuant to this MOU.

310.22 AB1506 QUALIFYING EVENTS

The California Department of Justice is mandated under AB1506 to investigate officer-involved shootings of "unarmed" civilians resulting in death. The intent is to have Department of Justice investigators working collaboratively with the staff from the local primary investigating agency to conduct the investigation. These investigations will be conducted in accordance with the guidelines in the California Department of Justice – Division of Law Enforcement California Police Shooting Investigations Teams (CaPSIT) Investigation Protocol Procedures manual and local OIS practices, like this MOU. Upon completion of the investigation, the investigative package will be submitted by the CaPSIT Case Agent to the California Attorney General's Division of Criminal Law for review.

310.23 DUTIES OF INITIAL ON SCENE SUPERVISOR

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. Attempt to obtain a brief overview of the situation from any involved officer(s).
- 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 involved officer(s), the initial on scene supervisor should not attempt to order any officer to provide other than public safety information.
- e. Provide all relevant information to the Watch Commander and Communications 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 detective supervisor or other assigned personnel.
- g. As soon as practical, involved officers should be separated and transported to a nearby law enforcement facility or other location as directed by the San Diego Police Department.
 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 provided with a comparable replacement weapon by the Department.

310.24 WATCH COMMANDER DUTIES

Upon learning of an officer-involved shooting, the Watch Commander shall be responsible for coordinating all aspects of the incident until relieved by investigators from the investigating agency or Carlsbad Police Department investigation personnel.

310.25 NOTIFICATIONS

The following entities shall be notified as soon as practical:

- San Diego Police Department
- Division Commanders
- Psychological/Peer support personnel
- CPOA/CPMA representative (if requested)

310.26 INVOLVED OFFICERS

Once the involved officer(s) have arrived at the station or at a different designated location, if not already done a supervisor 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)).

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

310.27 DETECTIVE PERSONNEL

Once notified of an officer-involved shooting, it shall be the responsibility of the Investigations Division supervisor to assign appropriate detective personnel to handle the investigation of related crimes preceding the deadly force incident. This investigation will be in coordination with the primary investigating agency.

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

310.28 ADMINISTRATIVE INVESTIGATION

The Carlsbad Police Department is responsible for conducting an administrative investigation to determine the conformance with department policy. The investigation will be conducted by the Professional Standards and Services Bureau.

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

- a. Any officer involved in a shooting or death may be requested or administratively compelled to provide a blood sample for alcohol/drug screening. Absent consent from the officer, such compelled samples and the results of any such testing shall not be disclosed to any criminal investigative agency.
- b. If any officer has voluntarily elected to provide a statement to criminal investigators, the assigned administrative investigator should review 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.
- 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. However, in order to maintain the integrity of each individual officer's statement, involved officers shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed (Government Code § 3303(i)).

3. Administrative interviews should be recorded by the investigator. The officer may also record the interview (Government Code § 3303(g)).
4. The officer shall be informed of the nature of the investigation. If an officer refuses to answer questions, they should be given their 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.
5. The Professional Standards and Services Bureau shall compile all relevant information and reports necessary for the Department to determine compliance with applicable policies.
6. 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.
7. Any other indications of potential policy violations shall be determined in accordance with standard disciplinary procedures.

310.29 AUDIO AND VIDEO RECORDINGS

Any officer involved in an incident may be permitted to review available Body Worn Camera (BWC) video or other video or audio recordings prior to providing a recorded statement or completing reports at the discretion and with the approval of assigned investigators or a supervisor.

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 BWC or other video or audio recordings with approval of assigned investigators or a supervisor.

Any BWC and other known video or audio recordings of an incident should not be publicly released during an ongoing investigation without consulting the primary investigating agency

Williams # 5221
Mickey Williams, Chief of Police

6/9/2022
Date