

**MONTEREY COUNTY DISTRICT ATTORNEY  
FOR OFFICIAL INVOLVED SHOOTINGS (OIS) AND IN CUSTODY DEATH (ICD)**

This procedure is designed to designate departmental procedures to be followed in the investigation of Officer Involved Shootings (OIS) and In Custody Death (ICD) incidents. The purpose of this procedure is to maximize the effectiveness of an independent investigation by the District Attorney and thereby eliminate any perceived conflict of interest that may otherwise result, and to clarify the process by which the District Attorney's Office becomes involved in these cases.

The Monterey County District Attorney's Office may, upon request, agree to conduct an independent investigation and review of all cases that involve:

1. The death of a serious injury of any persons when the circumstances of the death or injury involves a peace officer whether on or off duty.
2. The death of or life threatening injury to any inmate in any custodial facility when the circumstances of the death or injury involve a peace officer or custodial officer.

**I. INVOCATION OF OIS/ICD PROTOCOL**

- A. Each agency to this agreement, when in the capacity of a venue agency or employer agency, may itself invoke this protocol upon the occurrence of any OIS/ICD event involving a police employee which may have possible criminal liability attached. Upon this unilateral invocation, the matter will be investigated under the provisions of this protocol only for the existence or non-existence of criminal conduct. It will not be the function of this investigation to determine civil negligence or to determine whether the incident was in accordance with the agency policy.
- B. In lieu of invoking this protocol, the involved agency (ies) may investigate the matter themselves or seek assistance from other agencies. The District Attorney retains discretion to decline participation.
- C. The District Attorney, Assistant District Attorney or Chief Investigator may take appropriate action to unilaterally invoke this protocol and initiate an independent investigation. Cooperation with the involved agency's is important. All parties must understand that the District Attorney's investigation is independent of the involved agency and has investigative priority over the administrative investigation, and that it is to begin immediately after an incident has occurred.

**II. TYPES OF DISTRICT ATTORNEY INVOLVEMENT**

- A. Independent Investigation

1. The District Attorney's Team, comprised of an assigned Deputy District Attorney and two senior Criminal Investigators, will assume primary investigative responsibility for the incident. The venue agency may be requested to participate in all or selected phases of the investigation.
2. The District Attorney's Team will be responsible for initiating the official written report of the incident which will include all interviews.
3. The District Attorney's Team will collect all reports from all investigative sources, and be responsible for maintaining a master case file of the incident.
4. The venue agency personnel may be requested to participate in all or selected interviews and to make suggestions to facilitate the investigative process. However, since the final responsibility for the investigation rests with the District Attorney's Team, the Team shall direct the independent investigation.
5. The Department of Justice Criminalistic Laboratory will function as the scientific investigative unit as directed by the District Attorney's Team. This does not preclude the use of the venue agency's identification and forensic personnel to facilitate the investigation.
6. In cases involving a death, the Monterey County Sheriff's Department Coroner staff will function as an integral part of the Team, pursuant to its established procedures and legal responsibilities.
7. It shall be the responsibility of the Deputy District Attorney assigned to the Team to render all appropriate legal assistance necessary to complete the investigation.
8. At the completion of the investigation, the completed investigative package will be submitted to the District Attorney or Assistant District Attorney who will review the incident and prepare a written finding as to case disposition. This investigation will include, but will not be limited to, the following:
  - A. The District Attorney's Team Investigator's summary report of the incident.
  - B. The District Attorney's Team's investigative reports.
  - C. All supporting relevant police reports.
  - D. Autopsy and Coroner's reports and photographs.

- E. Relevant rap sheets and mug photographs.
  - F. Photographs and diagrams of scene.
  - G. Evidence control sheets and forensic requests.
  - H. DOJ laboratory reports.
9. Press release procedures.
- A. The District Attorney will request the venue agency to limit the content of any media release to the following:
    - 1. Information contained in public records.
    - 2. The general description of the offense, and the participating agencies involved.
    - 3. A request for public assistance in apprehending a suspect or assistance in other matters in which the release of information to the media would be helpful to the investigation.
    - 4. A request for assistance in other matters in which the release of information to the media would be helpful to the investigation.
  - B. The District Attorney's Team will limit public dissemination of information to the following:
    - 1. Confirmation that the District Attorney's Office is conducting an independent investigation of the incident.
    - 2. A request for assistance in apprehending a suspect or assistance in other matters in which the release of information to the media would be helpful to the investigation.
    - 3. All other issues will be referred to the District Attorney or his Assistant in accordance with existing press release policy.
  - C. The results of the investigation will be released until the venue has been provided a copy of the District Attorney's Team summary of the investigation and the District Attorney's conclusion. The public release of information concerning the content of the investigation and the results, and any

information regarding filing of a criminal complaint will be made by the District Attorney or his designated Assistant.

B. Legal advise/general assistance requests.

1. Legal advise and/or general assistance, where appropriate, will be given by the on-call duty Deputy District Attorney and/or Investigator upon requests, in the usual manner when the venue agency specifically asks for such advise and not an independent investigation.
2. Requests for general assistance is an investigation being conducted by the venue agency will be agreed to on a case by case basis when the venue agency wished to maintain primary control of and responsibility for an investigation. It is important that there be no misunderstanding between agencies as to whom is in charge of a particular investigation.
3. It appears to the District Attorney personnel providing legal advice or general assistance that an independent investigation is in order but has not been requested, contact will be made with both the District Attorney and the venue agencies administration for a reassessment of the type of assistance being requested.
4. It is important to recognize that if there is a late request for an independent investigation or legal advice/general assistance, this may affect the District Attorney's ability to become involved. On the other hand, our on-call duty Deputy District Attorney and Investigators are expected to be immediately available to the law enforcement agencies upon reasonable request.

C. Multi-agency incidents.

1. If an officer from one department is involved in an incident in another agency's jurisdiction and the District Attorney's Team is contacted for assistance, the decision as to which one of the police agencies assumes the responsibility must be decided immediately. This is imperative for purpose of recognizing the venue agency's request for assistance.

## OFFICER-INVOLVE FATAL INCIDENT PROTOCOL

Investigations of Officer-Involved Fatal Incidents are often more complex and demanding than other fatal incidents which do not involve police officers, for a number of reasons:

1. Applicable statutory and case law can be complex and confusing.
2. Technical evidence collection and scientific analysis is often required.
3. Such cases often attract considerable public and news media interest.
4. Questions may arise about the propriety of a police agency conducting an investigation in which one of its officers is involved.
5. The potential social, civil, administrative and criminal consequences of the fatal act can be profound and can affect many people.
6. The various competing interests can adversely affect the investigation of such a matter if adequate provisions are not made in advance.
7. The public's right to know what happened may conflict with the right of a party to a fair trial or with a party's desire for less publicity.
8. If several different agencies are involved, differences in policy, procedure, personnel, resources and interests may conflict and hamper the investigation.

Because of these factors, this protocol has been written as a model upon which individual agencies may develop policies and procedures for the investigation of Officer-Involved Fatal Incidents. The goal of the protocol is to help assure that such cases are fully and fairly investigated and that proper dispositions of such cases are made based upon all legally available relevant evidence.

While this document represents the understanding and agreement among member agencies of how such cases are to be investigated, the protocol permits individual agencies to make minor modifications to meet individual agency requirements.

In Officer-Involved fatal/mortal incidents all available relevant information about the incident will be investigated. The investigation will be conducted in a manner which provides the reality, and the appearance of a thorough and professional investigation which is free and conflicts of interests.

An Officer-Involved fatal incident is an incident directly involving an on/or off-duty police agency employee (including reserves, cadets and volunteers) as an involved party in which death or the serious likelihood of death results. Such incidents include, but are not limited to:

1. International and accidental shootings.
2. International and accidental use of any other deadly or dangerous weapon.
3. Assaults upon police employees who are acting for a law enforcement purpose.
4. Attempts to effect an arrest or otherwise gain physical control over a person for a law enforcement purpose.
5. Death of persons while in police custody or under police custody or under police control.
6. Physical altercations in which the police agency employee is acting in a private capacity for other law enforcement purpose.
7. Vehicular collisions.
8. This protocol will automatically activate whenever a police employee fires a shot and another person is hit.

The VENUE AGENCY for the following areas are designated as follows:

1. Sheriff-Coroner:
  - A. All unincorporated areas of the county (including other legal entities and districts).
  - B. Sheriff's custodial facilities within Santa Cruz City limits, including Water Street, Front Street, Blaine Street, and those portions of the County Governmental Center which are used for prisoner custody including each courtroom.
  - C. Sheriff's custodial facilities within Watsonville City limits, including, but not limited to, that facility located in the County Courthouse at 1430 Freedom Boulevard and the courtroom.
  - D. The California Youth Authority Facility, Ben Lomond.
2. Santa Cruz Police Department:
  - A. All incorporated areas of the City of Santa Cruz (including other legal entities and districts) except as listed in (1b) above.

3. Scotts Valley Police Department:
  - A. All incorporated areas of the City of Scott Valley (including other legal entities and districts).
4. Capitola Police Department:
  - A. All incorporated areas of the City of Capitola (including other legal entities and districts).
5. Watsonville Police Department:
  - A. All incorporated areas of the City of Watsonville (including other legal entities and districts) except as listed in (1c) above.
6. University of California Police-Santa Cruz:
  - A. All areas within the boundaries of the University of California (including other legal entities and districts).
7. California Highway Patrol:
  - A. All incidents involving a fatal traffic collision on ANY roadway.

#### I. INVESTIGATIVE RESPONSIBILITY

The responsibility for investigation "Incidents" rests with the Venue Agency, as specified above, under the direction of the INCIDENT TEAM. Incident/Management team will be comprised of a management-level representative from the Venue Agency, Officer of the District Attorney and the Sheriff-Coroner's Office. The representative from the Venue Agency will be in charge of the team and will be designated the "Incident Commander."

If the personnel from another agency are directly involved in the incident, that agency shall have a management-level representative on the Incident Management Team. The Incident Management Team shall have the authority to call upon the resources of the signature agencies. If an employee is involved in an incident within the venue of another agency, the Venue Agency may elect to defer the incident command authority to the management representative of the involved officer's agency.

Participation in the Incident Management Team and the investigation itself does not preclude any agency from exercising its independent investigatory powers and responsibilities. The agency employing the involved employee(s), whether it is the Venue 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 purpose (e.g. determination of possible violations of departmental regulations;

establishing suitability for duty, training, for use in civil suits or administrative claims bought by or against the agency etc). The employing agency may wish to conduct its own investigation for these purposes. That investigation will normally not duplicate or parallel the Incident Investigation but will focus on those administrative and non-criminal matters which were not within the scope of the Incident Investigation. That investigation should be performed so as to not interfere with the Incident Investigation.

The employing agency, if not the Venue Agency, is encouraged to assign a liaison officer to keep updated on the Incident Investigations progress, and to provide necessary information to Incident Investigators. The liaison officer shall not be considered part of the Incident Management Team.

## II. WORKING WITH THE OFFICER

GOAL: To insure the consistent and fair treatment of all Santa Cruz County Peace Officers who are involved in a fatal incident and still maintain the integrity and insure a proper investigation and handling of evidence.

- A. Insure that the officer receives emergency medical care if necessary.
- B. Psychological Reassurance
  - 1. Ask the officer if s/he's like to have another officer stay with him/her (one not involved in the incident).
  - 2. Explain the investigative process to the officer(s). Review this protocol with them.
  - 3. Ask the officer to begin his/her field notes and not to talk about the incident.
    - A. If there are two or more officers, they should be separated at this time.
- C. Evidence Collection
  - 1. All firearms which have been used should be collected for testing, as well as all ammunition which the officer is carrying.
    - A. If at all possible, do not take the officer(s) gun(s) in front of the other people.
    - B. An effort should be made to replace the officer(s) gun with another if possible at the time his/her's is removed.

- C. Collecting the firearms for evidence should be done as soon as reasonable, and an explanation should be given to the officer(s) about its necessity. The purpose is to conduct a proper investigation; not to be accusatory toward the officer.
  - D. It may be easier to seize the officer(s) entire gun belt rather than individual items from it. Ask the officer which s/he prefers.
2. As soon as possible after the incident, the officer should be taken to the appropriate medical facility and have blood and urine collected.
- A. This is to protect the officer later on as much as it is to complete a professional investigation.
  - B. A good time to stop at the medical facility may be when the officer leaves the scene to go to the department.
- D. Officer Comfort and Notifications
- 1. Once at the department the officer should be allowed to make telephone calls and have access to food, beverage and restrooms, etc.
  - 2. The officer should be told who will interview him/her and should not have repeat his/her story numerous times.
- E. Reports
- 1. The officer will be required to write a report detailing his/her observations, actions and involvement.
    - A. It may be necessary for the officer to interrupt his/her report writing and go to the scene if requested by investigators to orient them as to the incident.
    - B. Once the report is complete and approved, the Investigator in Charge at his/her discretion may defer the interview of the officer until later.
- F. Statements
- 1. The officer(s) will be interviewed by an investigator.

- A. The investigator should allow the employee to ask questions about the status of the case and the investigator should answer, as much as possible, any questions of the officer.
  - B. Miranda Rights will apply as in any criminal investigation.
  - C. This interview is to gather facts and fuse information together. It is not designed to catch or trick an officer.
- 2. Any rights applicable under Government Code Section 3300, usually referred to as the Peace Officer Bill of Rights, will be adhered to.
  - 3. The investigator will make necessary arrangements for another meeting, if necessary, and obtain information on how to reach the officer.
    - A. The officer will make necessary arrangements for another morning to receive instruction and leave work on how s/he can be contacted that day.
- G. Administrative Leave
    - 1. The employing agency should make allowance for the officer(s) 24-hours administrative leave before returning the officer to work.
    - 2. The employing agency should have officer(s) meet with the department psychologist. This meeting will allow the officer to examine any psychological effects of the incident. The meeting shall not be related to any department investigation, and is a privileged relationship.

### **III. INCIDENT MANAGEMENT AND MOBILIZATION**

- A. Incident Management Team Mobilization
  - 1. On-scene agency(s) determine if the policy applies.
    - A. Fatality
    - B. Mortal Injury
    - C. A situation is occurring that has a possibility of death, such as barricaded hostage situation in which swat/hostage teams are deployed. The Incident Management Team should be notified of pending situation.

1. The assigned Incident Management Team personnel can then communicate by phone or get together and be prepared. They will not respond until the incident is over and there is a fatality or mortal injury.
  2. On-scene agency(s) makes preliminary decision as to who is the Venue Agency, and identifies any other agency directly involved.
  3. On-scene agency initiates a call to the agencies they have identified and asks the agency to send its assigned Incident Management Team member.
    - A. Incident Management Team members will go to the on-scene agency's office unless told otherwise.
  4. Each signature agency will assign an employee who has the authority to make policy decisions and commit resources without further inquiry.
    - A. Each signature agency is advised to make a list of its own personnel who would meet the criteria and keep it with those persons who are likely to receive a call to initiate the Incident Management Team.
  5. Incident Management Team makes final determination as to venue agency.
  6. Incident Management Team establishes a command post.
  7. Incident Management Team will manage the investigation using any resources from its agency, utilizing Venue Agency resources as much as possible (personnel, equipment, money).
    - A. Use pre-made packet or task force method as guideline.
    - B. Insure VIP/press area and provide as much information as possible every thirty minutes without compromising the investigation.
- B. Pending Command Post Establishment
1. On-scene agency will follow its normal procedures in securing the scene, identifying, isolating, and interviewing witnesses.
  2. On-scene agency will start a chronological log of activity including, but not limited to, time received, arrived, responding units, when call-outs made, etc.

#### IV. EVIDENCE COLLECTION

- Goal: To insure that all items relevant, or possibly relevant, to an officer-involved fatal incident are documented, collected and recorded. Further, that they be analyzed by a criminologist or forensic professional as soon as possible. That the chain of evidence is established and remains clear through storage, analysis, and presentation to administrators, boards and the courts.
- A. Crime scene evidence collection shall be the responsibility of the Santa Cruz County Sheriff's Office Crime Scene Investigation Unit.
  - B. The evidence will be booked at the Sheriff's Office.
  - C. The District Attorney's Office will review the collected evidence within 72 hours.
    - 1. The District Attorney and the Incident Management Team will designate what evidence will be sent for processing.
    - 2. The Sheriff's Office will cause the evidence to be delivered to the proper facility to complete the requested analysis.
  - D. Upon completion of analysis the evidence and original reports will be delivered to the venue agency for storage.
    - 1. All evidence not sent for analysis will also be sent to the Venue Agency, along with the original reports.
  - E. The Incident Commander or his/her designee will, if requested, present the evidence and case information to the Venue Agency or other boards as necessary.
    - 1. He/she may call witness to cause evidence and information to be presented.
  - F. The District Attorney will present evidence and information to the courts as is its normal prosecutorial duties.

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**OFFICER ENTRY INTO OTHER LAW ENFORCEMENT JURISDICTIONS**  
**MONTEREY COUNTY LAW ENFORCEMENT AGENCIES**

**PURPOSE**

The nature of undercover investigations and the proliferation of task and teams involve in cross-jurisdictional surveillance emphasize the importance of an accepted protocol for inter-agency notifications. Equally important is the need for recognized procedures in the event of field contact or confrontation between uniformed and plainclothes officers.

This agreement addresses these two issues: a protocol for the notification of planned events in another agency's jurisdiction, and; suggested procedures to follow in situations involving a field contact or confrontation between undercover officers and uniformed personnel.

**DEFINITIONS**

1. Service Agency

The law enforcement agency initiating an investigation or planned event which enters another agency's jurisdiction.

2. Venue Agency

The law enforcement agency having primary responsibility for the delivery of police services in a geographical area.

3. Planned Event

A law enforcement activity which can be/is planned in advance, such as the service of a search or arrest warrant, a money or narcotics show, a protracted surveillance, etc.

**NOTIFICATIONS**

Prior to a planned event, the service agency shall notify the venue agency, in a timely manner, of the proposed event. Notification will normally be to the venue agency's watch commander. Such notification should include:

1. The time and location of the planned event and the names of the involved persons, if applicable.
2. The nature of the planned event, ie., search warrant., etc.
3. An assessment of the potential for problems.