

## Officer-Involved Shootings and Deaths

### 310.1 PURPOSE AND SCOPE

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 other action of an officer.

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

### 310.2 POLICY

The policy of the Union City Police Department is to ensure that officer-involved shootings and deaths are investigated in a thorough, fair and impartial manner.

### 310.3 INVESTIGATION RESPONSIBILITY

This Department conducts a separate but parallel investigation with the Alameda County District Attorney's Office OIS protocol for investigation of officer-involved shooting incidents. Officer involved shootings and in-custody deaths are investigated in a thorough, fair and impartial manner.

### 310.4 TYPES OF INVESTIGATIONS

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.

### 310.5 CONTROL OF INVESTIGATIONS

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 agency that employs the involved officer.

Jurisdiction is determined by the location of the shooting or death and the agency employing the involved officer. The following scenarios outline the jurisdictional responsibilities for investigating officer-involved shootings and deaths.

#### 310.5.1 UNION CITY POLICE DEPARTMENT OFFICER WITHIN THIS JURISDICTION

The Union City Police Department is responsible for the criminal investigation of the suspect's actions, the civil investigation and the administrative investigation. The criminal investigation of the officer-involved shooting will be conducted by the Union City Police Department and monitored or investigated by the Alameda County District Attorney's Office

# Union City Police Department

## Union City PD Policy Manual

### *Officer-Involved Shootings and Deaths*

---

#### 310.5.2 CRIMINAL INVESTIGATION OF OFFICER ACTIONS

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

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

#### 310.5.3 UNION CITY 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. That agency may relinquish its criminal investigation of the suspect(s) to another agency. The Union City Police Department will conduct timely civil and/or administrative investigations.

#### 310.5.4 INVESTIGATION RESPONSIBILITY MATRIX

The following table identifies the possible scenarios and responsibilities for the investigation of officer-involved shootings:

	<b>Criminal Investigation of Suspect(s)</b>	<b>Criminal Investigation of Officer(s)</b>	<b>Civil Investigation</b>	<b>Administrative Investigation</b>
<b>UCPD Officer in this Jurisdiction</b>	UCPD	UCPD/District Attorney's Office	UCPD	UCPD
<b>Allied Agency's Officer in this Jurisdiction</b>	UCPD	UCPD/District Attorney's Office	Involved Officer's Department	Involved Officer's Department
<b>UCPD Officer in another Jurisdiction</b>	Agency where incident occurred	Decision made by agency where incident occurred	UCPD	UCPD

#### 310.6 INVESTIGATION PROCESS

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

##### 310.6.1 UNINVOLVED OFFICER RESPONSIBILITIES

Upon arrival at the scene of an officer-involved shooting, the first uninvolved UCPD 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 the Department or other agencies.
- (d) Coordinate a perimeter or pursuit of suspects.

# Union City Police Department

## Union City PD Policy Manual

### *Officer-Involved Shootings and Deaths*

---

- (e) Check for injured persons and evacuate as needed.
- (f) Brief the supervisor upon arrival.

#### 310.6.2 WATCH COMMANDER DUTIES

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 Chief of Police or a Division Captain.

All outside inquiries about the incident shall be directed to the Watch Commander.

#### 310.6.3 NOTIFICATIONS

The following person(s) shall be notified as soon as practicable:

- Chief of Police
- Support Services Division Commander
- Operations Division Commander
- District Attorney Officer Involved Shooting protocol team
- Investigations Lieutenant
- Professional Standards Unit Lieutenant
- Psychological/Peer support personnel
- Coroner (if necessary)
- Officer representative (if requested)
- Involved officer's agency representative (if requested)
- Press Information Officer

All outside inquiries about the incident shall be directed to the Watch Commander and or Public Information Officer.

#### 310.6.4 PAID ADMINISTRATIVE LEAVE FOLLOWING AN OFFICER INVOLVED SHOOTING OR DEADLY FORCE

Each involved officer shall be given paid administrative leave following an officer-involved shooting and it shall be the duty of the Watch Commander to make schedule adjustments to accommodate such leave.

The Chief of Police or Division Commander will determine the appropriateness and duration of paid administrative leave, based on the findings of the preliminary criminal investigation and the recommendation of the psychotherapist regarding the officer's readiness for field assignment. Generally, the length of paid administrative leave shall not exceed three workdays. An employee may request additional paid administrative leave subject to approval of the Chief of Police or Division Commander, based upon information provided to establish the need to grant the request.

# Union City Police Department

## Union City PD Policy Manual

### *Officer-Involved Shootings and Deaths*

---

- The department is committed to facilitating the officer's successful transition back to full duty status, which may include temporary reassignments such as: partnered patrol deployments, patrol watch adjustments, specialty position assignments, etc.

#### 310.6.5 SUPERVISOR RESPONSIBILITIES

Upon arrival at the scene, the first uninvolved UCPD 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.
  - (a) 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 UCPD officer to immediately provide public safety information necessary to secure the scene, identify injured parties and pursue suspects.
  - (a) 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.
  - (b) 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 Communications Section. If feasible, sensitive information should be communicated over secure networks.
- (d) Take command of and secure the incident scene with additional UCPD members 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 UCPD officer should be given an administrative order not to discuss the incident with other involved officers or UCPD members 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.
- (f) All photographs, evidence and weapon recovery shall be carried out at the direction of the Investigations Supervisor or Manager.

#### 310.6.6 INVOLVED OFFICERS

The following shall be considered for the involved officer:

- (a) Any request for legal or union representation will be accommodated.

# Union City Police Department

## Union City PD Policy Manual

### *Officer-Involved Shootings and Deaths*

---

1. Involved UCPD 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-UCPD 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 Department to each involved UCPD officer. A licensed psychotherapist may also be provided to any other affected UCPD members, upon request.
- (a) Interviews with a licensed psychotherapist will be considered privileged.
- (b) 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.
- (c) A separate fitness-for-duty exam may also be required (see the Fitness for Duty Policy).
- (e) Peer counselors are cautioned against discussing the facts of any incident with an involved or witness officer (Government Code § 8669.4).

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 UCPD 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.

#### **310.7 CRIMINAL INVESTIGATION**

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 department 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) UCPD supervisors and Professional Standards Unit personnel should not participate directly in any voluntary interview of UCPD officers. This will not prohibit such

# Union City Police Department

## Union City PD Policy Manual

### *Officer-Involved Shootings and Deaths*

---

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 his/her choosing or an attorney prior to speaking with criminal investigators (Government Code § 3303(i)). 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, no administratively coerced statement will be provided to any criminal investigators unless the officer consents.

#### 310.7.1 REPORTS BY INVOLVED UCPD OFFICERS

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

While the involved UCPD 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 UCPD 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.

#### 310.7.2 WITNESS IDENTIFICATION AND INTERVIEWS

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.

# Union City Police Department

## Union City PD Policy Manual

### *Officer-Involved Shootings and Deaths*

---

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 a member of the Department.
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.

#### **310.7.3 INVESTIGATIVE PERSONNEL**

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

#### **310.8 ADMINISTRATIVE REVIEW/INVESTIGATION**

In addition to all other investigations associated with officer involved shootings, the department will conduct an administrative review of the officer involved shooting to determine if the use of force was within department policy. The review will be conducted by the Professional Standards Unit. The Professional Standards Unit will use the criminal investigation, such as reports, evidence, statements, or other materials associated with the criminal investigation, to determine if the officer involved shooting followed department policy. The administrative review will be documented in conformance with the departments Use of Force reporting policy.

If policy violations are apparent or further interview(s) of the involved officer(s) is deemed necessary to determine if the officer involved shooting followed department policy, the

# Union City Police Department

## Union City PD Policy Manual

### *Officer-Involved Shootings and Deaths*

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Professional Standards Unit will advise the Division Commander, who will determine if the matter will require a Professional Standards administrative investigation. If an investigation is deemed necessary, the investigation will comply with the Public Safety Officer Procedural Bill of Rights.

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, 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.
  5. The Professional Standards Unit Lieutenant or authorized designee shall compile all relevant information and reports necessary for the Department to determine compliance with applicable policies.
  6. Any other indications of policy violations shall be determined in accordance with standard disciplinary procedures.



# Union City Police Department

## Union City PD Policy Manual

### *Officer-Involved Shootings and Deaths*

---

#### **310.9 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 Chief of Police, prosecuting attorney or City Attorney's Office, as appropriate.

#### **310.10 CIVIL LIABILITY RESPONSE**

A member of this department may be assigned to work exclusively under the direction of the legal counsel for the Department 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.

#### **310.11 DEBRIEFING**

Following an officer-involved shooting or death, the Union City Police Department should conduct both a critical incident/stress debriefing and a tactical debriefing.

##### **310.11.1 CRITICAL INCIDENT/STRESS DEBRIEFING**

A critical incident/stress debriefing should occur as soon as practicable. The Support Services Division Captain is responsible for organizing the debriefing. Notes and recorded statements should not be taken because the sole purpose of the debriefing is to help mitigate the stress-related effects of a traumatic event.

The debriefing is not part of any investigative process. Care should be taken not to release or repeat any communication made during a debriefing unless otherwise authorized by policy, law, or a valid court order.

Attendance at the debriefing shall only include those members of the Department directly involved in the incident, which can include support personnel (e.g., dispatchers, other non-sworn personnel). Family or other support personnel may attend with the concurrence of those involved in the incident. The debriefing shall be closed to the public and should be closed to all other members of the Department, including supervisory and Professional Standards Unit personnel.

# Union City Police Department

## Union City PD Policy Manual

### *Officer-Involved Shootings and Deaths*

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#### 310.11.2 TACTICAL DEBRIEFING

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

#### **310.12 MEDIA RELATIONS**

Any media release shall be prepared with input and concurrence from the supervisor and department representative responsible for each phase of the investigation. Releases will be available to the Watch Commander, Support Services Division Captain and Press Information Officer in the event of inquiries from the media.

The Department shall not subject any involved UCPD officer to visits by the media (Government Code § 3303(e)). No involved UCPD officer shall make any comment to the media unless he/she is authorized by the Chief of Police or a Division Captain. Department members receiving inquiries regarding officer-involved shootings or deaths occurring in other jurisdictions shall refrain from public comment and will direct those inquiries to the agency having jurisdiction and primary responsibility for the investigation.

#### **310.13 REPORTING**

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

#### **310.14 SECTION TITLE**

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