

Officer-Involved Critical Incidents

416.1 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(s) of an officer.

In other incidents involving the use of force by department members, including those that result in serious bodily injury, the Office of the Police Chief may decide that the investigation will follow one or more of the processes provided in this policy.

416.2 POLICY

The Davis Police Department will objectively evaluate the use of force by its members to ensure that their authority is used lawfully, appropriately and is consistent with training and policy.

416.3 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.

416.4 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 sections outline the jurisdictional responsibilities for investigating officer-involved shootings and deaths.

416.4.1 CRIMINAL INVESTIGATION OF SUSPECT ACTIONS

The investigation of any possible criminal conduct by the suspect is controlled by the agency in whose jurisdiction the suspect's crime occurred. For example, the Davis Police Department would generally control the investigation if the suspect's crime occurred in Davis. However, the Office of the Police Chief may assign the investigation to an outside agency to assist.

If multiple crimes have been committed in multiple jurisdictions, identification of the agency that will control the investigation may be reached in the same way as with any other crime. The investigation may be conducted by the agency in control of the criminal investigation of the involved

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officer, at the discretion of the Office of the Police Chief and with concurrence from the other agency.

416.4.2 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 Office of the Police Chief for approval.

416.4.3 ADMINISTRATIVE AND CIVIL INVESTIGATION

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

416.5 INVESTIGATION PROCESS

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

416.5.1 UNINVOLVED OFFICER RESPONSIBILITIES

Upon arrival at the scene of an officer-involved shooting, the first uninvolved DPD 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 establishing and maintaining a perimeter or the pursuit of suspects.
- e. Check for injured persons and evacuate as needed.
- f. Brief the supervisor upon arrival. Secure the scene and identify and eliminate hazards for all those involved.

416.5.2 WATCH COMMANDER / SCENE SUPERVISOR RESPONSIBILITIES

The Watch Commander shall be notified as soon as practical following:

- a. The use or attempted use of deadly force.
- b. When a person dies in the process of being arrested.
- c. When a person dies while in custody.
- d. Whenever a peace officer discharges a firearm at a person.

416.5.3 WATCH COMMANDER RESPONSIBILITIES

Upon learning of an officer-involved shooting or death, the Watch Commander shall be responsible for coordinating all aspects of the incident until they are relieved by administrative personnel.

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- a. The Watch Commander shall take all reasonable steps to obtain emergency medical attention for all apparently injured persons.
- b. Attempt to obtain a brief overview of the situation from any uninvolved officer. In the event there are no uninvolved officers present during the actual event leading to the use of force or death, the supervisor should attempt to obtain a brief overview from one involved officer.
- 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. 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 scene supervisor should not attempt to compel or order an officer to provide any information, except for pertinent public safety information as specified above.
- e. The Watch Commander should take command and secure the scene with additional personnel until relieved as specified in this policy. When feasible, the scene shall be secured by at least two law enforcement personnel.
- f. The Watch Commander should safely remove the involved officer(s) from the scene and take possession of any discharged firearms and any expended or unexpended ammunition when it is reasonable to do so. A replacement weapon will be provided, by the department, as soon as practical. If the Watch Commander discharges their firearm they shall be removed from the scene as soon as a supervisor or manager arrives at the scene and assumes command. Each involved Davis police officer will be given an administrative order to not discuss the incident with other involved officers or Davis police members pending further direction from a supervisor/manager.

416.5.4 NOTIFICATIONS

Administrative Notification shall be made as soon as possible during or after any incident.

416.5.5 NOTIFICATION TO DEPARTMENT OF JUSTICE

The California Department of Justice (DOJ) is required to investigate an officer-involved shooting resulting in the death of an unarmed civilian. The Office of the Police Chief should promptly notify the DOJ in all incidents involving an officer-involved shooting resulting in the death of an unarmed civilian, including where it is undetermined if the civilian was unarmed.

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

416.5.6 INVOLVED OFFICERS

The following shall be considered for the involved officer(s):

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

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1. Involved DPD 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-DPD 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 DPD officer. A licensed psychotherapist may also be provided to any other affected DPD members, upon request.
 1. Interviews with a licensed psychotherapist will be considered privileged.
 2. An interview or session with a licensed psychotherapist may take place prior to the member providing a formal interview or report. However, involved members shall not be permitted to consult or meet collectively or in a group with a licensed psychotherapist prior to providing a formal interview or report.
- (e) Although the Department will respect the sensitivity of communications with peer counselors, there is no legal privilege to confidentiality. 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 involved officer's equipment or clothing, such as blood or fingerprints, until investigators or lab personnel can properly retrieve it.

Each involved DPD officer shall be given reasonable paid administrative leave following an officer-involved shooting or death.

416.6 CRIMINAL INVESTIGATION

The Office of the Police Chief will contact the on-call Yolo County District Attorney Investigator and the on-call Yolo County Deputy District Attorney. The District Attorney's Office may investigate where any injury or death occurs to any person as a result of the use of firearm by a peace officer or when a firearm is fired at a person by a peace officer, whether or not injury or death resulted. However, the Yolo County District Attorney's office may refuse to investigate, in which case the Office of the Police Chief may appoint another investigative agency to conduct the investigation.

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) DPD supervisors and Professional Standards Division personnel should not participate directly in any voluntary interview of DPD officers. This will not prohibit such personnel from monitoring interviews or providing the criminal investigators with topics for inquiry.

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- (b) If requested, any involved officer will be afforded the opportunity to consult individually with a representative of the officer's choosing or an attorney prior to speaking with criminal investigators. However, in order to maintain the integrity of each involved officer's statement, involved officers shall not consult or meet with a representative or an attorney collectively or in groups prior to being interviewed.
- (c) If any involved officer is physically, emotionally, or otherwise not in a position to provide a voluntary statement when interviewed by criminal investigators, consideration should be given to allowing a reasonable period for the officer to schedule an alternate time for the interview.
- (d) Any voluntary statement provided by an involved officer will be made available for inclusion in any related investigation, including administrative investigations. However, no administratively coerced statement will be provided to any criminal investigators unless the officer consents.

416.6.1 REPORTS BY INVOLVED DPD OFFICERS

In the event that suspects remain outstanding or subject to prosecution for related offenses, this department shall retain the authority to require involved DPD 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 DPD 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 DPD 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.

416.6.2 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.
 - 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.

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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.

416.6.2 INVESTIGATIVE PERSONNEL

The Lieutenant and/or Sergeant assigned to Investigation's, or in their absence a Patrol Commander, shall report to duty and shall, unless another agency has been directed by the Office of the Police Chief to do so, be primarily responsible for the investigation of the crime leading to the discharge of firearm and any related crime reports. They may call appropriate personnel to assist in the investigation and to complete crime scene work. The Investigations Division shall be responsible for the origination of a crime report(s), arrest report(s) and all other investigative narratives and reports. The Investigations Lieutenant and/or Sergeant shall approve any document prior to it being included with the original report.

416.7 ADMINISTRATIVE INVESTIGATION

In addition to all other investigations associated with an officer-involved shooting or death, this department will conduct an internal administrative investigation of Davis police officers to determine conformance with department policy. In some cases, the Administrative Investigation will be handled in accordance with Use of Force Review Board policy. The investigation will be conducted under the supervision of the Professional Standards Division. The results and associated documents will be considered part of the officer's/officers' confidential personnel record(s).

- (a) If any officer has voluntarily elected to provide a statement to criminal investigators, the assigned administrative investigator should review that statement before proceeding with any further interview of that involved officer.
 1. If a further interview of the officer is deemed necessary to determine policy compliance, care should be taken to limit the inquiry to new areas with minimal, if any, duplication of questions addressed in the voluntary statement. The involved officer shall be provided with a copy of his/her prior statement before proceeding with any subsequent interviews.

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- (b) 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 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 Division 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.

416.8 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.

416.9 DEBRIEFING

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

a. Critical Incident/Stress Debriefing

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A critical incident/stress debriefing should occur as soon as practicable. The Office of the Police Chief 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). 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 Division personnel, unless they were directly involved in the incident.

b. Tactical Debriefing

A tactical debriefing should take place to identify any training or areas of policy that need improvement. The Office of the Police Chief 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.

416.9 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, Investigation Division Commander and Press Information Officer in the event of inquiries from the media.

The Department shall not subject any involved DPD officer to visits by the media (Government Code § 3303(e)). No involved DPD officer shall make any comment to the media unless he/she is authorized by the Police Chief or a Division Commander. 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.

416.11 AUDIO AND VIDEO RECORDINGS

Any officer involved in a shooting or death may be permitted to review available in-car, body-worn video, or other video or audio recordings in accordance with applicable department policy (Policy 802 - Portable Audio/Video Recorders - Body-Worn Cameras).

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

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416.12 REPORTING

California Government Code Section 12525 requires that in any case where a person dies while "in the process of arrest, the agency shall report, in writing to the California Attorney General, within ten (10) days after the death, all facts in their possession concerning the death.

In the event a death of a prisoner occurs "in the process of arrest", the Police Chief shall direct an investigation of the circumstances of the death using the procedure as outlined in this policy.

"In the process of arrest", for purposes of a death investigation, includes those deaths occurring:

- a. In the physical custody or under the physical restraint of law enforcement officers, even if the person was not formally under arrest at the time.
- b. Killed by any use of force by law enforcement officers prior to booking.
- c. At a crime/arrest scene or medical facility prior to booking.
- d. In transit to or from law enforcement facilities.
- e. Confined in lockups, booking centers, or temporary holding facilities.

A comprehensive incident report describing the events of the death of the individual will be sent by the Deputy Chief, within the required time period, to:

Criminal Justice Statistical Center
Attention: Death In Custody Program
P.O. Box 903427
Sacramento, CA 94203-4270

The Criminal Justice Statistical Center will review the information and may return a Law Enforcement Custodial Death Report (Form CJ-11A) for completion if the death meets federal reporting requirements. The Deputy Chief shall be responsible for forwarding any required report.

[See attachment: Yolo County OICI Protocol.pdf](#)

[See attachment: County MOU DOJ.pdf](#)

[See attachment: DOJ Notification - unarmed deadly force.pdf](#)

Attachments

PP 3.05-AA Yolo County OICI Protocol.pdf

Yolo County Protocol for Response to Officer Involved Critical Incidents



Participating Agencies

California Highway Patrol – Woodland

Davis Police Department

UC Davis Police Department

West Sacramento Police Department

Winters Police Department

Woodland Police Department

Yolo County District Attorney's Office

Yolo County Probation Department

Yolo County Sheriff's Office

A. PURPOSE AND SCOPE

The purpose of this protocol is to establish uniform procedures for the investigation of Officer-Involved Critical Incidents.

This protocol recognizes the need for timely independent review of Officer-Involved Critical Incidents and considers available investigative resources while maintaining a best-practice approach of having an independent, outside agency investigate the incident.

While this protocol is generally recommended for use by all Yolo County law enforcement agencies, and other local, federal or state law enforcement agencies operating in Yolo County, each individual agency retains the discretion to adopt, reject, or modify any portion of this protocol in accordance with existing rules and regulations of that agency.

Additionally, this protocol can be used for the investigation of any incident involving the death of, or great bodily injury to a law enforcement officer or when a law enforcement officer is being investigated for committing a crime.

Finally, the provisions of this protocol shall be considered only as guidelines. It is recognized that police work is not always predictable and circumstances may arise which warrant departure from this protocol. This protocol is solely for the purpose of guidance. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable by law by any party in any matter, civil or criminal, nor do they place any limitations on otherwise lawful investigative or litigative prerogatives of any signatory agency.

B. DEFINITIONS

1. Officer-Involved Critical Incident (OICI):

- An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
- An incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury.
- Any incident resulting in death or great bodily injury which a Primary Agency or Jurisdiction Agency deems to be critical in nature, including but not limited to: vehicle pursuits and collisions; where a person was in police custody; and physical altercations with a police employee.

2. Great Bodily Injury: For the purpose of this protocol, great bodily injury includes any gunshot wound or any injury that, upon initial assessment, is likely to lead to death, paralysis, or other permanent change to a person's physical capability.

3. Jurisdictional Agency: The law enforcement agency with primary jurisdiction over the physical location of an incident. If an incident spans multiple jurisdictional areas, the Jurisdictional Agency will be determined as the location where the actual OICI took place or as otherwise agreed to by the Involved Agencies.

4. Primary Agency: The employing agency(ies) of the officer(s) involved in the actual OICI force application and/or the agency(ies) employing the officer(s) that suffered great bodily injury or death as the result of an OICI.

5. Involved Agency: Any agency involved in the OICI, whether or not its officers were directly involved in activities that precipitated a death or great bodily injury.
6. Uninvolved Agency: A law enforcement agency that had no involvement in the OICI and has the capacity to conduct an independent investigation related to an OICI.
7. Investigating Agency: the Uninvolved Agency that conducts a criminal investigation of the involved officer's actions. The Investigating Agency is responsible for preparing investigative reports and submitting them to the District Attorney for review.

C. TYPES OF INVESTIGATIONS

OICIs generally involve multiple, separate and often overlapping investigations. They typically include:

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

D. CONTROL OF INVESTIGATIONS

1. Criminal Investigation of Suspect Actions

The investigation of any possible criminal conduct by the suspect is generally investigated by the Jurisdictional Agency, absent some other agreement to the contrary. The Jurisdictional Agency is responsible for working with the District Attorney's Office for the charging of any involved suspect(s).

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 Jurisdictional Agency's protocol. As a general rule, when the Primary Agency and the Jurisdictional Agency are the same, the Jurisdictional Agency is encouraged to relinquish criminal investigative control of their employee's actions to an Uninvolved Agency for an independent investigation.

The OICI Protocol is activated by the head of the Primary Agency, or their designee, contacting the Chief Investigator of the Yolo County District Attorney's Office, or their designee, to request an independent criminal investigation of their employee. The two will determine which Uninvolved Agency should be contacted. The head of the Uninvolved Agency, or their designee, should be contacted directly to determine whether they can accommodate the request. If not, another Uninvolved Agency should be contacted until an agency agrees to conduct the investigation. The Uninvolved Agency that agrees to conduct the investigation becomes the Investigating Agency.

3. Administrative and Civil Investigation

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

E. PROTOCOL

1. Agencies are expected to work cooperatively to carry out this agreement.
2. The Jurisdictional Agency is responsible for maintaining the crime scene and any perimeters unless relieved by another agency.
3. Although not ideal, crime scene investigators and other resources from the Primary Agency can be used to assist the Investigating Agency.
4. The coroner shall be promptly notified of any confirmed death. Agencies are expected to work cooperatively to assist the coroner in their duties.
5. Other State and federal resources can be used to support and/or conduct independent investigations of OICIs.
6. Officer Interrogations
 - a. Agencies will honor the legal rights of involved officers pursuant to California Government Code 3300-3313 (Public Safety Officers Procedural Bill of Rights) and any other applicable State and/or federal law.
 - b. Interrogations shall be coordinated by the Primary Agency(ies) and be in compliance with any applicable Memorandum of Understanding affecting the officer's employment.
 - c. It is recognized that there are times when officer(s) legal counsel will advise against making a voluntary statement. Any compelled statements will be obtained exclusively by the Primary Agency for use in any administrative investigation and shall not be shared with an Investigating Agency.
7. Review and Use of Video/Audio Recordings
 - a. Critical incidents, or portions/aspects of critical incidents, may be captured on a variety of video/audio recording devices including, but not limited to: in-car cameras, body-worn cameras, surveillance cameras, traffic cameras, cell-phone cameras, media cameras and/or other similar devices. Furthermore, recordings may come from a variety of sources including those that are agency controlled; or they may come from private devices that are made available to the public and/or law enforcement.
 - b. Each agency should adopt policies/procedures regarding the ability of their employees to review recordings prior to providing a voluntary statement. Recognizing that agencies may have different policies/procedures regarding their employees reviewing recordings prior to providing initial voluntary statements, it is the responsibility of the Investigating Agency to be aware of any applicable policies/procedures prior to conducting interviews of employees that are under investigation. Officers may review recordings consistent with their employing agency policies.
 - c. It is acknowledged and understood that recordings taken during critical incidents do not necessarily reflect the full extent of the nature of the event, or the experience, analysis, training, threat assessment, or state of mind of the individual officers(s) in a given incident. Moreover, recordings, especially video, have limitations and may depict events differently than as honestly recalled by the involved officer(s). Specifically, it is

understood that recording devices may capture information that may not have been heard or observed by the involved officers, and that officers may see and hear things not captured by recording devices.

- d. In such cases where the involved officer(s) will be permitted to view a video recording of the incident prior to providing an initial voluntary statement, they shall be provided the following admonishment:

“Although you’ve had an opportunity to review video/audio recordings prior to providing this voluntary statement, it is important to understand that recordings have limitations and may depict the events differently than you recall, and may not depict all of the events as seen or heard by you. Video has a limited field of view and may not capture events normally seen by the human eye. The “frame rate” of video may limit the camera’s ability to capture movements normally seen by the human eye. Lighting as seen on video may be different than what is seen by the human eye. Videos are a two dimensional medium and may not capture depth, distance, or positional orientation as well as the human eye. Remember, video evidence is intended to assist your memory and ensure that your initial statement explains your state of mind at the time of the incident.”

- e. In such cases where the involved officer(s) will be permitted to view a recording of the incident only after they provide an initial voluntary statement, they shall be provided the following admonishment:

“In this case, there is video/audio evidence that you will have an opportunity to view after you have given your initial statement. Even though there may be video/audio evidence, it often has limitations and may depict the events differently than you recall, and may not depict all of the events as seen or heard by you. Video has a limited field of view and may not capture events normally seen by the human eye. The “frame rate” of video may limit the camera’s ability to capture movements normally seen by the human eye. Lighting as seen the video may be different than what is seen by the human eye. Videos are a two dimensional medium and may not capture depth, distance, or positional orientation as well as the human eye. Remember, video/audio evidence is intended to assist your memory and ensure that your initial statement explains your state of mind at the time of the incident.”

8. Investigative Reports

- a. The Primary Agency shall cooperate fully with the Investigating Agency by providing copies of all criminal investigative reports and evidence including, but not limited to, car and body-worn camera footage, involved uniforms and police equipment, and crime scene video and photos.
- b. The Primary Agency will not furnish any confidential administrative reports, civil reports containing attorney work-product, or compelled statements to the Investigating Agency.
- c. Upon conclusion of the investigation, the Investigating Agency will provide a full investigative report to the Primary Agency. The Primary Agency may use the criminal investigative report pursuant to their individual policies relating to administrative investigations.

F. CORONER'S OFFICE

Information obtained from the incident investigators or from the Involved Agencies will not be released by the Coroner's Office without prior clearance from those agencies.

Release of information from the coroner will generally be limited to the following:

- Autopsy findings, including the condition of the deceased, the cause of death, and toxicology test results (after the involved agencies have received this information).
- The general role of the Coroner's Office in the investigation of any death.

The Coroner's Office will not release any information to the media when there is pending criminal prosecution.

G. DISTRICT ATTORNEY'S OFFICE

1. During an OICI Investigation the District Attorney's Office will:

- Assist and advise criminal investigators regarding the various legal issues that may arise, including but not limited to search and seizure, taking of statements, identification procedures, arrests, elements of crimes, immunity, and voluntariness.
- Monitor the criminal investigations.
- Provide investigative process and procedure consultation.
- Ultimately determine if criminal charges will be filed.

2. The District Attorney reserves the right to conduct a criminal investigation of the involved officer(s) actions. The District Attorney will notify the Primary Agency if an independent investigation is being conducted, except if such notification would compromise the integrity of the independent investigation. A District Attorney Investigator assigned to participate as an incident investigator assisting or teamed with the Investigating Agency will not be a member or participant of an independent District Attorney investigation unless the Primary Agency is notified of such a dual role.

3. If the District Attorney's Office is a Primary Agency due to a District Attorney Investigator or District Attorney becoming directly involved in an OICI, the role of the District Attorney should be carried out by requesting the assistance of the Attorney General. If the Attorney General declines to participate, a designated Investigating Agency should be sought. The designated Investigating Agency should seek assistance and consultation from another District Attorney's Office.

4. All reasonable efforts should be made for the Officer-Involved Critical Incident investigation to be completed and all reports submitted to the Office of the District Attorney within 120 days of the incident, if possible, and absent unusual circumstances.

5. At the conclusion of the investigation, the District Attorney's Office will review and analyze all the evidence to determine whether or not the involved officer(s) will be charged with any crimes.

- a. The crime charging standards are the same for civilians and peace officers. The District Attorney's policy regarding crime charging requires the following:

- The prosecutor, based on a complete investigation and a thorough consideration of all pertinent facts readily available, is satisfied that the evidence proves that the accused is guilty of the crime to be charged;
 - There is legally sufficient, admissible evidence of a corpus delicti;
 - There is legally sufficient, admissible evidence of the accused's identity as the perpetrator of the crime charged; and
 - The prosecutor has considered the probability of conviction by an objective fact finder and has determined that the admissible evidence is of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact finder after hearing all the evidence available to the prosecutor at the time of charging and after considering the most plausible and reasonably foreseeable defenses.”
- b. If no charges are filed, the District Attorney will issue a succinct closing report summarizing the results of the investigation and analysis of the evidence.
 - c. Within the scope of this protocol, it is not the purpose of the District Attorney's review, investigation or report to determine if any law enforcement agency employee violated department policy or procedure, or committed any act that would be subject to civil sanctions.
 - d. The District Attorney's Office will make every effort to issue a closing report containing its findings and conclusion within 90 days from receipt of the completed investigative package. This report shall be sent to the primary police agency(ies), the decedent's family (if applicable) and then released to the public.
 - e. Prior to any public dissemination, the District Attorney will advise any Involved Agency of the intent to file any criminal charges.

H. NEWS MEDIA / PUBLIC RECORDS ACT REQUESTS

1. The Investigating Agency will give timely notice to each Primary Agency prior to the release of any information from the OICI investigation file to anyone other than involved law enforcement agencies. Each agency will then have the opportunity to raise appropriate objections and, if necessary, litigate for the protection of privileged information.
2. Although all Involved Agencies may have a responsibility to respond to Public Records Act (PRA) requests, the signatory agencies agree that the Primary Agency will retain a complete case file and respond to PRA requests, if allowable.
3. A Primary Agency will determine if and when they will release the name of the officer(s) involved. If the District Attorney determines that criminal charges will be filed against an involved officer(s), those names will be available through public record.
4. A representative of the Primary Agency is in the best position to comment about the facts of the case and the progress of the investigation. When multiple agencies are involved or have knowledge of an OICI, the following information release guidelines should be followed:

- a. The Primary Agency will assign a person to manage the release of information and to minimize interruptions to incident investigators. All requests for information should be routed to the assigned person.
 - b. Agencies and individuals that are not well informed and intimately involved with the investigation's progress and results should not make statements to the press. As in all other instances, care must be taken to ensure that intentionally misleading, erroneous or false statements are not made.
 - c. The interest of the public's right to know what occurred must be balanced with sensibility and requirements of the investigation and with the right of the accused to receive a fair trial. Agencies may release information that is required to be released under California law. The District Attorney's Office will be notified before information is released if it may tend to compromise the criminal investigation of an involved officer(s).
5. Other agencies may also be contacted by the news media for information about the incident, including:
- a. The Jurisdictional Agency: If the Jurisdictional Agency is different than the Primary Agency, the Jurisdictional Agency should refer the media to the Primary Agency media point of contact. They can confirm the location and time of the incident, but should defer all other questions to the Primary Agency's point of contact.
 - b. The District Attorney: The District Attorney will not disseminate any of the following information while the matter is undergoing criminal investigation and while the district attorney review process remains ongoing:
 - That an uncharged individual is "under investigation."
 - An Involved Officer's statement, confession or refusal to give a statement.
 - The subject of any gag order.
 - The prior criminal history of any involved party, unless it is part of the criminal pleading or crime under investigation.
 - The result of any examinations.
 - The pendency of a search warrant.
 - Any statement that has a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.
 - c. In cases where a criminal complaint is filed, the judicial record, such as a probable cause declaration, or preliminary hearing is open to the public. Additionally, the District Attorney may disseminate the following:
 - Name of defendant.
 - Area of residence.
 - Occupation.
 - Physical description.
 - Age.
 - Sex.
 - Time, date and location of arrest.
 - Factual circumstances of the crime.

- Amount of bail.
 - Location held.
 - All charges including warrants.
 - Parole or probation holds.
 - Schedule and explanation of the judicial process.
 - Penalty range.
-

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ADOPTION

The participating department heads have executed this Agreement on the respective dates indicated below.

_____ SIGNATURE	_____ DATE	<u>Darren Pytel</u> CHIEF	<u>Davis PD</u> AGENCY
_____ SIGNATURE	_____ DATE	<u>Robert Strange</u> Interim CHIEF	<u>West Sacramento PD</u> AGENCY
_____ SIGNATURE	_____ DATE	<u>John Miller</u> CHIEF	<u>Winters PD</u> AGENCY
_____ SIGNATURE	_____ DATE	<u>Derrek Kaff</u> CHIEF	<u>Woodland PD</u> AGENCY
_____ SIGNATURE	_____ DATE	<u>Tom Lopez</u> SHERIFF	<u>Yolo Co. Sheriff's Office</u> AGENCY
_____ SIGNATURE	_____ DATE	<u>Jeff Reisig</u> DISTRICT ATTORNEY	<u>Yolo Co. DA's Office</u> AGENCY
_____ SIGNATURE	_____ DATE	<u>Danin Fruchtenicht</u> CHIEF	<u>Yolo Co. Probation</u> AGENCY
_____ SIGNATURE	_____ DATE	<u>Joseph Farrow</u> CHIEF	<u>UC Davis PD</u> AGENCY
_____ SIGNATURE	_____ DATE	<u>Ivan Tien</u> Captain	<u>CHP (Woodland)</u> AGENCY

PP 3.05-AAA County MOU DOJ.pdf

ADDENDA No. 1
To the
MEMORANDUM OF UNDERSTANDING
BETWEEN
The Law Enforcement Agencies of Yolo County

Yolo County Protocol for Response to Officer Involved Critical Incidents

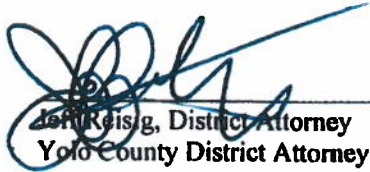


- I. In May, 2020, Yolo County Law Enforcement agencies entered into a Memorandum of Understanding (MOU) for the purpose of establishing uniform procedures for the investigation of Officer Involved Critical Incidents.
- II. On June 24, 2021, the California Department of Justice issued Information Bulletin No. 2021-DLE-03. This bulletin outlines the implementation of AB 1506 whereas the Department of Justice is required to investigate "incidents of an officer-involved shooting resulting in the death of an unarmed civilian." (Gov. Code, §12525.3, subd. (b)(1).) This law became effective July 1, 2021.
- III. The parties now mutually agree to amend the MOU as follows:

In critical incidents as outlined under AB 1506 and California Department of Justice Information Bulletin No. 2021-DLE-03, the California Department of Justice is responsible for the investigation. The Yolo County District Attorney's Office personnel will not respond, investigate, consult, or review incidents as previously outlined by the MOU, unless specifically directed to do so by the Attorney General.

In the event of an officer involved shooting resulting in death of an unarmed civilian, as outlined in the Information Bulletin 2021-DLE-03 (attached), Agencies will contact the California Department of Justice Division of Law Enforcement in place of the District Attorney's Office.

Agreed and Accepted:


Jeff Reising, District Attorney
Yolo County District Attorney's Office

8/20/21
Date

Tom Lopez, Sheriff
Yolo County Sheriff's Office

Date


Robert Strange, Chief of Police
West Sacramento Police Department

08/23/2021
Date


Darren Pytel, Chief of Police
Davis Police Department

8-23-21
Date

Derrek Kaff, Chief of Police
Woodland Police Department

Date

John Miller, Chief of Police
Winters Police Department

Date

Joseph Farrow, Chief of Police
University of California Davis Police Department

Date

Ivan Tien, Captain
Woodland Station Commander
California Highway Patrol

Date

Dan Fruchtenicht, Chief Probation Officer
Yolo County Probation

Date

PP 3.05-AAA DOJ Notification - unarmed deadly force.pdf

California Department of Justice DIVISION OF LAW ENFORCEMENT John D. Marsh, Acting Chief 		INFORMATION BULLETIN	
<i>Subject:</i> Assembly Bill (AB) 1506 Definitions and Law Enforcement Agency's Notification Responsibility	<i>No.</i> 2021-DLE-03	<i>Contact for information:</i> John D. Marsh, Acting Chief Division of Law Enforcement (916) 210-6300	
	<i>Date:</i> 6/24/2021		

TO: ALL DISTRICT ATTORNEYS, CHIEFS OF POLICE, SHERIFFS, AND STATE LAW ENFORCEMENT AGENCIES

Effective July 1, 2021, pursuant to AB 1506, the Department of Justice (DOJ) is required to investigate “incidents of an officer-involved shooting resulting in the death of an unarmed civilian.” (Gov. Code, § 12525.3, subd. (b)(1).) The following is DOJ’s understanding of the terms used in this statute, and is to be used as guidance for all law enforcement partners in determining whether a case falls within the ambit of AB 1506. These definitions are meant to apply *only* in the context of AB 1506, and these terms may have different meanings in other contexts or in different statutes.

Notwithstanding these definitions, DOJ may elect to assume jurisdiction in cases where jurisdiction is unclear, or based on other extenuating circumstances, as determined by the Attorney General. (See Cal. Const., art V, § 13 [Attorney General is “chief law officer of the State” and has a duty “to see that the laws of the State are uniformly and adequately enforced”].)

1. “Officer-involved”

A shooting is “officer-involved” if the death to the unarmed civilian is caused by a California peace officer, within the meaning of Penal Code section 830, acting under color of authority. All shootings committed by officers while on duty are officer-involved shootings. Shootings committed by officers while off-duty are considered officer-involved shootings only if the officer is acting under color of authority.

Officers are acting under “color of authority” when they are performing an act that is made possible only because they are clothed with the authority of law, or when they are acting under pretense of law. Conversely, officers are not acting under “color of authority” when they commit private acts in furtherance of personal pursuits. Shootings by correctional officers as defined in Penal Code section 830.55 are excluded.

2. “Shooting”

A “shooting” is the discharge of a metal projectile by a firearm. A “firearm” is a “device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion.” (Pen. Code, § 16520.) A “shooting” does not include incidents involving

the use of electronic control devices, stun guns, BB, pellet, air, gas-powered guns, or weapons that discharge rubber bullets or beanbags.

3. “Unarmed civilian”

An “unarmed civilian” is “anyone who is not in possession of a deadly weapon.” (Gov. Code, § 12525.3, subd. (a)(2).)

4. “Possession”

A civilian is in “possession” if the weapon is under the civilian’s dominion and control at the time of the shooting. Possession usually requires that the weapon is available for use. Where a civilian attempts to take control of an officer’s firearm, the civilian is not in possession unless the officer loses control of the firearm.

5. “Deadly weapon”

“‘Deadly weapon’ includes, but is not limited to, any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged, or a switchblade knife, pilum, ballistic knife, metal knuckle knife, dagger, billy, blackjack, plastic knuckles, or metal knuckles.” (Gov. Code, § 12525.3, subd. (a)(1).) All firearms, and BB/pellet guns, even if unloaded or inoperable, are deadly weapons.

Objects that have a legitimate non-weapon purposes are considered deadly weapons only when, based on all the circumstances, they are actually being used in a manner likely to produce death or great bodily injury. The following are examples of objects that have been considered a deadly weapon when used in that manner: knives, box cutters, screwdrivers, bottles, chains, automobiles, rocks, razor blades, and iron bars.

Replica firearms are not considered deadly weapons unless they are used in some particular manner likely to produce death or great bodily injury (e.g., as a bludgeon).

6. “Death”

Death occurs when “[a]n individual ... has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem[.]” (Health & Saf. Code, § 7180.) DOJ may assume responsibility for cases where death appears to be imminent.

Law Enforcement Agency’s (LEA) Notification Responsibility

Effective July 1, 2021, immediately notify the DOJ when the LEA has an incident of an officer-involved shooting resulting in the death of an unarmed civilian. When situations arise and it is undetermined if the civilian was unarmed, a notification to DOJ is still requested. The Los Angeles Regional Criminal Information Clearinghouse (LA CLEAR) will be the central point of contact for all officer-involved shooting incident notifications: **(800) 522-5327**.