

# Officer-Involved Shootings and Deaths

## 305.1 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 another action of an officer. While this policy makes continuous reference to "officers" being involved, the same application of procedure will apply for any non-licensed member becoming involved in an incident of this nature while on-duty or while acting in an official capacity.

In other incidents not covered by this policy, the Chief of Police may decide that the investigation will follow the process provided in this policy. The Department acknowledges the possibility that the circumstances surrounding a discharge incident may require a deviation from the precise procedure described below. This procedure is intended to guide the actions of officers on the scene of such an incident, and to illustrate the general philosophy of the department with respect to this matter.

## 305.2 POLICY

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

## 305.3 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.

## 305.4 CONTROL OF INVESTIGATIONS

The Bureau of Criminal Apprehension (BCA) or other outside agency will be assigned to work on the criminal investigation of officer-involved shootings and deaths. Although unlikely, this may include at least one investigator from the Oakdale Police Department.

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.

### 305.4.1 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 Oakdale Police Department would control the investigation if the suspect's crime occurred in Oakdale.

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

### **305.4.2 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 Chief of Police or the authorized designee for approval.

### **305.4.3 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.

### **305.4.4 POST ADMINISTRATIVE INVESTIGATIONS**

The Minnesota POST Board may require an administrative investigation based on a complaint alleging a violation of a statute or rule that the board is empowered to enforce. An officer-involved shooting may result in such an allegation. Any such complaint assigned to this department shall be completed and a written summary submitted to the POST executive director within 30 days of the order for inquiry (Minn. Stat. § 214.10, Subd. 10).

### **305.4.5 COOPERATION WITH BUREAU OF CRIMINAL APPREHENSION INVESTIGATIONS**

The Department will fully cooperate with and promptly respond to requests for information from the Bureau of Criminal Apprehension regarding an officer-involved death investigation (Minn. Stat. § 626.5534).

## **305.5 INVESTIGATION PROCESS**

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

### **305.5.1 UNINVOLVED OFFICER RESPONSIBILITIES**

Upon arrival at the scene of an officer-involved shooting or death, the first uninvolved OPD 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.
- (e) Check for injured persons and evacuate as needed.

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- (f) Brief the supervisor upon arrival.

#### 305.5.2 SUPERVISOR RESPONSIBILITIES

Upon arrival at the scene, the first uninvolved OPD 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 OPD officer to immediately verbally 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 Captain and Communications Center. If feasible, sensitive information should be communicated over secure networks.
- (d) Take command of and secure the incident scene with additional OPD 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.
  - (a) Each involved OPD officer should be given an administrative order not to discuss the incident with other involved officers or OPD members pending further direction from a supervisor.
  - (b) The supervisor shall advise the involved officer(s) to holster their firearm(s) and to leave their firearm(s) holstered until further notice. At the appropriate point in the investigation, the Captain or Captain's designee will secure the involved firearm(s). Firearms that cannot be holstered will be secured immediately by the supervisor on the scene.
  - (c) 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.

#### 305.5.3 SHIFT SERGEANT RESPONSIBILITIES

Upon learning of an officer-involved shooting or death, the Shift Sergeant shall be responsible for coordinating all aspects of the incident until he/she is relieved by the Chief of Police or a Captain.

All outside inquiries about the incident shall be directed to the Shift Sergeant.

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#### 305.5.4 NOTIFICATIONS

The following persons shall be notified as soon as practicable:

- Chief of Police
- Investigations Captain
- Minnesota Bureau of Criminal Apprehension (if appropriate)
- Psychological/peer support personnel
- Chaplain
- Medical Examiner (if necessary)
- Involved officer's agency representative (if requested)

#### 305.5.5 INVOLVED OFFICERS

The following shall be considered for the involved officer:

- (a) Any request for legal or union representation will be accommodated.
  - 1. Involved OPD 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-OPD 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.
- (d) A licensed psychotherapist shall be provided by the Department to each involved OPD officer. A licensed psychotherapist may also be provided to any other affected OPD 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, the 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) Communications between the involved officer and a peer support member, peer support counselors, and critical incident stress management team members are addressed in the Wellness Program Policy.
- (f) The supervisor on the scene shall make arrangements to have a member of this agency remain with the officer(s) involved in the shooting. The purpose of this provision is to provide support and assistance as needed, however the assisting members shall

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avoid inquiries concerning the facts of the discharge. Every effort shall be made to avoid the perception of the involved officers being in custody.

- (g) A monitoring officer shall be assigned as soon as possible to any officer involved in a discharge incident. The monitoring officer will provide companionship and support to the involved officer without impeding the investigation of the incident. The monitoring officer will also assist with the requirements outlined the procedure related to Officer Involved Shootings and Deaths and should be alert to the fact that the officer involved in the discharge incident may have been injured in some fashion and may not immediately realize that he or she has been injured.\_

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 OPD officer shall be given reasonable paid administrative leave following an officer-involved shooting or death. It shall be the responsibility of the Captain to make schedule adjustments to accommodate such leave.

### **305.6 CRIMINAL INVESTIGATION**

The Minnesota Bureau of Criminal Apprehension is responsible for the criminal investigation into the circumstances of any officer-involved shooting involving injury or death.

If needed, investigative personnel from this department may be assigned to partner with investigators from outside agencies or the County 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) OPD supervisors and Administration personnel should not participate directly in any voluntary interview of OPD officers. This will not prohibit such 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 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. The members involved will be asked to provide a comprehensive statement at a later reasonable time.
- (d) Any voluntary statement provided by an involved officer will be made available for inclusion in any related investigation, including administrative investigations. However,

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no administratively coerced statement will be provided to any criminal investigators unless the officer consents.

### 305.6.1 REPORTS BY INVOLVED OPD OFFICERS

In the event that suspects remain outstanding or subject to prosecution for related offenses, this department shall retain the authority to require involved OPD officers to provide sufficient information for related criminal reports to facilitate the apprehension and prosecution of those individuals.

While the involved OPD 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 OPD 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.

### 305.6.2 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 law enforcement 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.
  - 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, attempts to identify the witness prior to his/her departure should be made whenever feasible.
- (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.

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- (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.

### **305.6.3 INVESTIGATIVE PERSONNEL**

Once notified of an officer-involved shooting or death, it shall be the responsibility of the designated Investigations Division Sergeant to assign appropriate investigative personnel to assist with the investigation. The BCA will be contacted to take command of the investigation. Assigned department investigators will provide support to the BCA where needed.

All related department reports, except administrative and/or privileged reports, will be forwarded to the Investigations Division Sergeant for approval. Administrative reports will be forwarded to the appropriate Captain.

### **305.7 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 involved OPD officers to determine conformance with department policy. This investigation will be conducted under the supervision of the Administration.

Interviews of members shall be subject to department policies and applicable laws (Personnel Complaints Policy; Minn. Stat. § 626.89).

- (a) Any officer involved in a shooting or death may be requested or administratively compelled to provide a blood sample for alcohol/drug screening in accordance with the drug and alcohol testing guidelines in the Drug- and Alcohol-Free Workplace Policy adopted under the authority of Minn. Stat. § 181.950 to Minn. Stat. § 181.957. 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 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 not to provide criminal investigators with a voluntary statement, the assigned administrative investigator shall conduct an administrative interview to determine all relevant information (Minn. Stat. § 626.89).
  - (a) 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.
  - (b) The interview must be taken at the OPD or at a place agreed to by the interviewer and the involved officer.

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- (c) The interview must be of reasonable duration and provide the involved officer reasonable periods for rest and personal necessities. When practicable, the interview must be held during the involved officer's regularly scheduled work shift. If not, the involved officer must be compensated per the collective bargaining agreement.
- (d) If requested, the officer shall have the opportunity to select an uninvolved representative or an attorney, or both, 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 collectively or in groups prior to being interviewed.
- (e) Administrative interviews shall be recorded electronically or otherwise by the investigator. The officer may also record the interview. A complete copy or transcript of the interview must be provided to the involved officer upon written request without charge or undue delay.
- (f) 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 *Garrity* rights and ordered to provide full and truthful answers to all questions. The officer shall be informed in writing or on the record that the interview will be for administrative purposes only and that the statement cannot be used criminally.
- (g) The Administration shall compile all relevant information and reports necessary for the Department to determine compliance with applicable policies.
- (h) Regardless of whether the use of force is an issue in the case, the completed administrative investigation shall be submitted to the Chief of Police for review.
- (i) Any other indications of potential policy violations shall be determined in accordance with standard disciplinary procedures.

### **305.8 ACCIDENTAL DISCHARGES**

Accidental discharges that occur during the course of a police incident or intervention may be investigated by a supervisor of this department, provided no physical injury or property damage occurred as the result of the discharge. If circumstances exist that suggest the Bureau of Criminal Apprehension should be contacted, the Captain shall have the authority to do so.

Accidental discharges that occur in an environment other than a police intervention (locker room, training facilities, etc.) shall be promptly reported to the Captain, who shall then determine the appropriate course of action.

### **305.9 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



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to review available MAV, body-worn video, or other video or audio recordings with the approval of assigned investigators or a supervisor.

Any MAV, body-worn video, and other known video or audio recordings of an incident should not be publicly released during an ongoing investigation without consulting the prosecuting attorney or City Attorney's Office, as appropriate.

### **305.9.1 AUDIO AND VIDEO RECORDINGS OF USE OF FORCE INCIDENTS INVOLVING DEATHS OF INDIVIDUALS**

When a person dies as a result of the use of force by an officer, the Department shall (Minn. Stat. § 13.825, Subd. 2; Minn. Stat. § 626.8473, Subd. 3):

- (a) Allow certain individuals as identified in Minn. Stat. § 13.825, upon request, to inspect all portable recording system data that documents the incident within five days of the request pursuant to the provisions of Minn. Stat. § 13.825.
- (b) Release all portable recording system data that documents the incident within 14 days of the incident pursuant to the provisions of Minn. Stat. § 13.825.

The Chief of Police should work with the Support Services Manager when redactions or denials are necessary (Minn. Stat. § 13.825, Subd. 2; Minn. Stat. § 626.8473, Subd. 3).

### **305.10 DEBRIEFING**

Following an officer-involved shooting or death, the Oakdale Police Department should conduct both a Critical Incident Stress Debriefing and a tactical debriefing. See the Wellness Program Policy for guidance on Critical Incident Stress Debriefings.

#### **305.10.1 TACTICAL DEBRIEFING**

A tactical debriefing should take place to identify any training or areas of policy that need improvement. The designated Captain 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.

### **305.11 MEDIA RELATIONS**

Any media release should be prepared with input from department supervisors. Releases will be coordinated with the City Communications Department.

No involved OPD officer shall make any comment to the media unless he/she is authorized by the Chief of Police.

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.

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### **305.12 REPORTING**

If an officer discharges a firearm in the course of duty, the Chief of Police shall notify the Commissioner of Public Safety within 30 days of the reason for and the circumstances surrounding the discharge of the firearm (Minn. Stat. § 626.553).