

**MONTEREY COUNTY CHIEF LAW
ENFORCEMENT OFFICERS' ASSOCIATION
(MCCLEOA)
OFFICER-INVOLVED INCIDENT GUIDELINES**

FOREWORD

These guidelines have been developed to guide individual agencies conducting investigations of Officer-Involved Incidents. The goal of these guidelines is to help assure that such cases are fully and fairly investigated, and that proper dispositions of such cases are made based upon all the legally available, relevant evidence.

This document represents the consensus of member agencies as to how such cases are to be investigated. The guidelines permit individual agencies to make modifications in order to meet individual agency regulations. The guidelines are not intended to increase the civil or criminal liability of member agencies or their employees and shall not be construed to create any mandatory obligations to, or on behalf of, third parties. Agencies represented should review their related policies and make every effort to modify them to avoid conflict with these guidelines. Each agency's individual policy may be attached to these guidelines.

A. GENERAL POLICY STATEMENT

Investigations of Officer-Involved Incidents will be conducted to develop all available relevant information about the incident. They will be performed in a manner that provides for a thorough and credible investigation that is free from conflicts-of-interest.

Such investigations are designated "Incident Investigations," the goals of which are to determine:

1. The identity of the person(s) responsible;
2. The existence or non-existence of conduct constituting a criminal act; and
3. If it is determined that a criminal act has been committed, then the following are to be determined:
 - a. Any legal or factual defenses to the crime;
 - b. The existence of any factors which might mitigate or aggravate punishment for the criminal conduct.

The investigations shall be performed in a manner consistent with the rules of evidence in a criminal proceeding. Any administrative investigation shall be separate and distinctly different from the Incident Investigation.

The investigation of each Incident will commence as promptly as practicable after the occurrence.

B. DEFINITIONS

For the purpose of these guidelines the following definitions are offered:

"Officer-Involved Incident"

An "Officer-Involved Incident" is any incident in which a peace officer or custodial officer (both herein referred to as "Officer"), acting under color of authority, is directly involved in the following:

1. Any discharge of a firearm by an Officer which proximately causes the death of, or injury to another.
2. An intentional use of any other deadly or dangerous weapon by an Officer which proximately causes the death of, or injury likely to produce death to another.
3. An intentional act on the part of an Officer which proximately causes the death of, or injury likely to produce death to another.

4. Any death of person while in custody, or under Officer control.

Excluded from mandatory protocol investigations are post-booking deaths of prisoners, which occur in jails, hospitals or other facilities, while the prisoner is under the custody and care of a Law Enforcement Agency's (LEA) medical care provider for diagnosed diseases or conditions which have been known and monitored and/or treated by the LEA's medical care provider prior to death.

"Peace Officer" and "Custodial Officer"

1. Local law enforcement officers defined by Penal Code, § 830.1 et seq. (e.g., Municipal Police, Sheriff, D.A. Investigators, Coroner Investigators, and Probation Officers) and Reserve Officers and Reserve Deputies defined by Penal Code §830.6.
2. Custodial Officers defined by Penal Code § 831.5 (e.g., DOC Correctional Officers).
3. State Officers, (e.g., CHP, DOJ, University Police, Parole Officers).
4. Federal Agents, (e.g., FBI, ATF, U.S. Marshall, I.C.E., DEA).
5. Welfare Fraud Investigators defined by Penal Code § 830.35.

"Primary Agency"

The agency, or agencies, with geographic jurisdiction over the incident.

"Employing Agency"

The agency which employs the Involved Officer.

"Officer-Involved"

1. The Officer whose act may be a "proximate cause" of the injury to another person; or
2. The Officer who may intend that his/her act be a "proximate cause" of the injury to another person.

"Proximate Cause"

A cause which, in a natural and continuous sequence, produces the injury, and without which the injury would not have occurred.

"Incident Investigators"

The persons assigned by the Primary Agency(cies) and the District Attorney's Office to conduct the Incident Investigation.

C. INVESTIGATIVE RESPONSIBILITY

The responsibility for conducting the Incident Investigation rests with the Primary Agency, which has the ultimate responsibility for the preservation and security of the scene(s), collection of evidence at the scene(s) and from the Involved Officer(s), including their equipment and/or vehicles, when appropriate.

1. Initial officers at the scene will make all reasonable efforts to preserve and secure the scene, pending the arrival of the Incident Investigators.
2. The Primary Agency usually will conduct its own investigation. However, it may seek investigative assistance from the District Attorney or from other agencies.
3. If investigative assistance is obtained from another agency, the Primary Agency may maintain control of the investigation itself, or it may relinquish the primary responsibility for the investigation to the agency from which it obtained the assistance.
4. A crime scene unit of another jurisdiction or Department of Justice may be called upon for assistance at the discretion of the Primary Agency.
5. In Incidents where a vehicular collision or other vehicular movement is involved, another agency may be called upon for investigatory assistance in that phase of the Incident Investigation.

Until agreement regarding investigative responsibility is reached among the various Involved Agencies in a specific case, immediate investigative responsibility is determined in this order:

1. The Primary Agency.
2. The agency whose on-duty employee, acting apparently for a law enforcement purpose, was an Involved Officer.
3. The agency within whose jurisdiction the victim's body was first discovered after infliction of the injury.

If an on-duty peace officer is involved in an Incident within the geographical jurisdiction of another agency the District Attorney's Office shall conduct the investigation.

The Sheriff maintains primary responsibility for the investigation of Incidents that occur or emanate:

1. Within the buildings or secured grounds of detention or correctional facilities, including:
 - a. 1414 Natividad Road, Salinas (County Jail)
 - b. 240 Church Street, Salinas (Courthouse Complex)
 - c. 118 W. Gabilan Street, Salinas (Courthouse Annex)
 - d. 1200 Aguajito Road, Monterey (Monterey Court)
 - e. 1420 Natividad Road, Salinas (Juvenile Court)
 - f. 3180 Del Monte Boulevard, Marina (Traffic Court)
 - g. 250 Franciscan Way, King City (South County Court).

D. ROLE OF THE DISTRICT ATTORNEY¹

During an Incident Investigation the District Attorney will:

1. Assist and advise the Incident Investigators on the various legal issues that may arise, including search and seizure, *Miranda*, identification procedures, arrests, elements of crimes, immunity, and voluntariness.
2. Monitor the police investigation.
3. When deemed necessary, perform an independent investigation, separate from that of the police investigation. 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. A District Attorney Investigator assigned to participate as an Incident Investigator assisting or teamed with a Primary Agency Incident Investigator will not be a member or participant of an independent District Attorney investigation unless the Primary Agency is notified of such a dual role.
4. Ultimately determine if criminal liability exists.

E. NOTIFICATIONS

Upon identifying an occurrence as being an "Officer-Involved Incident", the Employing Agency shall make the following notifications as promptly as possible:

1. Intra-department, as required by that agency's procedures;
2. Primary Agency (If different from the Employing Agency); and

¹ In the event the Involved Officer is a District Attorney Investigator, the California Attorney General's Office will assume the role of the District Attorney as cited in this protocol. Additionally, a California Department of Justice criminal investigator will assume the role of the District Attorney Investigator

3. District Attorney's Chief Investigator or designee (via County Communications).

The Primary Agency shall make the following confirmations and notifications as promptly as possible:

1. Confirm that the District Attorney's on-call Chief Investigator, or designee, has been notified; and
2. Upon confirmation of a fatality, notification of the Coroner's Office.

F. SCENE PROCEDURES AND SECURITY PENDING ARRIVAL OF INVESTIGATORS

Emergency life saving measures have the first priority. If a person is transported to a medical facility with injuries, an officer should accompany that person in the same vehicle for the following purposes:

1. Preserve, safeguard and maintain the chain of evidence;
2. Obtain witness statements and document any spontaneous statements made to medical personnel;
3. Maintain custody if the person is under arrest, ensuring the preservation of his/her clothing and possessions; and
4. Provide information to and from the medical personnel. (If airlifted, immediate response to the hospital is required).

Pending arrival of the Primary Agency and Incident Investigators, the scene(s) should be secured immediately, with a perimeter established for each scene a sufficient distance away to safeguard evidence.

1. Access should be limited to only those who must enter for official reasons;
2. When not needed for life saving efforts, entry by fire and ambulance crewmembers should also be limited to those whose presence is necessary; and
3. A log, started as soon as possible, should be kept of the identities of all persons entering the scene, the time of their entry and exit, and the reason for the entry of each.

Whenever possible, all witnesses and Involved Officers should be separated as soon as practical after the incident to ensure that statements and recollections of events are independent.

1. In cases of a death in a jail or detention facility, all persons, including prisoners, who may have witnessed events leading up to the death shall be identified and separated pending interviews by investigators.

Ultimately, the Primary Agency has the responsibility for securing and processing the crime scene, including the Involved Officers.

1. Evidence collection, witness coordination and general crime scene processing will be under the authority and follow the procedures of the Primary Agency. The Primary Agency may defer its investigative authority to the Employing Agency.
2. Physical evidence at the scene which is in danger of being contaminated, destroyed or removed must be promptly and effectively observed, recorded and then protected for subsequent collection.

G. INCIDENT INVESTIGATION VS. ADMINISTRATIVE INVESTIGATION

This protocol is intended as an interagency guideline for Incident Investigations (as defined on page 1) of Officer Involved Incidents. This protocol is not intended to address issues concerning the administrative investigation of the incident.

1. The administrative investigation is the function of the agency employing the Involved Officer and will include administrative and non-criminal matters that are not within the scope of the Incident Investigation.
2. At the onset of the investigation of an incident, there must be an immediate and clearly defined distinction between the Incident Investigation and the Administrative Investigation.
3. The agency employing the Involved Officer, whether it is the Primary Agency or not, has an interest in the outcome of the Incident Investigation and may utilize the results of that investigation for its own non-criminal purposes (e.g., determination of possible violations of departmental regulations, establishing suitability for duty, training for use in civil suits or administrative claims brought by or against the agency).

H. INTERVIEWS WITH PEACE OFFICER AND CUSTODIAL OFFICER EMPLOYEES

Interviews with officer and custodial officer employees should be conducted by the investigator(s) from the Primary Agency. The Primary Agency will determine who will participate in the interview of any Involved Officer(s) or witnesses and where the interview(s) will take place.

1. Prior to the interview of an Involved Officer, investigators from the Primary Agency should review all available audio/video recordings from police vehicle in-

car cameras, personal body cameras worn by responding officers and/or an Involved Officer, independent third parties, and independent sources.

2. Interviews of an Involved Officer and witnesses to an Incident should be recorded.
3. The assigned District Attorney investigator and Employing Agency representative, if not physically present during the interview, will be permitted to monitor the interview or have immediate access to any recording made of the interview.

An initial preliminary interview of an Involved Officer will ordinarily occur before the officer views audio/video recordings of the incident. This interview shall be limited in scope with the primary goal of establishing the officer's state of mind that led to the use of force. An Involved Officer will have an opportunity to review recordings after the initial statement has been taken. Investigators should be mindful that audio/video recordings have limitations and may depict events differently than the events recalled by an Involved Officer. The investigator has the discretion to admonish an Involved Officer about the limitations of audio/visual recordings.

Investigators may ask the Involved Officer to view the incident scene during a "walk-through." The investigator will determine the timing of the "walk-through," however, it should not occur prior to the initial statement of the Involved Officer. Only one Involved Officer at a time will be permitted to do a "walk-through" of the scene.

If, prior to or during the interview, it is deemed that the Involved Officer may be charged with a criminal offense, and the interview becomes custodial, the officer shall be immediately informed of his/her constitutional rights pursuant to the *Miranda* decision.

To ensure the voluntariness of an interview with an Involved Officer, that has not reached the level of a custodial interrogation, the investigator may wish to advise him/her as follows:

1. The Involved Officer is not in custody and is free to leave the interview.
2. The Involved Officer is not obligated to answer incriminating questions, and answers that are given may be used against him/her in court.

The Involved Officer may consult with a representative prior to being questioned by the Incident Investigators. Some or all of these considerations may be applicable:

1. The consultation should not be allowed to materially impede the investigation.
2. The representative should be permitted to consult with only one Involved Officer at a time.

3. To ensure the integrity of each interview, it is important that statements about the incident not be relayed through such representatives; rather, the Involved Officer and other officer witnesses should answer the questions directly even if they need to consult with their representative prior to answering.

I. INTOXICANT TESTING

If the Incident Investigators determine that an Involved Officer's state of sobriety is relevant to the Incident Investigation, they shall proceed as they would with any civilian person in a similar situation. Their options are to:

1. Obtain a blood sample for alcohol and/or drug testing, and/or a urine sample for alcohol and/or drug testing, with the Involved Officer's valid consent; or
2. Obtain a blood sample for alcohol and/or drug testing and/or a urine sample for alcohol and/or drug testing, incidental to the arrest of that person for a crime; or
3. Obtain a blood sample for alcohol and/or drug testing and/or a urine sample for alcohol and/or drug testing, pursuant to a search warrant.

In the event appropriate physiological samples are not obtained from an Involved Officer as part of the Incident Investigation, the Employing Agency (whether or not it is also the Primary Agency) may wish to obtain such sample(s) for administrative employment-related purposes. The options are to:

1. Obtain the sample(s) with the employee officer's valid consent; or
2. Obtain the sample(s) by ordering the employee officer to provide such sample(s) based upon the employer-employee relationship.

Departments may establish administrative policies regarding intoxicant testing of any employee involved in an incident.

1. If the Employing Agency asks for a physiological fluid sample for administrative purposes after the Incident Investigators have either been unable to obtain a sample or have decided against obtaining one, the Employing Agency will be accommodated as much as possible. The Employing Agency's efforts to obtain a sample should not interfere with the Incident Investigation.

An employee officer may volunteer to provide a physiological fluid sample for intoxicant testing even if the Incident Investigators and Employing Agency have not ordered one. Similarly, a person from whom the Incident Investigators or the Employing Agency has taken a sample may wish to have a second sample taken for independent testing. Such requests should normally be accommodated, with the understanding that the employee officer will bear any expense for sample collection and testing.

J. AUTOPSY

At least one of the primary Incident Investigators shall attend the autopsy. A member of the District Attorney's staff may also be present.

1. The Incident Investigators (evidence collection team) have the responsibility for the collection and documentation of physical evidence at the autopsy.

The Pathologist and Coroner Detective should receive a full and complete briefing prior to the post-mortem examination. The briefing should include all relevant information available at that time which may tend to aid in determining cause, manner and means of the decedent's death. The Incident Investigator(s) and a member of the evidence collection team should be present at the briefing.

When possible, the Primary Agency will coordinate with the pathologist performing the autopsy to assure the reports, toxicology and other laboratory results are completed expeditiously, i.e., take priority over other death cases—when feasible.

K. NEWS MEDIA RELATIONS

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 Incident, the following information release guidelines should be followed:

1. The Primary Agency will assign a particular individual to be the sole contact with the news media to manage the release of information and to minimize interruptions to incident investigators. If this is not feasible, a particular job assignment (e.g., Watch Commander) should be designated.
2. If Incident Investigators determine that the release of a specific piece of information would materially jeopardize the investigation, they shall notify those agencies possessing that knowledge of the hazards of releasing it.
3. Agencies and individuals that are not well informed and intimately involved with the investigation's results and progress should not make statements to the press. As in all other instances, care must be taken to insure that intentionally misleading, erroneous or false statements are not made.
4. The interest of the public's right to know what occurred must be balanced with the requirements of the investigation and with the right of the accused to receive a fair trial.

Other agencies may also be contacted by the news media for information about the Incident, including:

The Employing Agency

1. If the Employing Agency is not also the Primary Agency, it should coordinate any information release with the Primary Agency and limit its comments to the following areas:
 - a. The employer-employee relationship, however, the names of the Involved Officer(s) will not be released until 24 hours after the incident to allow time for appropriate notifications to be made.
 - b. Information which has been cleared for release by the Primary Agency.

The District Attorney

1. The District Attorney will not disseminate any of the following information:
 - a. That an uncharged individual is "under investigation."
 - b. An Involved Officer's statement, confession or refusal to give a statement.
 - c. The subject of any gag order.
 - d. The prior criminal history of any Involved party, unless it is part of the criminal pleading or crime under investigation.
 - e. The result of any examinations.
 - f. The pendency of a search warrant.
 - g. Any statement that has a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.
2. 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:
 - a. Name of defendant.
 - b. Area of residence.
 - c. Occupation.
 - d. Physical description.
 - e. Age.

- f. Sex.
- g. Time, date and location of arrest.
- h. Factual circumstances of the crime.
- i. Amount of bail.
- j. Location held.
- k. All charges including warrants.
- l. Parole or probation holds.
- m. Schedule and explanation of the judicial process.
- n. Penalty range.

The 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 will generally be limited to the following:

1. Autopsy findings, including the condition of the deceased, the cause of death, and toxicology test results, after the Involved Agencies have received this information and, if applicable, after the District Attorney's office has cleared the Involved Officer(s). The Coroner's Office will not release any information to the media where there is a pending criminal prosecution. The Involved Agencies shall provide a written request to the Coroner for non-release of the Coroner's Report, the Autopsy Report and the Toxicology Report pursuant to Government Code § 6254 (f).
2. The general role of the Coroner's Office in the investigation of any death.

L. ACCESS TO REPORTS AND EVIDENCE

Material created or collected by the Primary Agency's Incident Investigators, as well as by any other assisting agencies, will be made available in a timely manner to those agencies which have a "need to know" and which are legally authorized to receive the information. The material may include:

1. Reports written and collected.
2. Physical evidence obtained.

3. Photographs and diagrams.
4. Recordings.

The agencies with an interest in the Officer-Involved Incident Investigation may include:

1. Investigating agencies.
2. The employer of any Involved Officer.
3. The District Attorney.
4. The Crime Laboratory.
5. The Coroner's Office.

M. FINAL ACTION

The Officer-Involved Incident Investigation should be completed and all reports submitted to the Office of the District Attorney within 90 days of the Incident, absent unusual circumstances.

At the conclusion of the investigation, the Office of the District Attorney will review and analyze all the evidence to determine whether the officer acted lawfully.

The crime charging standards are the same for civilians and peace officers. The District Attorney's policy regarding crime charging is as follows:

“The prosecutor should charge only if the following four basic requirements are satisfied:

- 1) 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;
- 2) There is legally sufficient, admissible evidence of a corpus delicti;
- 3) There is legally sufficient, admissible evidence of the accused's identity as the perpetrator of the crime charged; and
- 4) 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.”

If no charges are filed, the District Attorney will issue a closing report summarizing the results of the investigation and analyzing the evidence. This report will address the question of whether or not there is proof beyond a reasonable doubt that an officer, deputy, or any other person committed a crime. It is not the purpose of the District Attorney's investigation or report to determine if any officer or deputy violated police policy or procedure, or committed any act that would be subject to civil sanctions. The District Attorney's Office will make every effort to issue a closing report containing its findings and conclusion within 90 days of the receipt of the completed investigative package. This report shall be sent to the involved police agencies, the decedent's family and then released to the public.

N. TRAINING

All affected agencies are strongly encouraged to provide training to their members regarding these guidelines, including:

1. The responsibilities of the Incident Investigators and first responders to the scene of an Officer-Involved Incident.
2. The investigative process of an Officer Involved Incident, including the specific process relative to the actual officer(s) involved.
3. The psychological effect(s) which may be experienced by the Involved Officer and/or officers who were involved in the incident.

The employing agencies are encouraged to provide some form of critical incident stress debriefing to their affected employees.

**Monterey County Chief Law Enforcement Officers' Association
Officer –Involved Incident Guidelines
NOVEMBER 2018**

In recognition of the inherent difficulties faced by law enforcement when dealing with Officer-Involved Incident Guidelines.



JEFFREY J. HOYNE

President – Monterey County Chief Law Enforcement Officer's Association

DECEMBER 13, 2018

DATE

City Police Chiefs:

Carmel-By-The-Sea PD – Chief Paul Tomasi
Del Rey Oaks PD – Chief Jeffrey J. Hoyne
Gonzales PD – Chief Keith Wise
Greenfield PD – Chief Denise Chavez Oglesby
King City PD – Chief Robert Masterson
Marina PD – Chief Tina Nieto
Monterey PD – Chief David J. Hober
Pacific Grove PD – Chief Amy Christey
Salinas PD – Chief Adele Frese
Sand City PD – Chief Brian Ferrante
Seaside PD – Chief Abdul Pridgen
Soledad PD – Chief Eric Sills

County of Monterey

District Attorney – Mr. Dean Flippo
Chief Probation Officer – Ms. Marcia Parsons
Sheriff/Coroner – Sheriff Steve Bernal

State of California

CSU Monterey Bay – Chief Earl Lawson
California State Parks – Superintendent Brent Maarshall
CHP – Salinas Office – Captain Kelly Cardoza
CHP – King City Office – Lieutenant Chris Paredes
CDCR, Adult Parole – District Administrator Anthony Ivanich
Fish and Wildlife - Vacant

Monterey County Chief Law Enforcement Officers' Association
Officer-Involved Incident Guidelines
Date: November 08, 2018

Salinas Valley State Prison – Warden Tammy Foss
Soledad State Prison – Warden Craig Koenig

Federal Agencies

Presidio of Monterey PD – Chief Christopher Norlund
Naval Support Activity Monterey PD – Vacant
Fort Hunter Liggett PD – Chief Leonard Lovett
FBI, Monterey – SSRA Lucas Beebe