

# Calaveras County Probation Department

## *Officer-Involved Shooting Policy*

### **1 PURPOSE AND SCOPE**

To establish policy and procedures for the investigation of an incident in which a person is injured or killed as the result of an officer-involved shooting. The intent of this policy is to ensure that such incidents be investigated in a fair and impartial manner.

Nothing in this policy is intended to increase, modify, or in any way affect the current legal standards nor shall any deviation from these guidelines be considered a breach of any legal standard.

### **2 TYPES OF INVESTIGATIONS**

Officer-involved shootings involve several separate investigations. The investigations may include:

- (a) A criminal investigation of the incident by the law enforcement agency having jurisdiction where the incident occurred. This includes investigation of the actions of the suspect(s) and the involved officer.
- (b) An administrative investigation conducted by the involved officer's agency, to determine if there were any violations of department policy.
- (c) A civil investigation to determine potential liability conducted by the involved officer's agency.

### **3 JURISDICTION**

The law enforcement agency having jurisdiction where the shooting occurred is responsible for the criminal investigation of the incident. This includes investigation of the suspect(s) and the involved officer. That agency may relinquish its investigation to another agency.

The Calaveras County Probation Department will conduct timely civil and/or administrative investigations, no matter the location of the incident.

### **4 THE INVESTIGATION PROCESS**

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

#### **4.1 DUTIES OF INITIAL ON-SCENE SUPERVISOR**

Upon arrival at the scene of an officer-involved shooting, the first uninvolved supervisor should:

- (a) Take all reasonable steps to obtain emergency medical attention for all apparently injured individuals.
- (b) Attempt to obtain a brief overview of the situation from any non-shooter officer(s).
  - 1. In the event that there are no non-shooter officers, the supervisor should attempt to obtain a brief voluntary overview from one shooter 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.
  - 1. 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 officer(s), the initial on-scene supervisor should

not attempt to order any officer to provide other than public safety information.

(e) Provide all available information to the Chief Probation Officer. If feasible, sensitive information should be communicated over secure networks.

(f) Take command of and secure the incident scene with additional personnel until relieved by the agency having jurisdiction or other assigned personnel.

(g) As soon as practical, shooter officers should be transported (separately, if feasible) to the office for further direction.

1. Each involved officer should be given an administrative order not to discuss the incident with other involved officers pending further direction from a supervisor.
2. When an officer's weapon is taken or left at the scene (e.g., evidence), the officer will be provided with a comparable replacement weapon or transported to the office by other officers.

#### **4.2 NOTIFICATIONS**

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

- Chief Probation Officer
- Sheriff
- District Attorney
- County Counsel
- Psychological/Peer support personnel
- Officer representative (if requested)

All outside inquiries about the incident shall be directed to the Chief Probation Officer.

#### **4.3 MEDIA RELATIONS**

It will be the policy of this department to not release the identities of involved officers absent their consent or as required by law. Moreover, no involved officer shall be subjected to contact from the media (Government Code § 3303(e)) and no employee shall make any comments to the press unless authorized by the Chief Probation Officer.

Employees receiving inquiries regarding shooting incidents shall refrain from public comment and will direct those inquiries to the agency having jurisdiction and primary responsibility for the investigation.

#### **4.4 INVOLVED OFFICERS**

Once the involved officer(s) have arrived at the office, the Probation Unit Supervisor should admonish each officer that the incident shall not be discussed except with authorized personnel or representatives. The following shall be considered for the involved officer:

- (a) Any request for department or legal representation will be accommodated, however, no involved officer shall be permitted to meet collectively or in a group with an attorney or any representative prior to providing a formal interview or report (Government Code § 3303(i)).
- (b) Discussions with licensed attorneys will be considered privileged as attorney-client communications.
- (c) Discussions with department representatives (e.g., employee association) will be privileged only as to the discussion of non-criminal information however.
- (d) A psychotherapist shall be provided by the Department to each involved officer, or any other officer, upon request.
  1. Interviews with a licensed psychotherapist will be considered privileged and will not be disclosed except to the extent that the officer is or is not fit for return to duty.

2. An interview or session with a licensed psychotherapist may take place prior to the involved officer providing a formal interview or report, but the involved officers 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 honor the sensitivity of communications with peer counselors, there is no legal privilege to such. 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 officer's equipment or clothing, such as blood or fingerprints, until investigators or lab personnel can properly retrieve it.

The Unit Supervisor shall make reasonable accommodations to the officer's physical and emotional needs (Government Code § 3303(d)).

Each involved officer shall be given reasonable paid administrative leave following an officer-involved shooting. It shall be the responsibility of the Probation Unit Supervisor to make schedule adjustments to accommodate such leave.

## **5 THE SHOOTING INCIDENT CRIMINAL INVESTIGATION**

### **5.1 CRIMINAL INVESTIGATION**

It is the responsibility of the law enforcement agency having jurisdiction where the incident occurred to conduct an independent criminal investigation into the circumstances of any officer-involved shooting involving injury or death.

Once public safety issues have been addressed, criminal investigators will be given the next opportunity to interview involved officers in order to provide them with an opportunity to give a voluntary statement. The following shall be considered for the involved officer:

- (a) Supervisors should not participate directly in any voluntary interview of officers. This will not prohibit such personnel from monitoring such interviews or indirectly providing areas for inquiry.
- (b) If requested, any involved officer will be afforded the opportunity to consult individually with a representative of his/her choosing or an attorney, prior to speaking with criminal investigators. 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.
- (c) Any voluntary statement provided by the officer(s) will be made available for inclusion in the administrative or other related investigations.
- (d) Absent consent from the involved officer or as required by law, no administratively coerced statement(s) will be provided to any criminal investigators.

### **5.2 REPORTS BY INVOLVED OFFICERS**

In the event that suspects remain outstanding or subject to prosecution for related offenses, this department shall retain the authority to require involved 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 officer may write the report, it is generally recommended that such reports be completed by law enforcement officials having jurisdiction, who should interview 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 involved 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 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.

## **6 ADMINISTRATIVE INVESTIGATION**

In addition to all other investigations associated with an officer-involved shooting, this department will conduct an internal administrative investigation to determine conformance with department policy. This investigation will be conducted by the Probation Unit Supervisor/Internal Affairs investigator and will be considered a confidential peace officer personnel file.

(a) Any officer involved in a shooting may be administratively compelled to provide a blood sample for alcohol/drug screening. Absent consent from the officer, such compelled samples and the results of any such testing shall not be disclosed to any criminal investigative agency.

(b) If any officer has voluntarily elected to provide a statement to criminal investigators, the assigned administrative investigator should review that statement before proceeding with any further interview of that involved officer.

1. If a further interview of the officer is deemed necessary to determine policy compliance, care should be taken to limit the inquiry to new areas with minimal, if any, duplication of questions addressed in the voluntary statement. The involved officer shall be provided with a copy of his or her prior statement before proceeding with any subsequent interview(s) (Government Code § 3303(g))

(c) In the event that an involved officer has elected to not provide criminal investigators with a voluntary statement, the assigned administrative investigator shall conduct an administrative interview to determine all relevant information.

1. Although this interview should not be unreasonably delayed, care should be taken to ensure that the officer's physical and psychological needs have been addressed before commencing the interview.
2. If requested, the officer shall have the opportunity to select an uninvolved representative to be present during the interview (Government Code § 3303(i)). 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.
3. Administrative interview(s) should be recorded by the investigator (the officer may also record the interview) (Government Code § 3303(g)).
4. The officer shall be informed of all constitutional *Miranda* rights (Government Code § 3303(h)) and, assuming no voluntary waiver, will then be given an administrative order to provide full and truthful answers to all questions (Government Code § 3303(e)). The officer shall be informed, however, that the interview will be for administrative purposes only and that the statement cannot be used criminally (The *Lybarger* or *Garrity* admonishment).
5. The administrative interview shall be considered part of the officer's confidential personnel file.
6. The Probation Unit Supervisor shall compile all relevant information and reports

- necessary for the Department to determine compliance with applicable policies.
7. The completed administrative investigation shall be submitted to the Use of Deadly Force Review Board, which will restrict its findings as to whether there was compliance with the Department use of deadly force policy.
  8. Any other indications of potential policy violations shall be determined in accordance with standard disciplinary procedures.

## **7 CIVIL LIABILITY RESPONSE**

A member of this department may be assigned to work exclusively under the direction of the legal counsel for the Department (County Counsel) to assist in the preparation of materials deemed necessary in anticipation of potential civil litigation.

All materials generated in this capacity pursuant to instruction from legal counsel shall be considered attorney work product. The civil liability response is not intended to interfere with any other investigation.