



**PROTOCOL FOR SANTA BARBARA COUNTY DISTRICT ATTORNEY OFFICER-
INVOLVED INCIDENT RESPONSE PROGRAM**
For Officer/Deputy-Involved Shootings and In-Custody Deaths

PREAMBLE

Law enforcement officers perform a vital and often dangerous job in our communities. Situations will occur where peace officers must use deadly force; we expect that such force will be used only when legally necessary and as prescribed by law. When officers or deputies use deadly force, the public and the involved officers/deputies have a right to expect that a thorough and neutral examination will be conducted of these incidents.

The Santa Barbara County District Attorney's Office and Santa Barbara County law enforcement agencies agree that district attorney personnel will immediately respond to the scene of officer-involved shootings where any person is injured or killed and have the option of responding to in-custody deaths¹. The District Attorney's role in officer involved shootings and, at times, in-custody deaths, is to observe the law enforcement investigation and determine whether any violation of criminal law may have occurred. The officer-involved incidents discussed in this protocol include: officer-involved shootings where an officer/deputy shoots and injures or kills any person in the course and scope of their employment, deaths of suspects or inmates in the custody or control of law enforcement, and deaths of any person following a use of force incident by a law enforcement officer. The policies and procedures to be followed as well as the focus of our response team are set out in this protocol.

SEPARATION OF CRIMINAL AND ADMINISTRATIVE INVESTIGATIONS

Law enforcement agencies have the responsibility in an officer-involved shooting or in-custody death investigation to address several issues, such as: (1) whether any criminal law violations have occurred, (2) whether any participant has incurred or is at risk of incurring civil liability, (3) whether departmental policies have been followed, (4) whether appropriate law enforcement tactics were utilized under the circumstances.

¹ For purposes of this protocol, "in-custody deaths" refers to when an individual dies while in custody or control of a law enforcement officer or agency, following a use of force by a law enforcement officer or custody personnel. For more discussion on when District Attorney personnel may respond to an "in-custody death" see the section entitled "Incidents to be Investigated."

The District Attorney's role is to observe the criminal investigation and determine whether any violation of criminal law may have occurred by all parties involved, including suspects, and whether the use of force was lawful. However, the role of the law enforcement agency may also be to administratively investigate other issues as well, and these can be conducted concurrently with the criminal investigation.

During the course of an administrative inquiry, law enforcement agencies are authorized by law to compel their officers or deputies to give statements regarding matters that are the subjects of administrative investigation. (Public Safety Officers Procedural Bill of Rights Act, Government Code Sections 3300 et seq.) However, the law provides that such a compelled statement and any evidence derived therefrom may be inadmissible in a criminal prosecution. Therefore, it is vital to ensure that from the outset of an investigation, there is a clear separation between the administrative and the criminal investigation. District Attorney personnel should not be present, either remotely or physically present, during any compelled interview, nor should they receive any information concerning the content of a compelled statement, absent unusual circumstances.²

There will be an Officer-Involved Incident team consisting of one deputy district attorney and one chief deputy or chief assistant deputy district attorney in both north and south county. Deputy district attorneys from the Officer-Involved Incident team of the Santa Barbara County District Attorney's Office will respond to the incident site to work with the investigating law enforcement officers. The District Attorney's Office will work with the investigating agency to ensure that the inquiry is conducted in a fair and professional manner that will serve the interest of justice, the community, the involved officers, those persons injured, and the families of those affected. The primary objective of this program is to accurately, thoroughly, and objectively investigate all relevant evidence and to determine the potential criminal liability, or lack thereof, of any party.

INCIDENTS TO BE INVESTIGATED

This protocol shall apply when either of the following incidents occur within Santa Barbara County:

- 1) A peace officer, on or off duty, shoots and injures or kills any person during the scope and course of employment.
- 2) An individual dies while in custody or control of a law enforcement officer or agency, following a use of force by a law enforcement officer or custody personnel.

² For further discussion on this subject, see section entitled "Interviews of Officers and Deputies."

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This protocol will also apply to peace officers employed by an agency outside Santa Barbara County, if the incident occurs within Santa Barbara County. This protocol will not apply where officers or deputies from Santa Barbara County are involved in incidents that occur outside the borders of Santa Barbara County.

NOTIFICATION OF DISTRICT ATTORNEY OFFICER-INVOLVED INCIDENT TEAM

For all incidents described in 1 and 2 above, it is the responsibility of the law enforcement agency investigating the incident to immediately notify the north or south county deputy district attorney on the Officer-Involved Incident Team, depending on where the incident occurred. The investigating agency should refer to the on-call list on file with dispatch services for the deputies on the Officer-Involved Incident Team.

The responding deputy district attorney should be given a brief summary of all the facts known at the time, including: location of the incident, command post location, suggested access routes, and any safety concerns. The notification should be made as soon as possible, preferably no later than 1 hour after the incident. An early response to the scene of an investigation is critical so that district attorney personnel may gain first-hand knowledge of lighting conditions, witness demeanor, trajectories, vehicle and pedestrian traffic conditions, etc.

AT THE SCENE

The investigating law enforcement agency shall have primary responsibility to conduct a thorough, objective, and professional investigation of the incident. They shall be responsible for securing the location, collecting all physical evidence, photographing and/or diagramming the scene, and interviewing witnesses in cooperation with district attorney personnel.

The responsibilities of the District Attorney's Office shall include the following:

- 1) Assist and advise the Incident Investigators on the various legal issues that may arise, including but not limited to search and seizure, *Miranda*, identification procedures, arrests, elements of crimes, immunity, and voluntariness.
- 2) Observe the law enforcement investigation.
- 3) Advise and assist investigative officers as to the collection of evidence and the interview of witnesses, when appropriate.
- 4) Ultimately determine if the use of force was lawful.

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District Attorney personnel will notify the officer maintaining the crime scene log at the scene upon their arrival and entry into the secure scene. As soon as practical, the officer in charge of the investigation will provide district attorney personnel with an initial briefing of the incident. The briefing will consist of all relevant information known at that time, including but not limited to:

- 1) The names and present whereabouts of the officers involved in the incident;
- 2) The names, addresses and present whereabouts of all civilian witnesses to the incident;
- 3) Any public safety statement(s) made by the involved officers.
- 4) The physical evidence discovered;
- 5) A summary of witness statements and the status of the investigation;
- 6) A “walk through” at the scene, including witness descriptions of the events and the evidence recovered;
- 7) The medical condition of injured parties.

The investigating officer will ensure that district attorney personnel have access to the scene of the investigation. All physical evidence shall remain in the custody of the law enforcement agency conducting the investigation.

INTERVIEWS OF OFFICERS AND DEPUTIES

All officer or deputy witnesses to the events of the incident shall be separately interviewed. The interviews should take place as soon as is practical and should be recorded.

During the course of the investigation and prior to the interviews, all involved officers/deputies should be instructed not to talk with one another or any witnesses about the investigation or the facts of the incident prior to their interviews. This shall not affect an involved officer/deputy’s communication with their legal representative, non-involved association representative, clergy or counselor.

District attorney personnel will be available to participate **remotely** in interviews of law enforcement personnel at the request of the investigating agency³. However, if the officer or deputy chooses to make a non-compelled statement outside the presence of district attorney

³ “Remote participation” means that the District Attorney personnel will be observing or listening to the interview from a separate room with remote audio capabilities.

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personnel, investigators will inform district attorney personnel of the substance of the statement and provide access to any recording of the statement.

If the officer chooses not to make a voluntary statement and the police agency elects to compel a statement pursuant to Public Safety Officers Bill of Rights Act (Government Code Sections 3300 et seq.), district attorney personnel will not participate in the compelled interview.

INVESTIGATIVE REPORTS

It is the intent of the District Attorney's Office and participating law enforcement agencies to complete their review of these matters as quickly as possible, consistent with the primary goal of conducting a thorough and objective review of the facts.

The investigating agency will submit all relevant reports regarding the incident to the District Attorney's Office as soon as possible.

FINAL ACTION

At the conclusion of the investigation, the District Attorney's Officer-Involved Incident Team will review and analyze all the evidence to determine whether the officer/deputy acted lawfully. The crime-charging standards are the same for civilians and peace officers. The District Attorney's Office should charge only if the following 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 to prove the case to the standard of beyond a reasonable doubt; and
3. There is legally sufficient, admissible evidence of the accused identity as the perpetrator of the crime charged;

If charges are filed against the officer they will be prosecuted by the District Attorney's office. If no charges are filed, the District Attorney's Office 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 which would be subject to civil sanctions. The District Attorney's Officer-Involved Incident

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Team will review all matters in a timely manner and issue a closing report containing its findings and conclusions in as timely a manner as possible, preferably within 90 days of receipt of the investigation. This report shall be sent to the involved police agencies and will be available to the public.

The District Attorney's Office will notify the appropriate Chief of Police, Sheriff, or their representative prior to releasing to a third party any document related to an officer-involved shooting or in-custody death, and prior to conducting a news conference or issuing a press release concerning an officer-involved shooting or in-custody death.

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