

# BERKELEY POLICE DEPARTMENT

DATE ISSUED: January 18, 2005

GENERAL ORDER P-12

**SUBJECT: POLICE-INVOLVED SHOOTINGS AND FATAL OR SERIOUS INJURY INCIDENTS**

## PURPOSE

- 1 - The purpose of this Order is to delineate the policy for investigating officer involved shootings or other incidents involving officer/employees which result in serious injury or fatalities **and to thoroughly investigate all serious incidents involving multiple jurisdictions or personnel from other law enforcement agencies.**

## POLICY

- 2 - Investigation of police-involved shootings or other incidents, which result in serious injury or death, are complex and demanding. The consequences of such an incident can be profound and affect many people in the Department and the community. For these reasons, it is the policy of the Berkeley Police Department to investigate all such incidents thoroughly, fairly and in compliance with the directions of this Order.

## PROCEDURES

- 3 - The Berkeley Police Department will investigate all police-involved shootings or other incidents which result in serious injury or death that occur in the City of Berkeley, whether they involve Berkeley Police employees or employees of another law enforcement agency. **If a serious incident takes place in two or more jurisdictions, each part of the incident will be investigated by the agency having primary jurisdiction over the geographical area in which that part occurs. The policy applies to sworn officers and non-sworn employees who are on duty, and it applies to sworn officers who are off duty but assume an on-duty status to accomplish a police objective.**

An "Officer Involved Shooting and Fatal/Serious Injury Incidents Checklist for Sergeants /Watch Commanders is attached at the end of this directive. The Checklist should be used to facilitate the investigation, with appropriate copies routed to the Administrative Division Captain, Division Commander(s) of the involved employee(s) and the Homicide Detail.

- (a) When a police-involved shooting or other incident results in serious injury or death, a member of the Berkeley Police Department Homicide Detail shall notify the Alameda County District Attorney's on-call "Officer-Involved Shooting Team" or "Homicide Unit." These notifications may be made via the Alameda County Sheriff Department's Dispatchers.

- (1) The District Attorney's Office will determine if the incident is one that they will respond to. Where deemed appropriate by the District

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Attorney's Office, they will conduct an investigation independent and apart from our investigations.

- (b) If the District Attorney's Office determines they will respond, the Homicide Detail shall insure they are provided with a summary of all investigative information upon arrival at the incident scene. Members of the District Attorney's Office shall be allowed to view and photograph the scene and all physical evidence. They shall also be provided with the opportunity to interview all witnesses and involved officer(s)/employee(s).
    - (1) The District Attorney's Office will conduct a separate investigation of the incident without interfering and will receive full cooperation from members of the Berkeley Police Department, including being present at officer/employee interviews and submitting questions in writing to be asked of the involved personnel.
  - (c) Upon completion of their investigation, the District Attorney's staff will provide the Berkeley Police Department with a written report of their investigation, generally within 30 days of the incident.
- 4 - Shootings or incidents which result in injury or death, involving an on-duty or off-duty Berkeley Police Department employee and which occur in another jurisdiction, will be investigated by that jurisdiction.
- (a) In all cases involving Officer Involved Shootings or serious injury incidents by Berkeley Police Officers in another jurisdiction, a member of the Berkeley Homicide Detail will be contacted by the Communications Center to respond to the incident scene. He/she will coordinate and serve as a liaison for our Department.
- 5 - The purpose of any criminal investigation conducted under this Order is to determine if a crime occurred, and if so, to identify the person(s) responsible, the degree of the crime, any legal or factual defenses to the crime, and the existence of any factors which might mitigate or aggravate the punishment for the violation(s) committed. **The criminal investigation will be conducted as soon as possible after the incident becomes known and will take precedence over any administrative investigation that may be required by another association policy statement or policy of another agency.**
- 6 - An administrative investigation will be conducted concurrently with, but separate from, any criminal investigation of a police-involved shooting, serious injury incident or death conducted under this Order.
- (a) The criminal investigation shall have priority.
- 7 - The purpose of the administrative investigation conducted under this Order is to identify training deficiencies and to determine if there are any violations of policy

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or procedures of the Berkeley Police Department, and if so, the identity of the person(s) responsible for the violation(s).

### DEFINITIONS

- 8- Serious Injury: A serious injury is an injury which if sustained could possibly result in death or permanent disability.
- 9 - Types of incidents covered under this Order are defined as:
- (a) Officer involved shootings, accidental or intentional, whether or not there is injury or death.
  - (b) Any intentional or negligent act on the part of an employee of the Berkeley Police Department while performing his/her official duties which causes the death of or serious injury to another person.
    - (1) Officer/Employee involved fatal/serious injury incidents in which a vehicle collision is the apparent cause shall be handled by the California Highway Patrol relative to the traffic/criminal investigation.
    - (2) Departmental personnel assigned to our Fatal Accident Investigation Team (FAIT) representing the Homicide Detail and Crime Scene Unit shall assist the California Highway Patrol in their investigation if requested. This includes but is not limited to duties such as assistance with evidence collection, coordinating interviews, etc.
    - (3) In situations where a vehicle collision or other vehicular movement is involved but it not the direct cause of death, or where the vehicle collision is one of a series of events resulting from a violation of law apart from the collision itself, Homicide Detail shall retain responsibility for the investigation but may obtain assistance from the California Highway Patrol for the traffic related portions of the incident.
  - (c) Any intentional or negligent act on the part of an employee of any outside law enforcement agency while performing his/her official duties in the City of Berkeley which causes the death of or serious injury to another person.
- 10 - All Police Department employees are covered by this Order. Employee is defined as:
- (a) Any full-time regular salaried sworn or non-sworn employee.
  - (b) Any part-time salaried employee **or Police Reserve Officer.**

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- (c) Any volunteer employee while actually performing duties at the direction of or with the consent of the Chief of Police.
- 11 - Investigators, as included in this Order, are defined as:
- (a) Sworn police officer(s) of the Berkeley Police Department assigned by the Chief of Police to conduct the criminal investigation of any incident covered by this Order.
  - (b) Sworn police officer(s) of the Berkeley Police Department assigned by the Chief of Police to conduct the administrative investigation of any incident covered by this Order.
  - (c) Members of the District Attorney's Office of Alameda County assigned by the Alameda County District Attorney to conduct the criminal investigation of any incident covered by this Order.

### RESPONSIBILITIES

- 12 - Criminal investigations conducted under this Order shall be conducted by members of the Homicide Detail, or if unavailable, an investigator assigned by the Chief of Police.
- 13 - Administrative investigations conducted under this Order shall be conducted by the Internal Affairs Bureau, or if unavailable, an investigator assigned by the Chief of Police.

### INVESTIGATIVE PROCEDURES

- 14 - The officers conducting the investigation are required to follow the rules of law which apply to all criminal proceedings including constitutional, statutory, and case law regarding rights which are covered by the United States Constitution's 4th, 5th, 6th, and 14th Amendments.
- (a) The investigation is to be performed in a manner that both is and appears to be thorough, fair, complete, and professional and provides an investigation, which is free of conflicts of interest.
  - (b) **For incidents involving outside agency personnel, a representative of the agency employing the involved law enforcement personnel will be afforded the opportunity to monitor the investigation, be present during questioning regarding the incident and within a reasonable period of time, to have access to all materials and documents pertinent to, or generated throughout the investigation.**
  - (c) Notifications:

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Upon identifying an occurrence as an officer involved shooting or other incident which results in serious injury or death, the Patrol Watch Commander or senior on-duty Sergeant shall insure the following notifications are made, except where noted:

- (1) Homicide **Supervisor**, or On-call Detective
- (2) Duty Command Officer
- (3) Chief of Police
- (4) Division Commander(s) of the involved personnel
- (5) **Public Information Officer**
- (6) Internal Affairs Investigator
- (7) Alameda County District Attorney's representative
  - (a) This contact will be made by the Homicide Detail.

### SCENE PROCEDURES

15 - Emergency life saving measures have the first priority.

- (a) If a person is transported to a hospital with possible "fatal injuries," an officer should accompany that injured person in the same vehicle in order to:
  - (1) Locate, preserve, safeguard, and maintain the chain of physical evidence.
  - (2) Obtain a dying declaration (Evidence Code 1242); a spontaneous statement (Evidence Code 1240); a contemporaneous statement (Evidence Code 1241); a statement of then-existing or previous mental or physical state (Evidence Code 1250, 1251).
  - (3) Maintain custody of the person if he/she has been arrested.
  - (4) Provide information to medical personnel about the incident as relevant to treatment, and obtain information from medical personnel relevant to the investigation.
  - (5) Identify relevant people, including witnesses and medical personnel.
  - (6) Be available for contacts with the victim's family, if appropriate.

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- 16 - The scene(s) must be secured immediately with a perimeter established for each a sufficient distance away to safeguard evidence. In some circumstances an inner and an outer perimeter are appropriate.
- (a) Access to the scene(s) must be limited to only those officials who must enter for an investigative purpose.
  - (b) A written log will be established as quickly as possible to identify all persons entering the scene(s), the time of their entry and exit, and the reason for entry.
  - (c) When not needed for life saving efforts, entry by fire and ambulance personnel should be restricted to the absolute minimum necessary to perform the needed duties.
  - (d) No items shall be moved inside the scene(s) or removed from a scene without approval of the scene supervisor unless absolutely necessary for public or officer safety or for preservation of evidence.

If removal without approval is necessary, the removal must be witnessed and logged. The log shall state the identity of the person removing the described object, the reason for removal, a witness to the removal, and the time of removal. The item should be photographed prior to removal.

- 17 - If any type of weapon or instrument was involved in the fatal incident, the supervisor at the scene will promptly have the item secured or collected as follows:
- (a) If the area is secure, loose weapons or instruments shall be left in place and undisturbed.
  - (b) If the area is not secure, the supervising officer at the scene shall decide whether the items can be safely left in place or whether prompt removal is necessary. If such items must be moved or removed for protection, they should be photographed in place prior to removal if possible.
  - (c) If an involved officer still has personal possession of a weapon he/she used in the incident, the supervising officers at the scene shall take steps to get the officer removed from the scene as soon as possible. The supervising officer shall promptly but discreetly obtain possession of the involved officer(s) weapons and gun belt assemblies.
    - (1) Preferably, this should be done at the **Public Safety Building** or at another location with consideration given towards being out of the view of the public and/or other officers if possible.
    - (2) Side arms shall not be removed from their holsters; obtain the

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entire gun belt if necessary to avoid moving the weapon from its holster.

- (3) Unless there are mitigating circumstances, the supervising officers shall take steps to immediately give the involved officer(s) a replacement firearm and/or any other equipment, which was collected as evidence.
- (d) In shooting cases, the supervising officer shall attempt to identify all firearms, which may have been discharged by other officers who were present at the time of the incident to ensure that all discharged firearms are identified and collected. Where a duty sidearm, which is collected, is in the personal possession of an officer it shall be immediately replaced.
- (e) The supervising officer collecting any weapon or instrument will describe in his/her report its description, condition and the location of any trace evidence adhering to it. These observations should be made without removing a firearm from its holster or otherwise compromising physical evidence. The location where the weapon or instrument was first observed by the supervising officer, and the identity of the person or location from which the weapon or instrument was received shall also be recorded.
- (1) In firearms cases, the supervising officer will also make note of whether the firearm is cocked, has its safety "engaged" has its hammer back, any apparent jamming of either fired or unfired ammunition; the location and position of the weapon's magazine (e.g. fully or partially inserted, completely separate from the firearm, missing, etc.), to the extent possible without removal of the weapon from its holster.
  - a. If the mechanism of a firearm is obviously jammed, no attempt shall be made to unload the weapon or clear the jam.
  - b. If the firearm is found in a single action condition (hammer/firing mechanism cocked), the safety shall be engaged by the supervising officer, who must make note of that fact. If the firearm's hammer is back, it shall be lowered, but note must be made of that fact.
- (f) Any officer receiving a weapon or instrument from another person or obtaining it otherwise shall note its serial number if readily visible without removing the weapon from its holster or otherwise compromising physical evidence and to maintain the chain of evidence.

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- (g) Otherwise, weapons and instruments will not be disturbed in any way. They shall not be handled by anyone other than the supervising officer and that officer shall handle them minimally to preserve the exact state of the weapon or instrument when received.
- 18 - The collected weapons or instruments shall be transferred to the Identification Expert for processing.
- 19 - Any other 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. Evidence adhering to live participants (such as blood stains), footprints, and fingerprints, volatile substances, various types of trace evidence, and firearms discharge evidence, are examples.
- 20 - Transporting and Sequestering of Involved Officers:
  - (a) Officers who were present at the scene at the time of the incident, whether involved parties or witnesses, will be relieved of their duties at the scene as promptly as possible and transported to the **Public Safety Building**.
    - (1) As soon as practical, the involved officers(s)/employee(s) shall have photographs taken of any injuries they suffered, and/or any damage to or physical evidence present on their attire.
  - (b) An uninvolved officer shall remain with the involved officer(s) until they can be interviewed. The sequestering officers are present to ensure the officers have privacy and that their needs are accommodated, they should not be present during confidential (privileged) conversations.
  - (c) Involved officers are to refrain from discussing the incident among themselves, with sequestering officers, or with anyone other than their representative(s) prior to the investigative interview process.
- 21 - Custodial Death Scenes:

When an incident occurs in a jail facility or other location where inmates may have witnessed something, inmates should be identified and separated if possible, pending interviews by criminal investigators.

### INTERVIEWING POLICE EMPLOYEES

- 22 - Under the Public Safety Officers Procedural Bill of Rights ("The Act") (Government Code Section 3300 et seq):
  - (a) The Act is applicable only to "Public Safety Officers." It is not applicable to police employees who are not peace officers.

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- (b) The Act is not applicable to interviews with Public Safety Officers who are being interviewed by other than their Employing Agency.
- (c) The Act is not applicable to interviews with Public Safety Officers when being interviewed by other than their Employing Agency when the investigation is concerned solely and directly with "alleged criminal activities."

If prior to or during the interrogation of a Public Safety Officer it is deemed that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights. {Per Government Code Section 3303, (h)}.

- 24 - Interviews will be conducted separately.
- 25 - Interviews will normally be fully tape-recorded.
- 26 - The interviewees will be considered as witnesses unless the circumstances dictate otherwise.
- 27 - Police employees have the same rights and privileges regarding interviews that any other citizen would have, including the right to consult with a representative prior to interview and the right to have legal counsel present during the interview.
  - (a) Legal counsel shall be allowed to consult with the employee about the facts of the incident privately.
  - (b) If the representative is not a doctor, lawyer, psychotherapist, or priest, or an agent of such professional, the contents of private conversations between the representative and his/her police employee "client" are not privileged.

### CHEMICAL SUBSTANCE TESTING

- 28 - If, during the criminal investigation of an incident covered by this Order, the investigator determines that there is probable cause to believe that a Police employee, as defined in paragraphs 8(c) and 9 above, is or may be under the influence of a chemical substance, the investigator shall obtain a sample of the subject's blood and urine consistent with the requirements of the California Evidence Code, State and case law.
- 29 - During the administrative investigation of an incident covered by this Order, the investigator shall follow City policy:

On November 25, 1986, under Resolution Number 53,543A-N.S. the City Council passed the following resolution:

PROHIBITING VOLUNTARY OR MANDATORY DRUG TESTING OF CITY OF

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BERKELEY EMPLOYEES UNLESS SPECIFICALLY AUTHORIZED BY THE CITY COUNCIL.

BE IT RESOLVED by the Council of the City of Berkeley as follows:

That as a public policy, the City of Berkeley is not interested in voluntary or mandatory drug testing of City employees without the specific authorization of the City Council.

All members of the Berkeley Police Department shall follow this policy.

REVIEW PROCESS

- 30 - All incidents investigated under this Order, which involve Berkeley Police Department employees, shall be reviewed by the Chief of Police and a Review Board as outlined in General Order R-3.

References: General Orders C-15, E-3, R-3 and T-16\*  
Government Code Sections 3300, et seq.  
Police Regulation 323  
Special Order 87-56263, September 23, 1987, "Drug Testing"  
CALEA Standards  
Alameda County District Attorney Guidelines for Investigation of Officer Involved Shooting Incidents  
**Alameda County Chiefs of Police and Sheriff's Association Policy Statement Adopted July 1998**

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EXAMPLE FORM

<i>Berkeley Police Department</i> OFFICER INVOLVED SHOOTING AND FATAL/SERIOUS INJURY INCIDENT CHECKLIST FOR SERGEANTS/WATCH COMMANDERS	
Respond immediately to scene and assume command	
Establish Field Command Post if necessary	
Secure scene	
Immediate attention to any injured parties	
Request ambulance to scene and/or to "stage"	
Broadcast crime/suspect(s) information	
Insure the following notifications are made:	
* Homicide Sergeant or his/her designee - Responds to scene and assumes primary responsibility for investigation (except for designated traffic collisions handled by CHP - refer General Order T-16)	
** Homicide Detail to contact the Alameda District Attorney's Office (contact "on call" Officer Involved Shooting Team or Homicide Unit via ACSD Dispatch)	
* Duty Command Officer	
* Chief of Police	
* Division Commander(s) of involved personnel	
* <b>Public Information Officer</b>	
* Internal Affairs Sergeant(s)	
Obtain preliminary information from all involved officers/personnel (i.e., ascertain who might have fired their weapons and others who were present, etc.)	
Focus on relevant questions of "what happened" for purpose of (1) public safety; (2) exigent circumstances; and (3) delineation and management of crime scene(s)	
Remove all involved personnel from scene - <b>take to Public Safety Building*</b> (Refer " <b>Public Safety Building*</b> " checklist)	
Designate officer responsible for providing overview of investigation	

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Designate officer to maintain log of all personnel entering and leaving the scene (shall include personnel from other City Departments or other agencies)	
Request I.D. Technician to process the scene/Crime Scene Unit Sergeant notified of incident	
Witness statements (witnesses may be taken to <b>Public Safety Building</b> for interviews if appropriate)	
Designate officer(s) for scene diagram	
Designate officer(s) for neighborhood check	
For officer involved shooting situations, insure two cases are initiated (the first for the event which precipitated the shooting, the second for the shooting investigation)	
Insure proper collection of all evidence (see <b>PSB</b> checklist)	
<b>PUBLIC SAFETY BUILDING SUPPLEMENTAL CHECKLIST FOR SERGEANTS/WATCH COMMANDERS</b>	
Insure segregation of all involved personnel (including refraining from discussing incident with other employees)	
Assignment of an officer to sit with involved personnel pending continuance of the investigation	
Officer involved shootings - Unless there exists mitigating circumstances, at <b>PSB</b> (or other appropriate site) take gun and gun belt assembly as evidence from officers when it has been determined they fired their weapons (replacement sets maintained at <b>PSB</b> * gun locker)	
Officer involved shootings - if unclear who fired, or such a designation is in dispute, guns/gun belts taken from all involved officers. If there is no dispute, examine weapons and magazines of officers at the scene but allow them to maintain possession	
Insure all seized guns/gun belts are turned over to Crime Scene Unit personnel for processing	
<i>cc: Captain of Administration, Division Commander, Homicide Detail</i>	
Completed by: _____ Date/Time: _____	

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