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Operational and Procedural Guidelines for Officer-Involved Shootings, In-Custody Deaths and Use-of-Force Incidents

PREAMBLE and ADOPTION

Law Enforcement Officers perform a vital role in protecting the public and enforcing the laws of the State of California. Situations will occur where peace officers must use force, including deadly force, in the lawful performance of their duties. When peace officers use force, the public has a right to expect that a thorough and neutral investigation will be conducted and all parties held legally accountable for their actions.

In view of this solemn responsibility, the Ventura County Law Enforcement Coordinating Committee (VCLECC), which includes the Sheriff, District Attorney, municipal police chiefs, and CHP Commander for Ventura County, does hereby adopt this Operational Agreement and agree, that District Attorney personnel will immediately respond to the scene of any officer-involved shooting resulting in death or injury and any in-custody death which occurs while the subject is in the custody or control of a law enforcement officer or agency and the use of force by a peace officer may be a proximate cause of serious injury or death.

PURPOSE

To establish recommended uniform guidelines within Ventura County for the investigation of officer-involved shootings resulting in death or injury, in-custody deaths, and, upon request, all other incidents involving the on-duty or off-duty use of force by a peace officer, as defined by California Penal Code sections 830.1-830.35, which results in serious injury.

INCIDENTS TO BE INVESTIGATED

This operational agreement shall apply when any of the following incidents occur within Ventura County:

- 1) A peace officer, on or off duty, shoots and kills or injures any person during the course and scope of his/her employment.
- 2) An individual dies while in the custody or control of a law enforcement officer or agency and the use of force or actions of a peace officer may be a proximate cause.
- 3) A peace officer, on or off duty, shoots at or seriously injures any person during the course and scope of employment, if requested by the agency.

SEPARATION OF CRIMINAL AND ADMINISTRATIVE INVESTIGATIONS

Law enforcement agencies have multiple responsibilities related to the investigation of officer-involved shootings, uses of force, and in-custody deaths including: (1) whether any criminal law violation has occurred, (2) whether any participant has incurred or is at risk of incurring civil liability, (3) whether departmental policies have been followed, and (4) whether, under the circumstances, appropriate law enforcement tactics were utilized.

It is the role of the District Attorney to investigate such actions of peace officers and determine whether the peace officer(s) acted lawfully. (Gov. Code, § 26500.)

“Investigation and the gathering of evidence relating to criminal offenses is a responsibility which is inseparable from the district attorney’s prosecutorial function.” (*Hicks v. Board of Supervisors* (1977) 69 Cal.App.3d 228, 241; see also, *Triple A Machine Shop v. State of California* (1989) 213 Cal.App.3d 131, 144-145.)

It shall be the responsibility of the District Attorney to evaluate the actions of peace officers in accordance with Penal Code section 835a, effective January 1, 2020, as enacted by A.B. 392. If after a thorough review of the facts and circumstances of the incident, it is determined that the peace officer’s (s’) actions constituted a violation of the law, it shall be the responsibility of the District Attorney to determine what charges should be filed and to vigorously prosecute those offenses. If no charges are warranted, it shall be the responsibility of the District Attorney’s Office to issue a public report containing its findings and the reasons therefore.

In addition to the initial criminal review, and pursuant to Penal Code section 835a, it shall be the responsibility of the involved law enforcement agency to carefully and thoroughly evaluate whether the peace officer’s (s’) actions were consistent with agency policies.

The law enforcement agency determine whether or not an administrative inquiry is warranted, and whether or not potential civil liability exists. It is neither the duty nor

expectation of the District Attorney's Office to conduct an internal administrative or civil liability investigation.

During the course of an administrative inquiry, law enforcement agencies are authorized by law to compel their peace officers to give statements regarding matters that are the subject of administrative investigations. (Public Safety Officers Procedural Bill of Rights Act; Gov. Code, § 3300 et seq.) However, the law provides that such compelled statements and any evidence derived therefrom may be inadmissible in a state criminal prosecution. Therefore, it is very important from the outset of an investigation to clearly separate the administrative from the criminal investigation. District Attorney personnel should not be present during any compelled interview, nor should they receive any information concerning the content of a compelled statement.

Nothing contained herein is intended to increase, modify, or in any way affect the current legal standards of the departments who are signatories hereto, nor shall deviation from these guidelines be considered a breach of any legal standard.

JURISDICTION

Jurisdiction is determined by the location of the shooting and the agency employing the involved peace officer(s). The agency having original jurisdiction over the location of the shooting, use of force, or in-custody death (hereinafter "primary agency") should have primary authority over the investigation. In the case of an officer-involved shooting, in-custody death or use of force by a federal officer, the involved federal agency would have primary authority over the investigation (unless relinquished by that agency). Should there be an officer-involved shooting, in-custody death or use of force involving both local and federal officers, the primary agency and the involved federal agency will each retain authority over their respective local and federal criminal investigations.

While cooperation among involved agencies is critical, control of the criminal investigation should remain with the primary agency until final submission of the case to the District Attorney's Office unless voluntarily relinquished in whole or in part. An agency may relinquish its criminal investigation to an outside agency with the approval of the Sheriff, Chief of Police, CHP commander, or designee of both the primary agency and the agency to which control is relinquished.

If a peace officer from one agency is involved in a use of force or in-custody death as defined above, which is outside their jurisdiction, the agency employing the involved peace officer will be considered the secondary agency.

The following scenarios outline the jurisdictional responsibilities for investigating officer-involved shootings, uses of force resulting in injury, and in-custody deaths:

1) Officer-Involved Shooting, Use of Force, or In-Custody Death Within One's Own Jurisdiction

The primary agency is responsible for the criminal investigation of the peace officer's (s') actions, the administrative investigation of its own peace officers, and any resulting civil litigation. The criminal review of the peace officer's (s') actions relative to the officer-involved shooting, use of force or in-custody death as defined above will be conducted by the District Attorney's Office. The criminal review of a federal officer's (s') actions, in the discretion of the District Attorney may be conducted by the U.S. Department of Justice, upon completion of the primary agency's investigation.

2) Officer-Involved Shooting, Use of Force, or In-Custody Death Involving Peace Officers from One Agency Which Occurs Within the Jurisdiction of Another Agency

If the officer-involved shooting, use of force, or in-custody death as defined above occurs in another agency's jurisdiction, the criminal investigation of the peace officer's (s') actions will be handled by the primary agency, unless relinquished to another agency. The criminal review of the peace officer's (s') actions will be conducted by the District Attorney's Office, and in the case of a federal officer, the U.S. Department of Justice upon completion of the primary agency's investigation. The secondary agency will be responsible for any administrative and/or civil investigation(s).

Investigation Responsibility Matrix

JURISDICTION	CRIMINAL INVESTIGATION OF INCIDENT	CRIMINAL/LEGAL REVIEW OF INCIDENT	CIVIL INVESTIGATION	ADMINISTRATIVE INVESTIGATION
Primary Agency Location and Peace Officers Involved	Primary Agency	District Attorney	Primary Agency	Primary Agency
Primary Agency Location: Secondary Agency Peace Officers Involved	Primary Agency	District Attorney	Secondary Agency	Secondary Agency
Primary Agency Location; Federal Officers Involved	Joint Federal and Primary Agency	U.S. DOJ or District Attorney	Federal Agency	Federal Agency

APPLICATION

This Operational Agreement will apply to peace officers employed by an agency outside Ventura County if the incident occurs within Ventura County. This Operational Agreement will not apply where peace officers from Ventura County are involved in incidents that occur outside the borders of Ventura County unless a contiguous county requests and the primary agency and District Attorney agree to assume jurisdiction.

There may be occasions where one law enforcement agency, which is a member of VCLECC, is conducting an investigation on behalf of another agency that is not a member or a signatory to this Operational Agreement. Upon request of the investigating agency and with the express consent of the non-member agency, District Attorney personnel will roll out to the scene, conduct a thorough investigation, make a determination as to whether the peace officer's (s') conduct was lawful and either file charges or issue a public report explaining their findings and conclusions.

Upon request of any law enforcement agency, the District Attorney's Office will review an officer-involved shooting, use of force resulting in injury, or in-custody death investigation for criminal violations, even if that agency is not a signatory to the Operational Agreement.

NOTIFICATION TO THE DISTRICT ATTORNEY'S OFFICE

For all incidents described above, it is the responsibility of the law enforcement agency investigating the incident to immediately notify the District Attorney's Supervising Investigator of the Major Crimes Unit or other designated District Attorney representative as soon as the area has been secured to the extent there no longer appears to be an immediate threat to safety, and emergency medical aid has been initiated. It shall be the responsibility of the District Attorney's Office to provide updated contact information to members of VCLECC and all other signatories to this Operational Agreement.

Wherever possible, the notification of the incident should be made without delay and should contain a brief summary of all the facts known at the time including the location of the incident, command post location, and any safety concerns. An early response to the scene of an investigation is critical so that District Attorney personnel may gain first-hand knowledge of such things as lighting conditions, witness demeanor, trajectories, vehicle and pedestrian traffic conditions, etc.

If the Ventura County Sheriff's Office is conducting the investigation on behalf of another agency who is a signatory to this Operational Agreement, both the Sheriff's Office and the participating agency shall notify the District Attorney's Supervising Investigator of the Major Crimes Unit or his/her designee.

GUIDELINES AND RESPONSIBILITIES

Primary Agency Shall:

- 1) Respond to take control of the scene through the Incident Command System.
- 2) If necessary, obtain a public safety statement within the confines of the Public Safety Officers Procedural Bill of Rights Act to determine the level of response necessary to properly handle the incident once the area has been secured to the

extent that there no longer appears to be an immediate threat to safety and emergency medical aid has been initiated.

- 3) Delegate a representative responsible for making necessary notification to the District Attorney's Office.
- 4) Collect and maintain custody of all physical evidence, photograph and/or diagram the scene, and interview witnesses in cooperation with District Attorney personnel.
- 5) Provide District Attorney personnel with a walk-through and initial briefing of all relevant information known at that time about the incident including but not limited to:
 - a. The names and present whereabouts of the peace officer(s) involved in the incident.
 - b. The names address and present whereabouts of all civilian witnesses to the incident.
 - c. The statements of all peace officers, if not compelled, pursuant to Government Code sections 3300, et. seq (*Lybarger v. City of Los Angeles (1985) 40 Cal.3d 822*).
 - d. The physical evidence discovered to date.
 - e. A summary of witness statements and the status of the investigation.
 - f. The medical condition of all injured parties.
- 6) Conduct a thorough, objective, and professional investigation of the incident, including any necessary follow-up.
- 7) Conduct an internal administrative investigation of its peace officer's (s') actions as they relate to agency policies.
- 8) Where appropriate, seek additional resources, such as psychological counselors for the peace officer(s) involved in the incident, civil liability response teams, etc.

Secondary Agency Shall:

- 1) Conduct its own internal administrative investigation of its peace officer's (s') actions as they relate to agency policies.
- 2) Where appropriate, seek additional resources, such as psychological counselors for the peace officer(s) involved in the incident, civil liability response teams, etc.

District Attorney Shall:

- 1) Assign a Senior Deputy District Attorney and a District Attorney Investigator for call-out to all officer-involved shootings involving injury or death and all in-custody deaths as defined above.
- 2) Make available a Senior Deputy District Attorney and a District Attorney Investigator for call-outs regarding any on-duty or off-duty use of force causing serious injury, and any officer-involved shooting where no injury has occurred.
- 3) Notify the investigating peace officer and the peace officer maintaining the log listing personnel at the scene immediately upon arrival.
- 4) Assist and advise the investigating peace officer on criminal law issues as they relate to the investigation.
- 5) Observe and participate with the investigative agency in the police investigation including any autopsy.
- 6) Advise and assist investigative peace officers as to the collection of evidence and the interview of witnesses, where appropriate.
- 7) Conduct an independent legal review of the incident for the exclusive purpose of determining if there is criminal liability on the part of any peace officer involved in the incident. It is understood that an independent investigation may include evidence collection and additional witness interviews.
- 8) File and prosecute all cases where legally sufficient, admissible evidence exists to prove each of the elements of the offense charged and the identity of the perpetrator beyond a reasonable doubt.
- 9) Issue a public report in all cases where no crime was committed or there is insufficient evidence to prove beyond a reasonable doubt that a crime was committed, and no criminal prosecution has been commenced.

INTERVIEWS

Civilian Witnesses

District Attorney personnel will be present and participate with the investigating agency in interviews of civilian witnesses whenever practicable. All witnesses shall be interviewed separately to maintain the integrity of their statements. Wherever possible and practical, all interviews should be electronically recorded. After final submission of the case, District Attorney personnel may conduct additional interviews as warranted.

Interviews of Peace Officers

Public safety information, such as outstanding suspect information, number and direction of rounds expended, etc., may be elicited from involved peace officer(s) by the primary agency prior to legal counsel's response to the scene, particularly where there are no peace officer witnesses.

If the primary agency, while investigating the criminal matter, determines that a statement from the involved peace officer(s), other than a public safety statement, is necessary, it shall be the policy of that agency to secure the interview only with the concurrence of the involved peace officer and his/her counsel, if he/she elects to use counsel. Coerced statements will be sought only by assigned investigators or Professional Standards/Internal Affairs personnel from the involved peace officer's (s') employing agency, and in accordance with the Public Safety Officers Procedural Bill of Rights Act.

All peace officer witnesses to the events of the incident shall be interviewed separately. The interviews should take place as soon as is practical and should be recorded. During the pendency of the investigation and prior to the interview, all witnesses or potential witnesses should be kept apart to maintain the integrity of their individual statements. When appropriate, the interviews may take place at the scene to aid the peace officer(s) in recalling and explaining the exact location of the parties and the events that took place.

It is recognized that there are times when peace officer's (s') legal counsel will advise against making a voluntary statement. Instead, customarily, the peace officer's legal counsel will offer an involuntary statement "coerced" by virtue of an administrative order by a superior officer of that peace officer's department. These coerced statements would be reserved for administrative investigations and cannot be provided to the criminal investigative team or used in any state criminal prosecution of that peace officer. As it relates to federal law enforcement personnel, each federal agency must follow the rules and regulations of its particular agency.

The District Attorney's Office will be furnished with all departmental reports associated with the criminal investigation only. Upon request of the District Attorney's Office, the primary or secondary agency will submit, or make available for inspection, the personnel records of peace officer(s) related to the underlying criminal investigation, in accordance with Penal Code section 832.7. Any compelled statements obtained from peace officer's (s') shall be redacted from any records provided to the District Attorney's Office.

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 assigned deputy district attorney as soon as possible. Absent unusual circumstances and depending on the policy of the investigating agency, it is the goal of all participating agencies that the final reports be submitted to the District Attorney's Office within 120 days of the incident. Depending upon the complexity of the investigation, size of the incident scene, numbers of witnesses, need to consult expert witnesses or to conduct additional forensic testing and analysis, or other miscellaneous factors, additional time may be required.

FINAL ACTION

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

The crime charging standards are the same for civilians and peace officers. The District Attorney's policies regarding crime charging are set forth in the District Attorney's Legal Policies Manual and state in part:

The deputy district attorney shall charge only if the following four basic requirements are satisfied:

- a. The deputy district attorney, based on a complete investigation and a thorough consideration of all pertinent data readily available, is satisfied that the evidence shows the accused is guilty of the crime to be charged.*
- b. There is legally sufficient, admissible evidence of a corpus delicti.*
- c. There is legally sufficient, admissible evidence of the identity of the accused as the perpetrator of the crime charged.*
- d. The deputy district attorney has considered the probability of conviction by an objective factfinder hearing the admissible evidence. The admissible evidence should be 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 deputy district attorney at the time of charging and after consideration of the most plausible, reasonably foreseeable defense that could be raised under the evidence presented to the deputy district attorney.*

If no charges are filed, the District Attorney's Office will issue a public report. This report will address the question of whether the shooting or other actions by the peace officer(s) was/were justified under the law and, if not, whether there is proof beyond a reasonable doubt that a peace officer committed a crime. It is not the purpose of the District Attorney's investigation to determine if any peace officer violated police policy.

The District Attorney's Office will make every effort to issue a closing report containing its findings and conclusions within 60 days of the receipt of the final investigative package. An investigative package is not final until all requested follow-up investigation has been completed and submitted.

PUBLIC REPORT PROCEDURES

Whenever a peace officer shoots or seriously injures a suspect in the line of duty, or an individual dies while in the custody or control of a law enforcement officer or agency and the use of force may be a proximate cause of the death or injury, or in cases where an agency elects to request a District Attorney response as defined in this VCLECC - OIS

Operational Agreement, updated February 2020, the District Attorney's Office will commence a comprehensive review.

If after review of the facts and applicable law it is the decision of the District Attorney that the peace officer's (s') actions were not justified and there exists legally sufficient evidence to prove beyond a reasonable doubt that a crime was committed by the peace officer(s), a criminal prosecution will be commenced and the appropriate police agency notified. In such cases, no public report will be issued.

If after review of the facts and applicable law it is the decision of the District Attorney that the peace officer's (s') actions were legally justified, or cannot be proven to be a crime beyond a reasonable doubt, and no criminal charges will be filed, the District Attorney's Office will complete a comprehensive public report explaining its findings.

- 1) At the conclusion of the review of the incident, the assigned deputy district attorney will draft a public report describing the facts surrounding the incident, applicable legal authority and the conclusion of the District Attorney's Office regarding the lawfulness of the force used.
- 2) After review and approval by the Chief Deputy District Attorney - Criminal Prosecutions, the draft of the report shall be forwarded to the Chief Assistant District Attorney for review and revision.
- 3) The final draft of the report will be forwarded to the District Attorney for approval.
- 4) Once the District Attorney has approved the final draft, the report shall be forwarded to the Sheriff or Chief of Police of the primary and, if applicable, secondary agency. A memorandum from the Chief Assistant District Attorney will accompany the report and explain that the agency is being asked to review the document for factual accuracy only. The District Attorney Chief Investigator will be responsible for delivery of the draft report to the affected agency(ies). The agency(ies) will generally be given three working days to review the final draft of the report.
- 5) Following agency review, and after consideration of any additional relevant facts, the document will be finalized and prepared for distribution by the legal management assistant for the Chief Assistant District Attorney.
- 6) In the event that the incident under review resulted in death, decedent's legal representative or next of kin, if known to the office, will be provided a copy of the report before it is made public. District Attorney Bureau of Investigation personnel should hand-deliver the report.
- 7) The peace officer(s) involved shall receive an advance copy of the final report before it is made public. The report should be hand-delivered by District Attorney Bureau of Investigation personnel to the involved law enforcement officer(s) before it is made public. In addition to the report, a letter from the District Attorney explaining the decision will also be provided to the peace officer(s).

- 8) Generally, the report will be made public after 1:00 p.m. on the day chosen for publication. At that time, the office will issue a press release announcing the conclusion of the District Attorney and the availability of the report.
- 9) Copies of the report will remain at the desk of the Chief Assistant District Attorney's legal management assistant and will be provided to members of the media or the public upon request.


NEWS RELEASES AND INFORMATION REQUESTS

Unless otherwise agreed, news releases regarding the *incident being investigated* should be made by the primary agency with jurisdiction over the shooting with contribution, as appropriate, from other involved agencies.


- a) Subsequent news releases, if any, should be mutually coordinated between the agency of primary jurisdiction and affected secondary agency(ies).
- b) Law enforcement officials receiving inquiries regarding incidents occurring in other agency jurisdictions shall direct those inquiries to the primary agency.

News releases regarding the *issuance of the public report* at the conclusion of the investigation shall be made by the District Attorney's Office.

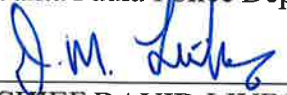
Reviewed and adopted by the following Ventura County Law Enforcement Coordinating Committee members on this 15 day of July, 2020.




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