

# **PROTOCOL FOR DISTRICT ATTORNEY OFFICER-INVOLVED SHOOTING 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 has a right to expect that a thorough and neutral examination will be conducted of these incidents and that all parties shall be held legally accountable for their actions.

The Los Angeles County District Attorney's Office and participating local law enforcement agencies agree that district attorney personnel will immediately respond to the scene of officer-involved shootings and in-custody deaths. 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 may 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.

It is the District Attorney's role to only investigate and determine whether any violation of criminal law may have occurred. However, the role of the law enforcement agency may also be to administratively investigate other issues as well, and they may sometimes choose to conduct an administrative review concurrently with the criminal investigation.

During the course of an administrative inquiry, law enforcement agencies are authorized by law to compel their officers to give statements regarding matters that are the subjects of administrative investigations. (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 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, absent unusual circumstances.<sup>1</sup> Because evidence derived from a compelled statement may be inadmissible in a criminal proceeding, care should be given to keep separate criminal and administrative investigations.

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<sup>1</sup> For further discussion on this subject, see section entitled "Interviews of Officers and Deputies."

Deputy district attorneys and investigators from the Justice System Integrity Division of the Los Angeles County District Attorney's Office will respond to the incident site to work with law enforcement officers and, when appropriate, conduct their own independent investigation. 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 interests 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 Los Angeles County:

- 1) A peace officer, on or off duty, shoots and injures any person during the scope and course of employment.
- 2) An individual dies while 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 the death.

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

There may be occasions where one law enforcement agency, which is a member of the DART program, is conducting an investigation on behalf of another agency, which is not a member of the program. Upon request of the investigating agency and with the express consent of the non-member agency, the District Attorney will roll-out to the scene and later issue a closing report.

Upon the request of any law enforcement agency, the District Attorney's Office will review an officer-involved shooting investigation for criminal violations, even if that agency is not a signatory to the protocol.

### **NOTIFICATION OF DISTRICT ATTORNEY COMMAND CENTER**

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 District Attorney Command Center.

Notification should be made as soon as practicable. Each agency should notify the District Attorney Command Center immediately after notification is made to its own investigators.

If the Los Angeles County Sheriff's Department is conducting the investigation on behalf of another agency, which has agreed to participate in the District Attorney's Officer-

Involved Shooting Response Program, both the Sheriff's Department and the participating agency shall notify the District Attorney Command Center regarding the incident. The District Attorney Command Center 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 30 minutes 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.

The District Attorney Command Center will notify the deputy district attorney and the district attorney investigator on-call who will respond to the scene.

### **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 District Attorney's Office has the authority to conduct an independent investigation. The responsibilities of the on-scene district attorney personnel shall include the following:

- 1) Assist and advise the investigating officer on criminal law issues as they relate to the investigation.
- 2) Observe and participate fully with the investigative agency in the police investigation. District attorney personnel should take notes of their observations and record interviews of witnesses.
- 3) Advise and assist investigative officers as to the collection of evidence and the interview of witnesses, when appropriate.
- 4) Conduct an independent investigation, at the District Attorney's discretion, separate from the law enforcement investigation when it is determined that the circumstances of the particular case make this appropriate. It is understood that an independent investigation may include evidence collection and witness interviews.

District attorney personnel will notify the officer maintaining the log listing personnel at the scene upon their arrival. 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) The statements of the officers, if not compelled, pursuant to Government Code sections 3300 et al. (Lybarger);
- 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. A walk through of the scene should be provided immediately upon arrival of district attorney personnel. All physical evidence shall remain in the custody of the police agency conducting the investigation.

If district attorney personnel determine that additional district attorney personnel are needed to assist with the investigation, additional district attorney investigators or deputy district attorneys can be called to the scene.

#### **INTERVIEWS OF CIVILIAN WITNESSES**

District attorney personnel, with the investigating agency, will make every attempt to locate, identify and interview all potential witnesses to an incident. District attorney personnel will be present and participate with the investigating agency in all interviews of civilian witnesses whenever practicable. All witnesses shall be interviewed separately to maintain the integrity of their statements. All interviews should be electronically recorded.

#### **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 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 officer in recalling and explaining the exact location of the parties and the events that took place.

District attorney personnel will be available to participate in interviews of law enforcement personnel at the request of the investigating agency. However, if the officer chooses to make a non-compelled statement outside the presence of district attorney 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 the Public Safety Officers Procedural Bill of Rights Act (Government Code sections 3300 et seq.), district attorney personnel will be available to participate in the compelled interview at the request of the investigating agency, if the

deputy district attorney assigned to the investigation determines, in his or her judgment, that our presence will not compromise any criminal investigation.

### **MEDICAL EVIDENCE**

When circumstances permit, district attorney personnel should remain at the scene of a fatal shooting or in-custody death until the coroner's investigator arrives and completes his investigation at the scene. When an individual has been wounded by the police, district attorney and law enforcement personnel shall attempt to question the medical doctor who has treated the wounded individual and make efforts to preserve evidence that could be obtained from the doctor, such as the angle of bullet entry, lacerations, contusions, or the presence and effect of any drugs or alcohol.

### **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 Justice System Integrity Division as soon as possible and absent unusual circumstances within 60 to 90 days, depending on the policy of the investigating agency. As the investigation proceeds, reports should be forwarded to the Justice System Integrity Division as they are completed regardless of whether all reports are completed. This procedure will permit the review process to proceed simultaneously with the investigation. It will also permit timely requests and implementation of any additional investigation and clarification of completed reports if required.

### **FINAL ACTION**

At the conclusion of the investigation, the District Attorney's Justice System Integrity Division 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 policies regarding crime charging are set forth in the District Attorney's Legal Policies Manual and state in part:

"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, reasonably foreseeable defense inherent in the prosecution evidence."

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 Justice System Integrity Division will make every effort to issue a closing report containing its findings and conclusions within 60 days of the receipt of the completed investigative package. This report shall be sent to the involved police agencies.