

Officer-Involved Shootings and Deaths

310.1 PURPOSE AND SCOPE

The purpose of this policy is to establish policy and procedures for the investigation of an incident in which a person is injured or dies as the result of an officer-involved shooting or dies as a result of another action of an officer.

In other incidents not covered by this policy, the Chief of Police may decide that the investigation will follow the process provided in this policy.

310.2 POLICY

The policy of the Bay Area Rapid Transit Police Department is to ensure that officer-involved shootings and deaths are investigated in a thorough, fair and impartial manner.

310.3 TYPES OF INVESTIGATIONS

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

- A criminal investigation of the suspect's actions.
- A criminal investigation of the involved officer's actions.
- An administrative investigation as to policy compliance by involved officers.
- A civil investigation to determine potential liability.

310.4 CONTROL OF INVESTIGATIONS

Investigators from surrounding agencies may be assigned to work on the criminal investigation of officer-involved shootings and deaths. This may include at least one investigator from the agency that employs the involved officer.

Jurisdiction is determined by the location of the shooting or death and the agency employing the involved officer. The following scenarios outline the jurisdictional responsibilities for investigating officer-involved shootings and deaths.

310.4.1 CRIMINAL INVESTIGATION OF SUSPECT ACTIONS

The investigation of any possible criminal conduct by the suspect is controlled by the agency in whose jurisdiction the suspect's crime occurred. For example, the Bay Area Rapid Transit Police Department would control the investigation if the suspect's crime occurred in San Francisco Bay Area Rapid Transit District.

If multiple crimes have been committed in multiple jurisdictions, identification of the agency that will control the investigation may be reached in the same way as with any other crime. The investigation may be conducted by another agency, at the discretion of the Chief of Police and with concurrence from the other agency.

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310.4.2 CRIMINAL INVESTIGATION OF OFFICER ACTIONS

The control of the criminal investigation into the involved officer's conduct during the incident will be determined by the employing agency's protocol. When an officer from this department is involved, the criminal investigation will be handled according to the Criminal Investigation section of this policy.

Requests made of this department to investigate a shooting or death involving an outside agency's officer shall be referred to the Chief of Police or the authorized designee for approval.

310.4.3 ADMINISTRATIVE AND CIVIL INVESTIGATION

Regardless of where the incident occurs, the administrative and civil investigation of each involved officer is controlled by the respective employing agency.

310.4.4 INVESTIGATION RESPONSIBILITY MATRIX

The following table helps identify the possible scenarios and responsibilities for the investigation of officer-involved shootings. This may vary based on the incident county and their protocol.

	Criminal Investigation of Suspect(s)	Criminal Investigation of Officer(s)	Civil Investigations	Administrative Investigations
BPD Officer in This Jurisdiction	BPD Investigations	BPD Investigations w/ District Attorney's Office	BART Legal Counsel	BPD Internal Affairs / BART Office of the Independent Police Auditor
Allied Agency's Officer in This Jurisdiction	BPD Investigations	District Attorney's Office	Involved Officer's Department	Involved Officer's Department
BPD Officer in Another Jurisdiction	Agency where incident occurred	Decision made by agency where incident occurred	BART Legal Counsel	BPD Internal Affairs / BART Office of the Independent Police Auditor

310.5 INVESTIGATION PROCESS

The following procedures are guidelines used in the investigation of an officer-involved shooting or death. The following checklist is a guideline that should be followed following an incident involving an officer-involved shooting or death;

- The BART Police Department officer assigned to the original call is in command of the scene until relieved by a supervisor or other person of higher authority. This

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includes those instances where more than one agency is participating or assisting in the investigation in BART's jurisdiction.

- Ensure that all necessary life-saving efforts are undertaken for any injured persons.
- The Incident Commander is responsible for deployment of personnel and equipment necessary to provide for the containment of the crime scene, security of the surrounding area, preservation of evidence, and compliance with all reporting requirements. The Incident Commander shall request all necessary resources to fulfill this responsibility.
- All necessary notifications shall be made in accordance with section 310.5.3 of this policy
- Obtain a public safety statement from involved officer(s) to establish crime scene boundaries, location of injured persons or other information to ensure the safety of the public regarding the incident.
- Assign an officer to ride with injured suspect(s) in the ambulance with a recording device to maintain custody of arrestee, document any spontaneous statements / dying declarations, and preserve any physical evidence.
- Only assigned investigative and emergency medical personnel will be allowed within the perimeter of the crime scene, unless authorized by the Incident Commander or higher authority.
- Locate, identify and seek voluntary compliance of witnesses to remain at the scene or other designated area to be interviewed regarding the incident.
- Coordinate a systematic canvass of the area for other witnesses, locating unaccounted vehicles, weapons, people, etc.
- Ensure radio broadcasts and teletypes regarding outstanding suspects, vehicles or witnesses are transmitted as soon as practical.
- The Incident Commander should conduct an on scene briefing once all investigative entities have arrived on scene. The briefing should include basic factual information known at that time such as type of call, date and time of incident, number of officers involved, summary of public safety statement(s), etc.
- Coordinate the preservation / collection of all evidence, including but not limited to, the officer's body worn camera, gunshot residue, etc. with Evidence Technicians and the Criminal Investigations Division.
- All personnel entering the scene will check in with the crime scene scribe and record the entry / exit time and reason for entering on the crime scene log.
- Any person(s) entering the crime scene may be ordered by the Incident Commander to prepare a supplemental report regarding their reasons for entering the crime scene and their actions while there.
- All officers directly involved in the shooting should be isolated from the immediate crime scene as soon as practical. Another officer or supervisor should be assigned to remain with these officers to attend to any personal needs that may arise until the arrival of assigned investigative units.

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- If more than one officer is directly involved in the shooting, the directly involved officers should be separated as soon as possible and should remain separated until after they have given a statement to the investigators.
- The officer's weapon will become evidence if the suspect was struck or if there is any indication that the weapon malfunctioned.
- The Criminal Investigations Division Lieutenant, or designee, will be responsible for ensuring that a replacement weapon is issued when the officer's weapon is taken as evidence.
- Coordinate with the Criminal Investigations Division / Internal Affairs Division to ensure that a drug / alcohol test is administered to the involved officer(s) (requested through the Operations Control Center (OCC) Manager). Accommodations should be made for the involved officer(s) to be later driven to his / her place of residence after the conclusion of the initial investigation.
- In cases of officer involved shootings where a fatality is involved, the Chief of Police should designate a Department representative to be assigned as a liaison to the family of the decedent. To the extent allowed by law, the liaison shall be responsible for keeping the family informed about updates to the investigation and the status of involved personnel.

310.5.1 OFFICER IN CHARGE - RESPONSIBILITIES

Upon arrival at the scene of an officer-involved shooting, the first uninvolved BART PD officer will be the officer-in-charge and will assume the responsibilities of a supervisor until properly relieved. This officer should, as appropriate:

- (a) Secure the scene and identify and eliminate hazards for all those involved.
- (b) Take reasonable steps to obtain emergency medical attention for injured individuals.
- (c) Request additional resources from the Department or other agencies.
- (d) Coordinate a perimeter or pursuit of suspects.
- (e) Check for injured persons and evacuate as needed.
- (f) Brief the supervisor upon arrival.

310.5.2 WATCH COMMANDER RESPONSIBILITIES

Upon learning of an officer-involved shooting or death, the Watch Commander shall be responsible for coordinating all aspects of the incident until the Watch Commander is relieved by the Chief of Police or a Division Commander.

All outside inquiries about the incident shall be directed to the Watch Commander.

310.5.3 NOTIFICATIONS

The following notifications shall be made soon as practical after an officer involved shooting:

- BART Police Communications Center

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- On-duty supervisor and officers responsible for the area in which the incident occurred
- On-duty Watch Commander or on-call command officer
- If other than BART Police, the agency having primary investigative responsibility
- Detective Sergeant and on-call detective
- Chief of Police and appropriate command officers
- Operations Control Center (If necessary)
- County Officer Involved Shooting Protocol rollout team
- Department of Media Affairs as directed by the Chief
- Coroner (if necessary)
- BPMA/BPOA Representative
- Trauma Response Team
- Office of the Independent Police Auditor

All outside inquiries about the incident shall be directed to the Watch Commander.

310.5.4 NOTIFICATION TO DEPARTMENT OF JUSTICE

The California Department of Justice (DOJ) is required to investigate an officer-involved shooting resulting in the death of an unarmed civilian. The Watch Commander should promptly notify the DOJ in all incidents involving an officer-involved shooting resulting in the death of an unarmed civilian, including where it is undetermined if the civilian was unarmed.

For purposes of notification, “unarmed civilian” means anyone who is not in possession of a deadly weapon (Government Code § 12525.3).

310.6 CRIMINAL INVESTIGATION

The District Attorney's Office is responsible for the criminal [charging associated with investigation into the circumstances of](#) any officer-involved shooting or death. [In any incident where an established protocol does not exist, the Police Department will work cooperatively with the District Attorney's Office and, if appropriate, the allied agency in the criminal investigation of the case.](#)

If available, investigative personnel from this department may be assigned to partner with investigators from outside agencies or the District Attorney's Office to avoid duplicating efforts in related criminal investigations.

Once public safety issues have been addressed, criminal investigators should be given the opportunity to obtain a voluntary statement from involved officers and to complete their interviews. The following shall be considered for the involved officer:

- (a) BART PD supervisors and Internal Affairs Division personnel should not participate directly in any voluntary interview of BART PD officers. This will not prohibit such personnel from monitoring interviews or providing the criminal investigators with topics for inquiry. The BART Independent Police Auditor and Independent Police

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Investigators shall be provided with the same opportunity to monitor interviews and provide criminal investigators with topics 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 (Government Code § 3303(i)). However, in order to maintain the integrity of each involved officer's statement, involved officers shall not consult or meet with a representative or an attorney collectively or in groups prior to being interviewed.
- (c) If any involved officer is physically, emotionally or otherwise not in a position to provide a voluntary statement when interviewed by criminal investigators, consideration should be given to allowing a reasonable period for the officer to schedule an alternate time for the interview.
- (d) Any voluntary statement provided by an involved officer will be made available for inclusion in any related investigation, including administrative investigations. However, no administratively coerced statement will be provided to any criminal investigators unless the officer consents.

310.6.1 REPORTS BY INVOLVED BART PD OFFICERS

In the event that suspects remain outstanding or subject to prosecution for related offenses, this department shall retain the authority to require involved BART PD 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 BART PD officer may write the report, it is generally recommended that such reports be completed by assigned investigators, who should interview all 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 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 BART PD 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 or death.

310.6.2 WITNESS IDENTIFICATION AND INTERVIEWS

Because potential witnesses to an officer-involved shooting or death may become unavailable or the integrity of their statements compromised with the passage of time, a supervisor should take reasonable steps to promptly coordinate with criminal investigators to utilize available personnel for the following:

- (a) Identification of all persons present at the scene and in the immediate area.

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1. When feasible, a recorded statement should be obtained from those persons who claim not to have witnessed the incident but who were present at the time it occurred.
 2. Any potential witness who is unwilling or unable to remain available for a formal interview should not be detained absent reasonable suspicion to detain or probable cause to arrest. Without detaining the individual for the sole purpose of identification, officers should attempt to identify the witness prior to his/her departure.
- (b) Witnesses who are willing to provide a formal interview should be asked to meet at a suitable location where criminal investigators may obtain a recorded statement. Such witnesses, if willing, may be transported by a member of the Department.
1. A written, verbal or recorded statement of consent should be obtained prior to transporting a witness. When the witness is a minor, consent should be obtained from the parent or guardian, if available, prior to transportation.
- (c) Promptly contacting the suspect's known family and associates to obtain any available and untainted background information about the suspect's activities and state of mind prior to the incident.

310.7 ADMINISTRATIVE INVESTIGATION

In addition to all other investigations associated with an officer-involved shooting or death, this department will ensure that an administrative investigation of BART PD officers to determine conformance with department policy is completed. The investigation will be reviewed by the Internal Affairs Division and will be considered a confidential officer personnel file.

Interviews of members shall be subject to department policies and applicable laws (see the Personnel Complaints Policy).

- (a) Any officer involved in a shooting or death may be requested or 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/her prior statement before proceeding with any subsequent interviews.
- (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.

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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. 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 (Government Code § 3303(i)).
3. Administrative interviews should be recorded by the investigator. The officer may also record the interview (Government Code § 3303(g)).
4. The officer shall be informed of the nature of the investigation. If an officer refuses to answer questions, he/she should be given his/her *Lybarger* or *Garrity* rights and ordered to provide full and truthful answers to all questions. The officer shall be informed that the interview will be for administrative purposes only and that the statement cannot be used criminally.
5. The Internal Affairs Division shall compile all relevant information and reports necessary for the Department to determine compliance with applicable policies.
6. Regardless of whether the use of force is an issue in the case, the completed administrative investigation shall be submitted to the Use of Force Review Board, which will restrict its findings as to whether there was compliance with the Use of Force Policy.
7. Any other indications of potential policy violations shall be determined in accordance with standard disciplinary procedures.

310.8 MEDIA RELATIONS

Any media release shall be prepared with input and concurrence from the supervisor and department representative responsible for each phase of the investigation. Releases will be available to the Watch Commander, Criminal Investigations Division Commander and Media Relations in the event of inquiries from the media.

The Department shall not subject any involved BART PD officer to visits by the media (Government Code § 3303(e)). No involved BART PD officer shall make any comment to the media unless he/she is authorized by the Chief of Police or a Division Commander. Department members receiving inquiries regarding officer-involved shootings or deaths occurring in other jurisdictions shall refrain from public comment and will direct those inquiries to the agency having jurisdiction and primary responsibility for the investigation unless authorized by the Chief of Police or their designee.

310.9 DEBRIEFING

Following an officer-involved shooting or death, the Bay Area Rapid Transit Police Department shall conduct both a critical incident/stress debriefing and a tactical debriefing.

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310.9.1 TACTICAL DEBRIEFING

A tactical debriefing should take place to identify any training or areas of policy that need improvement. The Chief of Police should identify the appropriate participants. This debriefing should not be conducted until all involved members have provided recorded or formal statements to criminal and/or administrative investigators.

310.9.2 CRITICAL INCIDENT/STRESS DEBRIEFING

A critical incident/stress debriefing should occur as soon as practicable. The Support Services Division Commander is responsible for organizing the debriefing. Notes and recorded statements should not be taken because the sole purpose of the debriefing is to help mitigate the stress-related effects of a traumatic event.

The debriefing is not part of any investigative process. Care should be taken not to release or repeat any communication made during a debriefing unless otherwise authorized by policy, law, or a valid court order.

Attendance at the debriefing shall only include those members of the Department directly involved in the incident, which can include support personnel (e.g., dispatchers, other civilian personnel). Family or other support personnel may attend with the concurrence of those involved in the incident. The debriefing shall be closed to the public and should be closed to all other members of the Department, including supervisory and Internal Affairs Division personnel.

310.10 REPORTING

If the death of an individual occurs in the ~~Bay~~ Bay Area Rapid Transit Police Department jurisdiction and qualifies to be reported to the state as a justifiable homicide ~~or an in-custody death~~, the ~~Operations Division Commander~~ Operations Division Commander will ensure that the ~~Records Supervisor~~ Records Supervisor is provided with enough information to meet the reporting requirements (Penal Code § 196; Penal Code § 13022; ~~Government Code § 12525~~).

310.11 OFFICE OF THE INDEPENDENT POLICE AUDITOR (OIPA)

- (a) After notification of any officer-involved shooting or death has been made to OIPA pursuant to Section 310.5.3, the BART Independent Police Auditor and the Independent Police Investigator(s) shall be granted access to the scene(s) of the incident(s) in the same manner as granted to BPD Internal Affairs Investigators.
- (b) The BART Independent Police Auditor and the Independent Police Investigator(s) shall be granted the same opportunity as BPD Internal Affairs investigators to monitor criminal investigation interviews and to submit requests for questions to the criminal interviewers.

310.12 RETURN TO ACTIVE DUTY

The following checklist guideline outlines the protocol which should be followed to facilitate the involved officer's return to active duty after an officer involved shooting where death / serious bodily injury occurs.

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- The involved officer(s) are not cleared for regular patrol duties until the results of the mandatory drug testing individually clears the involved officer(s).
- The involved officer(s) successfully completes an individual session with a Department approved psychologist.
- The Chief of Police, or designee, may keep the officer(s) from active duty if they believe, based upon the totality of the circumstances, that placing the employee on active duty poses an unreasonable safety and/or security risk to the Department, employees or the public.
- The Chief of Police, or designee, may keep the officer(s) from active duty if a preliminary determination appears to show that the officer's conduct was not in compliance with policy.
- A member of Command Staff should consult with the involved officer(s) individually to confirm that they feel ready to return to full duty.
- The involved officer(s) shall successfully complete a firearms qualification with the Department Rangemaster.