

Use of Deadly Force and In-Custody Deaths

305.1 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 as a result of other 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.

This policy shall be consistent with the requirements set forth in the current collective bargaining agreement with the Port Orchard Police Guild. In the event of any inconsistency between this policy and the collective bargaining agreement with the Guild, the agreement shall control.

305.1.1 DEFINITIONS

- (a) **Evanescent evidence** - Physical evidence that may be degraded or tainted by human or environmental factors if left unprotected or unpreserved for the arrival of the independent investigative team (IIT); identification and contact information for witnesses to the incident; photographs and other methods of documenting the location of physical evidence and location/perspective of witnesses.
- (b) **Force** - The application of physical techniques or tactics, chemical agents or weapons to another person. It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed, or restrained.
- (c) **Deadly force** - The intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious injury.
- (d) **Great bodily harm** - Bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ.
- (e) **In-Custody Death** - The death of any person who is detained, arrested, en route to incarceration, or incarcerated in local facilities. Excluded are deaths caused by fatal injuries that occur while an inmate is under physician's treatment for a disease or other natural condition, except that deaths involving custodial trauma or custodial suicide while under a physician's treatment are considered In-Custody Deaths.
- (f) **Involved officer** - An officer, who in the performance of their duties, uses force that results in death, substantial bodily harm, or great bodily harm; or, in whose custody a person dies or receives great bodily harm.
- (g) **Non-law enforcement community representatives** - Community members selected by this agency to participate in the IIT as delineated in WAC 139-12.
- (h) **Substantial bodily harm** - Bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part.
- (i) **Uninvolved officer(s)** - Officers who responded to, or were present at, the scene but did not witness the use of force by the involved officer(s).

Port Orchard Police Department

Policy Manual

Use of Deadly Force and In-Custody Deaths

- (j) **Witness officer(s)** - Officers who observed the use of force by the involved officer(s).

305.2 POLICY

The policy of the Port Orchard Police Department is to ensure that officer-involved shootings and deaths are investigated in a thorough, fair and impartial manner and one which ensures public trust in the Department.

305.3 TYPES OF INVESTIGATIONS

Incidents in which an officer's use of force results in death, substantial bodily harm, or great bodily harm or, a person dies or receives substantial bodily harm or great bodily harm while in-custody will result in a criminal investigation and an internal investigation or use of force review.

- (a) **Independent Investigation** - The Chief of Police or designee will request an independent criminal investigation be conducted by either an uninvolved agency or an Independent Investigative Team (IIT) to determine whether the use of deadly force met the good faith standard established in RCW 9A.16.040 and satisfied other applicable laws.
- (b) **Internal Investigation / Use of Force Review** - The internal investigation or use of force review will be conducted to determine whether the use of deadly force was in compliance with Port Orchard Police Department policy. This investigation or review will be conducted in accordance with the provisions of the Use of Force Review policy.
- (c) **Criminal Investigation** - If the use of deadly force occurred during another criminal investigation (e.g. bank robbery, homicide), determination of which agency or IIT will investigate the underlying crime will be made by agreement between the chief law enforcement officers of the affected agencies and applicable IIT commanders. A primary factor in that determination will be the degree of separation, by time and distance, of the underlying crime from the use of force.

305.4 INITIAL ON-SCENE DUTIES

305.4.1 DUTIES OF INVOLVED OR ON-SCENE OFFICER

The involved or other on-scene officers should complete the following duties if reasonably possible under the circumstance::

- (a) Immediately notify Kitsap 911 and the supervisor to obtain additional resources.
- (b) Render first aid to any injured parties. Call for paramedics as required.
- (c) Direct and coordinate back-up units as necessary.
- (d) Protect the scene and any evanescent evidence. No items, including involved vehicles, should be moved or have their condition altered unless authorized.
- (e) Provide a Public Safety statement to the sergeant or senior officer.
- (f) Protect weapon(s) for examination.
- (g) Remain on-scene until properly relieved.

Port Orchard Police Department

Policy Manual

Use of Deadly Force and In-Custody Deaths

305.4.2 DUTIES OF ON-SCENE SUPERVISOR

Upon arrival at the scene, the first uninvolved POPD supervisor should ensure completion of the duties as outlined above, plus:

- (a) Take command of the scene until relieved.
- (b) Take all reasonable steps to obtain emergency medical attention for all apparently injured individuals.
- (c) Activate the IIT via Kitsap 911 and the command staff.
- (d) Obtain a briefing from any uninvolved or witness officer(s) who were present.
- (e) Obtain a public safety statement from the involved officer(s).
- (f) Disseminate public safety information immediately by radio as appropriate.
- (g) Using information obtained in the public safety statement, take appropriate action to:
 - (a) Identify likely bullet trajectories and determine if there are secondary victims.
 - (b) Locate and protect evidence.
 - (c) Coordinate a search for any outstanding suspects.
- (h) Ensure the crime scene is secured by proper placement of crime scene tape. No one should enter the crime scene, other than medical personnel rendering aid or IIT personnel.
- (i) Ensure a crime scene log is established and maintained. Assign at least one officer to guard each crime scene and keep a log of everyone entering the scene.
- (j) Ensure the involved officer(s) secures their weapons until surrendered to investigators. There is no need to remove the officer's weapon publicly on scene.
- (k) Identify and separate any witnesses.
- (l) Identify any individual(s) with potential gunshot residue and take the appropriate steps to ensure the person does not destroy the evidence.
- (m) Ensure that all responding officers complete their responsibilities with regard to reports, evidence, and the crime scene.

305.4.3 PUBLIC SAFETY STATEMENT

The supervisor will administratively order any involved officer from this department to immediately provide a Public Safety Statement. The purpose of this statement is to provide sufficient information to facilitate the apprehension of suspects, identify and protect evidence, and to check on the safety of the public. The Department recognizes and anticipates that the stress of the incident, combined with the cognitive demands imposed on the participants as a function of their active role, may impair recall. Those evaluating the incident after the fact should be mindful of the potential for naturally-occurring memory gaps and inconsistencies, particularly for those who were immersed in the incident.

Supervisors should immediately act on the information provided during the Public Safety Statement to check on the safety of others, attempt to apprehend the suspect, and protect

Port Orchard Police Department

Policy Manual

Use of Deadly Force and In-Custody Deaths

evidence. This includes a radio broadcast of any information that would help accomplish these goals. The purpose of this statement is to immediately provide sufficient information to facilitate the apprehension of suspects, identify and protect evidence, and to check on the safety of the public. Involved officer(s) should not be interviewed at the scene other than to gather the public safety statement, which should be limited to the following:

- (a) From where and in what direction did you fire rounds?
- (b) In what direction did the suspect(s) fire rounds?
- (c) If you know of anyone who is injured, what is his/her location?
- (d) If there are any outstanding suspects, what are their descriptions?
 - (a) What was their direction of travel?
 - (b) How long have they been gone?
 - (c) With what weapons were they armed?
 - (d) Are there any other safety risks known about the outstanding suspect(s)?
- (e) Does any evidence need protection?
- (f) Any known witnesses?
- (g) Where are they located?

Once the statement is obtained, the officer shall be ordered to not discuss the incident with anyone, including supervisors and command staff, prior to the arrival of the assigned investigators, with the exception of legal representation or designated peer support officer.

305.4.4 WITNESS IDENTIFICATION

Supervisors should take steps to identify witnesses, including those who claim not to have witnessed the incident but who were present at the time it occurred. Any potential witness who is unwilling or unable to remain available for a formal interview by the IIT should not be detained absent reasonable suspicion to detain or probable cause to arrest. Witness information should be provided to IIT personnel upon their arrival at the scene.

305.5 HANDLING INVOLVED OFFICERS

As soon as they are no longer needed at the scene, involved officers should be transported (separately, if feasible) to the station.

The involved officer(s) shall remain dressed and equipped as they were during the incident. Once at the station, the officer(s) shall be photographed as they were dressed at the time of the incident. Their uniform and equipment may then be examined and collected by the investigators. Care should be taken to preserve the integrity of any physical evidence present on the officer, equipment, or clothing (e.g. blood, fingerprints, etc.) until IIT investigators can properly retrieve it.

All reasonable accommodations to care for the officer's physical and emotional needs should be taken.

Port Orchard Police Department

Policy Manual

Use of Deadly Force and In-Custody Deaths

305.5.1 COMMUNICATION WITH INVOLVED OFFICER(S)

Following the public safety statement, each involved officer should be given an administrative order not to discuss the incident with anyone, except IIT investigators, the employee's attorney, a designated peer supporter, a mental health professional, the officer's personal clergy, or the officer's spouse.

Communications between designated peer supporters and involved officers are privileged [RCW 5.60.060]. No involved officers should be permitted to meet collectively with a counselor or in a group for the purposes of a critical incident debrief prior to providing a formal statement to IIT investigators.

Any request for guild representation will be accommodated. Communications with guild representatives are not privileged. Any statements made by an involved officer to a guild representative about the details of the incident may be compelled to be divulged in both state and federal court proceedings. Involved officers may discuss the post-shooting process with their guild representative.

Any request for legal representation will be accommodated. Discussions with licensed attorneys are considered privileged as attorney-client communications, however, no involved officers shall be permitted to meet collectively with an attorney prior to providing a formal interview or report.

305.5.2 FAMILY NOTIFICATIONS

Arrangements should be made to notify the involved officer's family of the incident as soon as possible. The involved officer should make the notification if at all possible. An open line of communication should be established between the officer's immediate family and a designated member of the police department, who will remain available to answer questions and to see to any reasonable needs of the family.

305.5.3 COMPANION OFFICER

Involved officers should not be isolated. As soon as resources permit, each involved officer should be provided a companion officer who was not involved in the incident. This Companion Officer should:

- (a) Drive the involved officer to the station.
- (b) Accompany the involved officer until relieved.
- (c) Ensure the involved officer is kept separate from other personnel involved in the incident.
- (d) Ensure the involved officer does not discuss the incident.
- (e) Attend to the needs of the involved officer.

305.5.4 INVOLVED FIREARMS

When an officer's firearm is collected by IIT investigators or left at the scene (e.g. evidence), the officer will be provided with a replacement firearm. Absent a compelling need, the firearm should not be taken from the officer at the scene.

Port Orchard Police Department

Policy Manual

Use of Deadly Force and In-Custody Deaths

Injured officers taken to the hospital should have their belt, holster, and weapon secured for examination and collection by IIT investigators.

All weapons, including back-ups, in the possession of the involved officer at the time of the incident, should be secured for examination and collection by IIT investigators, even if not used.

305.5.5 RELIEF OF DUTY / REASSIGNMENT / ADMINISTRATIVE LEAVE

Any officer involved in an incident which results in serious injury or death shall be removed from duty and placed on administrative leave. This assignment to administrative leave is not disciplinary and does not imply the officer acted improperly. The purpose of this relief from duty is to:

- (a) Protect officers who have not exceeded the scope of their authority from possible confrontations with the community
- (b) Protect the community's interest when officers may have exceeded the scope of their authority in the use of deadly force.
- (c) Provide the involved officer with a reasonable recuperation period prior to clearance for return to full duty.

The officer will generally remain on administrative leave until cleared by criminal and internal investigations and a psychologist or psychiatrist determines the employee is able to return to regular duty. The Chief of Police may assign involved officers to desk duties prior to return to full duty.

The Chief of Police may return an involved officer to their regularly scheduled assigned duty prior to the completion of criminal and internal proceedings on a case-by-case basis when:

- (a) There is a clear and objective basis for the Chief of Police to believe that the officer did not exceed the scope of their authority in the use of deadly force, and,
- (b) Careful consideration is given to the interests of, and impacts to, the community, the Department, and the officer by the return to full duty.

While on administrative leave, the officer will remain available for interviews and statements, at times designated by the Chief of Police or designee.

305.5.6 PEER SUPPORT

The involved officer will be offered a peer supporter to provide emotional and logistical support following the incident. Involvement with peer support is voluntary.

Communications between the peer supporter and the involved officer are privileged. The peer supporter must be designated as such prior to the incident that results in counseling. The privilege only applies when the communication was made to the peer supporter while acting in his or her capacity as a peer supporter. The privilege does not apply if the peer supporter was an initial responding officer or firefighter, a witness, or a party to the incident which prompted the delivery of peer support services (RCW 5.60.060).

Employees experiencing emotional distress may initiate contact with a peer supporter at any time.

Port Orchard Police Department

Policy Manual

Use of Deadly Force and In-Custody Deaths

305.6 OFFICER-INVOLVED USE OF DEADLY FORCE CRIMINAL INVESTIGATION

305.6.1 INVESTIGATING AGENCY

The Department participates in the Kitsap Critical Incident Response Team (KCIRT), a multi-jurisdictional unit formed to investigate officer-involved incidents which result in death, substantial bodily harm, or great bodily harm. The Chief may select KCIRT or another law enforcement organization to investigate the incident.

305.6.2 OFFICER STATEMENTS

Besides the Public Safety Statement, involved officers should be provided with reasonable recovery time before meeting with investigators or providing statements. Per the Collective Bargaining Agreement this shall be a minimum of 72 hours but may be extended on a case-by-case basis.

Involved officers may consult individually with a labor representative and legal counsel of their choosing prior to speaking with investigators or providing statements. In order to maintain the integrity of the investigation, involved officers should not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.

The involved officers will be afforded all constitutional rights during the criminal investigation.

IIT investigators will generally request a voluntary report or statement from the involved officer. Involved officers will not be ordered to provide statements or reports without approval from the Chief of Police or designee. In the event a statement is compelled from an involved officer as part of an administrative investigation, members are prohibited from providing the compelled statement, or any of the investigative fruits from such compelled statements, to any member of the IIT.

Witness and uninvolved officers are required to provide necessary reports and/or statements.

305.6.3 INFORMATION FIREWALLS

Apart from the initial exchange of information when transferring the responsibility of the scene to IIT investigators, no member of the Department will discuss the investigation with, receive information or materials from, or provide information or material to, a member of the IIT without the approval of the Chief of Police or designee. The Chief of Police or designee will not approve of such an exchange without first consulting the IIT incident commander. Any unauthorized information that is shared or received shall immediately be reported to the Chief of Police or designee and the IIT commander.

305.7 ADMINISTRATIVE INVESTIGATION

The Department will conduct a use of force review or an internal administrative investigation to determine conformance with departmental policy. The review will be conducted in accordance with any applicable provisions of the current collective bargaining agreement.

Use of Deadly Force and In-Custody Deaths

305.8 AUDIO AND VIDEO RECORDINGS

Any known video or audio recordings of an incident should not be publicly released during an ongoing investigation without consulting the investigators, the prosecutor's office, or the City Attorney's Office as appropriate.

Any officer involved in a shooting or death may be permitted to review their own Mobile Audio/Video (MAV), body-worn video, or other video or audio recordings after providing a recorded statement or completing reports. At the discretion of investigators, this viewing may be used to allow an officer to provide additional supplementary statements.

305.9 POST-INCIDENT OFFICER CARE AND RETURN TO DUTY

305.9.1 PSYCHOLOGICAL WELLNESS AND FITNESS FOR DUTY

Prior to being authorized to return to duty an involved officer will meet with a psychologist or psychiatrist to ensure the officer is ready to return to work. This is not a fitness for duty exam. Communications between the psychologist or psychiatrist and the involved officer are privileged and will not be divulged other than to notify the City whether or not the officer is ready to return to full duty.

A fitness for duty exam may also be required before the involved officer is authorized to return to full duty. A psychological fitness for duty exam is formal, specialized examination, generally conducted in accordance with International Association of Chiefs of Police (IACP) protocols. A fitness for duty exam may be required when:

- (a) Objective evidence that the employee may be unable to safely or effectively perform a defined job, and,
- (b) A reasonable basis for believing that the cause may be attributable to a psychological condition or impairment.

The purpose of a fitness for duty exam is to determine whether the employee is able to safely and effectively perform his or her essential job functions. The examiner provides a written report to the Department that describes the methods employed, and whenever possible, a clearly articulated opinion that the examinee is presently fit or unfit for unrestricted duty.

305.9.1 CRITICAL INCIDENT DEBRIEFING

A psychologist or trained facilitator will conduct a group debriefing, upon request, with personnel involved in the event. The debriefing is not part of any investigative process. Attendance at the debriefing is voluntary and should only include approved facilitators and those directly involved in the incident who have already provided required statements and reports. Notes or recordings will not be made. If an involved officer is unable to participate in a debriefing because they have not completed their official statements, arrangements should be made for the officer to meet individually with a psychologist.

Port Orchard Police Department

Policy Manual

Use of Deadly Force and In-Custody Deaths

305.9.3 FIREARMS TRAINING

If the officer has been issued a replacement firearm, the officer will complete a training session at the range with an instructor in order to ensure familiarization and that the replacement is in good working order.

If the involved firearm is cleared to be released back to the officer for duty purposes, the involved officer will ensure the weapon has been function-tested at the range prior to carrying it.

305.10 TACTICAL DEBRIEF

A tactical debriefing should take place to identify any training, equipment, or areas of policy that need improvement. The Chief of Police should identify the appropriate participants.

305.11 TRIBAL NOTIFICATION

If the person against whom deadly force was used is believed to be a member of a federally recognized tribe, the Department will notify the Governor's Office of Indian Affairs (GOIA) in accordance with RCW 10.114.021.

305.12 SELF-DEPLOYMENT

After the initial response to and stabilization of the scene of a use of deadly force by a member of this Department, employees shall not self-deploy or engage in investigative activities, including database searches, without authorization from the IIT commander.

305.13 NON-LAW ENFORCEMENT COMMUNITY REPRESENTATIVES

RCW 10.114.011 established an independent investigation requirement when an officer uses deadly force that results in death, substantial bodily harm, or great bodily harm. The criteria for an independent investigation, as established by WAC 139-12, requires that at least two non-law enforcement community representatives be assigned to the IIT.

305.13.1 COMMUNITY REPRESENTATIVE SELECTION

The chiefs and sheriffs who participate in the regional IIT team shall create a roster of individuals willing to serve in the capacity of a community representative. These community representatives must have credibility with, and ties to, communities impacted by police use of deadly force.

When a member of this department uses deadly force that results in death, substantial bodily harm, or great bodily harm to another, the Chief will select two non-law enforcement community representatives from the established roster to participate on the IIT for that investigation. The names of the non-law enforcement community representatives on the IIT will be available to the public.

Each non-law enforcement community representative must sign a binding confidentiality agreement at the beginning of each investigation in accordance with WAC 139-12. The binding confidentiality agreement remains in effect until the Prosecutor either declines to file charges or the criminal case is concluded.

Port Orchard Police Department

Policy Manual

Use of Deadly Force and In-Custody Deaths

305.13.2 COMMUNITY REPRESENTATIVE DUTIES

Non-law enforcement community representatives on the IIT will:

- (a) Participate in the interviewing and selection of IIT investigators
- (b) Review investigator "conflict-of-interest statements" submitted within seventy-two hours of the commencement of each investigation
- (c) Be present at briefings provided to the Chief by the IIT
- (d) Have access to the investigation file when it is completed
- (e) Be provided a copy of all press releases and communication to the media prior to release
- (f) Review notification of equipment use of the involved agency