

Investigations of Officer Involved Shootings and Firearm Discharges

8.11.01 PURPOSE

This order outlines the rules and procedures to be followed in the investigation, review, and reporting of officer-involved shootings and firearm discharges.

8.11.02 DEFINITIONS

- A. Officer Involved Shooting (OIS)** – A member's firearm discharge causing physical injury or death including negligent discharges and intentional discharges where a suspect is not injured; excludes self-inflicted injury or death.
- B. Officer Involved Discharge (OID)** – A member's firearm discharge, including shooting at, injuring, or killing animals, and negligent discharges that do not cause injury.
- C. Unarmed Civilian** – Anyone who is not in possession of a deadly weapon (California Government Code § 12525.3(a)(2)).

8.11.03 POLICY

The San Francisco District Attorney's Office (SFDA) is the primary investigative entity in the determination of criminal conduct on the part of the OIS member. The San Francisco Police Department (Department) is responsible for the administrative investigation and any relevant ancillary investigation into the OIS. (*Memorandum of Understanding Regarding the Investigation of Officer-Involved Shootings, In-Custody Deaths, and Uses of Force Resulting in Serious Bodily Injury* [MOU]).

Nothing in this order shall prohibit a member from taking reasonable actions to protect their safety or the safety of another person.

8.11.04 PROCEDURES

- A. Investigative Responsibility** – OISs are investigated in two separate venues:
 - 1. **Criminal Investigations** – SFDA will conduct the criminal investigation of the OIS in accordance with the MOU.

- a. Prior to any administrative interviews, SFDA shall have an opportunity to request to interview the involved member in the criminal investigation. Members are reminded that participation in the interview is voluntary and that 5th Amendment protections apply. Interviews shall take place either at the SFDA's office, the San Francisco Police Officer's Association office, or at the Department's Headquarters.
- b. The CAL-DOJ will investigate incidents involving unarmed civilians (California Government Code § 12525.3).
 - i. Shootings committed by members while off duty are considered OISs only if the member is acting under the color of authority (California Government Code § 12525.3).
 - ii. Replica firearms are not considered deadly weapons unless they are used in some particular manner that is likely to produce death or great bodily injury (e.g., as a bludgeon).
- c. The Department's Investigative Services Detail (ISD) is responsible for the OIS scene management and will investigate any ancillary crimes that led to the OIS.

2. Formal Criminal Interrogations

- a. California Penal Code § 1054.8(a) prohibits the prosecuting attorney, attorney for the defendant, or investigator for either the prosecution or the defendant from interviewing, questioning, or speaking to a victim or witness without first clearly identifying themselves and identifying the full name of the agency by whom they are employed, and identify whether they represent or have been retained by, the prosecution or the defendant. The party must also show the victim or witness a business card, official badge, or other form of official identification before commencing the interview or questioning.
- b. Per California Government Code Section § 7287, before any initial formal interview with an immediate family member of a person killed or seriously injured, or upon confirmed the relationship as an immediate family member, the member or prosecuting attorney shall:
 - i. Identify themselves by providing their full name, full name of the agency by which they are employed, and display a business card, official badge, or other form of official identification.
 - ii. Inform the person of the status of their family member, if known, including whether the family member has been killed or seriously injured by law enforcement.
 - iii. Inform the person that they are conducting a formal interview for the purposes of an investigation that may or may not involve an assessment of the conduct of the person that was killed or injured.
 - iv. Inform the person that they can have a trusted support person with them. If the family member is asked to go to a station for a formal interview, inform the family member that they have a choice to come to the station and can have a trusted support person with them.

- v. Members shall not employ threats or deception, including knowingly using false information, fabricated evidence, or misleading statements, to coerce an interview or when conducting any interview subject to this section.
 - vi. Subdivision (a) shall not apply under the following circumstances:
 - 1. Where a reasonable officer believes that delay would result in the loss or destruction of evidence or pose an imminent threat to public safety.
 - 2. Where the immediate family member has received advisements substantially equivalent to those required by this section or under Miranda.
3. **Administrative Investigations** – The Internal Affairs Division (IAD) and the Department of Police Accountability (DPA) will separately conduct administrative investigations into possible violations of Department policy (San Francisco Administrative Code § 96.11).
- a. **Compelled Interview** – If a member chooses not to make a statement in the criminal investigation, the Commanding Officer of the Risk Management Office (RMO) will notify SFDA of IAD’s intent to conduct a compelled interview.
 - i. Compelled members will be afforded all rights under the *Public Safety Officers’ Procedural Bill of Rights Act*.
 - ii. DPA may conduct a separate compelled interview.
 - b. Members have the right to consult with representatives and support personnel prior to interviews and to have their representative present during the interview.
 - c. Compelled statements shall not be shared with the criminal investigation.
4. **Airport** – Incidents occurring on San Francisco International Airport (SFO) property or surrounding San Mateo County shall be investigated by the San Mateo County Sheriff’s Office (SMCSO) in conjunction with the San Mateo County District Attorney’s Office (SMCDAO).
- a. IAD will conduct an administrative investigation of any reports shared by SMCSO and SMCDAO.
 - b. DPA does not have automatic jurisdiction to investigate OISs occurring at SFO or surrounding San Mateo County property (San Francisco Administrative Code § 96.11). However, per the San Francisco Charter § 4.136(d), DPA has jurisdiction to investigate any citizen complaints filed against an officer regarding an OIS at SFO.
 - c. The CAL-DOJ will investigate incidents involving unarmed civilians (California Government Code § 12525.3).

B. Notifications

- 1. **OISs Inside of the City and County of San Francisco** – Actions and notifications at the scene should be guided by DGO 8.01, *Major and Critical Incident Evaluation and Notification* and in accordance with the MOU.

2. **OIDS Inside of the City and County of San Francisco** (except at an approved range or during lawful recreational activities) – If practical, the involved member should notify:
 - a. Department of Emergency Management
 - b. A supervisor of the district in which the OID took place
 - c. Where applicable, the involved member's chain of command

Where practical, the Platoon Commander shall notify the involved member's Commanding Officer.

3. **OISs or OIDs Outside of the City and County of San Francisco** (except at an approved range or during lawful recreational activities) – The involved member, whether on or off duty and as soon as practical, should do the following:
 - a. Absent exigent circumstances, remain at the scene of the shooting or discharge
 - b. Notify the local law enforcement agency
 - c. Notify a supervisor of the involved member's unit
 - d. Notify Department Operations Center

C. Scene – On-scene management and responsibility of the OIS scene is governed by the MOU, excluding OIDs. As scene safety permits, the involved member should limit their investigation and activity to the following:

1. Request medical assistance for injured people.
2. Secure the Firearm
 - a. Pistol
 - i. No attempts to reload the firearm or remove the magazine shall be made.
 - ii. De-cock and holster the pistol.
 - iii. Once the firearm is "strapped in," do not remove the weapon from the holster until directed to do so by the ISD investigator.
 - b. Shotgun/Rifle
 - i. Leave in the same condition as when fired, and
 - ii. Isolate in a secure location.
3. Protect the crime scene and preserve evidence.
4. The involved and able-bodied member shall not be disarmed until Range staff are able to provide a replacement firearm.

D. Public Safety Statement (PSS) – Information obtained by a field supervisor intended to determine existing threats to public safety and to capture transitory evidence that must be preserved. The scope of this statement is limited to the collection of fleeting and crucial information in the immediate aftermath of a critical incident. This statement is considered compelled and may be taken from the involved member without the benefit of representation.

1. It is not the responsibility of the field supervisor to conduct a comprehensive interview of the involved member, but the responsibility of SFDA, ISD, or IAD investigators at a later time.
2. The field supervisor shall not ask the involved member, “why?”
3. SFPD 544 Form, *Public Safety Statement* (SFPD 544) provides guidelines for field supervisors in the collection of a PSS at the scene of an OIS or OID.
4. When taking a Public Safety Statement and where feasible, the field supervisor should ask each involved member separately.
5. The field supervisor shall deactivate their own and the involved member’s Body Worn Cameras (BWC).
6. The field supervisor shall seize the involved member’s BWC as evidence and provide the BWC to IAD investigators.
7. Every involved member incident is unique, so the field supervisor may need to ask the involved member other necessary questions not listed on SFPD 544 as part of the PSS. The field supervisor should remind the involved member not to discuss the incident further until they have met with an attorney. The field supervisor that obtains a PSS should remain on scene to confer with assigned investigators.
8. The field supervisor shall prepare a memorandum, documenting the PSS and other actions taken at the scene. The field supervisor shall send the memorandum directly to the Officer-in-Charge of IAD as soon as practical.

E. Administrative Protocols

1. OISs
 - a. All members shall be afforded all substantive and procedural rights and remedies as provided by applicable law, including but not limited to, the *Public Safety Officers’ Bill of Rights* (DGO 2.08, *Peace Officer Rights in Disciplinary Investigations*).
 - b. Upon a supervisor’s arrival on scene and where safe to do so, the supervisor shall deactivate their own and the involved Member’s BWC, shall take the PSS, and take custody of the involved member’s BWC, as noted above.
 - c. The supervisor shall have the involved member or witnesses escorted from the scene to a Department facility, as directed by ISD. If more than one member is involved in the discharging of firearms, absent exigent circumstances, the members shall be kept separate from one another and shall not discuss the incident with one another prior to being interviewed.
 - d. The Critical Incident Response Team (CIRT) may assist the involved member prior to their interview with investigators. CIRT members and the involved member are reminded that facts or details of the shooting shall not be discussed.
 - e. The involved member in an OIS will be reassigned to their respective Bureau Headquarters for a minimum of 5 calendar days. This reassignment is administrative only and in no way shall it be considered punitive.

2. **OIDs**

- a. The Commanding Officer of a member who discharges a firearm in an OID shall have discretion as to the member's assignment within their Station/Unit.
- b. Any reassignment is administrative only and in no way shall be considered punitive.

8.11.05 RETURN TO DUTY

A. OISs

1. Within 5 to 15 calendar days of an OIS, the Chief shall convene a panel to determine the involved member's return to duty. The panel shall include:
 - a. The Deputy Chief of the Administration Bureau (Chair)
 - b. The Deputy Chief, Commander, and Captain of the involved member's unit
 - c. Commander and/or Captain of RMO
 - d. Commanding Officer of RMO
 - e. Officer in Charge of ISD
 - f. Officer in Charge of IAD
 - g. Representative of the Behavioral Science Unit
2. After the panel convenes, the Chief shall determine if the involved member should be returned to their regular assignment, but only after completion of any mandatory debriefings (DGO 8.04, Critical Incident Response Team), requalification at the Range, and scheduling of the Training Division's FTFO refresher course within 30 calendar days. This decision, including the factors supporting the decision, shall be documented in a report provided to the Police Commission. This report will be part of the member's confidential personnel file and shall not be disclosed to the public except by court order.
3. A decision by the Chief to not return a member to their regular assignment is administrative only and in no way shall be considered punitive.

B. OIDs

1. The Commanding Officer of the involved member is responsible for conducting a firearms discharge investigation, including negligent discharges.
2. The Commanding Officer may delegate this investigation to another Commissioned Officer, however, the Commanding Officer shall be responsible for the investigation, as well as documenting the appropriate findings and recommendations in an investigative summary.
3. IAD shall set a due date for this investigation which shall not exceed 90 calendar days.

8.11.06 SERIOUS INCIDENT REVIEW BOARD

The criminal and administrative investigation reports and evidence shall be submitted to the Serious Incident Review Board (SIRB), who shall review the reports and act as outlined in DGO 3.10, *Serious Incident Review Board*.

- A. Criminal Investigation** – Per the MOU, SFDA shall provide the evidentiary materials in support of its investigation to the Department at the investigation’s conclusion.
- B. Administrative Investigation** – IAD’s administrative investigation should be completed and submitted to the SIRB within 180 calendar days after the closure of the criminal investigation or at the order of the Chief. It should be noted that DPA may have their own investigative timelines.

8.11.07 STATE-MANDATED REPORTING

- A.** Where mandated or at the Chief’s request, ISD shall make the notification to the CAL-DOJ (California Government Code § 12525.3).
- B.** The incident will also be reported by the Business Analysis Team in the monthly submission to the CAL-DOJ that includes all use of force by a peace officer resulting in a civilian’s death (California Government Code § 12525.2).