

## INVESTIGATION OF OFFICER INVOLVED SHOOTINGS AND **Firearms** DISCHARGES

### 8.11.01 PURPOSE

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

### 8.11.02 ~~A.~~ **DEFINITIONS:**

- A.** ~~1.~~ Officer-involved shooting (OIS) -- ~~An officer's discharge of a A member's firearm discharge causing that results in the physical injury or death of a person, including negligent discharges and intentional discharges where a suspect is not injured; excludes self-inflicted injury or death even if it is an accidental discharge.~~
- B.** ~~2.~~ Officer-involved discharge (OID) -- ~~An officer's discharge of a A member's firearm discharge, including that does not cause injury or death to a person. sShooting at, injuring, or killing animals, and negligent discharges that do not cause also falls into this category, including accidental discharge without injury.~~
- C. Unarmed Civilian** – Anyone who is not in possession of a deadly weapon (California Government Code § 12525.3(a)(2)).

### **I. 8.11.03 POLICY**

~~It is the policy of the San Francisco Police Department to respond immediately and conduct a timely and complete investigation of all officer-involved shootings.~~

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 preclude prohibit a member from taking reasonable actions to protect their safety provide/ensure officer and/or public the safety of another person.

**H. 8.11.04 PROCEDURES****A. DEFINITIONS:**

1. ~~Officer involved shooting. An officer's discharge of a firearm that results in the physical injury or death of a person, even if it is an accidental discharge.~~
2. ~~Officer involved discharge. An officer's discharge of a firearm that does not cause injury or death to a person. Shooting at, injuring, or killing animals also falls into this category, including accidental discharge without injury.~~

**B. A. INVESTIGATION VE Responsibility - PROTOCOL: Officer involved shootings that result in injury or death OISs are investigated in two distinctly separate venues:**

1. Criminal Investigations -- SFDA will ~~Investigations to determine if there was criminal conduct~~ **the criminal investigation of the OIS in accordance with the MOU on the part of the involved officer(s) are conducted separately by the Homicide Detail and the Office of the District Attorney.**
  - 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:
    - a. Where a reasonable officer believes that delay would result in the loss or destruction of evidence or pose an imminent threat to public safety.
    - b. Where the immediate family member has received advisements substantially equivalent to those required by this section or under Miranda.

~~Officer-involved shootings occurring on San Francisco International Airport property or in San Mateo County shall be investigated by the San Mateo County Sheriff's Office in conjunction with the San Mateo County District Attorney's Office.~~

3. Administrative Investigations -- ~~The Internal Affairs Division (IAD) and the Department of Police Accountability (DPA) will determine if the officer involved shooting was within Department policy are conducted separately~~ conduct administrative investigations into possible violations of Department policy (San Francisco Administrative Code § 96.11) by the Management Control Division and by the Office of Citizen Complaints if and when initiated by a citizen complaint.
  - 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.

~~If the officer involved shooting occurs on San Francisco International Airport property or on its surrounding areas, the Management Control Division shall contact the San Mateo County Sheriff’s investigators and the San Mateo County District Attorney’s Office investigators responsible for the criminal investigation and request copies of any reports those agencies have made that are relevant to the officer involved shooting.~~

4. **Airport** – ~~Officer involved shootings~~ Incidents occurring on San Francisco International Airport (SFO) property or surrounding in 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).

~~C.~~ **B. Notifications 1. OISs Inside of OFFICER INVOLVED SHOOTING OCCURRING WITHIN THE CITY AND COUNTY OF SAN FRANCISCO -:** As soon as practical after an officer involved shooting occurring within the City and County of San Francisco, the following **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. shall be made:

- ~~1. If practical, the member(s) involved shall notify Emergency Communications Division (ECD), and his/her immediate supervisor, or the platoon commander of the district in which the shooting took place.~~
- ~~2. ECD shall immediately notify the Field Operations Bureau Headquarters (Operations Center after normal business hours).~~
- ~~3. The Field Operations Bureau or the Operations Center shall make the following notifications:~~
  - ~~a. The on-call Homicide Inspectors~~
  - ~~b. The Crisis Incident Response Team (See DGO 8.04, Crisis Incident Response Team)~~
  - ~~c. Management Control Division~~
  - ~~d. District Attorney's Office~~
  - ~~e. The Commanding Officer of the member(s) involved~~
  - ~~f. Chair of the Firearm Discharge Review Board~~
  - ~~g. Office of Citizen Complaints~~
  - ~~h. San Francisco Police Department Command Staff~~
  - ~~i. Legal Division~~
  - ~~j. Captain of Risk Management~~
  - ~~k. Secretary of the Police Commission~~

~~D.~~ **2. OIDs Inside of the City and County of San Francisco (except at an approved range or during lawful recreational activities) - OFFICER INVOLVED DISCHARGES.** In cases where injury or death has not occurred, the Commanding Officer of the member involved is responsible for conducting a thorough shooting investigation, including accidental discharges. The Commanding Officer may delegate this investigation to another Commissioned Officer. The Commanding Officer, however, shall be responsible for the proper conduct of the investigation, and the appropriate findings and recommendation as documented in an investigative summary. The Commanding Officer's Bureau Chief shall set an appropriate due date for this investigation. However, this investigation shall not exceed 45 days. Officer involved discharges require the following notifications: If practical, the involved member(s) involved shall **should** notify:

- a. Department of Emergency Management**
- b. A supervisor** ~~contact the platoon commander of the district in which the~~ **OID** ~~took place~~ ~~discharge occurred.~~

c. Where applicable, the involved member's chain of command

Where practical, ~~t~~The platoon commander shall ~~notify~~ ~~contact~~ the ~~involved member's~~ ~~officer's~~ Commanding Officer.

1. ~~If outside San Francisco, as soon as practical, the officer shall contact that jurisdiction's Police or Sheriff's Department requesting that entity contact the San Francisco Police Department.~~
2. ~~An officer who discharges a firearm in an Officer Involved Discharge shall be assigned to his or her respective Bureau Headquarters. The officer shall not return to regular assignment for a minimum of 5 days or unless, upon recommendation of the member's Commanding Officer with the approval of his or her respective Bureau Chief, the Chief of Police determines the member may return to his/her assignment.~~

~~E.~~ **3. OISS OFFICER INVOLVED SHOOTINGS OR OIDS DISCHARGES OCCURRING OUTSIDE OF THE CITY AND COUNTY OF SAN FRANCISCO.** ~~If a member discharges a firearm outside the City and County of San Francisco (except at an approved range or during lawful recreational activities) - either while~~ **The involved member, whether** on duty or off duty **and as soon as practical, he/she shall** ~~should do the following these procedures:~~

- a. Absent exigent circumstances, remain at the scene of the **shooting or** discharge ~~and~~
- b. ~~Notify~~ the **local** law enforcement agency.
- c. **Notify a** ~~Immediately contact the on-duty supervisor of the involved member's in your unit or detail.~~

1. ~~As soon as practical, the member shall contact the senior ranking member on duty in the Bureau to which he/she is assigned, or the~~ **d. Notify Department** Operations Center after normal business hours, and report the incident. ~~The senior ranking member in the Bureau who is notified or the staff at the Operations Center shall notify the on-duty supervisor of the involved member. If the member's unit is closed, the notification shall be made to the Commanding Officer or Officer in Charge.~~

~~F.~~ **C. SCENE -- On-scene management and responsibility of the OIS scene is governed by the MOU, excluding OIDs. As scene safety permits, t**~~The~~ *involved* member who has discharged his/her weapon in an officer involved shooting should limit **their** ~~his/her~~ investigation and activity to the following:

1. ~~As soon as practical, seek~~ **Request** *medical assistance/treatment for injured persons* ~~people.~~

## 2. Secure the Firearm

## a. Pistol

- i. No attempts to reload the firearm or remove the magazine shall be made.
- ii. ~~When officer safety permits: D~~de-cock ~~and;~~ holster the ~~pistol, and strap in his/her firearm. He/she should not reload the weapon, or remove the magazine to examine its contents. Thereafter, he/she should~~
- iii. Once the firearm is “strapped in,” do not remove the weapon from the holster until directed to do so by the **ISD investigator Homicide Detail**.

## b. Shotgun/Rifle

- i. Leave in the same condition as when fired, and
- ii. ~~In cases involving shotguns and/or long rifles the weapon shall be placed on “safe” and I~~solated in a secure location.

c. ~~Nothing in this order shall preclude a member from taking reasonable actions to provide/ensure officer and/or public safety.~~3. ~~As soon as practical, seek medical assistance/treatment for injured persons.~~4. ~~As soon as practical,~~**3. P**rotect the crime scene and preserve all evidence. Prior to the arrival of the homicide detail investigators as provided under H.F.5., no person(s) should be permitted to enter the scene except to perform emergency medical assistance or assist in the preservation of the scene and evidence contained therein.5. ~~As soon as practical, attempt to obtain the name and address of any witness who may not remain at the scene.~~6. ~~When an officer involved shooting occurs within the City and County of San Francisco, the crime scene(s) shall be under the control of the Homicide Detail upon the arrival of their investigators. No persons shall be permitted to enter the crime scene without the approval of the Homicide Inspector assigned the investigation or the Homicide OIC.~~7. ~~Nothing in this order shall prohibit a member from taking reasonable actions to ensure his/her safety or the safety of another person.~~

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.

~~G. INVOLVED OFFICERS. The following actions will be taken in all cases of officer involved shootings (resulting in injury or death):~~ **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, without limitation thereto** the Public Safety Officers' Bill of Rights (DGO 2.08, **Peace Officer Rights in Disciplinary Investigations**).
  - b. ~~When~~ **Upon** a supervisor's arrival ~~arrives~~ on the 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(s) 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 a firearms, absent exigent circumstances, the members shall **be separated and will be kept separate from one another; and shall not discuss the**

incident with each ~~one~~ another prior to being interviewed by the Homicide Detail Inspectors. If possible, the supervisor shall contact the investigator from the Homicide Detail and ascertain if the involved member is to be taken to the Homicide Detail, the Investigations Bureau, or the involved member's Station or Detail. In all circumstances the member shall be taken to a department facility.

- d. ~~Members of the department's~~ **The Critical Incident Response Team (C-I-R-T) program** may assist the *involved* member(s) ~~involved~~ prior to their interview with investigators. **CIRT members and the involved member are reminded that** ~~However, they shall not discuss the facts or of details of the shooting shall not be discussed with the member.~~
- e. ~~Officers who discharge a firearm in an officer-involved shooting~~ **The involved member in an OIS** will be reassigned to **their** ~~his or her~~ respective Bureau Headquarters. ~~Officers shall not return to regular assignment for a minimum of 5 to 10 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** ~~business~~ days of an **OIS** ~~officer-involved shooting~~, the Chief of Police shall convene a panel to **determine** ~~discuss whether it is appropriate for the involved member's to return to duty. The Panel shall include:~~ **a. The Deputy Chief of the Administration Bureau (Chair)** ~~a representative of the Behavioral Science Unit, the officer in charge of the Homicide Detail,~~ **b. The Deputy Chief, Commander, and Captain of overseeing the involved member's officer's unit** ~~c. Commander and/or Captain of RMO d. Commanding Officer of RMO e. Officer in Charge of ISD f. Officer in Charge IAD g. Representative from the Behavioral Science Unit, the officer in charge of the Management Control Division, the Deputy Chief of Investigations and officer in charge of Risk Management.~~
2. **After the panel convenes,** ~~The Chief, after consulting with the panel~~ shall determine if the **involved** member should be returned to their regular field assignment, but only after completion of any mandatory debriefings (~~per DGO 8.04, Critical Incident Response Team Section 1.A~~); **requalification at the Range, and scheduling of the Training**

~~Division's FTFO refresher course within 30 calendar days. and any recommended retraining. This decision, including the factors supporting the decision, shall be documented contained in a written report provided that shall be forwarded immediately to the Police Commission. A copy of the report shall also be forwarded to the Director of the OCC. This report will be part of the member's officer's confidential personnel file and shall not be disclosed to any member of the public except by court order. The Police Commission shall, at the first Commission meeting following receipt of the report, meet in closed session with the Chief of Police to review the Chief's findings and decision. Officers shall not be returned to their regular duty until the Commission has met in closed session with the Chief of Police.~~

~~Any determination~~ 3. A decision by the Chief to not to return a member an officer to their regular assignment and to continue their reassignment is administrative only and in no way shall be considered punitive.

~~The officer shall receive a debriefing by the Crisis Incident Response Team and support as outlined in Section C., of Department General Order 8.04.~~

## 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.

## ~~H. INVESTIGATIONS~~

- ~~1. Officer involved shootings. The Homicide Detail and the Management Control Division shall respond immediately and conduct a timely investigation into every officer involved shooting. These investigations shall utilize the same numbering system, and be consistent with each other, e.g., 03-01 (first O.I.S. of 2003), 03-02 (second O.I.S. of 2003) etc.~~
- ~~2. Officer involved discharges. The Commanding Officer of the member involved shall contact the Management Control Division and obtain an O.I.D. number. The report prepared by the Commanding Officer of the member involved shall reflect the M.C.D. issued O.I.D. number. The final~~

~~report submitted shall be routed through channels, to the Management Control Division for evaluation prior to review by the Chief of Police.~~

#### ~~I. 8.11.06 SERIOUS INCIDENT REVIEW BOARD OF INVESTIGATIONS~~

~~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.

##### ~~1. Officer involved shootings.~~

- ~~a. Homicide Detail Investigation. The criminal investigation prepared by the Homicide Detail shall be completed and received by the Chair of the Firearm Discharge Review Board within forty five calendar days of the shooting event. If the criminal investigation report is not completed within forty five calendar days of the shooting event, the Officer in charge of the Homicide Detail shall appear before the Commission at the earliest possible meeting to explain why the report has not been completed.~~
- ~~b. Management Control Division~~ **B. Administrative Investigation** -- The **IAD's** administrative investigation prepared by the Management Control Division shall **should** be completed and submitted to the **SIRB** Chair of the Firearm Discharge Review Board within **365 180** sixty calendar days **after the closure of the criminal investigation or at the order of the Chief** of the shooting event. **It should be noted that DPA may have their own investigative timelines.** ~~If the administrative investigation report is not completed within sixty calendar days of the shooting event, the Officer in charge of the Management Control Division shall appear before the Commission at the earliest possible meeting to explain why the report has not been completed.~~
- ~~c. The Firearm Discharge Review Board shall convene within thirty calendar days of receipt of the Management Control Division investigation report. Within 120 calendar days following the first meeting of the Firearm Discharge Review Board, the panel shall complete its investigation and issue its findings in accordance with Department General Order 3.10. If the Firearm Discharge Review Board report is not completed within the required 120 calendar days, a representative of the Firearms Discharge Review Board shall appear before the Commission at the earliest possible meeting to explain why the report has not been completed.~~

### **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).