

IN-CUSTODY DEATHS

8.12.01 PURPOSE

This order outlines the rules and procedures to be followed in the investigation, review and, reporting to the Police Commission of In-Custody Deaths Investigations.

8.12.02 I. DEFINITIONS

- A. **Administrative Investigation** – A non-criminal investigation to determine whether any member violated any general order, regulation, policy, or other workplace rule during the in-custody death.
- B. **Criminal Investigation** – An investigation to determine whether there is any criminal conduct on the part of any involved member during the in-custody death.
- C. **A. In-Custody Death:** – Any death that occurs when a person is restrained by an on-duty SFPD officer law enforcement personnel by means of (1) physical restraints and/or any use of force, as defined by Department Policy (DGO 5.01, *Use of Force Policy and Proper Control of a Person*); (2) detention or confinement in a SFPD law enforcement vehicle; or (3) detention or confinement in a jail or detention facility while in the custody of a SFPD officer the San Francisco Police Department.
- D. **B. Involved Member:** – A member(s), who through facts that establish logical and consequential involvement, are is reasonably responsible for the relevant physical restraint, detention, or confinement at the time of death.
- E. **Parallel Criminal Investigation** – A criminal investigation into conduct of a person who is not a member. That conduct may occur before, during, or after the in-custody death or be related to an on-going investigation outside of the in-custody death.

8.12.03 II. POLICY

The San Francisco District Attorney's Office, Independent Investigations Bureau (SFDA) shall conduct the criminal investigation of any in-custody death; the Department is responsible for the administrative investigation and any relevant parallel investigation into the in-custody death (*Memorandum of Understanding Regarding the Investigation of Serious Uses of Force and In-Custody Deaths* [MOU]).

~~It is the policy of the San Francisco Police Department to immediately respond to the scene and conduct a complete investigation of any death of a person(s) that occurred while in the custody of the San Francisco Police Department.~~

~~The In-Custody Death Review Board shall review every in-custody death.~~

~~The purpose of this review process is to determine if the SFPD members acted reasonably within policy at the time of the in-custody death and evaluate the Department's training, policies and procedures in light of circumstances that led to the in-custody death.~~

~~The San Francisco Police Department recognizes the public's right to know about circumstances involving an in-custody death. It is the policy of the San Francisco Police Department to provide as much information as is reasonable through its public reporting process while also complying with applicable civil and criminal laws and preserving the integrity of ongoing investigations.~~

8.12.04 ~~III.~~ INVESTIGATION PROCEDURES

A. **Notifications** – ~~IN-CUSTODY DEATHS OCCURRING IN SAN FRANCISCO POLICE DEPARTMENT FACILITIES, VEHICLES, OR CUSTODY.~~ As soon as practical after a person dies while in the custody of the San Francisco Police Department **an in-custody death**, reasonable efforts shall be taken to make the following notifications **must be made**:

1. ~~When practical, a~~**An** "involved member" shall notify the Department of Emergency Management (DEM) **Dispatch**, and his/her **their** immediate supervisor, or the platoon commander of the district in which the in-custody death took place.
2. The supervisor ~~should~~ **shall** immediately notify the Field Operations Bureau Headquarters (**Department** Operations Center (**DOC**) after normal business hours).
3. **a. DOC** The Operations Center shall make the following notifications: **all required notifications through the appropriate channels.**
 - ~~• The on-call Homicide Detail investigators and Homicide O.I.C.~~
 - ~~• The Critical Incident Response Team,~~
 - ~~• The Photo Lab unit on duty or on-call,~~
 - ~~• The C.S.I. unit on duty or on-call,~~
 - ~~• The Management Control Division,~~
 - ~~• The Commanding Officer of the member(s) involved,~~
 - ~~• Chair of the In-Custody Death Review Board,~~
 - ~~• Deputy Chief of member(s) involved.~~
 - ~~• Legal Division,~~
 - ~~• Director of Risk Management,~~
 - ~~• Secretary of the Police Commission,~~
 - ~~• The District Attorney Office,~~
 - ~~• The Director or Designee of the O.C.C.,~~
 - ~~• Public Affairs Office,~~
 - ~~• All other notifications as necessary.~~
- b. The Officer-in-Charge of ISD, once notified by DOC, shall notify the on-call SFDA Officer-in-Charge with a summary of known facts.**
 - i. Facts will include: the location of the incident and the command post (if any), suggested**

access routes, and any safety concerns.

B. INVESTIGATION PROTOCOL. ~~Investigative Responsibility~~ The investigation into an In-Custody Death will be generally divided into separate investigations, criminal and administrative.

1. ~~SFDA – Criminal Investigation.~~ Investigations to determine if there is any **Will conduct the criminal investigation of the in-custody death in accordance with the MOU.** ~~conduct on the part of any participant. This investigation will be conducted separately by the Homicide Detail and the Office of the District Attorney.~~
2. **Department** ~~Administrative Investigation.~~ Investigations to determine if the member acted within policy at the time of the in-custody death are conducted separately by the Management Control Division and by the Office of Citizen Complaint, if and when a citizen's complaint has been generated.
 - a. **Investigative Services Detail (ISD) – Shall conduct the parallel criminal investigation of the ancillary crime.**
 - b. **Internal Affairs Division (IAD) – Shall conduct the administrative investigation for the involved members of the in-custody death.**
3. ~~The Homicide Detail and the Management Control Division (MCD) shall respond promptly and conduct a timely investigation into every in-custody death. These investigations will utilize the same numbering system and be consistent with each other, e.g., ICD 03-01 (first in-custody death of 2003), ICD 03-02 (second in-custody death of 2003), etc. The Homicide Detail Inspector shall contact the MCD Investigator and obtain the MCD in-custody death (ICD) case number.~~ **Department of Police Accountability (DPA) – May also investigate an in-custody death upon receiving a complaint.**
4. ~~The Homicide Detail's final report shall be routed to the Management Control Division for evaluation, prior to review by the Chief of Police.~~

C. Scene: ~~The member(s) who is involved in an in-custody death should limit his/her investigation to the following:~~ **On-scene management and responsibility is governed by the MOU.**

1. ~~As soon as practical, protect the crime scene and preserve all evidence. Prior to the arrival of the Homicide Detail Investigators, as provided under III.C.3., 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.~~ **Involved member(s) should limit their work to:**
 - a. **Protecting the scene and preserving all evidence.**
 - i. **Prior to the arrival of investigators, no persons should be permitted to enter the scene except to perform emergency medical assistance or assist in the preservation of the scene and evidence.**
 - ii. **Medical intervention tools used and left on the scene by medical personnel shall remain**

on scene for possible collection by Crime Scene Investigation (CSI).

b. *Attempting to obtain the name and address of any witness who may not remain at the scene, if no other members are available.*

2. ~~As soon as practical, attempt to obtain the name and address of any witness who may not remain at the scene~~ Senior-ranking supervisor on scene shall:
 - a. Take immediate physical custody of any involved member's body worn camera.
 - b. Direct all involved members not to communicate with each other about the incident to maintain integrity of their statements.
 - c. Sequester all involved members at a safe location, where they may have access to counsel.
 - d. Sequester witness officers when feasible.

3. ~~When an in-custody death 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 its investigators. No person shall be permitted to enter the crime scene without the approval of the Homicide Inspector assigned the investigation or the Homicide OIC.~~

4. ~~Units maintaining the crime scene should ensure that all tools of medical intervention left at the scene by treating medical personnel remain at the scene for possible collection by C.S.I. personnel.~~

5. ~~A crime scene log shall be maintained at the scene.~~

6. ~~Nothing in this order shall prohibit a member from taking reasonable actions to ensure his/her safety or the safety of another person.~~

D. COMPOSITION. The In-Custody Death Review Board shall be composed of: **Interviews – All members who are involved in, or witness to, the in-custody death shall be separately interviewed.**

1. ~~Deputy Chief of the Administration Bureau – Chair~~ The interview should take place as soon as practicable after the incident and shall be electronically recorded.
 - a. The interviews shall take place at either the SFDA's Office, the San Francisco Police Officers' Association Officer, or Department Headquarters.
2. ~~Deputy Chief of the Field Operations Bureau~~ Criminal Investigation – Shall be conducted following the procedures outlined in the MOU.
 - a. Voluntary Interview – SFDA must have an opportunity to interview members in the criminal investigation prior to conducting administrative interviews.
3. ~~Deputy Chief of the Airport Bureau~~ Administrative Investigation
 - a. Compelled Interview – If a member chooses not to make a statement in the criminal investigation, the commanding officer of the Risk Management Office will notify SFDA of IAD's intent to conduct a compelled interview.
 - i. Compelled members will be afforded all rights under the *Public Safety Officer's Procedural Bill of Rights Act*.
 - ii. DPA may conduct a separate compelled interview if the investigation falls within their jurisdiction.

- 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. Administrative interviews shall be conducted pursuant to all applicable Department General Orders, including DO 10.11, *Body Worn Cameras*.

- 4. Deputy Chief of the Investigations Bureau
- 5. Commanding Officer of the Training Division or Designee
- 6. Director of Risk Management—Advisory
- 7. Designated Public Health Physician—Advisory
- 8. The Director or Designee for the Office of Citizens Complaints—Advisory
- 9. San Francisco Police Commissioner (to be appointed by the San Francisco Police Commissioner President and to serve for one year)—Advisory
- 10. Medical Examiner—Advisory

8.12.05 RETURN TO DUTY

A. ~~E.~~ Involved OFFICERS: members shall be temporarily reassigned to a non-public contact position for a minimum of 10 calendar days. This reassignment is administrative only and not punitive. The following actions will be taken in all cases of in-custody deaths:

- 1. All members shall be afforded all substantive and procedural rights and remedies as provided by applicable law, including without limitation thereto, the Public Safety Officers' Bill of Rights.
- 2. When a supervisor arrives on the scene, the supervisor shall have the involved member(s) escorted from the scene unless their presence is necessary for investigative purpose. If more than one member is involved in the in-custody death, absent exigent circumstances the members shall be kept separated from one another and shall not discuss the incident with each other 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 directed to the Homicide Detail, the Investigations Bureau, or the involved member's station or detail, or another Department facility. In all circumstances, the members shall be taken to a Department facility.
- 3. Members of the department's C.I.R.T. program may assist the member(s) involved prior to their interview with investigators. However, they shall not knowingly discuss the facts or details of the in-custody death with the member.
- 4. Involved members shall be assigned to their respective Bureau Headquarters. The Officer shall not return to regular assignment for a minimum of 10 calendar days.

B. a. Within 5 five business days of an in-custody death, the Deputy Chief (DC) of Police the Administration Bureau shall convene a panel to discuss whether it is appropriate for the involved member(s) to return to duty. The Panel shall include a representative of the Behavioral Science Unit, the officer in charge of the Homicide Detail, the Deputy Chief, Commander, and Captain overseeing the involved officer's unit, the officer in charge of the Management Control Division, the Deputy Chief of Investigations and officer in charge of Risk Management.

1. The panel shall include:
 - DC of Admin, Chair
 - DC of the member's unit
 - Commander of the member's unit
 - Captain of the member's unit
 - Commander of Risk Management
 - Commanding Officer of Risk Management
 - Officer-in-Charge of ISD
 - Officer-in-Charge of IAD
 - Representative of the Behavioral Science Unit

C. The Chief of Police (CoP), after consulting with the panel, shall determine if the member should be returned to their regular field assignment, but only after completion of any mandatory debriefing (per DGO 8.04, Section I.A. *Critical Incident Response Team*), and any recommended retraining.

D. Upon determination by the CoP, the Chief's Office will draft a determination letter that ~~This decision, including~~ the factors supporting the decision, to return or not return to duty and shall be contained in a written report that shall be forwarded immediately ~~send it~~ to the Police Commission Office. A copy ~~ing~~ of the report shall also be forward to the DPA Director of the Office of Citizen Complaints and the Officer-in-Charge of IAD.

1. IAD shall notify the members' Commanding Officer of the decision and ensure the member returns to duty in accordance with the final determination of the CoP.

~~This report will be part of the officer's confidential personnel file and shall not be disclosed to any member of the public except by court order.~~

2. The Police Commission ~~shall~~ **should**, at the first Commission meeting following receipt of the report, meet in closed session with the Chief of Police **CoP** to ~~review~~ **evaluate** the Chief's **performance as it relates to their** 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.~~

~~This reassignment is administrative only and in no way shall be considered punitive.~~

5. ~~The officer shall receive a debriefing by the Critical Incident Response Team and support as outlined in Section C., of Department General Order 8.04, unless upon the recommendation of the members Commanding Officer.~~

8.12.06 SERIOUS INCIDENT REVIEW BOARD (SIRB)

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

1. Criminal Investigation – Per the MOU, the SFDA shall provide the evidentiary materials in

support of its investigation to the Department at the investigation's conclusion.

2. Administrative Investigation – IAD's administrative investigation shall 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 of Police.

F. REVIEW OF THE INVESTIGATIONS.

1. ~~Homicide Detail Investigation. The criminal investigation prepared by the Homicide Detail shall be completed and received by the Chair of the In-Custody Death Review Board within 90 calendar days of the in-custody death event, unless evidence material to the investigation is not yet available. If the investigation is not completed, the OIC of the Homicide Detail, shall provide an updated report to the Police Commission every 30 days or upon its completion.~~
2. ~~Management Control Division Investigation. The administrative investigation prepared by the Management Control Division shall be completed and submitted to the Chair of the In-Custody Death Review Board within 30 calendar days after receipt from Homicide Detail of the in-custody death event, unless evidence material to the investigation is not yet available. If the investigation is not completed, the OIC of the Management Control Division shall provide an update report to the Police Commission every 30 days or upon its completion.~~
3. ~~The In-Custody Death Review Board shall review the submitted reports and interview the involved investigators, as necessary.~~
4. ~~Within 120 days of the event, the Chair shall report the status of the matter to the Commission.~~
5. ~~The In-Custody Death Review Board shall review written reports submitted by the Homicide Detail (Criminal Investigation) and the Management Control Division (Administrative Investigation). The Chair shall submit his/her finding within 60 days of receipt. If the report from either unit is not completed, the investigator responsible for the investigation and his/her commanding officer shall appear before the In-Custody Death Review Board and explain, orally and in writing, the reason for not complying with the time limits of this order.~~
6. ~~The In-Custody Death Review Board can refer a case back to M.C.D. for further investigation or clarification, with a stated due date to the Review Board.~~
7. ~~The In-Custody Death Review Board shall discuss the circumstances surrounding the in-custody death and the response of the officer(s). Within 15 days of completion of its investigation, the In-Custody Death Review Board will submit to the Chief of Police, for his/her concurrence, a written summary. This summary shall include recommendations concerning the following:~~
 - a. ~~Adherence to department policy by the member(s) involved.~~
 - b. ~~The need to develop new policy where none existed at the time of the incident.~~
 - c. ~~The need to develop new training and techniques to improve department performance.~~
 - d. ~~Consideration for commendation (Life Saving Award).~~

~~This summary shall also indicate one of the following findings:~~

- a. ~~Proper Conduct,~~
- b. ~~Improper Conduct (Recommendation for Discipline),~~
- c. ~~Policy/Training Failure (Identify needs to develop or improve a policy and/or training for the type of incident when encountered in the future).~~

8. ~~The chief shall review for concurrence and forward the In-Custody Death Review Board's written summary to the Police Commission, with a copy to the OCC Director, within 15 days of receipt. In the event of disagreement between the Management Control Division and the In-Custody Death Review Board, the Chief of Police shall make the final decision. This summary report with the Chiefs decision shall be a public record. No report that is made public shall disclose any information deemed confidential by law.~~

~~The Director of the O.C.C. shall review the investigation and summary and recommend any further action (including an independent investigation) that the Director concludes is warranted. A summary of the O.C.C. Director's recommendations shall be a public record. No report that is made public shall disclose information deemed confidential by law.~~

~~The Police Commission shall review the In-Custody Death Review Board's summary and the O.C.C. Director's recommendations and take action as appropriate. No report that is made public shall disclose information deemed confidential by law.~~

8.12.07 STATE-MANDATED REPORTING

- A. ~~G. (MANDATORY CALIFORNIA ATTORNEY GENERAL REPORT. ISD shall complete and submit the mandatory California Attorney General report (California Government Code §12525) requires that in any case in which person dies while in the custody of a local law enforcement agency or local or state correctional facility, the agency shall report facts concerning the death, in writing, to the California Attorney General and post all required information on the department's website (§10008 PC) within ten (10) days after the death. In addition, each agency must report annually regarding the deaths that occurred within their jurisdiction for that calendar year.~~
- i. ~~The O.I.C. Homicide Detail, will complete both of these documents and forward a copy to Management Control Division for review and transmittal.~~
- B. ~~The incident will also be reported by ISD in the monthly submissions to the California Attorney General that includes all use-of-force by a peace officer resulting in a civilian's death (Government Code §12525.2).~~
- H. ~~POLICE COMMISSION YEARLY REPORT. The Chair of the In-Custody Death Review Board shall prepare and provide a yearly report to the Police Commission, and a copy to the Director of the O.C.C., that contains a summary of each in-custody death occurring in the San Francisco Police Department. Any disciplinary action, training issues and proposals for modifying department policy shall be included. This report shall be a public record. No report that is made public shall disclose any information deemed confidential by law.~~

8.12.07 ~~1.~~ **AIRPORT BUREAU OPERATIONS**

- A. The policies contained in this order are applicable to all members, including those assigned to the Airport Bureau.
- B. ~~Police Department operations at the San Francisco International Airport (SFO) are conducted, in part, pursuant to policies required to meet federal mandates and necessary to interface effectively with San Mateo County Agencies. Airport Bureau policies sometimes differ from department-wide policies contained in General Orders and Department Bulletins. The policies contained in this order are applicable to all members, including those assigned to the Airport Bureau. However, as to those parts, if any, part of this General Order that conflicts with or differ from Airport Bureau written policy, members assigned to the Airport Bureau shall follow Airport Bureau Ppolicy.~~
1. If in doubt as to the controlling policy, Airport Bureau members shall immediately notify their supervisor of the conflict in policy.
- C. ~~Notifications to the Department of Emergency Management (DEM) will be made by SFO Communications. Related criminal investigations will be conducted by the San Mateo County Sheriff's Office and the San Mateo County District Attorney, consistent with San Mateo County protocols.~~
1. IAD will conduct the administrative investigation in accordance with this DGO.

References

California Penal Code §10008
DGO 3.10, *Serious Incident Review Board*
DGO 5.01, *Use of Force and Proper Control of a Person*
DGO 8.04, *Critical Incident Response Team*
DGO 10.11, *Body Worn Cameras*
Government Code §12525
Government Code §12525.2
Memorandum of Understanding Regarding the Investigation of Serious Uses of Force and In-Custody Deaths
Public Safety Officers' Procedural Bill of Rights Act