

In-Custody Deaths

8.12.01 PURPOSE

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

8.12.02 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. **In-Custody Death** – Any death that occurs when a person is restrained by an on-duty SFPD officer by means of (1) physical restraints or any use of force (DGO 5.01, *Use of Force Policy and Proper Control of a Person*); (2) detention or confinement in a SFPD vehicle; or (3) detention or confinement in a jail or detention facility while in the custody of a SFPD officer.
- D. **Involved Member** – A member who 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 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]).

8.12.04 INVESTIGATION PROCEDURES

- A. **Notifications** – As soon as practical after an in-custody death, the following notifications must be made:
 - 1. An involved member shall notify Dispatch and their immediate supervisor or the platoon commander.

2. The supervisor shall notify the Department Operations Center (DOC).
 - a. DOC shall make all required notifications through the appropriate channels.
 - 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. Investigative Responsibility

1. SFDA – Will conduct the criminal investigation of the in-custody death in accordance with the MOU.
2. Department
 - 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. Department of Police Accountability (DPA) – May also investigate an in-custody death upon receiving a complaint.

C. Scene – On-scene management and responsibility is governed by the MOU.

1. 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 witnesses who may not remain at the scene, if no other members are available.
2. 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 the 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.

D. Interviews – All members who are involved in, or witness to, the in-custody death shall be separately interviewed.

1. The interviews should take place as soon as practicable after the incident and shall be electronically recorded.
 - a. The interviews shall take place either at the SFDA's Office, the San Francisco

Police Officers' Association Office, or Department Headquarters.

2. 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. 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 Officers' 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 DGO 10.11, *Body Worn Cameras*.

8.12.05 RETURN TO DUTY

- A. Involved 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.
- B. Within five business days of an in-custody death, the Deputy Chief (DC) of the Administration Bureau shall convene a panel to discuss whether it is appropriate for the involved member(s) to return to duty.
 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 assignment after completion of any mandatory debriefing (DGO 8.04, *Critical Incident Response Team*) and recommended retraining.
- D. Upon determination by the CoP, the Chief's Office will draft a determination letter that includes the factors supporting the decision to return or not return to duty and shall immediately send it to the Police Commission Office, copying the DPA Director 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.
2. The Police Commission should, at the first meeting following receipt of the report, meet in closed session with the CoP to evaluate the Chief's performance as it relates to their decision.

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, 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.

8.12.07 STATE-MANDATED REPORTING

- A. ISD shall complete and submit the mandatory California Attorney General report (Government Code §12525), submit a copy of the report to the BSCC (CCR, Title 15 § 1046(a)), and post all required information on the department's website (§10008 PC) within 10 days after the death.
- B. The incident will also be reported by ISD in the monthly submission 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).
- C. If the in-custody death occurred in an SFPD detention facility, the Title 15 § 1046 (b)(c) Review Report shall be completed and submitted by the Department Facility Administrator to the BSCC within 60 days of the death, in compliance with disclosure requirements set forth in PC 832.10.

8.12.08 AIRPORT BUREAU OPERATIONS

- A. The policies contained in this order are applicable to all members, including those assigned to the Airport Bureau.
- B. If any part of this General Order conflicts with Airport Bureau policy, members assigned to the Airport Bureau shall follow Airport Bureau policy.
 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 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