

Officer-Involved Shootings and Deaths

305.1 PURPOSE AND SCOPE

Best Practice NYSLEAP - 8.4 - 21.1

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 dies 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.

305.2 POLICY

Best Practice MODIFIED

The policy of the Auburn Police Department is to ensure that officer-involved shootings and deaths are investigated in a thorough, fair and impartial manner.

305.3 TYPES OF INVESTIGATIONS

Best Practice MODIFIED

Officer-involved shootings and deaths involve several separate investigations. The investigations may include:

- A criminal investigation of the suspect's actions.
- A criminal investigation of the involved officer's actions.
- An administrative investigation as to policy compliance by involved officers.
- A civil investigation to determine potential liability.

305.4 CONTROL OF INVESTIGATIONS

Best Practice MODIFIED

The Auburn Police Department should conduct the criminal investigation of officer-involved shootings and deaths within the City of Auburn. Investigators from surrounding agencies may be assigned to work on the criminal investigation of officer-involved shootings and deaths. The Cayuga County District Attorney's Office and the NYS Attorney General's Office may conduct their own investigations as well.

Jurisdiction is determined by the location of the shooting or death and the agency employing the involved officer. The following scenarios outline the jurisdictional responsibilities for investigating officer-involved shootings and deaths.

305.4.1 CRIMINAL INVESTIGATION OF SUSPECT ACTIONS

Best Practice

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The investigation of any possible criminal conduct by the suspect is controlled by the agency in whose jurisdiction the suspect's crime occurred. For example, the Auburn Police Department would control the investigation if the suspect's crime occurred in Auburn.

If multiple crimes have been committed in multiple jurisdictions, identification of the agency that will control the investigation may be reached in the same way as with any other crime. The investigation may be conducted by the agency in control of the criminal investigation of the involved officer, at the discretion of the Chief of Police and with concurrence from the other agency.

305.4.2 CRIMINAL INVESTIGATIONS OF OFFICER ACTIONS

Best Practice

The control of the criminal investigation into the involved officer's conduct during the incident will be determined by the employing agency's protocol. When an officer from this department is involved, the criminal investigation will be handled according to the Criminal Investigation section of this policy.

Requests made of this department to investigate a shooting or death involving an outside agency's officer shall be referred to the Chief of Police or the authorized designee for approval.

305.4.3 ADMINISTRATIVE AND CIVIL INVESTIGATION

Best Practice

Regardless of where the incident occurs, the administrative and civil investigation of each involved officer is controlled by the respective employing agency.

305.5 INVESTIGATION PROCESS

Best Practice

The following procedures are guidelines used in the investigation of an officer-involved shooting or death.

305.5.1 UNINVOLVED OFFICER RESPONSIBILITIES

Best Practice **MODIFIED**

Upon arrival at the scene of an officer-involved shooting or death, any uninvolved APD officer will:

- (a) Secure the scene and identify and eliminate hazards for all those involved.
- (b) Take reasonable steps to obtain emergency medical attention for injured individuals.
- (c) Request additional resources from the Department or other agencies.
- (d) Coordinate a perimeter or pursuit of suspects.
- (e) Check for injured persons and evacuate as needed.
- (f) Brief the supervisor upon arrival.

305.5.2 SUPERVISOR RESPONSIBILITIES

Best Practice **MODIFIED** **NYSLEAP - 8.4 - 40.2**

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

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- (a) Attempt to obtain a brief overview of the situation from any uninvolved officers.
 - 1. In the event that there are no uninvolved officers who can supply adequate overview, the supervisor should attempt to obtain a brief voluntary overview from one involved officer.
- (b) If necessary, the supervisor may administratively order any APD officer to immediately provide public safety information necessary to secure the scene, identify injured parties and pursue suspects.
 - 1. Public safety information shall be limited to such things as outstanding suspect information, number and direction of any shots fired, perimeter of the incident scene, identity of known or potential witnesses and any other pertinent information.
 - 2. The initial on-scene supervisor should not attempt to order any involved officer to provide any information other than public safety information.
- (c) Provide all available information to the Shift Commander and Dispatch. If feasible, sensitive information should be communicated over secure networks.
- (d) Take command of and secure the incident scene with additional APD members until properly relieved by another supervisor or other assigned personnel or investigator.
- (e) As soon as practicable, ensure that involved officers are transported (separately, if feasible) to a suitable location for further direction.
 - (a) Each involved APD officer should be given an administrative order not to discuss the incident with other involved officers or APD members pending further direction from a supervisor.
 - (b) When an involved officer's weapon is taken or left at the scene for other than officer-safety reasons (e.g., evidence), ensure that he/she is provided with a comparable replacement weapon or transported by other officers.
- (f) Assign an uninvolved officer to accompany the involved officer.
- (g) Once relieved from the scene, ensure that all applicable statements and reports are completed by all officers assigned to the incident. Defensive Action Reports are required as instructed.
- (h) Arrange for family notifications and transportation as necessary.

305.5.3 SHIFT COMMANDER RESPONSIBILITIES

Discretionary **MODIFIED**

Upon learning of an officer-involved shooting or death, the Shift Commander shall be responsible for coordinating all aspects of the incident until he/she is relieved by the Chief of Police or a Commander.

All outside inquiries about the incident shall be directed to the Chief or Deputy Chief.

305.5.4 NOTIFICATIONS

Discretionary **MODIFIED**

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The following persons shall be notified as soon as practicable:

- Chief of Police and Deputy Chief
- Detective Commander
- Outside agency investigators (if appropriate)
- District Attorney's Office
- CISM
- Chaplain
- Coroner (if necessary)
- Involved officer's union representative (if requested)
- Public Information Officer

305.5.5 INVOLVED OFFICERS

Best Practice **MODIFIED**

The following shall be considered for the involved officer:

- (a) Any request for legal or union representation will be accommodated.
 1. If there are more than one officer involved in the incident, APD officers shall not be permitted to meet with other involved members.
 2. Requests from involved non-APD officers should be referred to their employing agency.
- (b) Discussions with licensed attorneys will be considered privileged as attorney-client communications.
- (c) Discussions with agency representatives will be privileged only as to the discussion of non-criminal information.
- (d) An Employee Assistance Program (EAP) representative shall be provided by the Department to each involved APD officer. An EAP representative may also be provided to any affected APD members, upon request.
 1. Interviews with an EAP representative will be considered privileged.
 2. An interview or session with an EAP representative may take place prior to the member providing a formal interview or report. However, the involved members shall not be permitted to consult or meet collectively or in a group with an EAP representative prior to providing a formal interview or report.
 3. A separate fitness-for-duty exam may also be required (see the Fitness for Duty Policy).
- (e) Although the Department will honor the sensitivity of communications with peer counselors (Critical Incident Stress Management Team), there is no legal privilege to such communications. Peer counselors (Critical Incident Stress Management Team) are cautioned against discussing the facts of any incident with an involved or witness officer.

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- (f) Services of the department Chaplain will be made available to the involved officer(s) and his/her family to aid them with the after-effects of the incident.

Care should be taken to preserve the integrity of any physical evidence present on the involved officer's equipment or clothing, such as blood or fingerprints, until investigators or Evidence Technicians can properly retrieve it.

Each involved APD officer shall be given reasonable paid administrative leave following an officer-involved shooting or death. It shall be the responsibility of the shift supervisor to make schedule adjustments to accommodate such leave.

305.6 CRIMINAL INVESTIGATION

Best Practice **MODIFIED** NYSLEAP - 8.4 - 20.1 (B)

The prosecuting office with jurisdiction over the incident is responsible for the criminal prosecution of any officer-involved shooting involving injury or death.

Investigative personnel from this department may be assigned to partner with investigators from outside agencies or the prosecuting office with jurisdiction over the incident to avoid duplicating efforts in related criminal investigations.

Once public safety issues have been addressed, criminal investigators should be given the opportunity to obtain a voluntary statement from involved officers and to complete their interviews. The following shall be considered for the involved officer:

- (a) Administration personnel should not participate directly in any voluntary interview of APD officers. This will not prohibit such personnel from monitoring interviews or providing the criminal investigators with topics for inquiry.
- (b) If requested, any involved officer will be afforded the opportunity to consult individually with a representative of his/her choosing or an attorney prior to speaking with criminal investigators. However, in order to maintain the integrity of each involved officer's statement, he/she shall not consult or meet with a representative or an attorney collectively or in groups prior to being interviewed.
- (c) If any involved officer is physically, emotionally or otherwise not in a position to provide a voluntary statement when interviewed by criminal investigators, consideration should be given to allowing a reasonable period for the officer to schedule an alternate time for the interview.
- (d) Any voluntary statement provided by an involved officer will be made available for inclusion in any related investigation including administrative investigations. However, no administratively coerced statement will be provided to any criminal investigators unless the officer consents.

[Detective Bureau Supervisor Responsibilities / Procedure](#)

305.6.1 REPORTS BY INVOLVED APD OFFICERS

Best Practice **MODIFIED**

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In the event that suspects remain outstanding or subject to prosecution for related offenses, this department shall retain the authority to require involved APD officers to provide sufficient information for related criminal reports to facilitate the apprehension and prosecution of those individuals.

While the involved APD officer may write the report, it is generally recommended that such reports be completed by assigned investigators, who should interview all involved officers as victims/witnesses. Since the purpose of these reports will be to facilitate criminal prosecution, statements of involved officers should focus on evidence to establish the elements of criminal activities by suspects. Care should be taken not to duplicate information provided by involved officers in other reports.

Nothing in this section shall be construed to deprive an involved APD officer of the right to consult with legal counsel prior to completing any such criminal report.

Reports related to the prosecution of criminal suspects will be processed according to normal procedures but should also be included for reference in the investigation of the officer-involved shooting or death.

Whenever deadly physical force is used, it will be documented in all applicable police reports, defensive action reports, and sworn affidavits when:

- (a) The use of such force results in the injury or death of a person
- (b) The use of force involved the intentional discharge of a firearm, whether or not a person was struck or injured as a result of the discharge of such firearm.

305.6.2 WITNESS IDENTIFICATION AND INTERVIEWS

Best Practice **MODIFIED**

Because potential witnesses to an officer-involved shooting or death may become unavailable or the integrity of their statements compromised with the passage of time, a supervisor should take reasonable steps to promptly coordinate with criminal investigators to utilize available law enforcement personnel for the following:

- (a) Identification of all persons present at the scene and in the immediate area.
 - 1. When feasible, a statement should be obtained from those persons who claim not to have witnessed the incident but who were present at the time it occurred.
 - 2. Any potential witness who is unwilling or unable to remain available for a formal interview should not be detained absent reasonable suspicion to detain or probable cause to arrest. Without detaining the individual for the sole purpose of identification, attempts to identify the witness prior to his/her departure should be made whenever feasible.
- (b) Witnesses who are willing to provide a formal interview should be asked to meet at a suitable location where criminal investigators may obtain a statement. Such witnesses, if willing, may be transported by a member of the Department.

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1. A written, verbal or recorded statement of consent should be obtained prior to transporting a witness. When the witness is a minor, consent should be obtained from the parent or guardian, if available, prior to transportation.
- (c) Promptly contacting the suspect's known family and associates to obtain any available and untainted background information about the suspect's activities and state of mind prior to the incident.

305.6.3 INVESTIGATIVE PERSONNEL

Best Practice **MODIFIED**

Once notified of an officer-involved shooting or death, it shall be the responsibility of the designated Detective Bureau supervisor to assign appropriate investigative personnel to handle the investigation of related crimes. Department investigators will be assigned to work with investigators from the prosecuting office with jurisdiction over the incident and may be assigned to separately handle the investigation of any related crimes not being investigated by the prosecuting office with jurisdiction over the incident.

All related department reports, except administrative and/or privileged reports, will be forwarded to the designated Detective Bureau supervisor for approval. Privileged and administrative reports shall be forwarded and maintained by the Office of the Chief of Police.

305.7 ADMINISTRATIVE INVESTIGATION

Federal **MODIFIED** **NYSLEAP - 8.4 - 21.1 (B), 20.1 (B)**

In addition to all other investigations associated with an officer-involved shooting or death, this department will conduct an internal administrative investigation of involved APD officers to determine conformance with department policy. This investigation will be conducted under the supervision of the Administration and will be considered a confidential officer personnel file.

Interviews of members shall be subject to department policies and applicable laws.

- (a) Any officer involved in a shooting or death may be requested or administratively compelled to provide a blood sample for alcohol/drug screening. Absent consent from the officer, such compelled samples and the results of any such testing shall not be disclosed to any criminal investigative agency.
- (b) If any officer has voluntarily elected to provide a statement to criminal investigators, the assigned administrative investigator should review that statement before proceeding with any further interview of that involved officer.
 1. If a further interview of the officer is deemed necessary to determine policy compliance, care should be taken to limit the inquiry to new areas with minimal, if any, duplication of questions addressed in the voluntary statement. The involved officer shall be provided with a copy of his/her prior statement before proceeding with any subsequent interviews.
- (c) In the event that an involved officer has elected not to provide criminal investigators with a voluntary statement, the assigned administrative investigator shall conduct an administrative interview to determine all relevant information.

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1. Although this interview should not be unreasonably delayed, care should be taken to ensure that the officer's physical and psychological needs have been addressed before commencing the interview.
 2. If requested, the officer shall have the opportunity to select an uninvolved representative to be present during the interview. However, in order to maintain the integrity of each individual officer's statement, involved officers shall not consult or meet with a representative collectively or in groups prior to being interviewed.
 3. Administrative interviews should be recorded by the investigator. The officer may also record the interview.
 4. The officer shall be informed of the nature of the investigation. If an officer refuses to answer questions, he/she should be given his/her *Garrity* rights and ordered to provide full and truthful answers to all questions. The officer shall be informed that the interview will be for administrative purposes only and that the statement cannot be used criminally.
 5. The Administration shall compile all relevant information and reports necessary for the Department to determine compliance with applicable policies.
 6. Any other indications of potential policy violations shall be determined in accordance with standard disciplinary procedures.
- (d) The assigned administrative investigator will inform the Chiefs of the status of the investigation.
1. The Chief of Police, or his/her designee will keep the involved officer and his/her command supervisor apprised of the status of the investigation.
- (e) The assigned administrative investigator will prepare a full report to the Chiefs regarding his/her investigation and conclusion.
- (f) The Chief of Police or designee shall review the investigations to ensure that the use of deadly physical force was justified, necessary, reasonable and in accordance with department policy.
- (g) At the conclusion of both the criminal and/or departmental investigation, the Chief of Police, or designee, will make the final determination of actions to be taken.

305.8 CIVIL LIABILITY RESPONSE

Discretionary

A member of this department may be assigned to work exclusively under the direction of the legal counsel for the Department to assist in the preparation of materials deemed necessary in anticipation of potential civil litigation.

All materials generated in this capacity shall be considered attorney work product and may not be used for any other purpose. The civil liability response is not intended to interfere with any other investigation but shall be given reasonable access to all other investigations.

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305.9 AUDIO AND VIDEO RECORDINGS

Best Practice

Any officer involved in a shooting or death may be permitted to review available Mobile Audio/Video (MAV), body-worn video, or other video or audio recordings prior to providing a recorded statement or completing reports.

Upon request, non-law enforcement witnesses who are able to verify their presence and their ability to contemporaneously perceive events at the scene of an incident may also be permitted to review available MAV, body-worn video, or other video or audio recordings with the approval of assigned investigators or a supervisor.

Any MAV, body-worn video, and other known video or audio recordings of an incident should not be publicly released during an ongoing investigation without consulting the prosecuting attorney or Corporation Counsel's Office, as appropriate.

305.10 DEBRIEFING

State

Following an officer-involved shooting or death, the Auburn Police Department should conduct both a critical incident/stress debriefing and a tactical debriefing.

305.10.1 CRITICAL INCIDENT/STRESS DEBRIEFING

Best Practice **MODIFIED**

A critical incident/stress debriefing should occur as soon as practicable. The Shift Commander/Administration Commander is responsible for organizing the debriefing. Notes and recorded statements should not be taken because the sole purpose of the debriefing is to help mitigate the stress-related effects of a traumatic event.

The debriefing is not part of any investigative process. Care should be taken not to release or repeat any communication made during a debriefing unless otherwise authorized by policy, law or a valid court order.

Attendance at the debriefing shall only include those members of the Department directly involved in the incident, which can include support personnel (e.g., dispatchers, civilian personnel). Family or other support personnel may attend with the concurrence of those involved in the incident. The debriefing shall be closed to the public and should be closed to all other members of the Department, including supervisory and Administration personnel, unless otherwise requested.

305.10.2 TACTICAL DEBRIEFING

Best Practice

A tactical debriefing should take place to identify any training or areas of policy that need improvement. The Chief of Police should identify the appropriate participants. This debriefing should not be conducted until all involved members have provided recorded or formal statements to the criminal and/or administrative investigators.

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305.11 MEDIA RELATIONS

Best Practice **MODIFIED**

Any media release shall be prepared by the Office of the Chief of Police, or his designee. Releases will be available to the Shift Commander, Detective Commander and Public Information Officer in the event of inquiries from the media. The Chief of Police or their designee shall be responsible for press coverage of the incident, or assign such duty to the Public Information Officer. The Chief of Police or their designee will notify the City of Auburn Manager and Mayor/Council.

No involved APD officer shall make any comment to the media unless he/she is authorized by the Chief of Police or his designee.

Department members receiving inquiries regarding officer-involved shootings or deaths occurring in other jurisdictions shall refrain from public comment and will direct those inquiries to the agency having jurisdiction and primary responsibility for the investigation.

Department personnel shall not post, transmit, or otherwise disseminate any information to which they have access, as a result of their employment with the Auburn Police Department, without expressed authorization of the Chiefs of Police or designee.

All personnel must be sensitive to the psychological trauma that is associated with these types of incidents. Behavior such as blaming, ridiculing, teasing and isolating the involved officer will only increase the potential trauma and, therefore, will not be tolerated. Supervisors shall ensure that the officer is treated in a dignified manner.