

Officer-Involved Shootings and Deaths

310.1 PURPOSE AND SCOPE

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 a deputy.

In other incidents not covered by this policy, the Sheriff may decide that the investigation will follow the process provided in this policy.

310.2 POLICY

The policy of the Emery County Sheriff's Office is to ensure that officer-involved shootings and deaths are investigated in a thorough, fair and impartial manner.

310.2 TYPES OF INVESTIGATIONS

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

- (a) A criminal investigation of the suspect's actions.
- (b) A criminal investigation of the involved officer's actions.
- (c) An administrative investigation as to policy compliance by involved deputies.
- (d) A civil investigation to determine potential liability.

310.3 JURISDICTION

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

310.3.1 CRIMINAL INVESTIGATION OF OFFICER ACTIONS

The control of the criminal investigation into the involved deputy's conduct during the incident will be determined by the employing agency's protocol. When a deputy 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 Sheriff or the authorized designee for approval.

310.3.2 ALLIED AGENCY'S OFFICER WITHIN THIS JURISDICTION

The ECSO is responsible for the criminal investigation of the suspect's actions. The criminal investigation of the officer-involved shooting will be conducted by the Emery County Sheriff's Office or other delegated investigative agency. The officer's employing agency will be responsible for any civil and/or administrative investigation(s).

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310.3.3 CRIMINAL INVESTIGATION OF SUSPECT ACTIONS

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 Emery County Sheriff's Office would control the investigation if the suspect's crime occurred in Emery County Sheriff's Office.

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 Sheriff and with concurrence from the other agency.

310.4 INVESTIGATION PROCESS

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

310.4.1 UNINVOLVED DEPUTY RESPONSIBILITIES

Upon arrival at the scene of an officer-involved shooting or death, the first uninvolved ECSO deputy will be the deputy-in-charge and will assume the responsibilities of a supervisor until properly relieved. This deputy should, as appropriate:

- (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.

310.4.2 SUPERVISOR RESPONSIBILITIES

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

- (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 ECSO deputy 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.

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- (c) Provide all available information to the Shift Sergeant and the Dispatch Center. If feasible, sensitive information should be communicated over secure networks.
- (d) Take command of and secure the incident scene with additional ECSO 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.
 - 1. Each involved ECSO deputy should be given an administrative order not to discuss the incident with other involved officers or ECSO members pending further direction from a supervisor.
 - 2. 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 deputies.

310.4.3 ON-DUTY SUPERVISOR RESPONSIBILITIES

Upon learning of an officer-involved shooting, the on-duty supervisor shall be responsible for coordinating all aspects of the incident until relieved by the Sheriff or a Captain.

310.4.4 NOTIFICATIONS

The following persons shall be notified as soon as practicable:

- Sheriff
- Investigation Captain
- Officer Involved Shooting rollout team
- Outside agency investigators (if appropriate)
- Captain supervisor
- Civil liability response team
- Psychological/peer support personnel
- Chaplain
- Medical Examiner (if necessary)
- Involved officer's agency representative (if requested)
- Public Information Officer
- County Attorney (Utah Code 76-2-408)

310.4.5 INVOLVED OFFICERS

The following shall be considered for the involved officer:

- (a) Any request for legal or union representation will be accommodated.
 - 1. Involved ECSO deputies shall not be permitted to meet collectively or in a group with an attorney or any representative prior to providing a formal interview or report.

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2. Requests from involved non-ECSO 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/employee groups will be privileged only as to the discussion of non-criminal information.
- (d) A licensed psychotherapist shall be provided by the Office to each involved ECSO deputy. A licensed psychotherapist may also be provided to any other affected ECSO members, upon request.
 1. Interviews with a licensed psychotherapist will be considered privileged.
 2. An interview or session with a licensed psychotherapist may take place prior to the member providing a formal interview or report. However, involved members shall not be permitted to consult or meet collectively or in a group with a licensed psychotherapist 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) Communications between the involved deputy and a peer support member are addressed in the Wellness Program Policy.

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 lab personnel can properly retrieve it.

Each involved ECSO deputy shall be given reasonable paid administrative leave following an officer-involved shooting or death. It shall be the responsibility of the Shift Sergeant to make schedule adjustments to accommodate such leave.

310.5 CRIMINAL INVESTIGATION

The County Attorney's Office is responsible for the criminal investigation into the circumstances of any officer-involved shooting or death.

If available, investigative personnel from this department may be assigned to partner with investigators from outside agencies or the County Attorney's Office 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) ECSO supervisors and Captain personnel should not participate directly in any voluntary interview of ECSO deputies. 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

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investigators. However, in order to maintain the integrity of each involved officer's statement, involved deputies 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.

310.5.1 REPORTS BY INVOLVED ECSO DEPUTIES

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

While the involved ECSO deputies 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 ECSO deputy 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.

310.5.2 WITNESS IDENTIFICATION AND INTERVIEWS

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 recorded 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

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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 recorded statement. Such witnesses, if willing, may be transported by a member of the Department.
 - 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.

310.5.3 INVESTIGATIVE PERSONNEL

Once notified of an officer-involved shooting or death, it shall be the responsibility of the designated Investigation Division supervisor to assign appropriate investigative personnel to handle the investigation of related crimes. Department investigators will be assigned to work with investigators from the County Attorney's Office and may be assigned to separately handle the investigation of any related crimes not being investigated by the County Attorney's Office.

All related department reports, except administrative and/or privileged reports, will be forwarded to the designated Investigation Division supervisor for approval. Privileged reports shall be maintained exclusively by members who are authorized such access. Administrative reports will be forwarded to the appropriate Captain.

310.5.4 STATUTORY MANDATES RELATED TO CRIMINAL INVESTIGATIONS OF CRITICAL INCIDENTS

The Shift Sergeant shall notify the County Attorney as soon as practical if the following critical incidents occur within the jurisdiction of the Emery County Sheriff's Office, whether or not an involved law enforcement officer is a department member (Utah Code 76-2-408):

- (a) Use of a firearm that caused an injury by a law enforcement officer or any other use of a weapon by a law enforcement officer in a manner that could have caused death or serious injury (e.g., a blow to the head of a person with a baton).
- (b) A fatal injury to any person that could have been caused by a law enforcement officer or while the person was in the custody of a law enforcement agency.

The Sheriff or authorized designee and the County Attorney shall jointly designate an agency to criminally investigate the actions of a law enforcement officer involved in a critical incident, as appropriate, and may jointly designate a lead agency if more than one agency will be involved. An agency other than the Emery County Sheriff's Office will criminally investigate the actions of members who may have caused or contributed to a critical incident (Utah Code 76-2-408).

310.6 ADMINISTRATIVE INVESTIGATION

In addition to all other investigations associated with an officer-involved shooting or death, this department will conduct an internal administrative investigation to determine conformance with all

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department policy. This investigation will be conducted under the supervision of the Captain and will be considered a confidential deputy personnel file.

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

- (a) Any deputy 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 deputy, such compelled samples and the results of any such testing shall not be disclosed to any criminal investigative agency.
- (b) If any deputy 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 deputy.
 - 1. If a further interview of the deputy 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 deputy shall be provided with a copy of his/her prior statement before proceeding with any subsequent interviews.
- (c) In the event that an involved deputy 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.
 - 1. Although this interview should not be unreasonably delayed, care should be taken to ensure that the deputy's physical and psychological needs have been addressed before commencing the interview.
 - 2. If requested, the deputy 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 deputy's statement, involved deputies shall not consult or meet with a representative or attorney collectively or in a group prior to being interviewed.
 - 3. Administrative interviews should be recorded by the investigator. The deputy may also record the interview.
 - 4. The deputy shall be informed of the nature of the investigation. If a deputy 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 deputy shall be informed that the interview will be for administrative purposes only and that the statement cannot be used criminally.
 - 5. The Captain shall compile all relevant information and reports necessary for the Department to determine compliance with applicable policies.
 - 6. Regardless of whether the use of force is an issue in the case, the completed administrative investigation shall be submitted to the Use of Force Review

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Board, which will restrict its findings as to whether there was compliance with the Use of Force Policy.

7. Any other indications of a potential violation of any policy shall be determined in accordance with standard disciplinary procedures.

310.7 CIVIL LIABILITY RESPONSE

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.

310.8 AUDIO AND VIDEO RECORDINGS

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 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 County Attorney's Office, as appropriate.

310.9 DEBRIEFING

Following an officer-involved shooting or death, the Emery County Sheriff's Office should conduct both a Critical Incident Stress Debriefing and a tactical debriefing. See the Wellness Program Policy for guidance on Critical Incident Stress Debriefings.

310.9.1 TACTICAL DEBRIEFING

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

310.10 MEDIA RELATIONS

A single press release may be prepared with input and concurrence from the supervisor and agency representative responsible for each phase of the investigation. Any press release will be approved by the County Attorney's Office as to content prior to release. This release will be

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available to the on-duty supervisor, Investigation Division Captain and Public Information Officer in the event of inquiries from the media.

It will be the policy of the Department to not release the identities of involved officers absent their consent or as required by law. Moreover, no involved officer shall be subjected to contact from the media and no involved officer shall make any comments to the press unless authorized by the Sheriff or a Captain.

Law enforcement officials receiving inquiries regarding incidents occurring in other agency jurisdictions shall refrain from public comment and will direct those inquiries to the agency having jurisdiction and primary responsibility for the investigation.

310.10.1 DEPARTMENT WEBSITE

This policy shall be published on the department website along with any related written procedures and protocols (Utah Code 76-2-408).