

# Officer-Involved Shootings and Deaths

## **305.1 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 another 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**

The policy of the Missoula 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**

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**

Investigators from surrounding agencies may be assigned to work on the criminal investigation of officer-involved shootings and deaths. This may include at least one investigator from the agency that employs the involved officer.

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**

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 Missoula Police Department would control the investigation if the suspect's crime occurred in Missoula.

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.

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#### 305.4.2 CRIMINAL INVESTIGATIONS OF OFFICER ACTIONS

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

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**

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

#### 305.5.1 UNINVOLVED OFFICER RESPONSIBILITIES

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

#### 305.5.2 SUPERVISOR RESPONSIBILITIES

Upon arrival at the scene, the first uninvolved MPD 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) As soon as practicable, the supervisor should administratively order any MPD officer to immediately provide a [public safety advisory](#) necessary to secure the scene, identify injured parties and pursue suspects.
  - 1. The public safety advisory shall be limited to such things as outstanding suspect information, number and direction of any shots fired, perimeter of the

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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 MPD 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 MPD officer should be given an administrative order not to discuss the incident with other involved officers or MPD 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 they are provided with a comparable replacement weapon or transported by other officers.

#### 305.5.3 SHIFT COMMANDER RESPONSIBILITIES

Upon learning of an officer-involved shooting or death, the Shift Commander shall be responsible for coordinating all aspects of the incident until they are relieved.

All outside inquiries about the incident shall be directed to the Shift Commander.

#### 305.5.4 NOTIFICATIONS

The following persons shall be notified as soon as practicable:

- Chief of Police
- Detective Division Captain
- OIS Protocol rollout team
- Outside agency investigators (if appropriate)
- Office of Professional Standards supervisor
- Psychological/peer support personnel
- Chaplain
- Coroner (if necessary)
- Representative/liaison from involved officer's agency (if applicable)
- Involved officer's association board member
- Public Information Officer

#### 305.5.5 INVOLVED OFFICERS

The following shall be considered for the involved officer:

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- (a) Any request for legal or union representation will be accommodated.
  - 1. Involved MPD officers 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.
  - 2. Requests from involved non-MPD officers should be referred to their employing agency.
- (b) Discussions with licensed attorneys will be considered privileged as attorney-client communications.
- (c) Discussions with employee groups/agency representatives will be privileged only as to the discussion of non-criminal information.
- (d) A licensed psychotherapist shall be provided by the Department to each involved MPD officer. A licensed psychotherapist may also be provided to any other affected MPD 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, the 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 officer and a peer support member or a critical incident stress management team member is 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 MPD officer shall be given reasonable paid administrative leave following an officer-involved shooting or death. It shall be the responsibility of the Shift Commander to make schedule adjustments to accommodate such leave.

#### **305.6 CRIMINAL INVESTIGATION**

The County Attorney's Office is responsible for the criminal investigation into the circumstances of any officer-involved shooting involving injury 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:

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- (a) MPD supervisors and Office of Professional Standards personnel should not participate directly in any voluntary interview of MPD 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 their choosing or an attorney prior to speaking with criminal investigators. However, in order to maintain the integrity of each involved officer's statement, they 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.

#### 305.6.1 REPORTS BY INVOLVED MPD OFFICERS

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

It is generally recommended that 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. A recorded interview with criminal investigators shall suffice as a report from involved officers.

Nothing in this section shall be construed to deprive an involved MPD 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.

#### 305.6.2 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.

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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 of identification, attempts to identify the witness prior to their 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.

#### **305.6.3 INVESTIGATIVE PERSONNEL**

Once notified of an officer-involved shooting or death, it shall be the responsibility of the designated Detective 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 Detective 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.

#### **305.7 ADMINISTRATIVE INVESTIGATION**

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

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

(a) 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

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any, duplication of questions addressed in the voluntary statement. The involved officer shall be provided with a copy of their prior statement before proceeding with any subsequent interviews.

(b) 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.

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 shall 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, they should be given their *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 Office of Professional Standards 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 for use of force review, which will result in determination as to whether there was compliance with the Use of Force Policy.
7. Any other indications of potential policy violations shall be determined in accordance with standard disciplinary procedures.

#### **305.8 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 captured from their perspective prior to providing a recorded statement or completing reports.

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 City Attorney's Office, as appropriate.

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#### **305.9 CRITICAL INCIDENT STRESS DEBRIEFING**

Following an officer-involved shooting or death, the Missoula Police Department shall facilitate a Critical Incident Stress Debriefing in accordance with the Wellness Program Policy.

#### **305.10 TACTICAL DEBRIEFING**

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.

#### **305.11 MEDIA RELATIONS**

Any media release shall be prepared with input and concurrence from the supervisor and the department representative responsible for each phase of the investigation. Releases will be available to the Shift Commander, Detective Division Captain and Public Information Officer in the event of inquiries from the media.

No involved MPD officer shall make any comment to the media unless they are authorized by the Chief of Police or their 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.

## Attachments

## **Public Safety Advisory.pdf**

## Public Safety Advisory and Questions

Case number \_\_\_\_\_ Date \_\_\_\_\_

### Directions to the on scene supervisor.

You are required to compel the involved officer(s) to make a public safety statement. **You shall electronically record the questions and answers as well as write the answers on this form. You may not ask additional questions unless you can clearly articulate the need to do so because of unanticipated circumstances that require additional public safety questions.** Any additional questions must be written on this form as well as the answers to those questions. The following statement must be read before any public safety questions are asked.

Officer \_\_\_\_\_, I am directing you to give me a public safety statement. Due to the immediate need to take action, you are ordered to answer the questions listed below, as well as any others that are determined to be necessary in order to address public safety concerns. If you refuse to answer these questions relating to the performance of your official duties, you will be subject to departmental discipline, which could result in your dismissal from the department. **At this time and to the best of your knowledge please provide answers to following questions.**

1. Do you know of anyone who has been injured or is dead?

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2. Where are they?

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3. Do you know where the suspect(s) is now?

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4. If the suspect(s) is gone, how did they leave?

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5. What is the suspect(s) description?

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6. If the suspect(s) left in or on a vehicle, what kind of vehicle is it?

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7. What is the suspect's last known direction of travel?

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8. Do you know of any witnesses?

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9. Where are the witnesses?

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10. Do you know of any evidence that needs to be protected?

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11. Where were you?

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12. Where was/were the suspect(s)?

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13. Did the suspect use a weapon?

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14. If the weapon was a firearm or anything that fires a projectile, was it fired?

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15. In what direction was the weapon fired?

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16. Was the weapon fired in more than one direction?

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17. Do you know where the weapon is now?

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18. Did you fire a weapon?

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19. What weapon did you fire?

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20. In what direction did you fire?

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21. Did you fire in more than one direction?

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22. Did you use any weapon, other than a firearm?

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23. Where is/are your weapon(s) now?

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Officer \_\_\_\_\_, in order to prevent the contamination of your statement, I order you not to discuss this incident with anyone, including your supervisors or staff officers, prior to the arrival of any assigned investigators, with the exception of your legal representative.