

Investigations of Officer Involved Shootings and Firearm Discharges

8.11.01 PURPOSE

This order outlines the rules and procedures to be followed in the investigation, review, and reporting of officer-involved shootings and firearm discharges.

8.11.02 DEFINITIONS

- A. Officer involved shooting (OIS)** – A member’s discharge of a firearm that results in the physical injury or death of a person, even if it is a negligent discharge. Any intentional discharge where a suspect is not injured is included in this definition. Incidents involving self-inflicted injury or death are excluded.
- B. Officer involved discharge** – A member’s unintentional discharge of a firearm. Shooting at, injuring, or killing animals falls into this category, as does a negligent discharge that does not cause injury.

8.11.03 POLICY

The San Francisco District Attorney’s Office (SFDA) is the primary investigative entity in the determination of criminal conduct on the part of the OIS member; the San Francisco Police Department (Department) is responsible for the administrative investigation and any relevant parallel investigation into the OIS. (*Memorandum of Understanding Regarding the Investigation of Officer-Involved Shootings, In-Custody Deaths, and Uses of Force Resulting in Serious Bodily Injury* [MOU]).

Nothing in this order shall prohibit a member from taking reasonable actions to protect their safety or the safety of another person.

8.11.04 INVESTIGATIVE PROCEDURES

- A. Investigative Responsibility** – OISs are investigated in two separate venues:
 - 1. **Criminal Investigations** – SFDA will conduct the criminal investigation of the OIS in accordance with the MOU.
 - a. Prior to any administrative interviews, SFDA shall have an opportunity to request to interview involved members in the criminal investigation. Members are reminded that participation in the interview is voluntary and that 5th Amendment

- protections apply. Interviews shall take place either at the SFDA's Office, the San Francisco Police Officer's Association office, or at the Department's Headquarters.
- b. The California Department of Justice (CAL-DOJ) will investigate on-duty incidents involving the shooting deaths of unarmed civilians. Shootings committed by officers while off duty are considered OISs only if the officer is acting under color of authority (AB1506; California Gov. Code § 12525.3).
 - i. "Unarmed civilian" is "anyone who is not in possession of a deadly weapon" (California Gov. Code § 12525.3, subd. (a)(2).)
 - ii. Replica firearms are not considered deadly weapons unless they are used in some particular manner likely to produce death or great bodily injury (e.g., as a bludgeon).
 - c. The Department's Investigative Services Detail (ISD) will investigate any ancillary crimes that led to the OIS and is responsible for crime scene management.
2. **Administrative Investigations** – The Internal Affairs Division (IAD) and the Department of Police Accountability (DPA) (SF Admin Code 96.11) will separately conduct administrative investigations into possible violations of Department policy.
- a. Compelled Interview - If a member chooses not to make a statement in the criminal investigation, the Commanding Officer of the Risk Management Office (RMO) 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.
 - 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. Compelled statements shall not be shared with the criminal investigation.
3. **Airport** – Incidents occurring on San Francisco International Airport (SFO) property or surrounding San Mateo County shall be investigated by the San Mateo County Sheriff's Office (SMCSO) in conjunction with the San Mateo County District Attorney's Office (SMCDAO).
- a. IAD will conduct an administrative investigation of any reports shared by SMCSO and SMCDAO.
 - b. DPA does not have jurisdiction to investigate OIS incidents occurring at SFO or surrounding San Mateo County property (SF Admin Code 96.11). However, per SF Charter Section 4.136(d), DPA has authority to investigate any complaints regarding uses of force, misconduct, or allegations of improperly performed duty by members.
 - c. The CAL-DOJ will investigate incidents involving unarmed civilians (California Gov. Code § 12525.3).

B. Notifications for Officer Involved Shootings – Actions and notifications at the scene should be guided by DGO 8.01 *Major and Critical Incident Evaluation and Notification*, and in accordance with the MOU. In summary:

1. If practical, the involved member should notify the Department of Emergency Management (DEM), a supervisor of the district in which the shooting took place, and when applicable, their own chain of command.
2. A supervisor of the district in which the shooting took place shall respond to the scene, ensure that their chain of command and the Department Operations Center (DOC) are notified, and establish a Command Post.
3. The supervisor will ensure the crime scene and witnesses are secured prior to obtaining the Public Safety Statement (PSS).
4. DOC shall make the required notifications as directed by their unit order(s).

C. Notifications for Officer Involved Discharges

1. If practical, the involved member should notify DEM, a supervisor of the district in which the discharge took place, and when applicable, their own chain of command.
2. When practical, the Platoon Commander shall notify the member's Commanding Officer.

D. Officer Involved Shootings or Firearm Discharges Outside of the City and County of San Francisco (except at an approved range or during lawful recreational activities)
A member, whether on or off duty and as soon as practical, should do the following:

1. Absent exigent circumstances, remain at the scene of the discharge and notify the local law enforcement agency.
2. Notify a supervisor of the member's unit.
3. Notify DOC.

E. Scene – On-scene management and responsibility is governed by the MOU. As scene safety permits, the member involved should limit their investigation and activity to the following:

1. Pistol:
 - a. No attempts to reload the firearm or remove the magazine shall be made.
 - b. De-cock, holster, and "strap in" the pistol.
 - c. Once the firearm is "strapped in," do not remove the weapon from the holster until directed to do so by the ISD investigator.
2. Shotgun/Rifle – The firearm should be:
 - a. Placed on "Safe,"
 - b. Left in the same condition as when fired, and
 - c. Isolated in a secure location.
3. Request medical assistance for injured people.
4. Protect the crime scene and preserve evidence.

5. Able-bodied, involved members shall not be disarmed until Range staff are able to provide a replacement firearm.

F. Public Safety Statement – Information obtained by a supervisor using questions intended to determine existing threats to public safety, render aid to anyone injured during the incident, identify transitory evidence that must be preserved, and gather time-sensitive information.

Due to the exigent nature of this information, the statement may be taken from the officer without the benefit of representation, and the Public Safety Statement SFPD 544 (PSS) is considered a compelled statement.

This task should be handled by an uninvolved supervisor, barring exigent circumstances, and taken in the presence of only the supervisor and the involved member. If there are multiple involved members, the supervisor should obtain the PSS from each member separately, if feasible.

It is not the responsibility of the supervisor to conduct a comprehensive interview of the involved member, and the supervisor shall refer to the PSS.

Every OIS incident is unique, and there may be other appropriate and necessary PSS questions that a supervisor needs to ask that are not listed on SFPD 544. Supervisors are reminded not to ask, “Why?” or “What happened?”

1. Prior to taking the PSS, the supervisor shall deactivate their own body worn camera (BWC), ensure the involved member’s BWC is turned off, and collect the involved member’s BWC.
2. The supervisor shall maintain custody of the involved member’s BWC until custody is transferred to ISD.
3. Before end of watch, the supervisor shall prepare a memorandum, documenting the PSS actions taken at the scene, including the BWC seizure and chain of custody. The memo shall be sent directly to the officer in charge of IAD.

G. Administrative Protocols for Officer Involved Shootings

1. All members shall be afforded all substantive and procedural rights and remedies as provided by applicable law, including without limitation the Public Safety Officers’ Bill of Rights (DGO 2.08 *Peace Officer Rights in Disciplinary Investigations*).
2. Upon a supervisor’s arrival on scene and when safe to do so, the supervisor shall take the PSS and custody of the involved member’s BWC, as noted above.
3. The supervisor shall have the involved member escorted from the scene to a Department facility, as directed by ISD. If more than one member is involved in the discharging of firearms, absent exigent circumstances, the members shall be kept separate from one another and shall not discuss the incident with one another prior to being interviewed.

4. Critical Incident Response Team (CIRT) may assist the involved member prior to their interview with investigators. CIRT members and involved members are reminded that facts or details of the shooting shall not be discussed.
5. Members involved in an OIS will be reassigned to their respective Bureau Headquarters for a minimum of 5 calendar days. This reassignment is administrative only and in no way shall be considered punitive.

H. Administrative Protocol for Officer Involved Discharges

1. A member who discharges a firearm in an officer-involved discharge shall be assigned to their respective Bureau Headquarters. This reassignment is administrative only and in no way shall be considered punitive.
2. The member shall not return to their regular assignment for a minimum of 5 calendar days or unless the Chief of Police (Chief) determines the member may return to their assignment.

8.11.05 RETURN TO DUTY

A. Officer Involved Shootings

1. Within 5 to 15 calendar days of an officer-involved shooting, the Chief shall convene a panel to determine the involved member's return to duty. The panel shall include:
 - The Deputy Chief of the Investigations Bureau
 - The Deputy Chief, Commander, and Captain of the involved member's unit
 - Commander of RMO
 - Commanding Officers of ISD and IAD
 - Representative from the Behavioral Science Unit
2. After meeting with the panel, the Chief shall determine if the involved member should be returned to their regular assignment but only after completion of any mandatory debriefing (DGO 8.04 *Critical Incident Response Team*) and any recommended retraining. This decision, including the factors supporting the decision, shall be documented in a report provided to the Police Commission. This report will be part of the officer's confidential personnel file and shall not be disclosed to the public except by court order.

A decision by the Chief not to return an officer to their regular assignment is administrative only and in no way shall be considered punitive.

B. Officer Involved Discharges

1. The Commanding Officer of the member involved is responsible for conducting a firearms discharge investigation, including negligent discharges.
2. The Commanding Officer may delegate this investigation to another Commissioned

Officer; however, the Commanding Officer shall be responsible for the proper conduct of the investigation, as well as documenting the appropriate findings and recommendations in an investigative summary.

3. The Commanding Officer's Bureau Chief shall set a due date for this investigation which shall not exceed 60 calendar days.

8.11.06 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.

8.12.07 STATE-MANDATED REPORTING

- A. ISD shall make the notification to the CAL-DOJ (California Gov. Code § 12525.3).
- B. The incident will also be reported by ISD in the monthly submission to the CAL-DOJ that includes all use-of-force by a peace officer resulting in a civilian's death (California Gov. Code §12525.2).

References

DGO 2.07, *Discipline Process for Sworn Members*
DGO 2.08, *Peace Officer Rights in Disciplinary Investigations*
DGO 3.10, *Serious Incident Review Board*
DGO 8.01, *Major and Critical Incident Evaluation and Notification*
DGO 8.04, *Critical Incident Response Team*
DGO 10.11, *Body Worn Cameras*
DGO 11.04, *Peer Support Program*
DGO 11.13, *Directed and Recommended Referrals to the SFPD Behavioral Science Unit*
California Government Code §12525