

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 another 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 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 deputies.
- A civil investigation to determine potential liability.

310.3 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.

310.3.1 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 Modoc County Sheriff's Office would control the investigation if the suspect's crime occurred in Alturas.

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.

310.3.2 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 office is involved, the criminal investigation will be handled according to the Criminal Investigation section of this policy.

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

310.3.3 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.

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, the first uninvolved deputy will be the deputy in-charge and will assume the responsibilities of a supervisor until properly relieved. This officer/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 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 SHIFT SUPERVISOR RESPONSIBILITIES

Upon learning of an officer-involved shooting or death, the watch commander shall be responsible for coordinating all aspects of the incident until he/she is relieved by the Sheriff or Undersheriff.

All outside inquiries about the incident shall be directed to the Sheriff.

310.4.3 NOTIFICATIONS

The following person(s) shall be notified as soon as practicable:

- Sheriff
- Patrol Division Commander
- Officer-Involved Shooting Protocol rollout team
- Outside agency investigator (if appropriate)
- Administration supervisor
- Civil liability response team
- Psychological/peer support personnel
- Chaplain
- Coroner (if necessary)

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- Involved officer's agency representative (if requested)
- Public Information Officer

310.4.4 INVOLVED OFFICERS

The following shall be considered for the involved officer:

- (a) Any request for legal or union representation will be accommodated.
 1. Involved MCSO 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.
 2. Requests from involved non-MCSO 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 (Government Code § 3303(i)).
- (d) A licensed psychotherapist shall be provided by the Office to each involved MCSO deputy. A licensed psychotherapist may also be provided to any other affected MCSO 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 MCSO deputy 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.

310.4.5 SUPERVISOR RESPONSIBILITIES

Upon arrival at the scene, the first uninvolved MCSO 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.

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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 MCSO 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.
- (c) Provide all available information to the Shift Supervisor and Dispatch. If feasible, sensitive information should be communicated over secure networks.
- (d) Take command of and secure the incident scene with additional MCSO 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 MCSO deputy should be given an administrative order not to discuss the incident with other involved officers or MCSO 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.

310.4.6 NOTIFICATION TO DEPARTMENT OF JUSTICE

The California Department of Justice (DOJ) is required to investigate an officer-involved shooting resulting in the death of an unarmed civilian. The Shift Supervisor should promptly notify the DOJ in all incidents involving an officer-involved shooting resulting in the death of an unarmed civilian, including where it is undetermined if the civilian was unarmed.

For purposes of notification, "unarmed civilian" means anyone who is not in possession of a deadly weapon (Government Code § 12525.3).

310.5 CRIMINAL INVESTIGATION

The District 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 agency may be assigned to partner with investigators from outside agencies or the District Attorney's Office to avoid duplicating efforts in related criminal investigations.

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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) MCSO supervisors and Administration personnel should not participate directly in any voluntary interview of MCSO 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 the officer's choosing or an attorney prior to speaking with criminal 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 MCSO DEPUTIES

In the event that suspects remain outstanding or subject to prosecution for related offenses, this office shall retain the authority to require involved MCSO deputies to provide sufficient information for related criminal reports to facilitate the apprehension and prosecution of those individuals (Government Code § 3304(a)).

While the involved MCSO deputy 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 MCSO 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

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reasonable steps to promptly coordinate with criminal investigators to utilize available 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 of identification, deputies should attempt to identify the witness prior to his/her departure.
- (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 Modoc County Sheriff's Office.
 - 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 supervisor to assign appropriate investigative personnel to handle the investigation of related crimes. Modoc County Sheriff's office investigators will be assigned to work with investigators from the District Attorney's Office and may be assigned to separately handle the investigation of any related crimes not being investigated by the District Attorney's Office.

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

310.6 ADMINISTRATIVE INVESTIGATION

In addition to all other investigations associated with an officer-involved shooting or death, this office will conduct an internal administrative investigation of MCSO deputies to determine conformance with Modoc County Sheriff's Office policy. The investigation will be conducted under the supervision of the Undersheriff and will be considered a confidential deputy personnel file.

Interviews of members shall be subject to office policies and applicable laws (see the Personnel Complaints Policy).

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- (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 to not 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 groups prior to being interviewed (Government Code § 3303(i)).
 - 3. Administrative interviews should be recorded by the investigator. The deputy may also record the interview (Government Code § 3303(g)).
 - 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 *Lybarger* or *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 Internal Affairs Investigator shall compile all relevant information and reports necessary for the Sheriff's Office 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 Board, which will restrict its findings 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.

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310.7 CIVIL LIABILITY RESPONSE

A member of this office may be assigned to work exclusively under the direction of the legal counsel 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 DEBRIEFING

Following an officer-involved shooting or death, the Modoc 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.

310.8.1 TACTICAL DEBRIEFING

A tactical debriefing should take place to identify any training or areas of policy that need improvement. The department head 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.

310.9 MEDIA RELATIONS

Any media release shall be prepared with input and concurrence from the supervisor and Sheriff's Office representative responsible for each phase of the investigation. Releases will be available to the patrol supervisors, Undersheriff, Sheriff, dispatch and PIO in the event of inquiries from the media.

The Sheriff's Office shall not subject any involved MCSO deputy to visits by the media (Government Code § 3303(e)). No involved MCSO deputy shall make any comment to the media unless he/she is authorized by the Sheriff or his designee. Sheriff's Office 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.

310.10 REPORTING

If the death of an individual occurs in the Modoc County Sheriff's Office's jurisdiction and qualifies to be reported to the state as a justifiable homicide or an in-custody death, the Undersheriff will ensure that there is enough information to meet the reporting requirements (Penal Code § 196; Penal Code § 13022; Government Code § 12525).