



DEPARTMENTAL REGULATIONS
CONCORD POLICE DEPARTMENT

PROCEDURE 57
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Chief of Police

OFFICER-INVOLVED FATAL INCIDENT: COUNTY AGENCY PROTOCOL

A. POLICY STATEMENT

The investigation of an incident which involves the death of a police officer, or the death of a citizen as a result of a police action, is an extremely complex and demanding one that requires the utmost objectivity and thoroughness. The Concord Police Department has a legal, moral and professional responsibility to seek the truth above all other interests. Therefore, the Concord Police Department has entered into an agreement by which we will work directly with the Contra Costa County District Attorney's Office to investigate incidents that involve the death or great bodily injury of a police officer, or the death or great bodily injury of a citizen as a result of a police action.

B. GENERAL

This procedure has been developed to promulgate and further define the protocol for Officer-Involved Fatal Incidents which has been adopted by the law enforcement agencies in Contra Costa County.

C. DEFINITION OF TERMS

1. Officer-Involved Fatal Incident

An incident directly involving two or more persons in which an on or off duty police agency employee is involved as the actor or victim and where death or serious likelihood of death results. Such incidents include but are not limited to:

- .1 Intentional and accidental shootings.
- .2 Intentional and accidental use of any deadly or dangerous weapon.
- .3 Assaults upon police employees who are acting for a law enforcement purpose.
- .4 Attempts to effect an arrest or otherwise gain physical control over a person for a law enforcement purpose.
- .5 Deaths of persons while in police custody or under police control.
- .6 Physical altercations, such as mutual combat in which the police agency employee is acting in a private capacity for other than law enforcement purposes.
- .7 Vehicle collisions occurring in Contra Costa County except those involving:
 - .01 Off duty non-sworn personnel.
 - .02 Solo vehicle collisions where only the police agency employee is fatally injured.

2. Venue Agency
The agency or agencies within whose geographical jurisdiction the incident occurs.
3. Employing Agency
The agency by whom the involved police agency employee is employed or otherwise associated.
4. Proximate Cause
A cause which, in a natural and continuous sequence, produces the injury, and without which the injury would not have occurred.
5. Actor
A person whose act is the proximate cause of injury to another person or a person who intends that his act be the proximate cause of injury to another person.
6. Incident Investigators
Those persons assigned by the venue agency and the District Attorney's Office to conduct the criminal investigation.
7. Employee
An employee is defined as any individual who receives compensation for services rendered to a police department or who has reserve police officer status with a public entity.
8. Delegate
As utilized in this procedure, shall refer in the absence of the Chief of Police to the following succession of command: Acting Chief of Police, Investigations and Administrative Services Division Commander.

D. BIFURCATION, INVESTIGATIVE OBJECTIVES

All inquiries, conducted by the Concord Police Department, in whole or in part, shall consist of two separate and distinct investigations. The first shall be entitled the criminal investigation; the second, the administrative investigation.

Both the criminal and administrative investigations shall be pursued with equal vigor. However, in the event that one must be given preference, the needs of the administrative investigations shall be secondary to the criminal investigation.

1. Criminal Investigation
 - .1 The intent of the Criminal Investigation is to determine whether or not the incident involves a criminal violation of Municipal, State, or Federal Law.
 - .2 In the event a violation of criminal law exists:
 - .01 The identity of the person or persons responsible for violation of the law.
 - .02 The degree of the crime,

- .03 Any legal or factual defense to the crime,
 - .04 The existence of any factors which could mitigate or aggravate punishment for the conduct.
- .3 All information obtained as a result of the criminal investigation shall be made available on a timely basis to:
- .01 The District Attorney as provided for in Section F.4 of this procedure.
 - .02 The administrative investigator.
2. Administrative Investigation
- .1 The intent of the Administrative Investigation is to provide the Chief of Police with the facts and circumstances surrounding an officer-involved fatal incident. Specifically is should address, but not necessarily be limited to the following:
 - .01 A review of the Concord Police Department employee's actions to determine whether or not a violation of City policy and/or department regulation has occurred.
 - .02 In the event a violation of City policy and/or department regulation has occurred, the communication of sufficient facts and circumstances to enable the Chief of Police to take whatever personnel action he deems to be appropriate.
 - .03 The communication of sufficient facts and circumstances to the Chief of Police thus allowing for a continuing analysis of the department's organization effectiveness and where appropriate, effect changes which will enhance the public service. Such changes may include but are not limited to the department's policies, procedures, orders, administrative instructions, training, methods, and/or the manner in which department personnel are utilized.
 - .2 All administrative investigations shall, unless otherwise directed by the Chief of Police, be conducted by the Professional Standards Unit, as provided for in Departmental Procedure No. 31.
 - .3 All information obtained during the course of an administrative investigation shall be deemed to be confidential and shall not, absent specific approval of the Chief of Police, or his delegate, or an order of court, be released. This restriction shall include persons involved in the criminal investigation and the District Attorney's Office.

E. CONTRA COSTA COUNTY PROTOCOL, INVESTIGATIVE RESPONSIBILITY

- 1. The primary responsibility for the criminal investigation of officer-involved fatal incidents in Contra Costa County rests with the venue agency except as provided for in Section E.4 of this procedure. Unless otherwise directed by the Chief of Police, or his delegate, any officer-involved fatal incident occurring in the City of Concord shall be investigated by the Concord Police Department.
- 2. Contra Costa County protocol provides that the venue agency may seek investigative assistance from the sheriff, district attorney or other law enforcement agency(s). In the event assistance is provided from another agency, the protocol provides that the venue agency may elect to maintain control of the investigation itself, or it may elect to relinquish the primary responsibility for the investigation to the agency from which is has obtained assistance.
 - .1 It shall be the responsibility of the Chief of Police, or his delegate, to determine the appropriateness of requesting or providing such assistance.

- .2 The basis for providing investigative assistance may involve, but not necessarily be limited to the following:
 - .01 Whether or not the venue agency can marshal the necessary resources and expertise to conduct a thorough and expedient investigation.
 - .02 Whether or not the incident has clearly risen from continuing criminal events which have occurred in one jurisdiction and the fatal stroke has been inflicted in another.
 - .03 Whether or not any circumstances exist which have a reasonable likelihood of inhibiting the disclosure of the truth and/or would clearly create an atmosphere undermining the public's faith in the investigative process.
 - .04 Whether or not there are sufficient personnel available given other service needs, to provide such assistance.
3. In the event an on-duty police officer is involved as an actor in an incident which occurs outside the geographical jurisdiction of his/her agency, but was acting in response to a criminal matter originating in his/her jurisdiction, the agency having venue may defer vested authority to the involved officer's jurisdiction.
 - .1 The acceptance or surrender of such an investigation by the Concord Police Department shall be the responsibility of the Chief of Police, or his delegate.
 - .2 Incidents which by nature fall within the jurisdiction of one or more agencies shall be jointly investigated by the venue agencies as they agree. The Chief of Police, or his delegate shall be responsible for clearly and promptly reaching this agreement as to who shall serve as the primary investigative agency. (See Penal Code Sections 781, 782, 783.5 and 790). In the absence of an agreement or until one can be reached, the agency having primary responsibility and authority for the investigation of an incident shall be in the following order:
 - .01 The agency within whose jurisdiction the fatal stroke was inflicted, if readily and definitely ascertainable.
 - .02 The agency whose on-duty employee acting apparently for a law enforcement purpose was the actor of victim.
 - .03 The agency whose jurisdiction the body was first discovered after infliction of the injury.
4. Officer-Involved Fatal Incidents in which a vehicle collision is the apparent cause of death shall be investigated by the accident investigation specialists from the California Highway Patrol subject to the following:
 - .1 The primary responsibility for the collection of physical evidence shall rest with the California Highway Patrol. On scene collaboration with the Contra Costa County Sheriff's Criminalistic Laboratory and the Concord Police Department Crime Scene Identifications Unit is encouraged.
 - .2 In incidents where a vehicle collision or other vehicular movement is involved but is not the direct cause of the fatality or where the vehicle collision is one of a series of events resulting from a violation of law apart from the collision itself, the Concord Police Department shall retain responsibility for the investigation but may obtain investigative assistance from the California Highway Patrol in that phase of the incident investigation.
5. Crime Scene Responsibility

- .1 The initial responsibility for the preservation and security of the scene(s) rests with the venue agency as provided for in Section F.2 of this procedure.
- .2 Once the scene(s) is stabilized, the collection and subsequent analysis shall normally be the responsibility of the Contra Costa County Sheriff's Criminalistic Laboratory except as follows:
 - .01 Where the incident involves a death resulting from a traffic collision and is provided for under Section E.4 of this procedure.
 - .02 Where the involved agencies (the venue, the employing and the District Attorney's Office) each concur that the laboratory need not be called and the responsibility for the crime scene can be deferred to another unit or agency.
- .3 The Concord Police Department's Crime Scene Investigation Unit may, with the approval of the Investigations and Administrative Services Commander, provide assistance to the laboratory in the processing of the crime scene(s). Any such assistance, however, will be in accordance with Administrative Instruction Uniform No. 1, and under the laboratory's direction.

F. DUTIES AND RESPONSIBILITIES OF OFFICER IN CHARGE

1. Notification

Upon identifying an occurrence as being an Officer-Involved Fatal Incident wherein personnel from the Concord Police Department are involved, either directly or indirectly, or where the incident occurs in the City of Concord's jurisdiction, the Watch Commander, or in their absence the field supervisor, shall insure that notifications are made to the Chief of Police and affected command staff.

- .1 Upon receiving information that an officer-involved fatal incident has occurred, the Designated Command Officer shall be responsible for ensuring that the following notifications are made as promptly as possible:
 - .01 The Chief of Police.
 - .02 The District Attorney's Office, Homicide Watch Deputy.
 - .03 Where deemed appropriate, the California Highway Patrol.
 - .04 The Contra Costa County Sheriff's Criminalistic Laboratory.
 - .05 The Investigations & Administrative Services Division Commander, or in their absence, the ranking officer available from the Investigations & Administrative Services Division.
 - .06 The Major Crimes Unit supervisor.
 - .001 The Traffic Bureau supervisor when the incident involves a traffic collision.
 - .07 The press as provided for in General Order No. 4.
 - .08 The Coroner's Office.
 - .09 Professional Standards Unit.
 - .010 The Special Operations Lieutenant if the death occurs in the temporary holding facility.

- .2 In the event the Chief of Police is unavailable, the designated Command Officer shall advise the City Manager of such an occurrence.

2. Crime Scene Management

The Incident Commander, or in their absence the ranking officer in charge, shall ensure that the following steps and/or principles are adhered to:

- .1 Emergency life saving measures are to be given first priority.
- .2 In the event an individual is transported to a medical facility with fatal or imminently fatal injuries an officer shall accompany the person in the same vehicle to accomplish the following:
 - .01 Preserve, safeguard, and maintain the chain of evidence.
 - .02 Obtain a dying declaration, if applicable.
 - .03 Maintain custody, if the person has been arrested.
 - .04 Provide and receive information from the medical personnel.
- .3 The scene(s) shall be secured immediately with a perimeter established sufficiently large to safeguard any evidence. Access should be limited to only those officials who must enter due to the essential and immediate nature of their duties. This exclusion shall include fire and ambulance personnel. A log shall be maintained of the identities of all persons entering the scene, including the time of their entry and exit, and the reason for doing so. A similar record shall be maintained for any property/evidence removed.
- .4 Unless circumstances clearly indicate otherwise, evidence should be left in place and undisturbed pending arrival of the criminalistic laboratory personnel.
- .5 In the event the crime is not secure, or there is a likelihood that the evidence will be endangered or lost, such items of evidence shall be promptly collected and safeguarded.
 - .01 Where practical, evidentiary items should be photographed in place.
 - .02 A record shall be maintained of any item of evidence collected by persons other than those employed by the criminalistic lab or the Coroner's Office. Such a record shall include the place from which the item was seized and a description of its original condition.
- .6 In cases involving the use of a firearm, the officer in charge shall:
 - .01 Examine the firearms of all officers who were present at the time of the incident to ensure that all discharged firearms are identified and collected.
 - .02 Collect, where appropriate for trace evidentiary purposes, the holsters of all weapons that have been discharged.
 - .03 Ensure that any sidearm and/or issued equipment that has been seized is replaced as soon as possible, unless reason dictates otherwise.
 - .04 Any officer receiving or collecting a weapon shall:
 - .001 Record the general condition of the weapon; i.e., trace evidence, hammer back, etc.

- .002 Make no attempt to clear, open or unlock a weapon.
- .003 Not perform any disarming functions other than placing the safety or lowering the hammer.
- .05 The collected weapons or instruments shall be surrendered to the Contra Costa County Sheriff's Criminalistic Laboratory as soon as practical. Any alterations as to the original condition of the weapons or instruments shall be documented in writing and given verbally to the person(s) receiving the evidence.
- .06 Any officer receiving a weapon or instrument from another person or obtaining it otherwise shall note its serial number and maintain the chain of evidence.
- .07 Six rounds of the same type of ammunition fired will be collected from each shooting officer or from another appropriate source if the officer has insufficient similar rounds remaining.
- .08 Firearms which do not need to be retained in evidence as determined by the criminalistic laboratory, will be returned as promptly as possible to the appropriate police agency.
- .7 Officers who were present at the scene when the incident occurred, shall be relieved of their duties at the scene as promptly as possible and dispatched to the Concord Police Department absent other needs.
 - .01 Whenever possible, these officers shall be driven to the Concord Police Headquarters by an officer who is not directly involved in the incident.
 - .02 Officers who were involved as actors shall be given first priority.
 - .03 Officers not employed by the Concord Police Department may, at the option of their employer, be transported to their parent agency.
- .8 The officer in charge shall take whatever steps are necessary to ensure that prior to the formal interview with the criminal investigator that the involved officer(s) do not discuss the incident nor are questioned. This will normally necessitate the assignment of an uninvolved officer to stand by with the involved officer(s).
 - .01 In the event an involved officer is desirous of not being physically present with other involved officers, he/she shall be separated from the others and an uninvolved officer assigned to remain with him/her.
 - .02 In the event an involved officer wishes to consult with a person(s) representing his legal, psychological, or administrative interests, this section shall not apply and the request shall be granted.
- 3. Case Management
 - .1 Criminal Investigation:

The Chief of Police, or designee, shall appoint a supervisory officer/command officer and support staff to assume responsibility for the incident investigation.
 - .2 Administrative Investigation:

The Professional Standards Unit shall assume responsibility for the Administrative Investigation. In the absence of the PSU Investigator, the Chief of Police, or designee, shall appoint a supervisory/command officer to conduct the Administrative Investigation.

4. The Role of the District Attorney

- .1 The District Attorney has independent investigative powers and responsibilities and may conduct an investigation apart from or in conjunction with the venue agency.
- .2 The role of the District Attorney's Office shall be to:
 - .01 Assist and advise other criminal investigators regarding legal issues associated with the investigation.
 - .02 Monitor the conduct of the police investigation and to ensure its integrity.
 - .03 Where deemed appropriate by the District Attorney to conduct an investigation independent and apart from the police investigation.
 - .04 Following completion of the investigation, determine if criminal liability exists and to prosecute if appropriate.
- .3 In instances where the Concord Police Department is the primary investigative agency, the Concord Police Department shall maintain lead and control of the investigation.

5. Interviews with Police Employees - Criminal Investigation

- .1 The Peace Officer's Bill of Rights does not apply to interrogations conducted solely and directly with alleged criminal activities.
- .2 Interviews with police employees, whether actors, victims or witnesses to the incident, shall be conducted by the criminal investigators. Normally, interviews with police employees will be tape recorded.
- .3 Any request by an actor to consult a representative prior to or during an interview shall be granted.
 - .01 The consultation shall not be allowed to materially impede the investigation.
 - .02 The representative shall not be permitted to consult with more than one witness at a time.
 - .03 To ensure the integrity of the investigation representatives shall be cautioned regarding relaying recollections and other comments about the incident among the interviewees.
- .4 Attendance at the interview shall be restricted to:
 - .01 The principal investigator(s) from the venue agency who shall oversee and direct the structure of the interview.
 - .02 A member of the District Attorney's staff.
 - .03 If requested by the interviewee, a representative.
- .5 The criminal investigators shall avoid discussing matters that are solely of an administrative or non-criminal interest deferring such topics to the administrative investigator(s).

- .6 In the event the interview focuses or is likely to focus on matters which could lead to punitive action against the interviewee and the interview is being conducted by or at the direction of his/her employing agency the provisions outlined under Government Code Section 3300 et. seq., shall be adhered to.
6. Interviews with Police Employees - Administrative Investigation
 - .1 Administrative investigation interviews shall be conducted after criminal investigation interviews have been completed or declined by the involved employee.
 - .2 Attendance and/or monitoring of administrative interviews is restricted to persons involved in the administrative investigation.
 - .3 All administrative interviews shall be conducted in accordance with Departmental Procedure No. 31.
 7. Drugs/Alcohol Screening
 - .1 If the criminal investigator(s) determines that a police employee's state of sobriety is relevant to the criminal investigation, they shall proceed as they would with any civilian subject in a similar situation. Their options include:
 - .01 Obtaining the blood and/or urine sample as a result of the subject's valid consent.
 - .02 Where applicable obtaining a sample through the procedure established in Section 13353 of the California Vehicle Code.
 - .03 Obtaining the sample incidental to the arrest of the subject for a crime.
 - .2 During the course of an Administrative Investigation related to an Officer-Involved Fatal Incident, it shall be the policy of the Concord Police Department to obtain blood and urine samples from any department employee who was an actor in such an incident.
 8. Autopsy
 - .1 Prior to the postmortem examination, one of the primary criminal investigators, a member of the District Attorney's staff, a member of the Contra Costa County Sheriff's Criminalistic Laboratory shall brief the pathologist who is to perform the autopsy. The briefing shall include but not be limited to any information which may be relevant to the establishment of the cause, manner and means of death.
 - .2 The collection and preservation of physical evidence at the autopsy shall be the responsibility of the unit(s) previously designated to process the crime scene unless otherwise determined by the supervising officer in charge of the incident investigation.
 - .3 If the employing agency is one other than the venue agency, it may have a representative present as an observer subject to the discretion of the coroner's office.

G. ADMINISTRATIVE LEAVE/TEMPORARY ASSIGNMENT

1. It shall be the policy of the Concord Police Department to place employees involved as actors on administrative leave with pay pending administrative review.
2. Administrative leave will commence and terminate at the direction of the Chief of Police.

3. Officers involved as actors in the incident may be reassigned to another departmental function for a period of time determined solely by the Chief of Police.

H. PSYCHOLOGICAL SERVICES

It shall be the policy of the Concord Police Department to direct all employees involved as actors in a fatal incident to a department designated psychologist or psychiatrist for assistance and evaluation. Attendance is mandatory. Other employees involved in the incident may be referred, at the discretion of the Chief of Police.

I. NEWS MEDIA RELATIONS

1. As soon as practical, the Command Officer shall appoint a staff officer to act as public information officer who will be guided by and shall act in accordance with General Order No. 4.
2. In every instance involving the release of information the public's right to know shall be balanced with the privacy rights of the involved individuals and with the interest of the incident and administrative investigations.
3. In the event the Concord Police Department is not the venue agency and the incident involves a Concord Police Department employee, press releases shall be limited to:
 - .1 The employer/employee relationship exclusive of those matters prohibited under Section 3303 of the Government Code.
 - .2 Factual material discovered through the department's administrative investigation of the incident.
 - .3 Information which has been cleared for release by the venue agency.

J. ACCESS TO REPORTS AND EVIDENCE

1. Materials created or collected during the course of the criminal investigation by the Concord Police Department while acting as the venue agency shall be available in a timely manner to agencies having a legally constituted interest in the incident. "Available" as utilized in this procedure is intended to provide a means of distributing knowledge and information as opposed to physical possession of a specific evidence item. Incidents of the transfer, whether temporary or not, of an item of evidence will be determined by the Chief of Police, or his delegate.
2. Agencies identified as having a legally constituted interest in a case shall be limited to:
 - .1 Those which participated in the investigation.
 - .2 The employer of any involved police employee.
 - .3 The District Attorney.
 - .4 The criminalistic laboratory.
 - .5 The Coroner's office.

K. IN-CUSTODY DEATH/ADMINISTRATIVE PROCESS

California Code of Regulations Title 15 Section 1341

Pursuant to California Government Code Section 12525: In the event the incident involves the death of a person who is in custody under the control of the Concord Police Department, the Jail Manager shall, within

ten (10) days of the death, complete the D.O.J. Death In-custody Reporting Sheet and attach a copy of our Incident Report. The Incident Report shall include data extracted from various reports including booking sheets, arrest reports, fingerprint cards, original and supplemental reports. The reporting sheet and supporting documentation shall be submitted to the California Attorney General via the Bureau of Criminal Statistics, Death-in-custody Program, P.O. Box 903427, Sacramento, CA 94203-4270. Additional information contained in General Order No. 47, Article IV, Section 4.02-Incident Reports

1. The required documentation shall be reviewed by the Chief of Police prior to being forwarded to the Bureau of Criminal Statistics.

Within 90 days following an in-custody death, the Jail Manager shall forward a copy of the Coroner's Inquest Report and Death Certificate to the California Attorney General.

2. The Contra Costa County Coroner, in cooperation with the Special Operations Lieutenant, shall review all in-custody deaths of minors with a review team that consists of The Contra Costa County Coroner, Special Operations Lieutenant or other designee, the Contra Costa County Health Departments Emergency Physician, and other health care and supervision staff who are relevant to the incident.

3. In the event of a serious illness, injury or death of a minor in the Concord Police Department Temporary Holding Facility the ranking officer in charge or other designee shall facilitate the notification of the Juvenile Court and the parent, guardian, or person standing in loco parentis.

- .1 Notification shall be coordinated with the District Attorney's Office, the Coroner and the Special Operations Lieutenant.

L. OFFICER-INVOLVED FATAL INCIDENTS OCCURRING OUTSIDE CONTRA COSTA COUNTY FALL OUTSIDE THE GUIDELINES OF THIS PROCEDURE AND SHALL BE HANDLED ON A CASE BY CASE BASIS.