



## **PENNSYLVANIA DISTRICT ATTORNEYS ASSOCIATION OFFICER-INVOLVED SHOOTING INVESTIGATION BEST PRACTICES**

### **I. Introduction**

An officer-involved shooting is a traumatic and sensitive event. Following a shooting, law enforcement must address the immediate safety of people at the scene, the trauma to the person who was shot and officers involved, conducting a careful and unbiased investigation, and the public interest and perception of the event. Officer-involved shootings are unique in many ways and require best practices standards to preserve the integrity of law enforcement.

For purposes of this policy, an “officer-involved shooting” is any discharge of a firearm by an on-duty law enforcement officer which results in death, any bodily injury to another person, or where another person was the target of the firearm discharge (whether the target was struck or not).

There are two main themes that apply throughout this best practices policy. First, the investigation of an officer-involved shooting should be conducted by an

agency that is separate and independent from the agency involved in the shooting. Second, in the case of an officer-involved shooting, the District Attorney will be called upon to render a decision regarding whether the shooting was justified. Therefore, the investigating agency should answer to and be directed by the District Attorney.

Every county in Pennsylvania is different. We have densely populated urban counties, sparsely populated rural counties, and everything in between. These counties have very different resources and interactions between law enforcement agencies. Therefore, the District Attorney for each county shall have the discretion and responsibility to tailor this policy to the specific circumstances and needs of their respective county and the individual case.

The following best practices apply to any officer-involved shooting.<sup>1</sup>

## **II. Policy**

**A. Independent Agency.** The investigation of an officer-involved shooting shall be conducted primarily by a law enforcement agency independent from the agency involved in the shooting (the “Independent Agency”). The use of the Independent Agency avoids any appearance of bias in the investigation. The agency involved in the shooting may play a role in supporting and coordinating with the Independent Agency, which will be important because of that agency’s knowledge of its own internal procedures and policies. However, the Independent Agency maintains ultimate investigative responsibility. In counties where the District Attorney’s Office includes County Detectives, the Detectives may be the designated Independent Agency. In other counties, the Pennsylvania State Police or a separate municipal police Department may be designated.<sup>2</sup>

**B. District Attorney.** At the conclusion of the investigation, the District Attorney of the jurisdiction where the officer-involved shooting took place will be required to make a decision whether the shooting was justified or

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<sup>1</sup> This best practices policy does not address use of force protocols for law enforcement. Those protocols are addressed in Pennsylvania statutory law (18 Pa. Cons. Stat. Ann. §501 *et seq.*) and precedent from the United States Supreme Court (Graham v. Connor, 490 U.S. 386 (1989)).

<sup>2</sup> If an officer from the designated Independent Agency is involved in the shooting, the District Attorney should designate a different outside agency to conduct the investigation. In some smaller counties where the Pennsylvania State Police cover virtually the entire county and there is not another large law enforcement agency nearby, the District Attorney may need to rely upon an independent group with the Pennsylvania State Police to do the investigation (such as a team of investigators from outside barracks).

whether criminal charges should be filed. Because the District Attorney has this responsibility, it is important that the Independent Agency report directly to the District Attorney in order to assure that all necessary investigative steps are followed. The District Attorney shall designate the Independent Agency, and the Independent Agency shall work under the direction of the District Attorney.

- C. **Safety.** When an officer-involved shooting occurs, the first priority is the safety of any injured person and the security of law enforcement personnel. Emergency medical treatment should be provided to any injured person. After such safety and security have been established, the scene is to be secured immediately.
- D. **Securing the Scene.** The scene of the incident shall be fully secured. A perimeter shall be established using crime scene tape and personnel. There shall be only one entry/exit point for the scene. An officer shall be assigned to the entry/exit point to keep a log of any person who enters the scene. No evidence at the scene shall be moved or altered, except where required for safety concerns. If a person is dead at the scene, law enforcement shall shield the body from public view.
- E. **Notification.** Immediately after the scene is secured, the senior commanding officer at the scene shall notify the District Attorney's Office (the "DAO") via police radio. The DAO shall notify the designated Independent Agency who will conduct the investigation. The scene shall remain secured during this time. When the Independent Agency arrives at the scene, the Independent Agency becomes responsible for the scene.
- F. **Firearms.** To the extent possible, any firearms involved in the officer-involved shooting or located at the scene should remain in place and undisturbed prior to the scene being processed. If the scene is fully secured and a firearm is at the scene, an officer should be posted to guard the firearm. If the scene is of such a nature that the firearm cannot be safely left at the scene, officers at the scene should move the firearm to a secure location, but not otherwise alter the condition of the firearm (for instance, do not unload it). If the firearm involved is still in the possession of the officer involved in the shooting, that officer shall surrender his or her firearm to a supervisor. The supervisor then shall secure the firearm for later inspection without altering the condition of the firearm. Any officer involved in the shooting also shall surrender his or her duty belt to a supervisor. All

movements of and transfers of the firearm and duty belt shall be documented.

- G. Processing the Scene.** The Independent Agency shall process the scene for evidence. The Independent Agency shall maintain custody of all recovered evidence until the District Attorney makes a final decision on the nature of the shooting. Some of the standard evidentiary issues to consider when processing the scene include: (1) for a larger scene, it may be useful to use a total station device or similar tool to ensure complete and accurate mapping of the scene; (2) video recording of the scene; (3) securing any video recording of the event, including body-worn cameras, mobile video recorders, civilian-recorded videos, and/or surveillance videos; (4) photographing all critical pieces of evidence, such as location of weapons on-scene; (5) if the person shot at police officers, obtaining gun-shot residue samples from the hands/clothes of the suspect; and (6) processing any firearms, knives, or other weapons for DNA and/or fingerprints.
- H. Multiple Officers Involved.** If multiple officers were involved in the shooting, those officers shall avoid discussing the details of the shooting together both before and after the officers are interviewed. The officers may confirm the well-being of their fellow officer(s). To the extent practicable, after the scene has been secured, the involved officers should be kept separate at the scene, on the ride back to the station, and at the station prior to their respective interviews. The transportation of the involved officers from the scene back to the station (or other location) shall be noted in a report, including who transported each officer.
- I. Interviews.** The Independent Agency shall conduct interviews related to the officer-involved shooting. The initial interview of any officer who discharged his or her weapon during the officer-involved shooting and any officer who witnessed the shooting shall take place as soon as reasonably possible, taking into consideration potential issues of shock and trauma to the officer, as well as any applicable procedures established in a governing collective bargaining agreement. Each officer shall be advised of his or her right to representation prior to any interview. Under normal circumstances, there will be an initial general interview for purposes of public safety and orientation of the scene. There will be a later, more detailed interview after the officers have had an opportunity to decompress and the evidence at the scene has been reviewed. The timing of the interviews will depend on the circumstances of the shooting. Interviews of civilian witnesses shall take

place according to the same timing and procedures. To the extent that there are uncooperative witnesses, the District Attorney may use the resources of an investigating grand jury.

- J. **Photographs.** If possible, the Independent Agency shall photograph the officers involved in the shooting in the uniforms worn by those officers during the shooting.
- K. **Internal Affairs Investigation.** The department of any officer involved in any officer-involved shooting has the discretion to conduct the department's internal affairs investigation into the shooting at the same time as or after the District Attorney's investigation. That department's internal affairs investigation shall be separate and distinct from the District Attorney's investigation.<sup>3</sup> That department's internal policies regarding the work status of any officer shall control regarding those issues.
- L. **Counseling.** Any law enforcement officer involved in an officer-involved shooting should receive counseling after the event. This counseling should be available immediately after the event and on an on-going basis as needed.
- M. **Union Representatives.** The union representative of the officers involved may be present for the interview of the officers and otherwise involved in representing the officers. Therefore, to the extent possible, the union representative should not be involved in any other aspect of the investigation in order to avoid any claim of conflict of interest (for instance, taking possession of the officer's weapon).
- N. **Confidentiality.** Prior to the District Attorney's final decision regarding an officer-involved shooting, all officers involved in the incident and investigation shall maintain complete confidentiality regarding the incident. All media inquiries are to be directed to the DAO.
- O. **Video/Audio Recording Release.** If there is a video/audio recording of the officer-involved shooting, the District Attorney will need to make a decision whether to release the recording publicly. This is a very case-specific decision, requiring the balancing of many factors. In general, the following guidelines are appropriate. If the shooting has been deemed justified, the recording should be released. The public should be allowed to see the basis

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<sup>3</sup> Because of the potential impact of warnings provided under Garrity v. New Jersey, 385 U.S. 493 (1967), the internal affairs investigation may not be commingled with the criminal investigation.

for the prosecutor's decision. If the officer may be or has been charged, the recording should not be released. The Pennsylvania Rules of Professional Conduct specifically restrict prosecutors from releasing material that will "have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter" or "have a substantial likelihood of heightening public condemnation of the accused."<sup>4</sup> The release and widespread public dissemination of a recording where an officer may be or has been charged will make it substantially more difficult to provide for a fair trial.

**P. Preliminary Statement.** The District Attorney shall have the discretion to make a preliminary statement to the public about the factual circumstances of the officer-involved shooting. Because the investigation will still be ongoing at that point, the District Attorney may be limited in the areas that can be covered, but a preliminary statement may be useful for the public to understand the basic issues involved in the investigation. Whether a preliminary statement will be issued will depend on the circumstances of every case.

**Q. Completion of Investigation.** Once the Independent Agency and District Attorney have completed the investigation of an officer-involved shooting, the District Attorney shall publically announce the results regarding whether the shooting was legally justified. The timing will depend on the factual and legal circumstances of the officer-involved shooting. As a general policy, if the shooting is deemed justified, the officers involved will not be named. This follows the general rule that citizens who are not charged with a crime are not identified publicly.<sup>5</sup> If the shooting is deemed not justified and criminal charges are filed, the case will be treated with the same rules that cover other criminal cases.

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<sup>4</sup> See Rules 3.6(a) and 3.8(e) of the Pennsylvania Rules of Professional Conduct.

<sup>5</sup> There may be some limited circumstances where identification of the officer involved may be appropriate. However, careful consideration and consultation with the officer and agency involved must take place prior to such a decision.