

TO: ALL DEPARTMENT PERSONNEL **FROM:** Larry Esquivel
Chief of Police

SUBJECT: DUTY MANUAL ADDITION **DATE:** June 26, 2015
L 2646 POST-INCIDENT
REVIEW PROCEDURE
FOR OFFICER-INVOLVED
INCIDENTS

Approved

Memo # 2015-013

BACKGROUND

In order to provide Department members with factual and timely information regarding Officer-Involved Incidents and to identify Department training needs, the Department has established a Post-Incident Review Procedure for Officer-Involved Incidents. This procedure will document the steps the Department will take following an Officer-Involved Incident, which will include (1) officer-involved shootings, (2) in-custody deaths, and (3) any act by an officer, including but not limited to any use of any other deadly or dangerous weapon by an officer, which proximately causes injury likely to produce death to another. The Officer-Involved Shooting Training Review Panel and the In-Custody Death Training Review Panel will be combined into one Officer-Involved Incident Training Review Panel. The membership and procedures for the new combined Panel will be the same as for the existing Panels that it will replace. The procedures adopted in this protocol do not replace the latest Santa Clara County Police Chiefs' Association Officer-Involved Incident Guidelines or the Department's Internal Affairs investigation process.

ANALYSIS

The Department's primary objective is to make every reasonable effort to train and equip officers to manage field situations safely and in a manner that will minimize the risk of injury to officers, suspects and members of the public. As such, the Post-Incident Review Procedure for Officer-Involved Incidents will provide Department members with valuable information to better achieve those goals when handling future field incidents.

Assigned investigators will provide a briefing to designated command staff of incidents involving Department members that occur within and outside San Jose jurisdiction by the designated investigative unit. The procedure will also provide a brief, objective factual presentation to Department members within 30 days of the incident. The limited purpose of this presentation is to provide Department personnel with very basic, objective preliminary facts about the incident in order to dispel rumors and misinformation. It is not intended to substitute for the formal criminal and administrative investigations of the incident nor is it intended to prejudge the outcome of those investigations. The Officer-Involved Incident Training Review Panel will identify training and

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equipment needs, as well as determine whether Departmental policies and procedures require revision or further review.

As a result, Section L 2646 Officer-Involved Incident Protocol has been added to the Duty Manual and is outlined below.

L 2646 POST-INCIDENT REVIEW PROCEDURE FOR OFFICER-INVOLVED INCIDENTS:

(Added 06-26-15)

An Officer-Involved Incident includes:

- A) Officer-involved shootings,
- B) In-custody deaths, and
- C) Any act by an officer, including but not limited to any use of any other deadly or dangerous weapon by an officer, which proximately causes injury likely to produce death to another.

This definition is consistent with the latest Santa Clara County Police Chiefs' Association Officer-Involved Incident Guidelines, which are the most recent published guidelines.

The following steps will be taken following an Officer-Involved Incident:

Step 1 – Command Staff Briefing

A formal briefing presented by the designated investigative unit will be held within seven (7) days of the incident with the *involved* officer's chain of command, all chiefs, PIO, assigned BOI case investigators, on-duty Communications Division supervisor/senior and the Training Unit Commander.

Step 2 – Factual Presentation

A brief, objective factual presentation concerning the incident will be prepared by the designated investigative unit within 30 days of the incident. The factual presentation will be given to all sworn personnel. The presentation will be presented and, documented by the designated investigative unit. The designated investigative unit will retain the documentation of the presentation. The presentation should not be presented to the Department as exoneration of the actions of the involved officers since the criminal investigation will not have been completed. Moreover, the administrative investigation by the Internal Affairs Unit will not have been completed. In addition, critical testing may not have been completed, e.g., toxicology tests. If the cause of death has not been determined, then that fact should be stated as part of the presentation. A statement should be included in the presentation about the limited purpose of the presentation (e.g., to dispel rumor and provide very basic factual information about the incident). The factual presentation should include an admonition that the criminal and administrative investigations of the incident are on-going and that no final determinations have been made by the

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District Attorney's Office regarding criminal liability or by the Chief regarding compliance with Department policy and procedure. The City Attorney's Office shall review the draft presentation before it is finalized.

Step 3 – Convene Officer-Involved Incident Training Review Panel

The Internal Affairs Unit Commander will convene the Officer-Involved Incident Training Review Panel within 90 days of the incident to determine and recommend any training that should be provided as a result of the incident. This meeting shall occur even though the District Attorney's Office has not issued its final report. Since the City Attorney participates in the OII Training Review Panel, these sessions are subject to the attorney-client privilege and thus the discussions are confidential.

Officer-Involved Incident Training Review Panel Presentation

Homicide Unit Investigators will present a factual synopsis of the incident and investigation to the Panel for the purpose of reviewing Department policy and procedures, training and tactics, officer safety, equipment and communication.

Step 4 – Implement Training

At the conclusion of the Review Panel Presentation (Step 3), the Training Unit Commander will prepare a report with the Panel's recommendations to the Chief of Police. This analysis will identify issues and needs regarding training and tactics, equipment, communication, and officer safety, as well as identifying Departmental policies and procedures that may require review and revision. Since the report will contain the Training Review Panel's analysis and recommendations, the report will be subject to the attorney-client privilege and therefore confidential.

After approval by the Chief's Office, the Training Unit will then implement appropriate training in a manner consistent with the Department's ability and resources. The Department's primary objective is to make every reasonable effort to train and equip officers to manage field situations so that criminal suspects can be taken into custody safely, while minimizing the risk of injury to officers, suspects and members of the public.

The Research and Development Unit will review and revise Department policies and procedures based upon the recommendations of the Panel. The Chief's Office will also implement any recommended changes in equipment and communications through the appropriate units and divisions of the Department.

On an annual basis, the Chief of Police will provide a public summary in narrative format to the Mayor and City Council that will summarize the Panel's deliberations and recommendations. This summary will not identify individual officers or other involved persons.

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ORDER

The Post-Incident Review Procedure for Officer-Involved Incidents will serve as a valuable and timely training component of Officer-Involved Incidents. Effective immediately, all Department personnel will adhere to the addition of San Jose Police Department Duty Manual Section L 2646 Post-Incident Review Procedure for Officer-Involved Incidents.

LARRY ESQUIVEL
Chief of Police

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