

Officer-Involved Shootings and Deaths

304.1 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 other 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.

304.2 POLICY

The policy of the Montgomery County Sheriff's Office is to ensure that officer-involved shootings and deaths are investigated in a thorough, fair and impartial manner.

304.3 TYPES OF INVESTIGATIONS

Officer-involved shootings and deaths involve several separate investigations. The investigations may include:

- A criminal investigation of the suspect's actions, often conducted by the State Bureau of Investigation (SBI).
- A criminal investigation of the involved officer's actions, often conducted by SBI.
- An agency administrative investigation as to policy compliance by involved deputies.
- A agency civil investigation to determine potential liability.

304.4 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.

304.4.1 CRIMINAL INVESTIGATION OF SUSPECT ACTIONS

A criminal investigation of the suspect's actions, often conducted by SBI, could also be conducted by an outside law enforcement agency. Depending upon the circumstances, investigators from surrounding agencies may be assigned to work on the criminal investigation of officer-involved shootings or deaths. This may include at least one investigator from the agency that employs the involved officer.

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

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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.

304.4.2 CRIMINAL INVESTIGATIONS OF OFFICER ACTIONS

A criminal investigation of the officer's actions, often conducted by SBI, could also be conducted by an outside agency. Depending upon the circumstances, investigators from surrounding agencies may be assigned to work on the criminal investigation of officer-involved shootings or deaths. This may include at least one investigator from the agency that employs the involved officer.

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.

304.4.3 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.

304.5 INVESTIGATION PROCESS

The following procedures are guidelines used in the investigation of an officer-involved shooting or death, whether it is internal or criminal in nature.

304.5.1 UNINVOLVED DEPUTY RESPONSIBILITIES

Upon arrival at the scene of an officer-involved shooting or death, the first uninvolved MCSO deputy will be the deputy-in-charge and assume the responsibilities of a supervisor until properly relieved. This deputy should, as appropriate:

- (a) Secure the scene and identify and eliminate hazards for all those involved and detain or arrest persons involved in the incident if applicable.
- (b) Take reasonable steps to obtain emergency medical attention for injured individuals.
- (c) Request additional resources from the Office or other agencies.
- (d) Coordinate a perimeter or pursuit of suspects and provide suspect information if applicable.
- (e) Check for injured persons and evacuate as needed.
- (f) Brief the supervisor upon arrival.

304.5.2 SUPERVISOR RESPONSIBILITIES

Upon arrival at the scene of an officer-involved shooting or death, 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.
 1. In the event that there are no uninvolved officers who can supply adequate overview, the supervisor should a brief voluntary overview from one involved officer(s).
- (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.

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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 or law enforcement officers.

304.5.3 SHIFT SUPERVISORS' RESPONSIBILITIES

Upon learning of an officer-involved shooting or death, the shift supervisor or his designee shall be responsible for coordinating all aspects of the incident until he/she is relieved by a higher authority.

All outside inquiries about the incident shall be directed to the highest ranking official on scene.

304.5.4 NOTIFICATIONS

The following persons shall be notified as soon as practicable:

- Sheriff
- Section Director
- Investigations Services Director
- Outside agency investigators (if appropriate) (i.e. SBI)
- Chaplain, or personal clergy
- Medical Examiner(if necessary)
- Involved officer's agency representative (if requested)

304.5.5 INVOLVED OFFICERS

The following shall be considered for the involved officer:

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- (a) Any request for agency consultation or legal 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 will be privileged only as to the discussion of non-criminal information and only to the extent allowed by law.
- (d) A licensed psychotherapist may 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 as permitted by law.
 - 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) Communication between a peer counselor and a member or the member's immediate family is privileged unless:
 - 1. The peer counselor was an initial responding officer, a witness or a party to the incident that prompted the delivery of peer counseling services.
 - 2. The communication took place while the peer counselor was not acting in his/her official capacity as a peer counselor.
 - 3. The communication related to a violation of criminal law. This does not require the disclosure of otherwise privileged communications related to a deputy's use of force.
 - 4. Disclosure of privileged communications may also be made when the disclosure is:
 - (a) Authorized by the member or, if the member is deceased, authorized by the member's executor, administrator or, in the case of unadministrated estates, the member's next of kin.
 - (b) Necessary to the proper administration of justice and is compelled by a resident or presiding judge. If the case is in district court, the judge shall be a district court judge. If the case is in superior court, the judge shall be a superior court judge.

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.

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Each involved MCSO deputy may be given reasonable paid administrative leave following an officer-involved shooting. It shall be the responsibility of the shift supervisor to make schedule adjustments to accommodate such leave.

304.6 CRIMINAL INVESTIGATION

It shall be the policy of this office to utilize SBI to conduct an independent criminal investigation into the circumstances of any officer-involved shooting or death.

If available and approved by SBI, investigative personnel from this office may be assigned to partner with investigators from outside agencies or the District Attorney's Office to avoid duplicating efforts in related criminal investigations.

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 should be considered for the involved officer:

- (a) MCSO supervisors should not participate directly in any voluntary interview of MCSO deputies. This will not prohibit such personnel from monitoring interviews or indirectly providing topics for inquiry.
- (b) If requested, any involved officer will be afforded the opportunity to consult individually with a representative of his/her 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 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 may be made available for inclusion in any related investigation, including administrative investigations. However, no statements made during the course of the administrative investigations will be provided to any criminal investigators.

304.6.1 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 information for related criminal reports to facilitate the apprehension and prosecution of those individuals.

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.

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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.

304.6.2 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 reasonable steps to promptly coordinate with criminal investigators to utilize available law enforcement 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. Obtain any available video records of the incident from car cameras, body cameras or business surveillance.
 - 3. 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, attempts to identify the witness prior to his/her departure should be made whenever feasible.
- (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 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 independent background information about the suspect's activities and state of mind prior to the incident.

304.6.3 INVESTIGATIVE PERSONNEL

Once notified of an officer-involved shooting or death, it shall be the responsibility of the designated Criminal Investigative supervisor to assign appropriate investigative personnel to handle the investigation of related crimes. Office investigators will be assigned to work with investigators from SBI and may be assigned to separately handle the investigation of any related crimes not being investigated by SBI.

All related office reports, except administrative and/or privileged reports, will be forwarded to the designated Criminal Investigative supervisor for approval. Privileged reports shall be maintained exclusively by members who are authorized such access. Administrative reports will be forwarded to the appropriate person and when appropriate, in-house counsel.

304.7 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 involved MCSO deputies to determine

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conformance with office policy. This investigation will be conducted under the supervision of the Sheriff and will be considered a confidential deputy personnel file.

Interviews of members shall be subject to office policies and applicable laws.

- (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 or in compliance with a court order, 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.

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 administrative interviews.

- (c) In the event that an involved deputy has elected not to provide criminal investigators with a voluntary statement, the assigned administrative investigator shall conduct an administrative interview to determine all relevant information.

Although this interview should not be unreasonably delayed, care should be taken to ensure that the deputy's immediate physical and psychological needs have been addressed before commencing the interview.

Administrative interviews should be recorded, preferably using video, by the investigator.

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 *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.

The investigation shall compile all relevant information and reports necessary for the Office to determine compliance with applicable policies.

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.

Any other indications of potential policy violations shall be determined in accordance with standard disciplinary procedures.

304.8 CIVIL LIABILITY RESPONSE

A member of this office may be assigned to work exclusively under the direction of the legal counsel for the Office to assist in the preparation of materials deemed necessary in anticipation of potential civil litigation.

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All materials generated in this capacity shall be considered attorney work product, and be protected under the attorney/client privilege, 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.

304.9 AUDIO AND VIDEO RECORDINGS

Any officer involved in a shooting or death may be permitted to review available Mobile Audio/Video (MAV), body-worn video, or other video or audio recordings prior to providing a recorded statement or completing reports.

Non-law enforcement witnesses who are able to verify their presence and their ability to contemporaneously perceive events at the scene of an incident may also be permitted to review available MAV, body-worn video, or other video or audio recordings with the approval of assigned investigators or a supervisor.

Any MAV, body-worn video and other known video or audio recordings of an incident should not be publicly released during an ongoing investigation without consulting the prosecuting attorney or County Attorney's Office, and in-house counsel as appropriate.

304.10 DEBRIEFING

Following an officer-involved shooting or death, the Montgomery County Sheriff's Office should conduct both a critical incident/stress debriefing and a tactical debriefing.

304.10.1 CRITICAL INCIDENT/STRESS DEBRIEFING

A critical incident/stress debriefing should occur as soon as practicable. The Field Services Supervisor is responsible for organizing the debriefing. Notes and recorded statements should not be taken because the sole purpose of the debriefing is to help mitigate the stress-related effects of a traumatic event.

The debriefing is not part of any investigative process. Care should be taken not to release or repeat any communication made during a debriefing unless otherwise authorized by policy, law or a valid court order.

Attendance at the debriefing shall only include those members of the Office directly involved in the incident, which can include support personnel (e.g., telecommunicators, other non-sworn). Family or other support personnel may attend with the concurrence of those involved in the incident. The debriefing shall be closed to the public and should be closed to all other members of the Office.

304.10.2 TACTICAL DEBRIEFING

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

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304.11 MEDIA RELATIONS

Any media release shall be prepared with input and concurrence from the supervisor and office representative responsible for each phase of the investigation.

The Sheriff, after consultation with the agency conducting the criminal investigation, should make a determination whether the involved officer's name should be released. Moreover, no involved officer shall be subjected to contact from the media and no involved MCSO deputy shall make any comment to the media unless he/she is authorized by the Sheriff.

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 or the Sheriff.

304.12 REPORTING

If the death of an individual occurs in the Montgomery County Sheriff's Office jurisdiction and qualifies to be reported to the state because the death is a result of deadly force used by a deputy, the Records Section Manager will provide enough information to meet the reporting requirements.