# MEMORANDUM OF UNDERSTANDING

## March 7, 2022

## Countywide Protocol for the Investigation and Review of Officer-Involved Shootings and Other Deadly Force Incidents

WHEREAS the law enforcement agencies of San Diego County recognize the need for transparent and independent criminal investigations and reviews of all peace officer-involved shootings, use of force incidents resulting in death, and "in custody" related deaths occurring outside of the jail setting, these agencies have a desire to cooperate to achieve this goal with this Memorandum of Understanding (MOU).

NOW, therefore the signatories to this MOU agree and consent to the investigative and review responsibilities described herein.

**PURPOSE AND SCOPE**

The purpose of this agreement is to conduct independent investigations, provide consistency in inter-agency investigations within San Diego County and outline the circumstances for conducting criminal investigations and independent review of all law enforcement related:

a. Discharges of a firearm (excluding discharges that are deemed unintentional, training related, or conducted during the euthanization of an animal)

b. Deadly force incidents that result in serious bodily injury or death

This agreement applies solely to criminal investigations and does not address or impact an agency's ability to conduct their own concurrent or subsequent investigation for administrative or civil litigation purposes.

This agreement is not intended to transfer investigative responsibility for all deaths occurring in a custodial setting. Deaths in a County Custodial setting will only be investigated in accordance with this agreement when they are the apparent result of a use of force by an officer, deputy, or custodial staff.

**DEFINITIONS**

a. "AB1506 Qualifying Event" means an officer-involved shooting incident where the subject shot by officers is killed and deemed "unarmed" based on the guidelines established by the California Department of Justice and California Attorney General's Office.

b. "Deadly Force" means any use of force that creates a substantial risk of causing death

or serious bodily injury, including, but not limited to, the discharge of a firearm.

c. "Incident" is defined as 1) any discharge of a firearm by a peace officer, excluding discharges that are deemed unintentional, training related, or conducted during the euthanization of an animal, 2) any use of deadly force by a peace officer resulting in death, or 3) any death of a person while "in custody" of a peace officer. For purposes of this MOU, an "incident" does not include the death of a person incarcerated in a County or City detention facility/jail (except when it stems from a use of force).

d. "In-Custody" is defined as a detention or arrest coupled with a use of physical force and/or some sort of physical restraint (e.g., handcuffing, placed in a police vehicle). "In-Custody" means more than being chased or contained by officers.

e. "Involved Agency" means the agency employing the peace officers involved.

f. "Investigating Agency Liaison" means the employee, supervisor, or manager of the investigating agency tasked with being a liaison between the investigating agency and the involved agency and/or jurisdictional agency to facilitate the comprehensive and independent investigation of the incident.

g. "Involved Agency Liaison" means the employee, supervisor, or manager of the involved agency tasked with being a liaison between the involved agency, the jurisdictional agency (if different than the involved agency), and the primary investigating agency to facilitate the comprehensive and independent investigation of the incident.

h. "Jurisdictional Agency" means the agency with primary law enforcement jurisdiction over the area where the incident occurred.

i. "Jurisdictional Agency Liaison" means the officer, supervisor, or manager tasked with being the resource conduit between the jurisdictional agency, the involved agency (if different than the jurisdictional agency), and the investigating agency to ensure facility, information, evidentiary, and other logistical access for investigators handling the incident.

j. "Officers Involved" means peace officers who have fired their weapons, used force, or were participants in an incident as defined.

k. "Primary Investigating Agency" means the agency with investigative responsibility for a qualifying incident.

**PRIMARY INVESTIGATING AGENCY**

The Primary Investigating Agency is decided using the following criteria:

a. Incidents where officers involved are employed by the San Diego Police Department will be investigated by the San Diego Sheriff's Department.

b. Incidents where deputies/officers involved are employed by the San Diego Sheriff's Department or any of the other agencies participating in this agreement by signature below (except the San Diego Police Department), will be investigated by the San Diego Police Department.

c. Incidents where both the San Diego Sheriff's Department and the San Diego Police Department have deputies/officers involved, will be investigated by the Chula Vista Police Department.

d. Incidents meeting the definition of an " AB1506 Qualifying Event" will be investigated as detailed under the header below.

e. Uses of deadly force, aside from the discharge of a firearm by a peace officer, that do not result in death will be investigated by the involved agency unless there is an independent MOU with another agency to handle those investigations.

For incidents involving a predicate criminal investigation and an associated officer-involved shooting investigation, the jurisdictional agency of the original incident will handle the criminal investigation and apprehension of any related suspects, while the primary investigating agency will specifically investigate the officer-involved shooting. The lead case agents from each investigative team will confer to ensure investigatory needs, such as evidence collection and processing, scene processing and documentation, and interviews are met, and take into consideration the needs of both investigations. Appropriate laboratory personnel will be utilized for each investigation.

In situations where an officer is seriously injured or killed, other than traffic collisions, and an officer-involved shooting occurs, the incident will be investigated by the primary investigating agency utilizing their laboratory personnel. In some instances, the primary investigating agency and jurisdictional agency may consider separating the investigations. This decision will be made by the primary investigating agency, who will consider factors which may include the jurisdictional agency's interests, case integrity and other applicable considerations when making a decision to separate the cases.

Incidents meeting the definition of an AB1506 Qualifying Event will initially be handled as outlined above; however, once California DOJ is notified, responds, and determines the incident is a qualifying event, they will assume the role of primary investigating agency and the former primary investigating agency will take a secondary, collaborative role. The process for handling these events is outlined in the California Department of Justice – Division of Law Enforcement California Police Shooting Investigations Teams (CaPSIT) Investigation Protocol Procedures.

Incidents involving federal law enforcement or any state or local agency electing not to participate in this MOU will be handled by the jurisdictional agency or in accordance with other existing

agreements. This is further outlined below.

## POLICY

When a peace officer, whether on or off duty, is involved in an incident, the jurisdictional agency shall contact the appropriate primary investigating agency, via their Communications Centers, as outlined above. The agency that employs the officer(s) involved, or other designated investigating agency, may conduct a concurrent or subsequent administrative investigation of the incident; however, the intent of the parties to this agreement is that these types of investigations be conducted by the primary investigating agency, independently and without interference or undue influence from the agency that employs the involved officer(s) or deputy(s).

All information or reports developed by the primary investigators shall be made available to all involved agencies, as needed, and as permitted by law. Except as outlined in AB1506, or for incidents involving Federal Law Enforcement, the primary investigating agency shall submit investigative documentation of qualifying incidents, as defined herein, to the District Attorney's Office for review.

All AB1506 cases will be submitted by the California Department of Justice investigators to the charged Deputy Attorney General for review in accordance with their review process and the law.

## RESOURCES

The primary investigating agency will utilize their own laboratory personnel, unless impractical to do so. If the primary investigating agency laboratory personnel are not to be used, the primary investigating agency will make arrangements to provide laboratory personnel.

## JURISDICTIONAL AGENCY'S INITIAL RESPONSE

Officers who used force in incidents, as defined above, and officers identified as key witnesses shall be removed from the scene as soon as possible. Officers who used force shall be transported, as determined by the primary investigating agency, to a law enforcement facility within a reasonable distance from the scene, with resources deemed adequate for the separation of witnesses, accommodates investigative procedures, and affords a reasonable degree of personal comfort, convenience, and privacy for the parties involved.

Officers involved in incidents, as defined above, should brief the first responding supervisor, or other officer responsible for securing the incident scene, of the general facts of the incident and other matters as they relate to public safety. Within the guidelines of law and department policy, officers involved should cooperate fully with supervisors and advise them of the following via a public safety statement that captures the following:

- Are there any outstanding suspects; if so, please describe them and any vehicles and their last known direction of travel?
- Are there any injured persons; if so, please advise of their whereabouts and the nature

of their injuries?

- Where were you when you fired and in what approximate direction were you pointing your weapon when you fired? If you were fired at, from what direction was the suspect firing?

- How many rounds do you think you fired and how many rounds were fired at you?

- Are there any outstanding weapons, and if so, do you know what type?

This information will enable the responding staff to take appropriate emergency action, to secure evidence and to isolate the scene.

Following the initial briefing with the first responding supervisor, and except as permitted below, officers involved should not discuss the incident with other persons, or among themselves, before being interviewed by the investigators from the primary investigating agency.

Investigators shall seek voluntary statements from officers involved in the incident. Officers involved in the incident shall be permitted to speak with a legal representative, peer support representatives, chaplain and/or mental health professionals before submitting to an interview by incident investigators. Under no circumstances will the primary investigating agency compel a statement from an involved officer. Should an involved officer decline to provide a voluntary statement, an involved agency may elect to follow their Department's Policy and Procedure to obtain a statement for their internal use.

## INCIDENT SCENE

Officers at the scene, regardless of agency affiliation, shall secure the scene pending arrival of representatives of the jurisdictional agency and the primary investigating agency.

The security of the incident scene shall be handled by the jurisdictional agency, as directed by the primary investigating agency, for the duration of the time they are on scene.

## AGENCY LIASIONS

When the primary investigating agency is dispatched to handle an incident, they shall, immediately upon arriving on scene, identify who the involved agency liaison will be and, if applicable, a jurisdictional agency liaison to coordinate the sharing of necessary information.

The primary investigating agency liaison, or their designee, shall brief the involved agency and jurisdictional agency as requested. This will facilitate on scene logistical operations and allow the involved agency to complete necessary administrative and operational reviews.

The involved agency liaison shall also be responsible for providing any necessary agency-specific information to the primary investigating agency, such as mobile data/CAD information, BWC

footage, and employee record information to include date of hire, assignment, etcetera.

## EVIDENCE

Evidence, including personal belongings of the officers involved, shall not be unnecessarily moved or altered. Evidence in the personal possession of the officers involved, such as firearms or other equipment, shall be surrendered upon request of investigators representing the primary investigating agency. Replacement of equipment taken for evidence will be handled as outlined in the involved officer's Department policy and the law.

## ON SCENE BRIEF

Prior to beginning the investigation of the incident, members of the primary investigating agency, the involved agency, the assigned District Attorney Investigator, and where applicable, the jurisdictional agency liaison, shall receive a joint briefing on the facts known to that point. The primary investigating agency is not required to delay the briefing or subsequent investigation to accommodate unavailable involved or jurisdictional agency members, so as not to delay the onset of the investigation. Additional briefings may take place as time allows or as necessitated as the investigation unfolds.

## MEDIA RELEASES

The release of information concerning any incident as defined herein will be handled by the primary investigating agency, in coordination and collaboration with the involved agency, and when appropriate, the jurisdictional agency. The release of video or information related to these investigations shall be in compliance Government Code section 6254(f) and SB 1421. Any other agency receiving media inquiries about the incident shall refer them to the primary investigating agency for coordination and distribution with the involved agency, and if appropriate, the jurisdictional agency. Once the primary investigating agency submits the case to the District Attorney's Office for review, media requests should generally be referred to the District Attorney's Office. This MOU is not meant to restrict the head of an agency from making public statements or releasing video that he or she deems necessary to the interests of justice or to protect public safety.

## NOTIFICATIONS

The primary investigating agency shall be responsible for notifying the Medical Examiner and coordinating all necessary evidentiary information and collection with the Medical Examiner's Office.

The primary investigating agency shall be responsible for coordinating family notifications with the Medical Examiner's Office, as necessary.
The primary investigating agency shall notify the designated representative of the District Attorney, and/or representatives from the California Department of Justice as outlined below, immediately upon learning of the occurrence of any incident as defined herein.

## DISTRICT ATTORNEY'S OFFICE INITIAL RESPONSE

A District Attorney Investigator (DAI) may respond to the scene of incidents, as defined herein, which occur within the County of San Diego.

The DAI will contact the supervisor in charge of the investigative agency at an incident scene. A briefing of the incident and a familiarization of the incident scene will be given as soon as practical. The DAI will be permitted access to the incident scene to the extent possible, without contaminating evidence or otherwise disturbing the scene.

The DAI may participate in the interview of witnesses, if invited by the primary investigating agency. They will identify any potential witnesses they discover and point out any item of evidence they observe to the officer in charge of the investigation. The DAI will not interview witnesses and will not gather evidence at the initial scene but may provide any advice or other assistance sought by the primary investigating agency.

The assigned DAI may attend the autopsy of any decedent involved in a fatal incident.

## "THREE DAY" INITIAL BRIEF

In any incident, as defined herein, the primary investigating agency, or former primary investigating agency if the incident is an AB1506 Qualifying Event, shall provide a briefing to representatives of the involved agency and the District Attorney's Office, or the Attorney General's Office, generally no later than the third working day following the incident. The briefing shall include a verbal review of the evidence, witness statements, and the status of the investigation. Included in this review should be selected representatives of the involved agency, representatives from the Federal Bureau of Investigation, the United States Attorney's Office, and legal representatives for the involved agency.

## REPORTING

Upon completion of the investigation of an incident, as defined above, or no later than 90 days, the investigating agency shall provide copies of all investigative reports, witness statements, recordings, video evidence, photographs, diagrams, autopsy reports, and all other relevant documents in their possession to the California DOJ or the District Attorney for review as appropriate. The primary investigative agency shall also make available for inspection any item of evidence. In return, the District Attorney will complete their review and report their findings to the involved and investigating agencies within 90 days of receiving all relevant reports, such as the Medical Examiner's reports and laboratory findings.

In cases where there is a use of deadly force that is not a qualifying discharge of a firearm or does not result in death, the investigation will be conducted by the involved agency unless there is an independent MOU with another agency to handle those investigations. Submission of these cases for review by the District Attorney's Office for potential criminal liability will be determined by the investigating agency.

## DISTRICT ATTORNEY RESPONSIBILITY

The District Attorney may request supplemental investigation of an incident by the primary investigating agency or conduct additional investigation through District Attorney personnel. Copies of any investigative reports prepared by the District Attorney will be provided to the primary investigating agency as soon as possible.

The District Attorney shall conduct an independent assessment of the circumstances surrounding an incident, as defined herein. The District Attorney will issue written findings to the head of the primary investigating agency and the head of the agency employing the officer(s) involved within 90-days of receiving all relevant reports, such as the Medical Examiner's reports and laboratory findings.

The District Attorney's Office will be responsible for releasing their findings to the media/public after first issuing the findings to the head of the primary investigating agency and the head of the agency employing the involved officer/agent. The time and manner of release shall be determined by the District Attorney's Office with notification being made to the affected agencies beforehand, to ensure involved parties are prepared for that release of information.

In the event of an officer-involved shooting where an officer is wounded and a person is charged with a crime, the District Attorney reserves the option to waive the review set forth herein. In such a case, the District Attorney will send the requesting agency a letter memorializing the absence of state criminal liability on the part of the officer(s) involved.

## VIDEO AND AUDIO EVIDENCE RELEASES

Law enforcement agencies will endeavor to release video and audio evidence from an incident within 45 days of an incident or sooner, pursuant to Government Code section 6254(f)(4) and in accordance with Penal Code section 832.7. However, video and audio evidence will not be released if:

1) Release will substantially interfere with an active criminal investigation.

2) The safety of a witness or confidential source will be endangered, and redaction of the video or audio will not protect the safety of the individual.

3) Release will violate the reasonable expectation of privacy of a subject depicted in the recording which outweighs the public interest in the video, and redaction of the video or audio will not protect the privacy of the individual.

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## INCIDENTS INVOLVING NON-PARTICIPATING LAW ENFORCEMENT AGENCIES

When an employee of a state, local, or out-of-county law enforcement agency not participating in this agreement is involved in an incident as described above, the jurisdictional agency shall conduct the primary investigation of the incident unless there is an independent MOU between that non-participatory law enforcement agency and another agency to conduct those investigations. The agency that employs the involved officer may conduct a concurrent or subsequent investigation of the incident.

## INCIDENTS INVOLVING FEDERAL LAW ENFORCEMENT PERSONNEL

This MOU does not generally apply to incidents involving federal law enforcement personnel; therefore, incidents involving federal agencies will be handled by the appropriate federal investigatory agency or as outlined in an independent MOU/agreement.

## INCIDENTS INVOLVING PEACE OFFICERS ASSIGNED TO A FEDERAL TASK FORCE

If the involved officer is a peace officer under California law and assigned to a federal task force (i.e., a Task Force Officer, aka TFO), then the primary investigating agency shall be determined based on the agency the Task Force Officer works for, and pursuant to this MOU.

## AB1506 QUALIFYING EVENTS

The California Department of Justice is mandated under AB1506 to investigate officer-involved shootings of "unarmed" civilians resulting in death. The intent of this MOU is to have Department of Justice investigators working collaboratively with the staff from the local primary investigating agency to conduct the investigation. These investigations will be conducted in accordance with the guidelines in the California Department of Justice – Division of Law Enforcement California Police Shooting Investigations Teams (CaPSIT) Investigation Protocol Procedures manual and local OIS practices, like this MOU. Upon completion of the investigation, the investigative package will be submitted by the CaPSIT Case Agent to the California Attorney General's Division of Criminal Law for review.

## LIABILITY AND INDEMNITY

No party assumes liability for any act or omission committed by another party. The parties acknowledge that this agreement is by and between independent entities and is not intended, nor shall be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association. For civil liability purposes, no party shall be considered the agent of any other party. Each party shall, to the extent possible under applicable law, assume financial responsibility, and defend itself, for any liabilities arising from the acts or omissions of its own employees' actions pursuant to this agreement.

## AMENDMENTS

All amendments to this MOU need to be in writing and signed by each party to this MOU.

## WITHDRAWAL

A party to this MOU may withdraw its agreement and participation. A notice of intention to withdraw from this memorandum of understanding (MOU) shall be given to each other signatory, in writing, 30 days prior to the effective date of such revocation. All cases that are currently being investigated under this MOU shall continue to be investigated until the investigation is finished, notwithstanding the withdrawal of the investigating agency. All parties agree to a continued duty to cooperate with the investigating agency until all pending investigations are finished.

## TERM OF AGREEMENT

The parties, by signing this MOU, acknowledge and agree that this protocol shall be effective upon approval and shall remain in full force and effect unless and until a party withdraws or a revised memorandum of understanding is established.

**ENDORSEMENTS**

Agreed hereto by all parties whose signatures appear below:

KELLY MARTINEZ, Acting Sheriff
County of San Diego

DAVID NISLEIT, Chief
San Diego Police Department

SUMMER STEPHAN, District Attorney
County of San Diego

TAMIKA NELSON, Chief
San Diego County Probation

JORGE DURAN, Chief
District Attorney - Bureau of Investigations

MICKEY WILLIAMS, Chief
Carlsbad Police Department

KIRK NICHOLS, Interim Chief
San Diego Harbor Police

JOSEPH RAMOS, Chief
San Diego Community College Police

ROXANA KENNEDY, Chief
Chula Vista Police Department

JOEY FLORENTINO, Interim Chief
San Diego Unified School District Police

CHARLES KAYE, Chief
Coronado Police Department

~~MICHAEL HAYES~~, Chief
MICHAEL HASTINGS
San Diego State University Police

MICHAEL MOULTON, Chief
El Cajon Police Department

GREG MURPHY, Interim Chief
University California San Diego Police

ED VARSO, Chief
Escondido Police Department

RAY SWEENEY, Chief
La Mesa Police Department

JOSE TELLEZ, Chief
National City Police Department

FRED ARMIJO, Chief
Oceanside Police Department