

Law Enforcement Involved Fatal Incidents Policy



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From: Diana Becton, District Attorney

Introduction

The Contra Costa County District Attorney's Office is the sole prosecuting agency within Contra Costa County. Our core mission is to seek justice and enhance public safety for all residents by fairly and ethically prosecuting those who violate the law. A core component of public safety is community trust, which is strengthened by being transparent with the communities we are sworn to serve.

Situations may arise where a law enforcement officer uses deadly force, which should only be used in accordance with the law. When deadly force is used by law enforcement, the public has a right to expect the Contra Costa County District Attorney's Office to conduct a thorough, transparent, and independent investigation.

Overview

The Contra Costa County District Attorney's Office and every law enforcement agency in Contra Costa County has adopted the *Law Enforcement Involved Fatal Incidents Protocol* ("the Protocol") to investigate incidents when officers or civilians are shot, killed, or die during an encounter with law enforcement. The Protocol was created in 1984 and has undergone a number of revisions, with the most recent version being updated in 2014.

As part of the Protocol process, the District Attorney's Office and the involved agencies conduct independent criminal investigations. The purpose of the criminal investigation is to determine whether any of the involved individuals, officers or civilians, committed a crime. The law enforcement agency that employs the officer(s) involved in the incident also conducts an administrative investigation. The administrative investigation includes (1) investigating whether any criminal law violations have occurred; (2) determining if the involved officer or deputy acted within the department's policies, procedures, trainings and orders; and (3) to prepare for possible civil litigation.

It is imperative that the criminal, administrative, and civil investigations are performed separate and independent of one another. Due to the importance of the criminal investigation, the county's chief law enforcement executives have agreed that it will take priority over the administrative and civil investigations.

The Criminal Investigation

Pursuant to the Protocol, immediately after a fatal officer-involved shooting the involved law enforcement agency is required to notify the appropriate district attorney personnel. Once notified, trained and experienced members of the District Attorney's Office respond to the scene to begin the criminal investigation. In addition, criminal investigators from the law enforcement agency involved in the incident and from the jurisdiction where the incident occurred, if different, respond to the scene as well. It is important to note that although the investigations happen simultaneously, each agency is conducting its own independent investigation.

As part of the criminal investigation law enforcement officers and civilians who witnessed the incident may be interviewed, evidence is collected at the scene and may be submitted to the county crime lab for testing and analysis, in addition to any other relevant investigative work necessary to complete the investigation. The Sheriff's Crime Lab responds to every incident and is responsible for evidence collection of all officer-involved shootings and in-custody deaths.

During the course of the criminal investigation, an officer or deputy has the right to be represented by an attorney. They may choose to provide statements, physical evidence and other relevant information during the criminal and administrative investigations, or be compelled to provide this information during the administrative investigation only. (See, Public Safety Officers Procedural Bill of Rights Act, Government Code sections 3300 et seq.) Under the law, neither an officer nor civilian can be compelled to give a statement as part of a criminal investigation.

Independent of the District Attorney's Office and in accordance with the Protocol, the Coroner's Division in the Office of the Sheriff conducts a Coroner's Inquest following most deaths that involve law enforcement personnel or law enforcement operations or activities within Contra Costa County. The Inquests are open to the public, are conducted by a private attorney hired by the Coroner's Division and are held in front of a jury of citizens randomly selected from the Contra Costa County Superior Court jury pool. During the Inquest, the hearing officer questions witnesses and additional evidence may be presented. The role of the jury is to decide whether the death was by (1) natural causes, (2) suicide, (3) accident, or (4) at the hands of another person other than by accident (i.e. homicide). This decision has no bearing on the civil or criminal responsibility of the deceased or any other person(s) involved in the incident.

Final Action

The goal of the District Attorney's Office is to complete the criminal investigation as quickly and efficiently as possible, consistent with the goals of conducting a thorough and independent investigation. At the conclusion of the criminal investigation, an assigned deputy district attorney will review the matter and provide the District Attorney with a factual and legal analysis of the case, which includes a recommendation as to the filing of criminal charges against any person involved in the incident. The standard for charging any criminal case is whether the case can be proven beyond a reasonable doubt in a court of law. The District Attorney will then make the final charging decision.

If no charges are filed and the incident resulted in the death of an officer or civilian, the District Attorney's Office will issue a public report summarizing the results of the investigation and a legal analysis of the facts. Generally, the report will be issued after the Coroner's Inquest and will address why the case could not be proven beyond a reasonable doubt based on the law and the facts. The report will make no determination or draw any conclusions as to whether the law enforcement officer violated their department policies or procedures, or committed any act subject to civil liability. All cases will be reviewed in a timely manner in accordance with the Protocol. The District Attorney will notify the Sheriff or the appropriate Chief of Police prior to publicly releasing any report or charging decision related to an officer-involved shooting where there is a fatality.