

Peace Officer Involved Shootings and Deaths

307.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines of an incident involving a sworn member of the Nevada Department of Public Safety during which a person is injured or dies as the result of an officer involved shooting or dies as a result of other action of an officer.

For other incidents not specifically addressed by this policy, the Director of Public Safety may decide that any subsequent investigation will follow the process outlined in this policy.

307.2 POLICY

The policy of the Nevada Department of Public Safety is to ensure that officer involved shootings and other deaths resulting from actions by officers are investigated in a thorough, fair and impartial manner.

307.3 TYPES OF INVESTIGATIONS

Peace officer involved shootings and deaths can involve several separate investigations. The investigations may include:

- (a) A criminal investigation of the suspect's actions.
- (b) A criminal investigation of the involved peace officer's actions.
- (c) An administrative investigation as to policy compliance by involved peace officers.
- (d) A civil investigation to determine potential liability.

307.4 CONTROL OF INVESTIGATIONS

Except as otherwise delineated in any applicable multi-jurisdictional investigative team agreement, investigation jurisdiction is determined by the location of the officer involved shooting or death. Upon mutual agreement, an agency may relinquish its investigation jurisdiction to another law enforcement agency. The following scenarios outline the jurisdictional responsibilities for investigating officer involved shootings and deaths.

307.4.1 INVESTIGATION RESPONSIBILITY MATRIX

The following table identifies the possible scenarios and responsibilities for the investigation of peace officer involved shootings:

	Criminal Investigation of Suspect(s)	Criminal Investigation of Peace Officer(s)	Civil Investigation	Administrative Investigation
DPS Officer	Agency where incident occurred or DPS Investigators	DPS Investigators or Allied Agency	DPS Investigations or A.G Office	DPS Office of Professional Responsibility

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Allied Agency's Peace Officer	Involved Peace Officer's Agency or DPS Investigators (upon request)	Involved Peace Officer's Agency or DPS Investigators or Allied Agency (upon request)	Involved Peace Officer's Agency or DPS Investigators (upon request)	Involved Peace Officer's Agency or DPS Investigators (upon request)
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307.5 INITIAL RESPONSE PROCEDURES

The following are guidelines used in responding to and investigating a peace officer involved shooting or other officer involved death involving a sworn member of the Department.

In those jurisdictions where the Department has entered into multi-jurisdictional investigative shooting team agreements, investigations will be conducted according to the terms of the relevant agreement.

307.5.1 INVOLVED OFFICERS INITIAL RESPONSIBILITIES

- (a) Notify dispatch and request additional officers respond.
- (b) Request medical response for any injured person.
- (c) Preserve the scene.
 - 1. Do not remove, collect, or alter items including weapons, radios, tasers, batons, vehicles, etc. from their original resting place unless a safety concern exists. In that case, clearly document the location from which an item is moved and notify supervisors and detectives upon their arrival.
 - 2. Do not manipulate any involved firearms in any manner including reloading or unloading. If the officer holstered his/her involved firearm at the conclusion of the incident, it should remain holstered unless an imminent safety concern requires otherwise.
- (d) Turn over control of the scene to the first responding uninvolved officer/supervisor.
- (e) Surrender all firearms or other weapons and duty belts to appropriate law enforcement personnel upon request.
- (f) Other than providing appropriate public safety information necessary to aid in locating injured persons, securing weapons and evidence, and apprehending suspects who pose a continuing threat to the community, involved officers shall not discuss the details of the incident with any other person pending interview by assigned detectives.

307.5.2 UNINVOLVED OFFICERS INITIAL RESPONSIBILITIES

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

- (a) Secure the scene and identify and eliminate hazards for all those involved.
- (b) Check for injured persons and evacuate as needed.
- (c) Take reasonable steps to obtain emergency medical attention for injured individuals.

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- (d) Request additional resources from the Department or other agencies.
- (e) Coordinate a perimeter or pursuit of suspect(s).
- (f) Brief the supervisor upon arrival.

307.5.3 SUPERVISOR INITIAL RESPONSIBILITIES

Upon arrival at the scene, the first uninvolved Department supervisor should:

- (a) Take charge and maintain control until relieved by an appropriate superior or assigned investigating entity.
- (b) Determine what the first responding officers have done including the identity/status/location/condition of all officer(s)/victim(s)/suspect(s)/witness(es) (including fire and ambulance personnel), whether anyone needs medical attention, is the suspect armed, and what crimes are involved.
- (c) Identify and secure all scenes.
 - 1. Use generous perimeters.
 - 2. Request additional officers as needed.
- (d) Identify all persons present at the scene and in the immediate area. Because potential witnesses may become unavailable or the integrity of their statements compromised with the passage of time, the supervisor should take reasonable steps to promptly coordinate with assigned detectives to utilize available law enforcement personnel for the following:
 - 1. Witnesses who are willing to provide a formal interview should be asked to meet at a suitable location where criminal detectives may obtain a recorded statement. Such witnesses, if willing, may be transported by a member of the Department to a law enforcement facility for the detective interview.
 - 2. Potential witnesses who are 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.
 - 3. 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.
 - 4. 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.
- (e) Search for and preserve the integrity of any physical evidence present, including on the involved officer(s)/suspect(s) clothing or equipment (blood, fingerprints, etc.) until detectives or lab personnel can properly retrieve it.
 - 1. If weapons are found, record description and location.

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2. Do not move any evidence and do not attempt to unload firearms or change the position of any weapon unless unsafe.
- (f) Ensure appropriate crime broadcasts have been made (outstanding suspect(s)/ vehicle/etc.).
- (g) Protect sensitive information (caution on radio use/use landline or cell phones where possible).
- (h) Make appropriate notifications and provide call back number.
- (i) Obtain public safety statement from involved officers.
 1. The supervisor may administratively order any Department officer to immediately provide public safety information necessary to secure the scene, identify injured parties and pursue suspects.
 2. Public safety information shall be limited to information regarding identity/ status/location of suspect(s), whether the suspect(s) is armed and type of weapon, identity/location of injured parties, number and direction of any shots fired, perimeter of the incident scene, identity of known or potential witnesses and any other pertinent exigent information.
 3. The supervisor shall not attempt to order any involved officer to provide any information other than the public safety information.
 4. Inform involved officers about the investigative procedures that will follow.
 5. Arrange to remove the officers from the scene to a law enforcement facility or other secure area.
- (j) Secure officer's weapon.
 1. The supervisor shall have the authority to direct the involved officers to surrender any involved firearm the officer discharged during the incident along with the officer's duty belt.
 2. This process shall occur discreetly, out of the view of other officers and third parties.
 3. If the firearm is holstered, leave in holster.
 4. Do not open, alter, manipulate, unload, reload or disturb trace evidence.
- (k) When an involved injured officer is transported to hospital:
 1. Where appropriate, order not to discuss the incident with others pending interview with the assigned detective.
 2. If possible, assign an uninvolved officer to accompany during transport.
 3. Consider loss of perishable evidence. If appropriate, properly collect evidence prior to transport, if delay is not life threatening.
 4. If already transported, send an uninvolved officer to the hospital to protect, preserve and recover physical evidence.
- (l) Where involved and witness officers are uninjured:

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1. Inform involved officers about the investigative procedures that will follow.
2. Order each not to discuss the incident with others pending interview by an assigned detective.
3. Arrange to remove involved and witness officers from the scene to a law enforcement facility or other secure area. Barring exigent circumstances, ensure that each is transported independently by an uninvolved officer and sequester each individually with an uninvolved officer pending interview by an assigned detective.
4. When an involved officer's weapon is taken or left at the scene for other than officer safety reasons (e.g. taken as evidence), ensure he/she is provided with a comparable replacement weapon or is accompanied by another officer.

307.5.4 INVOLVED OFFICER SUPPORT

The following shall be considered for the involved officers:

- (a) Any request for legal representation will be accommodated.
 1. Involved Department officers 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. Discussions with licensed attorneys will be considered privileged as attorney-client communications.
 3. Discussions with agency representatives/employee groups will be privileged only as to the discussion of non-criminal information.
 4. Requests for legal representation from involved non-Department officers should be referred to their employing agency.
- (b) Each involved Department officer shall be given reasonable paid administrative leave following an officer involved shooting or death. It shall be the responsibility of the concerned Division Chief to make schedule adjustments to accommodate such leave.
- (c) A fitness-for-duty exam shall be required before an officer returns to regular duty status utilizing a licensed psychotherapist pursuant to Department policy titled Fitness for Duty.
 1. Interviews with a licensed psychotherapist will be considered privileged.
 2. A licensed psychotherapist may be provided to any other affected Department member, upon request.
- (d) Although the Department will honor the sensitivity of communications with peer counselors, there is no legal privilege to such communications. Peer counselors are cautioned against discussing the facts of any incident with an involved or witness officer.

307.5.5 NOTIFICATIONS

The following persons shall be notified as soon as practicable following an officer involved shooting or other officer involved death:

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- Director of Public Safety
- Concerned Division Chief
- Investigation Division Chief
- Multi-Jurisdictional Investigation rollout team
- Outside agency investigators (if applicable)
- Office of Professional Responsibility supervisor
- Psychological/peer support personnel
- Involved officer's legal and/or agency representative (if requested)
- Public Information Officer

307.5.6 CONCERNED DIVISION CHIEF RESPONSIBILITIES

Upon learning of an officer involved shooting or death, the concerned Division Chief shall be responsible for coordinating all aspects of the incident unless he/she is relieved by the Director of Public Safety.

- (a) If the concerned Division Chief is not immediately available, the highest ranking member of the concerned division shall be responsible for such coordination until relieved by the Director, the concerned Division Chief, or the assigned investigating entity.
- (b) All outside inquiries about the incident shall be directed to the concerned Division Chief.

307.6 INVESTIGATION PROCEDURES

The goal of an investigation into an officer involved shooting or death is to objectively examine and develop all available relevant information about the incident. The investigation of these incidents shall follow the rules of law which apply to all criminal proceedings, including constitutional, statutory and case law regarding rights which are covered by the U.S Constitution's 4th, 5th, 6th, and 14th Amendments. The overarching objective is to ensure that the investigation is performed in a thorough, complete, professional and fair manner free from conflicts of interest and conducted in a transparent fashion that garners the public's confidence. Information developed during such investigations is used:

- (a) To determine the presence or absence of criminal conduct on the part of those involved in the incident, specifically:
 - 1. To determine whether the nature and quality of the conduct involved is prohibited by statutes which provide for criminal penalties upon conviction.
 - 2. If criminal conduct does exist, determine the identity of culpable individuals.
 - 3. If criminal conduct does exist, to develop information to assist a prosecutor in determining the degree of any crime(s), the existence of any factual or legal defenses to that crime, and the presence or absence of mitigating factors.

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- (b) To provide factual information to the employing agency's management for its internal use.
 - 1. While the criminal investigation is not directed toward administrative concerns, it is recognized that the results of the criminal investigation will be of interest to Department managers for internal use and those results are fully available for that purpose unless otherwise prohibited by law.

307.6.1 MULTI-JURISDICTIONAL INVESTIGATION TEAMS

The Department endorses the concept of independent investigations of officer involved shootings and other officer involved deaths. To that end, the Department will wherever possible, enter into multi-jurisdictional investigative shooting team agreements with local criminal justice organizations across the State.

- (a) These agreements facilitate investigative management by uninvolved parties.
- (b) In those jurisdictions where the Department has entered into such agreements, investigations will be conducted according to the terms of the relevant agreement.

307.6.2 CRIMINAL INVESTIGATION OF SUSPECT ACTIONS

Except as otherwise delineated in any applicable multi-jurisdictional investigative team agreement, the law enforcement agency where the incident occurred has criminal jurisdiction and is responsible for any investigation concerning the criminal conduct of involved suspect(s).

- (a) That agency may for various reasons relinquish its criminal investigation jurisdiction to another uninvolved law enforcement agency.
- (b) Upon the request of the agency with jurisdiction and by mutual agreement when no other option is available, the Investigation Division may conduct the investigation concerning the criminal conduct of involved suspect on behalf of the Department.

307.6.3 CRIMINAL INVESTIGATION OF INVOLVED PEACE OFFICER ACTIONS

In jurisdictions where the Department has entered into multi-jurisdictional investigative team agreements, detectives from agencies participating in such agreements may be assigned to conduct the investigation as the primary detective according to the terms of the relevant agreement.

- (a) In jurisdictions where such agreements do not exist, the Department will request the assistance of local uninvolved law enforcement agencies to conduct the investigation.
 - 1. Detectives from local uninvolved law enforcement agencies may be assigned to conduct the investigation as the primary detective.
 - 2. Such investigations may include one or more detectives from the Investigation Division when requested to assist as necessary.
- (b) Where other options are not available, the Department will conduct the investigation using the Investigation Division.

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- (c) Once public safety issues have been addressed, assigned detectives should be given the opportunity to obtain a voluntary statement from involved officers and to complete their interviews. The following shall be considered when interviewing the involved officer:
 - 1. If requested, any involved officer will be afforded the opportunity to consult individually with up to two representatives of his/her choosing or attorneys prior to speaking with criminal detectives. However, in order to maintain the integrity of each involved officer's statement, involved officers shall not consult or meet with a representative or an attorney collectively or in groups prior to being interviewed.
 - 2. If an involved officer is physically, emotionally or otherwise not in a position to provide a voluntary statement when interviewed by criminal detectives, consideration should be given to allowing a reasonable period for the officer to schedule an alternate time for the interview.
 - 3. Any voluntary statement provided by an involved officer will be made available for inclusion in any related investigation, including administrative investigations. However, no administratively compelled statement will be provided to any criminal detectives unless the officer consents.
 - 4. Department supervisors and Office of Professional Responsibility personnel should not participate directly in any voluntary interview of Department officers. This will not prohibit such personnel from discreetly monitoring interviews or providing the criminal detectives with topics for inquiry.
 - 5. Unless significant circumstances prevent it, detectives should at a minimum audio record all interviews. When possible, video recording is preferable.
- (d) Other investigative measures shall include:
 - 1. Ensuring the appropriate preservation and collection of all evidence and the processing of all related scenes.
 - 2. Conducting all appropriate witness interviews as soon as reasonably practicable.
 - 3. Consideration should be given to promptly contacting the suspect's known family and associates to obtain any available and untainted background information about the suspect's activities and state of mind prior to the incident.

307.6.4 ADMINISTRATIVE INVESTIGATION AS TO POLICY COMPLIANCE

In addition to other investigations associated with an officer involved shooting or death, the Department will conduct necessary administrative investigations to determine policy compliance issues.

- (a) Administrative investigations will be conducted by the Office of Professional Responsibility according to appropriate protocols and will be completed in a timely manner.
 - 1. Documentation resulting from such investigations will be considered a confidential peace officer file.

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2. Administrative investigations may be deferred until the completion of a related criminal investigation.
- (b) Administrative interviews of members shall be subject to Department policies and applicable laws.
- (c) Any officer involved in a shooting or death may be requested or administratively compelled to provide a blood sample for alcohol/drug screen (NRS 284.4065.2(a)).
 1. Absent consent from the officer, such compelled samples and the results of any such testing shall not be disclosed to any criminal investigative agency.
- (d) If an officer has voluntarily elected to provide a statement to criminal detectives, the assigned administrative detective should review the statement before proceeding with any further interview of that involved officer.
 1. If a further interview of the officer 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 officer shall be provided with a copy of his/her prior statement before proceeding with any subsequent interview.
- (e) In the event that an involved officer has elected not to provide criminal detectives with a voluntary statement, the assigned administrative detective shall conduct an administrative interview to determine all relevant information.
 1. Although this interview should not be unreasonably delayed, care should be taken to ensure that the officer's physical and psychological needs have been addressed before commencing the interview.
 2. If requested, the officer shall have the opportunity to select up to two uninvolved representatives/attorneys to be present during the interview. However, in order to maintain the integrity of each individual officer's statement, involved officers shall not consult or meet with representatives or attorneys collectively or in groups prior to being interviewed (NRS 289.080.1).
 3. Administrative interviews should be recorded by the detective. The officer may also record the interview (NRS 289.080.7).
 4. The officer shall be informed of the nature of the investigation. The officer shall be given his/her *Garrity* rights and ordered to provide full and truthful answers to all questions. The officer shall be informed, however, that the interview will be for administrative purposes only and that the statement cannot be used criminally (NRS 289.060).
 5. The Office of Professional Responsibility shall compile all relevant information and reports necessary for the Department to determine compliance with applicable policies.
 6. 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.

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

307.6.5 REPORTS BY INVOLVED DEPARTMENT OFFICERS

In the event that suspects remain outstanding or subject to prosecution for related offenses, the Department retains the authority to require involved Department officers to provide sufficient information for related criminal reports to facilitate the apprehension and prosecution of those individuals.

- (a) While the involved Department officer may write the report, it is generally recommended that such reports be completed by assigned detectives, who should interview all involved officers as victims/witnesses.
 1. Since the purpose of these reports will facilitate criminal prosecution, statements of involved officers should focus on evidence to establish the elements of criminal activities by suspects.
 2. Care should be taken not to duplicate information provided by involved officers in other reports.
- (b) Nothing in this section shall be construed to deprive an involved Department officer of the right to consult with legal counsel prior to completing any such criminal report.
- (c) 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.

307.7 AUDIO AND VIDEO RECORDINGS

An officer's recall is dependent on a variety of processes, including attention and perception. In order to recall specific elements of an event from memory, those elements must first have been stored into memory. This cannot occur if the officer never saw or paid attention to those particular elements in the first place. There can be substantial disparity between what was possible to perceive and what an officer actually did perceive. The U.S. Supreme Court acknowledged this very concern by establishing the "objective reasonableness" standard of *Graham v. Connor*, instructing that judgments about an officer's actions must be tempered by an understanding of what a reasonable officer could have seen. Limits on an officer's field of vision, especially during a critical incident, can mean that an officer will see less than a camera or video might record. An officer's experience of a critical incident and his/her memory afterward are complex in and of themselves. Reviewing the video of the event adds additional complexity as the officer processes potential new information that might impact the officer's understanding of the event. In the event of an officer involved shooting death, involved officers and eyewitness officers are permitted to review available Mobile Audio/Video, body-worn video, or other video or audio recordings prior to providing a recorded statement or completing a report. However, it is strongly encouraged the officer withhold from viewing any video or audio recordings to retain the officer's recollection of their own perceptions.