

Officer-Involved Shootings and Deaths

302.1 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 another action of an officer.

In other incidents not covered by this policy, the Chief of Police may decide that the investigation will follow the process provided in this policy.

302.2 POLICY

The policy of the Town of Cheektowaga Police Department is to ensure that officer-involved shootings and deaths are investigated in a thorough, fair and impartial manner.

302.3 TYPES OF INVESTIGATIONS

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

- A criminal investigation of the suspect's actions.
- A criminal investigation of the involved officer's actions.
- An administrative investigation as to policy compliance by involved officers.
- A civil investigation to determine potential liability.

302.4 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.

The following scenarios outline the jurisdictional responsibilities for investigating officer-involved shootings and deaths.

302.4.1 CRIMINAL INVESTIGATION OF SUSPECT ACTIONS

The investigation of any possible criminal conduct by the suspect is controlled by the agency in whose jurisdiction the suspect's crime occurred. For example, the Town of Cheektowaga Police Department would control the investigation if the suspect's crime occurred in Cheektowaga.

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 investigation may be conducted by the agency in control of the criminal investigation of the involved officer, at the discretion of the Chief of Police and with concurrence from the other agency.

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302.4.2 CRIMINAL INVESTIGATIONS OF OFFICER ACTIONS

In incidents involving a death, the criminal investigation into the involved officer's conduct during the incident will be conducted by the New York State Office of the Attorney General Office of Special Investigation. If the Office of Special Investigation does not assert jurisdiction, or in cases not involving a death, the criminal investigation will be handled according to the Criminal Investigation section from this policy when an officer of this department is involved.

302.4.3 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.

302.5 INVESTIGATION PROCESS

The following procedures are guidelines used in the investigation of an officer-involved shooting or death.

302.5.1 UNINVOLVED OFFICER RESPONSIBILITIES

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

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

302.5.2 SUPERVISOR RESPONSIBILITIES

Upon arrival at the scene, the first uninvolved CPD 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 attempt to obtain a brief voluntary overview from one involved officer.
- (b) If necessary, the supervisor may administratively order any CPD officer to immediately provide public safety information necessary to secure the scene, identify injured parties and pursue suspects.
 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.

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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 Watch Commander and Dispatch. If feasible, sensitive information should be communicated over secure networks.
 - (d) Take command of and secure the incident scene with additional CPD 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 CPD officer should be given an administrative order not to discuss the incident with other involved officers or CPD 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 officers.

302.5.3 WATCH COMMANDER RESPONSIBILITIES

Upon learning of an officer-involved shooting or death, the Watch Commander shall be responsible for coordinating all aspects of the incident until he/she is relieved by the Chief of Police or a higher ranking supervisor.

302.5.4 NOTIFICATIONS

The following persons shall be notified as soon as practicable:

- Chief of Police
- Assistant Chief of Police
- Captain of Patrol
- Investigative Division Captain
- Town Supervisor
- Outside agency investigators (if appropriate)
- Internal Affairs Unit supervisor
- Psychological/peer support personnel
- Medical Examiner (if necessary)
- Union representative (if requested)
- Public Information Officer
- Office of Special Investigation

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302.5.5 INVOLVED OFFICERS

The following shall be considered for the involved officer:

- (a) Any request for legal or union representation will be accommodated.
 - 1. Involved CPD 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. Requests from involved non-CPD 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.
- (d) A licensed psychotherapist shall be provided by the Department to each involved CPD officer. A licensed psychotherapist may also be provided to any other affected CPD members, upon request.
 - 1. Interviews with a licensed psychotherapist will be considered privileged.
 - 2. An interview or session with a licensed psychotherapist may take place prior to the member providing a formal interview or report. However, the 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) Communications between the involved officer and a peer support member is addressed in the Wellness Program Policy.

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.

Each involved CPD officer shall be given reasonable paid administrative leave following an officer-involved shooting or death. It shall be the responsibility of the Watch Commander to make schedule adjustments to accommodate such leave.

302.6 CRIMINAL INVESTIGATION

The prosecuting office with jurisdiction over the incident is responsible for the criminal investigation into the circumstances of any officer-involved shooting involving injury or death.

If available, investigative personnel from this department may be assigned to partner with investigators from outside agencies or the prosecuting office with jurisdiction over the incident to avoid duplicating efforts in related criminal investigations.

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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 shall be considered for the involved officer:

- (a) 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, he/she shall not consult or meet with a representative or an attorney collectively or in groups prior to being interviewed.
- (b) 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.
- (c) Any voluntary statement provided by an involved officer will be made available for inclusion in any related investigation including administrative investigations. However, no administratively coerced statement will be provided to any criminal investigators unless the officer consents.

302.6.1 REPORTS BY INVOLVED CPD OFFICERS

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

While the involved CPD officer 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.

Nothing in this section shall be construed to deprive an involved CPD officer of the right to consult with legal counsel prior to completing any such criminal report.

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.

302.6.2 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.

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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. 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 Department.
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 untainted background information about the suspect's activities and state of mind prior to the incident.

302.6.3 INVESTIGATIVE PERSONNEL

Once notified of an officer-involved shooting or death, it shall be the responsibility of the designated Detective Bureau supervisor to assign appropriate investigative personnel to handle the investigation of related crimes. Department investigators will be assigned to work with investigators from the prosecuting office with jurisdiction over the incident and may be assigned to separately handle the investigation of any related crimes not being investigated by the prosecuting office with jurisdiction over the incident.

All related department reports, except administrative and/or privileged reports, will be forwarded to the designated Detective Bureau supervisor for approval. Privileged reports shall be maintained exclusively by members who are authorized such access. Administrative reports will be forwarded to the appropriate Captain.

302.7 ADMINISTRATIVE INVESTIGATION

In addition to all other investigations associated with an officer-involved shooting or death, this department will conduct an internal administrative investigation of involved CPD officers to determine conformance with department policy. This investigation will be conducted under the supervision of the Internal Affairs Unit and will be considered a confidential officer personnel file.

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

- (a) Any officer involved in a shooting or death may be requested or administratively compelled to provide a blood sample for alcohol/drug screening. Absent consent from

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the officer, such compelled samples and the results of any such testing shall not be disclosed to any criminal investigative agency.

- (b) If any officer 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 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 interviews.
- (c) In the event that an involved officer 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.
 - 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 an uninvolved representative 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 a representative collectively or in groups prior to being interviewed.
 - 3. Administrative interviews should be recorded by the investigator. The officer may have access to the official recording of the interview.
 - 4. The officer shall be informed of the nature of the investigation. If an officer 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 officer shall be informed that the interview will be for administrative purposes only and that the statement cannot be used criminally.
 - 5. The Internal Affairs Unit shall compile all relevant information and reports necessary for the Department to determine compliance with applicable policies.
 - 6. The completed administrative investigation shall include a response to resistance form, which will restrict its findings as to whether there was compliance with the Use of Force Policy.
 - 7. Any other indications of potential policy violations shall be determined in accordance with standard disciplinary procedures.

302.8 CIVIL LIABILITY RESPONSE

A member of this department may be assigned to work exclusively under the direction of the legal counsel for the Department 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 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.

302.9 AUDIO AND VIDEO RECORDINGS

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

Upon request, 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, body-worn video, or other video or audio recordings with the approval of assigned investigators or a supervisor.

Any, 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 Town Attorney's Office, as appropriate.

302.10 DEBRIEFING

Following an officer-involved shooting or death, the Town of Cheektowaga Police Department should conduct both a Critical Incident Stress Debriefing and a tactical debriefing. See the Wellness Program Policy for guidance on Critical Incident Stress Debriefings.

302.10.1 TACTICAL DEBRIEFING

A tactical debriefing should take place to identify any training or areas of policy that need improvement. The Chief of Police should identify the appropriate participants. This debriefing should not be conducted until all involved members have provided recorded or formal statements to the criminal and/or administrative investigators.

302.11 MEDIA RELATIONS

No involved CPD officer shall make any comment to the media unless he/she is authorized by the Chief of Police..

I. Release of Information

The Cheektowaga Police Department must be as publicly transparent as possible when disseminating information related to an investigation where an officer uses deadly force. Such transparency however, must not jeopardize, and does not supersede, the safety of the officer, the officer's family, or any member of the public who may be affected by the release of sensitive information.

- (a) The Public Information Officer (PIO), who reports directly to the Chief of Police, will be notified of all use of deadly force incidents whether they result in death or serious physical injury. The Chief of Police is ultimately responsible for approving information available for public release.[1]

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- (b) No officer, other than the Chief of Police, or his/her designee shall publicly comment on any officer use of deadly physical force incident.
- (c) Officers receiving inquiries regarding incidents occurring in other agency jurisdictions shall refrain from public comment and will direct those inquiries to the agency having jurisdiction and primary responsibility for the investigation.[2]
- (d) As soon as practical, information shall be released informing the public that an Officer has used deadly physical force in the performance of duty and that an initial press briefing will be scheduled. Ideally, this briefing will occur within two (2) hours of the initial release of information.[1] NO OTHER INFORMATION WILL BE RELEASED AT THIS TIME.
- (e) The impact of the internet and social media are factors to consider when making the decision to release and/or hold back information to the media. In some instances facts and/or distortions may be reported by media that require a confirmation and/or denial.

II. Initial Press Release

- (a) The Public Information Officer should provide the media with the following Information[1]:
 1. A description of the deadly force used. Example: firearm, personal weapon etc.
 2. The circumstances which brought the officer(s) and citizen(s) into contact prior to the deadly force encounter. Example: dispatched service call, routine traffic enforcement, street encounter, etc.
 3. If the officer had been called to the scene, the time the call was initiated and the time of the officer's arrival.
 4. The number of officers directly involved in the use of deadly force.
 5. The years of service of the officer (s) involved in the use of deadly physical force has.
 6. General Information about the citizen(s) involved in the deadly force encounter.
 7. Other information as determined by the Investigative Division and the District Attorney's office.
- b. The Public Information Officer should not provide the media with the following Information:
 1. The name of the citizen(s) involved in the deadly force encounter.
 2. Whether the citizen(s) involved have a prior criminal history.
 3. The name of the officer(s) involved in the use of deadly physical force.
 4. The race/ethnicity of the citizen(s), or officer(s) involved in the deadly force encounter.

III. First Official News Conference

- (a) The first news conference should be scheduled, when possible, to accommodate the official daily news cycle (noon, evening and nighttime broadcasts).[2]
- (b) The Chief of Police should attend and take questions from the media.

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- (c) Information the Public Information Officer/Chief of Police should provide to the media:
 - 1. The ethnicity of the officer(s) and citizen(s) involved in the deadly force encounter.
 - 2. The involved officer(s) history with the use of deadly physical force.
 - 3. The name of the citizen involved in the deadly force encounter.
- (d) Whether the deadly force encounter was captured by Departmental surveillance recordings.
- (e) Other information as determined by the Investigative Division and the District Attorney's office.
- (f) Information the Public Information Officer should not provide the media:
 - 1. The name of the officer(s) involved in the deadly force encounter. **
 - 2. Departmental recordings of the deadly force encounter.
 - 3. The criminal history of the citizen(s) involved in the deadly force encounter if the citizen(s) was/were unarmed.

IV. Subsequent News Conferences

- (a) The circumstances regarding a deadly use of force encounter may generate the need for subsequent news conferences. Any additional information related to the investigation may be released as determined by the Investigative Division and the District Attorney's office.
- (b) If Departmental Recordings of the deadly use of force encounter exist, they may be released to the media if the releases of said recordings do not compromise the integrity of the accompanying investigation.
- (c) The name of the officer(s) involved in the deadly force encounter should not be released prior to a Grand Jury finding in the investigation. Following a determination by the Grand Jury, the officer(s) involved in the deadly force encounter's name should be released to the media.