

# **CRIMINAL INVESTIGATION DIVISION HOMICIDE SECTION**

## **Level 1 Investigations**

### **Policy & Procedure 19-01**



Revised \*\*\*\* 2021

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## Preface

The Oakland Police Department values the protection and sanctity of human life. The Level 1 Investigation Team is committed to thorough, unbiased, equitable, transparent, and comprehensive criminal investigations into Level 1 incidents. The Department will work collaboratively with prosecutorial agencies and, as much as is possible, the Internal Affairs Division and the City of Oakland's Community Police Review Agency.

The Department is responsible for ensuring the investigative processes used during our investigations are ever evolving, utilizing best practices. The Level 1 Investigation Team will produce comprehensive, thorough, accurate, unbiased, transparent, and timely investigations.

## Purpose

The purpose of this directive is to set forth policy and procedures for all Level 1 Investigation Team activations. This document supplements existing homicide investigative policy and procedures identified in CID Policy and Procedure 15-01, General Orders K-04, M-04.1 and others. The intent of this directive is to reinforce procedures and conduct that should result in a thorough and quality investigation, serving as the foundation for prosecutorial decisions to be made by the Alameda County District Attorney's Office (or other sanctioned entity).

The investigation report may also provide facts to administrative investigators for the Department's own internal use. Criminal investigators should recognize their priority is the criminal investigation but should also be conscientious about addressing information and evidence pertaining to the Department's administrative investigation.

## Applicability

This directive is applicable to all personnel regularly assigned to the Level 1 Investigation Team and to other Departmental personnel participating in Level 1 investigations, as defined below.

## Definition

A "Level 1 Investigation" is one in which the Department sends specifically trained investigators, who are members of the Criminal Investigation Division's Homicide Section, on a "call-out" basis to investigate a major incident involving the actions, or alleged actions / involvement, of OPD members. **While the name of this type of investigation stems from the Department's force reporting structure (where "Level 1" force is the most serious type of force, such as an officer-involved shooting), OPD uses the Level 1 Investigation for Level 1 uses of force and other serious incidents.** These include:

Level 1 Uses of Force<sup>1</sup>:

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<sup>1</sup> Departmental General Order K-04 Section II, A as modified by [Special Order 9196](#)

- ❖ A lethal firearm discharge at a person;
- ❖ Any force resulting in death;
- ❖ Any force creating a substantial risk of causing death;
- ❖ Intentional strikes to the head with an impact or impromptu impact weapon, regardless of injury;
- ❖ Any unintentional firearm discharge with injury or as directed by the CID Commander;
- ❖ Any force<sup>2</sup> which results in Great Bodily Injury<sup>3</sup>;
- ❖ The use of the Carotid Restraint, including a Carotid Takedown<sup>4</sup>;
- ❖ The use of a vehicle by a member to intentionally strike a suspect. This includes a vehicle at any speed, with or without injury, when the act was intentional, and contact was made;
- ❖ Any Use of Force incident raised to a Level 1 at the direction of the Chief of Police (COP) or designee, including those raised in the field by a Watch Commander.<sup>5</sup>

Level 1 Vehicle Pursuits<sup>6</sup>:

- ❖ A vehicle pursuit that results in death or serious injury likely to cause death; or
- ❖ A Level 2 pursuit raised to a Level 1 by a supervisor or commander.

In-Custody Deaths:

- ❖ The death of a person who is detained by, under arrest by, or otherwise in the custody of OPD members.

Significant Incidents Involving Outside Law Enforcement Agencies Within Oakland:

- ❖ Where an outside agency on-duty law enforcement officer uses lethal force within the jurisdiction of the Oakland Police Department resulting in the death of a person.
- ❖ Where an outside agency on-duty law enforcement officer's pursuit of a vehicle results in the death of anyone involved in the pursuit or occurs as a result of the pursuit, and the death occurs within the jurisdiction of the Oakland Police Department.
- ❖ Where an outside agency on-duty law enforcement officer is involved in a Level 1 incident in their own jurisdiction, which is wholly or partially within the jurisdiction of the city of Oakland, and the outside agency requests that OPD take primary responsibility

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<sup>2</sup> Including positional asphyxia

<sup>3</sup> "Great bodily injury is significant or substantial physical injury which involves a substantial risk of death, a substantial risk of serious permanent disfigurement, or a substantial risk of protracted loss or impairment of the function of any part or organ of the body. It is an injury that is greater than minor or moderate harm, and is more severe than serious bodily injury." DGO K-03, as passed by the Police Commission 8 October 2020

<sup>4</sup> The Carotid Restraint is banned by policy (DGO K-03, I-1)

<sup>5</sup> CID PP 15-01 Section I, Homicide Section Protocol; Refer to K-04 Reporting and Investigating Use of Force Policy and J-4 Pursuit Policy.

<sup>6</sup> [DGO J-04](#), *Pursuit Driving*, Appendix A, J.

for the criminal investigation (e.g., an event where California Highway Patrol officers use lethal force on a controlled-access freeway wholly within the city of Oakland).

When Oakland Police personnel are involved in one of the above incidents, the Level 1 Investigation by the Criminal Investigation Division is typically paralleled by administrative investigations from the Department's Internal Affairs Division (IAD) and the City's Community Police Review Agency (CPRA).

### **OPD INCIDENTS OUTSIDE THE CITY OF OAKLAND**

Upon notification of a Level 1 force incident involving on-duty Oakland Police members occurring outside the City of Oakland, Level 1 investigators shall respond and liaise with the agency with jurisdiction over the incident.

Level 1 investigators may be directed to attend and/or monitor subsequent interviews of Oakland Police Department members, unless other factors make this impractical. The law enforcement agency with jurisdiction over the Level 1 incident shall retain incident command and primary criminal investigation responsibility. Level 1 investigators shall only assume primary criminal investigation responsibility of these incidents upon the request of the outside agency.

### **OUTSIDE STATE/LOCAL AGENCY INCIDENTS WITHIN THE CITY OF OAKLAND**

Upon notification of a Level 1 force incident involving outside agency personnel that occurred wholly within the City of Oakland, the CID Commander shall deploy Level 1 Investigators to conduct the criminal investigation for the incident. The CID Commander will ensure the subject officer's home agency has been notified of the Level 1 incident and will determine if the outside agency investigators may observe and be present during the criminal investigation, upon the request of that agency.

For Level 1 force incidents involving outside agency personnel that occurred within multiple jurisdictions including the City of Oakland, the BOI Deputy Chief shall make the determination of whether OPD Level 1 investigators or an outside agency will conduct the criminal investigation for the incident.

In all instances involving Level 1 force incidents and outside agency personnel, requests – or specific direction – to outside agency personnel may be disregarded by those agencies. In cases where OPD cannot enforce compliance, and outside agency personnel do not follow the direction of OPD command or policy, these deviations shall be communicated to the lead investigator, who shall memorialize the deviation in their Investigation Report.

## SECTION I

### DUTIES & RESPONSIBILITIES AT LEVEL 1 INCIDENTS

#### On-Duty Watch Commander or Initial Incident Commander

The first command officer (rank of Lieutenant of Police or above) to respond to the scene of a Level 1 incident will take command as the Incident Commander. This person's role is crucial in the time between when the incident takes place and when the Level 1 Investigation team and its attendant apparatus arrives. While for incidents involving the Bureau of Field Operations this is typically the on-duty Watch Commander for that area, another command officer may take this role.

The on-duty Watch Commander or initial incident commander<sup>7</sup> (hereafter "Watch Commander") at a Level 1 incident shall:

1. Follow the direction in [DGO K-04](#) regarding responsibilities at a Level 1 force incident, if applicable, including managing the apprehension of outstanding suspects and ameliorating any public safety threats;
2. Follow the direction in [DGO J-04](#) regarding responsibilities at a Level 1 pursuit incident, if applicable, including managing the apprehension of outstanding suspects and ameliorating any public safety threats;
3. Ensure that all involved and witness members are physically separated immediately after the scene has been secured and that these members are sequestered with an uninvolved member who was not a witness to or involved in the use of force. Sequestered means:
  - a. Sequestered members cannot communicate with each other, including by use of their personal phones;
  - b. Sequestered members have their BWCs collected (see number 7);
  - c. Sequestered members have their departmentally owned cellular devices collected (see number 7);

If physical sequestration is impossible, involved and witness members shall be admonished to not discuss the incident with other involved or witness members (an inability to physically sequester shall be documented and explained, and should only occur in exceptional circumstances).

Involved in this context means that the member:

- a. Used **any** force during the level 1 incident
- b. Directed **any** force as a supervisor or commander during the level 1 incident

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<sup>7</sup> Refer to MOR 250.01, *Authority and Responsibilities of the Watch Commander*

- c. Was the driver or passenger in a police vehicle engaged at any point in a vehicle pursuit that ended as a Level 1 pursuit or was directed to be investigated as a Level 1 pursuit
  - d. Was part of any physical detention, arrest, or custody of a person who died in custody of OPD members.
4. When there is a doubt as to whether a member's involvement requires sequestering, the Watch Commander should sequester that member as a precaution until a determination can be made by the Level 1 investigation team.
5. Ensure that a supervisor receives a Public Safety Statement<sup>8</sup> from all involved personnel if a firearm discharge occurred.
6. Ensure a Crime Scene Security Log is prepared;
7. Collect (or direct that a designee collect) the body-worn cameras (BWC) of all involved and witness officers and maintain custody of the cameras until he/she can pass them to the Level 1 investigator or designee;
8. Collect (or direct that a designee collect) any departmentally owned cellular devices in possession of all involved and witness officers and maintain custody of these devices until he/she can pass them to the IAD investigator or designee;
9. Direct preliminary scene investigation to include:
  - a. identifying and canvassing for witnesses and surveillance footage; and
  - b. identifying an appropriate primary report writing officer with the experience and capacity to complete the initial crime report.

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<sup>8</sup> Definition: A Public Safety Statement is information obtained by a supervisor at an officer-involved incident using questions intended to determine existing threats to public safety and identify transitory evidence that must be preserved. The scope of this statement is limited to the collection of such critical, fleeting information in the immediate aftermath of these critical incidents. If there are multiple officers involved, the field supervisor should separately obtain Public Safety Statements from each involved officer, if feasible.

This task should be handled by a field supervisor. The field supervisor shall direct the involved officer to answer limited questions of an exigent nature. These include, but are not limited to:

- Have you been involved in an Officer-Involved Shooting?.
- Is anyone injured? Where are they?
- Are there any outstanding suspects? If so, can you provide a description, direction, mode of flight? How long ago did the outstanding suspect(s) flee? What weapons are they armed with?
- Did the suspect(s) fire at you? Where was the suspect? Where were you?
- Where were you when you fired at the suspect? Where was the suspect?
- Did you move during the encounter? From where to where?
- Are you aware of weapons or evidence that needs to be secured or protected?
- Are you aware of any witnesses? Where are they?

10. Ensure that a space (similar to a media staging area) has been designated for family members of persons who have had force used against them as well as other impacted community members, if applicable;
11. Once the Level 1 investigation team has arrived, lead a briefing and a scene **investigation** walk-through for the Level 1 investigators, outside agency investigators (if any), IAD investigators, Homicide Section Commander, CID Commander, District Attorney Inspectors (if applicable), and Traffic Investigators (if applicable).
12. Watch Commanders initially responding to the scene should ask each member at the scene whether any discussions regarding the incident have occurred prior to the Watch Commander's arrival or prior to the member being sequestered. The Watch Commander should then brief Level 1 investigators immediately after investigators arrive at the scene about whether any discussions have occurred so that these can be clarified during subsequent interviews.
13. Follow the direction of DGO K-04, Section J-4, regarding the community impact of force incidents and consider whether community response resources or strategies should be recommended or immediately implemented given the nature of the force incident. These include, but are not limited to:
  - a. Referrals to community-based support organizations for force witnesses;
  - b. Community force debriefs or town halls; and
  - c. Resources made available by other governmental entities (e.g., the Department of Violence Prevention).
14. If the Watch Commander played an active role in the incident, tactical event, or directed the force, he or she shall:
  - a. Immediately request relief as the incident commander from another command officer (typically another on-duty Watch Commander), and
  - b. Inform the Level 1 Investigation team of his/her involvement in the incident, so that he/she can be sequestered.
15. Involved commanders should contact their Division Captain or Bureau Chief to coordinate relief.

### **The Bureau of Investigations Deputy Chief**

Upon notification of a Level 1 incident, the BOI Deputy Chief shall:

1. Notify and brief the Assistant Chief and Chief of Police;

The Bureau of Investigations Deputy Chief will also adjudicate any disputes between the IAD Commander (Captain of Police) and the Criminal Investigation Division Commander (Captain of Police) over whether personnel are to be considered as "involved" in a Level 1 incident (and thus subject to the provisions of this policy, including sequestration and interview). The IAD Commander may appeal this decision to the Assistant Chief of Police, who will be the final arbiter of any disputes of this sort.

### **Criminal Investigation Division Commander**

Upon notification of a Level 1 incident, the CID Commander or designee shall:

1. Notify and brief the Bureau of Investigation (BOI) Deputy Chief;
2. Notify the Internal Affairs Division Commander (if CPRA investigators respond to the scene, the IAD Commander will coordinate with CPRA investigator[s]);
3. Respond to the incident location within one hour of notification, or as soon as practical;
4. Review the investigative plan coordinated by the Homicide Commander;
5. Ensure that BWC footage from involved officers has been uploaded and locked so that uninvolved persons cannot access it;
6. Ensure that any applicable search warrant affidavits have sealing order requests attached, if supported by law.
7. Ensure that the primary crime report has been locked by Records Manager with limited access for authorized personnel.
8. Coordinate with the Public Information Officer (PIO) on a preliminary media statement to be issued in accordance with Section IV, below, if applicable.
9. Ensure that investigative plan is completed within 48-72 hours by the Homicide Section Commander and documented on the Investigative Action Report (IAR).
  - a. Review and approve investigative plan within ten days and forward to chain of command.
  - b. Ensure that investigative plan is completed and forwarded to Bureau of Investigation Chief and Executive Command Team within ten days after the incident.

### **Homicide Section Commander**

The Homicide Section Commander is responsible for overseeing all Level 1 investigations to ensure procedures outlined in this policy are addressed, followed, and properly memorialized. The Homicide Section Commander is also responsible for the overall command and control of the use of force crime scene and investigation, as well as ensuring that all primary investigators conducting Level 1 Investigations have completed the mandated training courses<sup>9</sup> prior to being activated as a Level 1 Investigator.

Upon being notified of a Level 1 incident the Homicide Commander or his/her designee shall:

1. Notify and brief the CID Commander;
2. Notify the District Attorney's Office standby team<sup>10</sup>;
3. Respond to the incident location within one hour of notification, or as soon as practical;

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<sup>9</sup> Mandatory training courses are set forth in CID P&P 13-05, *CID Investigative Training Program*.

<sup>10</sup> If the District Attorney's Office standby team declines to respond, this information shall be memorialized in the primary investigator's case notes.

4. Confirm that all involved members, witness members, and non-member witnesses have been identified, properly separated, and sequestered (for members) by the incident commander;
  - a. When there is a doubt as to whether a member's involvement requires sequestering, the Homicide Commander should isolate parties as a precaution until a determination can be made by the CID Commander, the BOI Deputy Chief, or, at last resort, the Assistant Chief of Police.
5. Ensure all Body Worn Cameras (BWC) were collected by the Watch Commander and uploaded to the server as soon as possible, pursuant to [DGO I-15.1](#).
6. Designate the lead investigator and coordinate the investigative plan for the incident with the force investigators. The plan may include, but is not limited to, determining if there is probable cause for an arrest, the direction of ongoing criminal investigations, apprehending outstanding suspects, search warrants to be authored, etc.
7. In cases of a fatality, the Homicide Section Commander will confer with the Alameda County Coroner's Office to determine whether OPD or the Coroner's office will perform next-of-kin notification.
8. Contact communications supervisor and obtain copy of radio purge. Review document as soon as practical and ensure:
  - a. Identify any witnesses who may have called the OPD Communications Division.
  - b. Ensure appropriate follow up once witnesses have been identified from the radio purge.
9. Ensure that the investigative plan is completed within 48 – 72 hours and documented within the body of the Investigative Action Report (IAR).
  - a. Forward copy of investigative plan to CID Commander no later than seven days from date of incident.

### **CID Level 1 Investigators**

The primary investigator is generally the on-call Level 1 Investigation Team Sergeant, and the primary investigator shall be at the rank of Sergeant or above (assisting investigators may be at the rank of officer). The Homicide Section Commander may, at any point in the investigation, designate a different investigator (Sergeant or above) as the primary investigator. All primary investigators for Level 1 Investigations must have previously completed specific training for investigating Level 1 uses of force.

The Primary Level 1 Investigator holds authority over the crime-scene(s) and may order the delegation of investigative tasks, remove unnecessary personnel from the scene (regardless of rank or assignment), and take other investigative actions as necessary to ensure a thorough, unbiased, and equitable investigation may take place. Typically, while many personnel might be within the outer perimeter of the incident, only the following personnel will be allowed into the inner perimeter which contains the crime scene:

- Lead investigator
- Secondary investigator
- Assigned primary Police Evidence Technician

- Homicide Section Commander
- BOI Deputy Chief (if necessary)
- IAD Lead investigator
- IAD Secondary investigator
- IAD Investigations Lieutenant
  - If CPRA personnel respond to the incident, they shall be escorted while inside the crime scene by the IAD Lieutenant or designee
- District Attorney (if applicable)
- District Attorney Investigator (if applicable)

Upon being notified of a Level 1 incident the assigned Level 1 Investigator(s) shall:

- Notify and confer with the Homicide Section Commander;
- Respond to the incident location within one hour of notification, or as soon as practical;
- Note all relevant information involving the notification of the incident for eventual inclusion in the Investigative Action Report (IAR).

Upon arrival the Investigator shall:

1. Assume control of the crime scene.
2. Ensure that the crime scene is protected, including the assemblance of the crime scene visibility barriers (e.g. dignity curtains) if available and if they can be erected without impacting the scene integrity or investigation.
3. Ensure that all items of evidence are identified and protected prior to collection by Police Evidence Technicians (PET).
4. Receive a briefing and scene walk-through from the assigned report writer, on-scene sergeant, on-scene commander, and Police Evidence Technician(s). This should include:
  - a. The outcome of all Public Safety Statements already obtained by the incident commander or designated supervisors;
5. Conduct a briefing for other law enforcement or civilian agencies with jurisdiction to investigate or oversee Level 1 investigations, if applicable. The extent of this briefing will depend on the agencies or other parties (outside of OPD) who are present.
6. Confirm that all non-member witnesses, member witnesses, and involved members have been identified.
7. Ensure statements have been taken from available witnesses, subject officers, and the subjects of the force or that arrangements have been made for interviews (see Section II for interview considerations). *Note: part of the ongoing investigation will be to find and interview witnesses who were not available or identified at the initial scene, if they exist.* Direct any additional necessary canvassing efforts and collect all results of the canvass.
  - a. Canvassing efforts should include identifying:

- i. Witnesses;
  - ii. Video evidence from cellular telephones;
  - iii. Video evidence from surveillance cameras around the scene of the incident.
8. Assess, in coordination with the Homicide Section Commander, whether a Crime Lab call-out is needed;
9. Assess, in coordination with the Homicide Section Commander, whether a Fatal Accident Standby Team (FAST) activation to include application of Total Station<sup>11</sup> or equivalent technology for evidence identification and scene mapping is needed;
10. Request aerial assets be made available for overhead photography of the scene (when appropriate). Options may include:
  - a. Oakland Police Department's helicopter unit (ARGUS) or other air-borne assets.
  - b. Other local agency's air-borne assets.
11. Work towards apprehension of outstanding suspects, if necessary.
12. Review and approve crime report and supplemental reports by applicable staff.

#### **Police Evidence Technicians**

The primary PET processing the scene shall be designated and properly identified during the incident by the Level 1 Investigation Team, and the Level 1 Investigation Team has the discretion to replace the primary PET or add PETs as needed.

The Level 1 investigation Team will direct the duties of the primary PET on scene, which may include:

1. Inspecting and collecting all involved members' firearms<sup>12</sup> and magazines in their possession, and/or other weapons or equipment as relevant:
  - a. Describe the condition of the member's firearm(s) and magazines and round count (e.g., ammunition remaining in magazine, damage to firearm, weapon malfunction, and safety on if applicable);
  - b. Describe the condition of the member's other weapons or equipment;
  - c. Process for evidence as applicable;
2. Conducting a round count of involved members' firearms and magazines in their possession, even if it is not known whether they fired their firearm (if applicable);
3. Assemble crime scene visibility barriers (e.g. dignity curtains) if available and if they can be erected without impacting the scene integrity or investigation;

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<sup>11</sup> Laser Scanning equipment is stored in the Crime Lab and must be formally requested by a commander for access/use.

<sup>12</sup> CID Level 1 personnel will have access to loaner equipment to replace items collected in the field.

4. Photograph the scene, subject's injuries or absence of injuries, and all involved members' injuries or absence of injuries;
  - a. Photographs should include full length as well as close-up photographs of the involved members depicting their appearance at the time of the incident;
5. Conduct a Gunshot Residue (GSR) examination on all involved parties, if necessary / applicable;
6. Recover all relevant and identified evidence;
7. Prepare a report as well as scale drawings and diagrams of the crime scene to include, when possible:
  - a. Identification of relevant reference points within the scene, such as vehicles, structures, street lights, or telephone poles;
  - b. Locations of known bullet holes and strike marks;
  - c. Locations of spent casings, live rounds, and magazines;
8. Ensure the assigned Level 1 Investigator reviews the Technician report for accuracy and completeness prior to finalizing.

## SECTION II - INTERVIEWS

### Summary

The interview of police personnel involved in a Level 1 incident, especially one involving the use of lethal force, is necessarily fraught with many challenges. Sworn peace officers are allowed, in certain circumstances, to use lethal force to protect themselves and others; in other circumstances, the use of lethal force by a peace officer may constitute a crime. Unlike other crimes that criminal investigators investigate, the identity of the perpetrator of the action (a peace officer) is rarely in doubt in a use of force by an officer. Instead, investigators of Level 1 incidents are faced with the complex task of discovering as many facts as possible about the case, while also eliciting information from the officer about their recollection of the incident and why they took the actions they took. In-person interviews are one of the main opportunities for investigators to elicit information about the incident from involved personnel, witnesses, and the subjects of force (if possible).

### General Considerations for Level 1 Interviews

#### Deciding Who is Interviewed

As the first-level commander of the Level 1 investigators and the coordinator of the investigative plan for the incident, the Homicide Commander will approve the investigation's plan on who is interviewed and the manner in which the interview takes place. **For Level 1 incidents, all OPD members who are determined to be materially involved in the incident by the Level 1 investigation team shall be asked to submit to an in-person voluntary interview.** Materially involved means directly involved in the use of force incident; this may be of a narrower scope than those personnel who are initially sequestered on scene by the watch commander. As the Level 1 investigation moves forward, for instance, certain members caught in the wide net of sequestration may be determined to have not been materially involved and the Level 1 investigation team may decide not to formally interview that person. *For every instance where a member is initially sequestered but determined to not be materially involved, the investigator shall include in their investigation report the reason why that member was determined to not be materially involved.*

For OPD personnel who are witnesses to Level 1 incidents, the Level 1 investigation team will make a determination on whether they will be personally interviewed and who will conduct the interview. Certain witness personnel who are determined to not be involved nor needed for a witness interview may be directed to complete a supplemental report detailing their recollections of the incident. Witness personnel who complete supplemental reports may be called for interview by the Level 1 investigators at a later point, if necessary.

For civilian witnesses to Level 1 incidents whose in-person interview would improve the quality of the investigation, the Level 1 investigators shall request that the witness voluntarily come to the location of the interviews or location where a thorough interview with the investigators can occur (typically the Police Administration Building) to provide a recorded interview. Private

person witnesses who are not in custody are free to refuse this request; if they do so, the Level 1 investigation team will review any statement taken of the witness by canvassing officers, and may elect to contact the witness for more details if the witness is still on scene and/or available.

### **Type of Interview for OPD Materially Involved Members**

Materially involved members who are not under arrest shall be asked to submit to a voluntary interview about their involvement in the incident. These members shall be given an admonition that minimally includes:

- That the member is not under arrest;
- That the member's interview is being sought on a voluntary basis, and is not being compelled by policy or direction of a superior officer;
- That the member is free to leave and terminate the interview at any time.

Materially involved members who are under arrest shall be read their *Miranda* rights and asked to provide a signed waiver of their rights. If a valid *Miranda* waiver has been obtained, the member shall be interviewed about their involvement in the incident.

Interviews of all materially involved members shall be recorded by video (preferred) and/or audio recording. If video recording is not used, the primary investigator shall note the reason why in their report.

### **Type of Interview for Witness Members**

Witness members may be asked to provide an in-person interview about their recollections of the incident in lieu of writing a crime or supplemental report. Interviews of witness members shall be recorded by video (preferred) and/or audio. If video recording is not used, the primary investigator shall note the reason why in their report.

### **Location of Interviews and Persons Allowed to be Present**

Interviews of materially involved members shall be completed in an interview room. Only the following persons may be physically in the room during the interview:

- The interviewee;
- The Legal Representative for the interviewee;
- The primary Level 1 investigator;
- The secondary Level 1 investigator;
- One supplemental investigation team member to control the recording device, if necessary;
- The Deputy District Attorney from the Alameda County District Attorney's Office, Officer Involved Shooting Team;
- The Inspector from the Alameda County District Attorney's Office, Officer Involved Shooting Team;

- With approval of the BOI Deputy Chief or CID Commander, other law enforcement agency with investigative jurisdiction;
- The Homicide Section Commander.

The following persons may observe the interview remotely (e.g. telephonically or via video streaming), but may not participate in the interview:

- IAD primary and secondary investigators;
- CPRA Personnel (for OPD incidents);
- The CID Commander;
- The BOI Deputy Chief.

Interviews of witness members and other private person witnesses may be completed in an appropriate interview room or office. The Level 1 investigation team shall decide whether to have these members interviewed by the primary Level 1 investigators or a supplemental investigation team.

### Interview Sequence

While each investigation is different, typically interviews will be sequenced so that private person witnesses are interviewed first, followed by OPD member witnesses, followed by the force subject (if possible), and finishing with materially involved members. This allows for the Level 1 investigation team to have the most thorough understanding of events prior to interviewing the members who used force, or whose actions are under scrutiny. Factors that may be considered when determining the interview sequence may include:

- Whether investigators have enough of an understanding of the incident, and the interviewed member's involvement, from other sources that they are ready to conduct the interview;
- Investigative resources available;
- Physical and mental fatigue of witnesses and materially involved persons, and whether these factors will impact the quality of interview or recollection provided.

### Delaying OPD Materially Involved Member Interviews

It shall be the policy of the OPD that all materially involved members to a Level 1 use of force incident shall be interviewed as soon as practical after the incident, consistent with the investigation plan of the Level 1 investigation team. However, in certain cases (e.g. exhaustion or injury on the part of the involved member, lack of investigative resources, etc.) the Level 1 investigation team may decide to postpone the interview of materially involved members. All delays of this type shall be approved by the Chief of Police.

Regardless of the length of time, any materially involved members who are allowed to leave sequestration (e.g. to go home and sleep prior to returning for their interview) **shall be verbally admonished to not discuss the incident with anyone outside of their legal counsel and the Level 1 investigation team.** This admonition shall be witnessed by the Homicide Section Commander or designee.

## Interview Protocols and Considerations

### Interview Questions and Plan

The primary Level 1 investigator will be the lead interviewer during all interviews of materially involved members and has the responsibility of administering the interview and controlling the flow of the session. While Level 1 investigators may utilize the question sets in the appendices to this document to formulate their interview plan and questions, they shall prepare their general interview questions prior to the interview. The interview questions shall be reviewed by the Homicide Section Commander prior to the interview.

### Introductions, Administration, and Order of Questioning

Typically, the following protocols are followed during an interview of a materially involved member once the recording equipment has been activated:

- The primary investigator introduces all active participants in the room and explains who (if anyone) is monitoring the interview remotely.
- The primary investigator explains the normal Level 1 procedures (if necessary), explains the format of the interview (one questioner at a time), and explains that the completed investigation will be reviewed by the Alameda County District Attorney's Office (or appropriate prosecuting body).
- The primary investigator will explicitly state that no discussion of the incident will occur while the recording equipment is not activated, except for privileged conversations between the involved member and his/her legal counsel.
- The primary investigator will begin the interview with basic background questions, then allow the member to provide a cognitive recall of the incident. Following the member's recollection of the incident, the primary investigator will ask questions to obtain a thorough understanding of the facts and circumstances surrounding the incident, including questions about a member's decisions and actions during the incident.
- **It is essential that all questions be neutral, non-leading, and do not make assumptions that are not based in facts or previously-stated assertions by the person being interviewed.**
- The Level 1 investigators may use a diagram or map of the scene, to allow the interviewee to describe his or her movements during the incident or otherwise provide information about the incident.
  - A new, unmarked diagram or map shall be used for each interviewee;
  - The diagram or map shall not depict anything that would influence the statement of the interviewee;
  - If a diagram or map is used, it should be signed and dated by the interviewee at the end of the interview.

- Level 1 investigators shall question interviewees about any responses that are inconsistent with evidence, other statements, or facts already known to the investigators, or other discrepancies that arise during the interview<sup>13</sup>.
- Level 1 investigators shall attempt to clarify assertions of fact made during interviews that are either not supported by other evidence or contradicted by other evidence or statements.
- Once the primary investigator has completed their initial questioning, he or she will allow each person present in the interview to ask questions of the interviewee, typically in the following order:
  - Secondary investigator
  - Homicide Section Commander
  - Deputy District Attorney (if applicable)
  - District Attorney Inspector (if applicable)
  - Member's legal counsel.
- After questioning by each person at the table is completed, but before the interview is complete, the primary investigator will determine whether to provide the involved member the opportunity to review their BWC footage (if applicable). If they view their BWC footage, the involved member will be given the opportunity to provide additional information to supplement their statement and may be asked additional questions by the investigators to clarify any discrepancies between the BWC footage and the member's statement.

## Post-Interview Considerations

### Information to Provide the Member

If the member discharged their firearm, the firearm will be taken for testing. Sworn members will typically be provided with a replacement sidearm if necessary.

Members involved in an incident where a person dies or is seriously injured shall attend employee assistance and counseling services provided by the City before his/her return to duty.<sup>14</sup> Affected members will be contacted by the Bureau of Services or their chain of command regarding these City-provided resources.

### Administrative Leave

If a member is subject to the administrative leave provisions of [DGO K-03](#)<sup>15</sup>, the CID Commander will inform the member that he or she will be placed on paid administrative leave

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<sup>13</sup> As a reminder, allegations of misconduct related to departmental policy should be handled in accordance with DGO M-03.

<sup>14</sup> DGO K-03, Section J-3.

<sup>15</sup> *Ibid.*, Section J-2: "Officers involved in a lethal force incident shall be placed on paid administrative leave for not less than three days, unless otherwise directed by the Chief of Police."

pending further notice, but for no less than three (3) working days. After a Level 1 incident, the CID Commander will prepare a list of all members placed on administrative leave and send it to:

- The Chief of Police
- The Captain of IAD
- The Bureau of Services Deputy Director; and
- The involved members' chain(s) of command

#### **Follow-Up Interviews**

Follow-up interviews shall be conducted in the same manner as the primary interview after the incident, unless the investigative plan approved by the Homicide Commander dictates a deviance.

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## SECTION III – FOLLOW-UP INVESTIGATION

### Investigation Basics

#### Mission

The mission of every Level 1 investigation is to provide a thorough, impartial, transparent, and timely investigation of the incident and present the facts in the professional, unbiased, and systematic fashion using statements, physical evidence, and all available technological and investigative means to achieve that goal. The fact finding for the Level 1 investigation is geared towards giving the appropriate prosecuting authority enough information to determine whether anyone involved in the incident committed any violation of criminal statutes.

#### Standard of Review

For Level 1 incidents that result from a use of force by peace officers, the Level 1 investigation shall minimally focus on gaining information which will allow the appropriate prosecuting authority to determine whether the use of force was compliant with [California Penal Code § 835a](#), which confers upon peace officers the ability to use force to overcome resistance and in defense of themselves or others.

#### Transparency and Family Member Outreach

For all Level 1 investigations, and especially in instances of Level 1 force where the engaged person perishes, the Criminal Investigation Division Captain (or designee) will be responsible for alerting the Department's Victim Services Specialist of the incident. The Victim Services Specialist shall coordinate with the CID Captain (or designee) to alert the engaged person's family to the presence of resources and share what information can be shared with the family about the status of the investigation without compromising the investigative process. The Victim Services Specialist shall also apply CID policies and procedures for victim engagement as directed in those policies.

### Investigation Timelines and Briefings

#### Timelines

Depending on the complexity of the incident and other factors, the investigation may be completed within a few weeks or stretch out for several months. Regardless of the length of the investigation, the Level 1 investigation team will endeavor to complete the investigation in a timely manner and forward it for review through the chain of command and ultimately to the relevant prosecuting authority.

#### 72-Hour Briefing

Within 72 hours of a Level 1 incident involving OPD personnel, the Bureau of Investigations Deputy Chief will give a basic presentation to the Chief of Police on the status of the Level 1 investigation. This will include:

- Status of the involved officers and subject of force; and
- Basic investigative plan of the Level 1 investigation team.

### 30-Day Briefing

Within 30 days of a Level 1 incident involving OPD personnel, the Bureau of Investigation Deputy Chief or designee will give a presentation to the Chief of Police, Departmental counsel, and Public Information Officer on the status of the Level 1 investigation. This will include:

- Investigative challenges or resource needs
- Estimated timeline of the investigation, if available
- Discussion on whether the investigation would be compromised by release of any video or audio recording of the incident pursuant to [Government Code § 6254\(f\)\(4\)\(A\)\(i\)](#)<sup>16</sup> (if applicable).
  - If release of video or audio would not compromise the investigation (with the final determination on this matter resting with the BOI Deputy Chief), the Level 1 investigation team should have available a list of those recordings which best encapsulate the incident for forwarding to the PIO.
  - Prior to release of video or audio pursuant to the Government Code, the BOI Deputy Chief or designee shall advise the prosecuting authority of the Department's planned information releases.

### Ongoing Briefings

While the investigation is ongoing after the first 30 days, the BOI Deputy Chief or designee will give a briefing to the Chief of Police on the status of the Level 1 investigation involving OPD personnel at least every 30 days. This will include:

- Investigative challenges or resource needs
- Estimated timeline of the investigation, if available

### Final Briefing

Once the investigation has been completed and reviewed through the level of the BOI Deputy Chief, the Level 1 investigation team will provide a briefing to the Assistant Chief of Police and Chief of Police on the entirety of the investigation, in conjunction with providing the investigation report to these two officers for review (if applicable).

## Evidentiary Considerations

### Expected Evidence

While every Level 1 investigation is unique, it is expected that certain evidence will be collected or requested by the Level 1 investigation team. This may include:

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<sup>16</sup>Government Code § 6254(f)(4)(A)(i): During an active criminal or administrative investigation, disclosure of a recording related to a critical incident may be delayed for no longer than 45 calendar days after the date the agency knew or reasonably should have known about the incident, if, based on the facts and circumstances depicted in the recording, disclosure would substantially interfere with the investigation, such as by endangering the safety of a witness or a confidential source. If an agency delays disclosure pursuant to this paragraph, the agency shall provide in writing to the requester the specific basis for the agency's determination that disclosure would substantially interfere with the investigation and the estimated date for disclosure.

- Body worn camera video
- Surveillance video
- In-car camera video
- Cellphone video
- Shotspotter activation recordings
- Patrol radio channel recordings
- Computer-aided dispatch (CAD) printouts
- Physical evidence on scene (e.g. casings, weapons)
- Photographs of the scene
- Medical or autopsy reports
- Criminalistics Division Laboratory reports

### **Case File Management**

The primary investigator is responsible for documenting the overall investigation of the incident as well as coordinating with the IAD Force Investigation investigators to facilitate the transfer of documents to IAD. The primary investigator shall organize their investigation in accordance with the CASE FILE MANAGEMENT steps outlined in the Homicide Manual 15-01.

### **Chain of Review**

The ability of the Department to investigate itself, and other law enforcement officers, relies on the transparency of the investigation and the duty to consider criminal culpability.

Investigative Action Reports (IAR) completed by the Level 1 Force Investigation Team will be reviewed and approved by the Homicide Section Commander and forwarded to the CID Commander.

The Command review process shall include:

1. Homicide Section Commander;
2. CID Commander;
3. BOI Deputy Chief.

For Level 1 incidents involving only outside agency personnel, the review process may terminate at the BOI Deputy Chief. For incidents involving OPD personnel as involved, the chain of review shall include:

1. Assistant Chief; and
2. Chief of Police

If an IAD investigation includes compelled (*Lybarger*) statements which, if known to criminal investigators, could be used to direct or further a criminal investigation of the member making the compelled statement, that investigation shall be flagged by IAD before submitting it to the Chief or Assistant Chief for review. For any flagged case, the Chief or Assistant Chief shall not receive the IA investigation for review until the Chief or Assistant Chief has approved the related CID IAR. This will prevent the Chief or Assistant Chief from using, even inadvertently, the information contained in a compelled statement to direct or further a criminal investigation of the member who made the compelled statement. In these cases, the Chief or Assistant Chief shall document next to their signature on the IAR that he or she completed CID IAR review before receiving the IAD Investigation Report.

The review of the investigation is complete once the final reviewer has signed off on the investigation. Once the investigation has been approved by the final reviewer the investigation can be submitted to the DA's office for possible charges. An exception to the final reviewer approval can be made if a person is under arrest and documents are needed for criminal prosecution.

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## SECTION IV – MEDIA

### Initial Information Releases

For any incident which requires a Level 1 Investigation, The Public Information Officer (PIO) shall, at a minimum, be notified of the incident in order to determine whether their involvement is required. For any Level 1 incident where there is great bodily injury or death, the Public Information Officer shall be called out to the scene. The Public Information Officer (PIO) will prepare and disseminate all related press releases and will be the primary point of contact for all public and press inquiries about the incident.

For Level 1 incidents where a PIO is not called out, the incident commander or members of the Level 1 investigation team may respond to immediate questions from the media received at the scene if feasible and practical. Detailed requests will be referred to the PIO.

The PIO, or other assigned staff member designated to speak with the media, shall be prepared to deliver confirmed facts regarding Level 1 incidents involving the department or which the department is investigating. Upon arrival at an incident, the PIO shall be briefed and provided a public information walk-through (enough situational awareness to be able to convey critical information to the community and media) to assist the PIO in appropriately presenting information to the public going forward. The PIO assigned to this role should understand that any police use of force cannot be pre-judged, and that the public information provided should remain neutral and consistent throughout the reporting incident. All public messages shall be approved by the Chief of Police before dissemination.

Approved by

Drennon Lindsey  
Deputy Chief of Police  
Bureau of Investigations

Date Signed: \_\_\_\_\_

## Appendix A – Key Investigative Points for Uses of Force

The mission of every Level 1 investigation is to provide a thorough, impartial, transparent, and timely investigation of the incident and present the facts in the professional, unbiased, and systematic fashion using statements, physical evidence, and all available technological and intellectual means to achieve that goal. The fact finding for the Level 1 investigation is geared towards providing the appropriate prosecuting authority enough information and evidence to determine whether anyone involved in the incident, OPD member or the subject of force, committed any violation of criminal statutes.

The following material addresses points of emphasis that an investigator should look for in the statement of an involved officer or employee – the questions do not necessarily all need to be asked, or asked in the form in which they are presented here. Knowledgeable questioning by investigators should elicit responses that properly address these important areas in order for investigators to complete the most transparent, thorough, and accurate criminal investigation possible. **It is essential that all questions be neutral, non-leading, and do not make assumptions that are not based in facts or previously-stated assertions by the person being interviewed.**

The term officer is used in these questions and is understood to mean officer or professional staff member who was engaged in the Level 1 incident.

1. Did the shooting or force application violate state law?

**California Penal Code Section 835a (a)(3):** ...[T]he decision made by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies.

2. What brought the person(s) or situation to the officer's attention in the very beginning? This requires an evaluation of the reason for the initial contact. An officer could be faced with a defense of life or a justifiable shooting situation, but also one that stemmed from an unlawful detention or arrest.
3. What tactics were utilized by the officer?
  - a. Evaluate the tactics prior, during, and after the OIS or Level 1 Force incident.
  - b. Were the tactics consistent with best practices and departmental training?
  - c. Was the utilization of poor tactics a contributor to circumstances that caused or necessitated the use of deadly force, or force which resulted in death? Alternately, did good or exceptional tactics allow for restraint, de-escalation, or other beneficial interventions to be utilized? How did the tactics used impact the event?
4. Why did the officer use force? Why did they use the particular force they did?
5. Was the use of force:

a. Objectively reasonable based on the totality of the circumstances, including the *immediacy of the threat, severity of the crime at issue, and whether the subject of force was actively resisting arrest or attempting to evade by flight*<sup>17</sup>?

b. Necessary<sup>18, 19</sup>? DGO K-03 defines necessary as:

An action is necessary if it is reasonably believed to be required by the totality of the circumstances. The evaluation of whether an action was necessary shall be based on whether

1. Objectively reasonable *alternatives* to the action were available and/or practical AND
2. Whether the action was reasonably likely to *effect the lawful purpose* intended.<sup>20</sup>

c. Proportional<sup>21</sup>? DGO K-03 defines proportional as:

Proportional force is force which is deemed reasonably effective to overcome the level of resistance posed, taking into account the severity of the offense or law enforcement need facing the officer(s) using force. Officers must rely on training, experience, and assessment of the situation to decide an appropriate level of force to be applied.<sup>22</sup>

<sup>17</sup> *Graham v. Connor*, 490 US 386, 396 (1989)

<sup>18</sup> California Penal Code 835a(c)(1)

<sup>19</sup> DGO K-03, Section D-1.

<sup>20</sup> *Ibid.*, Section B-17.

<sup>21</sup> *Ibid.*, Section D-1.

<sup>22</sup> *Ibid.*, Section B-22.

## **Appendix B – Investigative Checklist for Level 1 Use of Force Interviews**

The following questions cover topics to be considered during the interview(s) of the involved subject officer(s) or subject employee and witness officer(s) or witness employee(s) in an OIS or ICD interview. These questions need not be asked verbatim, but are meant to provide guidelines for the investigators as they develop a set of questions and interview plan.

These questions will help structure the interview so that the information is presented in a logical order and grouped by the subject matter. Knowledge developed from these questions may provide background information and identify important factors surrounding the shooting or force incident. The sum of the information will assist with achieving a transparent, thorough, and accurate criminal investigation.

The term officer is used in these questions, and is understood to mean officer or employee engaged in an OIS or any other use of force resulting in a Level 1 Use of Force Investigation. While an OIS would likely involve only sworn members/officers, an ICD could involve officers and other members of the department.

### **Information Pertaining to the Officer**

1. The officer's name, serial number, and age.
2. Date of the officer's hire at OPD (or employing agency, if an outside agency incident).
3. Other law enforcement experience, length of service, and names of other agencies worked at?
4. Unit designation during the involved shift (Radio call sign)?
5. Area/beat assigned during this shift and time period assigned to that Area and/or beat.
6. The officer's normal shift hours; were they working overtime or an additional shift?
7. Who is the officer's supervisor and was it the same supervisor at the time of this incident?
8. Training the officer has received that might be relevant to the Level 1 incident?
9. Is the officer right-handed, left-handed, or ambidextrous?

### **Information on the Officer's Condition**

1. Any significant events in their shift which occurred before the Level 1 incident?
2. What was the last shift the officer worked prior to the shift on which the Level 1 took place?
3. Any second jobs, schooling, or extended hours worked prior to the shift when the Level 1 incident took place?
4. Any medications taken by the officer? Both prescription and non-prescription drugs; what is it, when was it taken, and the dosage?

5. Any alcoholic beverage consumed in the past 24 hours? The beverage(s) and how much?
6. Any medical conditions that might impact the officer's judgement or physical abilities?
7. Last time the officer slept? How long and what hours?
8. Did the officer receive any injuries during this incident? What are the injuries, were they photographed, and did a physician evaluate them? Does OPD have a copy of the medical treatment records?
9. Does the officer wear glasses or contacts and were the items being worn during the OIS or ICD incident? Other vision problems?

### **The Officer's Uniform**

1. Full uniform description.
  - a. Items to cover are full duty gun belt and equipment, such as baton, flashlight, badge, uniform markings (Wool uniform or utility uniform), hat, and any special equipment.
2. Was there any damage to the uniform or the equipment during the incident?
3. On which side of the body does the officer have their sidearm holster?
4. In incidents of a gun taken away, do investigators have possession of the officer's holster and gun belt?
5. In incidents of an ICD, do investigators have possession of the involved impact item(s), if any?

### **The Officer's Vehicle**

1. Vehicle number, make, and model.
2. Vehicle markings (light, siren, painted, & etc.)? Does the officer normally drive this vehicle?
3. Single or Adam unit at the time of the OIS incident? Name of the other officer?
4. This area should be expanded if the interview involves a pursuit; reference DGO J-4 and Appendix C.

### **The Officer's Weapon**

1. Make, model and color of the officer's gun. Was it issued by the Department (OPD issues the Glock 17, Gen4, 9mm firearm)? Was this the firearm fired by the officer?
2. The caliber of the weapon.
3. Any special modifications to the gun or equipment?

4. Ammunition used in the officer's gun, caliber, type, and was it Department issued?
5. Number of live rounds with which the weapon was loaded, including the chamber. This should be the same as the weapon's capacity (ex: Glock 17 Gen.4, 9mm holds 17 in the magazine and 1 in the chamber, total 18).
6. Was the officer trained in the use of a semi-automatic pistol in the academy or by transition training? Other training if the weapon is a shotgun or rifle, etc?
7. The date of the transitional training by the officer to the semi-automatic pistol (i.e. from a revolver) if they remember and if applicable?
8. Last qualification date for the officer (OPD qualifies with handguns twice a year)?
9. Was the officer carrying any other firearm? If so, was the weapon fired?
10. If the officer had a second weapon, repeat the questions that document that firearm (make sure the technician also examines this weapon).
11. The applicable questions should be repeated for the involved weapon if other than a firearm discharge or if the incident is an ICD.

### **Officer's Communications**

1. Does the officer have a cellular telephone or other electronic communications device?
2. Did the officer communicate with anyone immediately before, during, or after the OIS (or Level 1 Use Of Force) by cellular telephone, electronic communication device, patrol vehicle MDT, direct communication with any mobile radio(s), or other means than the main Communications Division channel for the OIS incident's location?
3. If so, to whom and by what means?

### **Scene Conditions**

1. Location of the OIS or Level 1 Use Of Force.
2. Weather conditions at the time of the OIS or Level 1 Use Of Force.
3. Lighting condition at the time of the shooting. OIS or Level 1 Use Of Force.

### **Information to Seek in Interview regarding an OIS**

1. The officer or employee sets the scene, time, date, location, and parties involved.
2. Did the officer have any prior knowledge of the situation before the OIS or ICD took place?
3. What brought the person or situation to the attention of the officer?

4. Determine the reason for the first contact. If the contact was initiated by enforcement action, what was the legal justification for the contact? Was this probable cause valid?
5. Did the officer have prior knowledge of the suspect(s) or witnesses?
6. Did the officer have prior contact with any of the suspect(s) or witnesses?
7. What was the officer's state of mind at the time of contact and throughout the incident?
8. What tactics were utilized by the involved officer(s) during the incident?
  - a. What was the reasoning behind the tactics used (if any)?
  - b. Was there any discussion of tactics between officers prior to contact? Why or why not? If so, what tactics were discussed? Which officers were involved?
9. Can the officer articulate the imminent danger to themselves or another person?
10. When did the officer draw their weapon, and why?
11. Did the officer utilize physical cover?
  - a. If so, what physical cover was the officer utilizing?
  - b. If physical cover was not utilized, was there physical cover which was reasonably available to the officer?
  - c. If physical cover was available, but not utilized, what was the officer's reasoning for not doing so?
12. Why did the officer fire their weapon?
13. What was targeted at the time the officer fired their weapon?
14. Where was the suspect in relation to the officer?
15. What was the response and/or actions of the suspect following the officer firing their weapon?
16. How many shots did the officer fire and from what distance?
17. What was the officer's sequence of fire? (Rapidly, in pairs, burst, etc.)
18. Did the officer reload their firearm at any time? How many times? For what reason? (expended magazine, malfunction, etc.)
19. What position/stance did the officer fire from? For what reason(s)?
20. Were the shots fired with one hand or with two hands? If one hand, which one?
21. What was the background (the area beyond the target) at the time of the OIS?
22. Did the officer assess the effectiveness of the force being used? At what point and how many times?
23. Were there any other alternatives available to the officer before the use of deadly force? If so, what were they and why were they not attempted/used (if applicable)?
24. Which is the officer's dominant hand, right, left, or is the officer ambidextrous?

25. Who relieved the officer of their weapon after the OIS incident?

### **Ending the interview**

1. Is there anything that the officer thinks we need to know that has not been asked?
2. Does the officer have any questions?
3. End the interview, secure the video or audio tapes.
4. The officer or employee signs and dates the 'rough' scene diagram.
5. Retain audio tape recording, diagram, and notes as evidence.

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## Appendix C – Level 1 Pursuit Interviews

The following material addresses points that the investigator should inquire about in an interview related to a Level 1 pursuit. These questions need not be asked verbatim, but are meant to provide guidelines for the investigators as they develop a set of questions and interview plan .

### Key Investigative Points for Pursuits<sup>23</sup>

1. Did the pursuit or actions of a member during the pursuit violate State Law?
2. What brought the person(s) or situation to the officer's attention in the very beginning? Evaluate the reason for the first contact.
3. The officer's tactics.
  - a. Look at the tactics prior, during, and after the Officer Involved Pursuit – Injury or Death (OIPID) incident.
  - b. Were the tactics consistent with best practices and department training?
  - c. Did poor tactics cause a dangerous situation which culminated in a traffic collision?

### Questions to Consider Regarding an Officer Involved Pursuit – Injury or Death Interview

The following questions should be considered during the interview(s) of the involved subject member(s) and witness member(s) in a pursuit-related interview.

These questions will help structure the interview, so the information is presented in a logical order and grouped by the subject matter. Knowledge from these questions may provide background information and factors surrounding the pursuit that are important. The totality of the information gathered will allow for the completion of a thorough, transparent, and accurate criminal investigation.

#### Information Pertaining to the Officer

1. Officer's name and serial number.
2. Officer's age.
3. Date of the officer's hire at OPD (or employing agency).
4. Other law enforcement experience the officer has, the length of service at the agency, and which agency.
5. Unit designation during the involved shift (radio call sign).

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<sup>23</sup> DGO J-04, III (A): A vehicle pursuit is an event involving one or more law enforcement officers attempting to apprehend a subject operating a motor vehicle while the subject is trying to avoid arrest by using high speed driving or other evasive tactics. A failure to yield does not constitute a pursuit unless the driver's actions demonstrate the above factor.

6. Area/beat assigned during this shift and time period the officer has been assigned to this beat or particular assignment (knowledge of the Area).
7. Officer's normal shift hours, were they working overtime or an additional shift?
8. Name of the officer's supervisor; was it the same supervisor at the time of this incident?
9. Training the officer has received that might be relevant to the OIPID incident.

### **Information on the Officer's Condition**

1. Was there any significant event in the officer's shift that occurred before the OIPID incident?
2. What was the last shift the officer worked prior to the shift on which the OIPID took place?
3. Any second jobs, schooling, or extended hours worked prior to the OIPID shift?
4. Any medications taken by the officer? Include the names of prescription and non-prescription drugs, the time taken, and the dosage.
5. Any alcoholic beverage consumed in the past 24 hours? The beverage(s) and the amount?
6. Any medical conditions that might impact the officer's judgement or physical abilities?.
7. Last time the officer slept? How long and what hours?
8. Did the officer receive any injuries during this incident? What are the injuries, were they photographed, and did a physician evaluate them? Does OPD have a copy of the medical treatment records?
9. Does the officer wear glasses or contacts and were the items being worn during the OIPID incident? Other vision problems? Does the officer's California Driver's License have a corrective lenses restriction?

### **The Officer's Uniform**

1. Full uniform description and confirmation that photographs were taken of the officer at the scene or how the officer looked on the scene.
2. Items to cover are full gun belt and equipment, baton, flashlight, badge, uniform markings (wool uniform or utility uniform), hat, and any special equipment.
3. Was there any damage to the uniform or the equipment during the incident?

### **The Officer's Vehicle**

1. Vehicle number, make, and model.

2. Vehicle mileage, if known.
3. Vehicle markings (light, siren, painted, & etc.).
4. Does the officer normally drive this vehicle?
5. Single or Adam unit at the time of the OIPID incident? Name of the other officer?
6. Did the officer conduct an inspection of the vehicle before going on duty?
7. Does the officer know of any problems with the police vehicle?
8. Does the officer know of any problems with the subject's vehicle?
9. Did the police vehicle have any damage before the pursuit?
10. Does the police vehicle now have any damage(s)?
11. Were photographs taken of the police vehicle?

### **Officer's Communication**

1. Does the officer have a cellular telephone or another electronic communications device?
2. Did the officer communicate with anyone immediately before, during, or after the OIPID by cellular telephone, electronic communication device, patrol vehicle MDT, direct communication with any mobile radio(s), or other means than the main Communication Division channel for the OIPID incident's location.
3. If so, to whom and by what means?

### **Scene Conditions**

1. Location or area, if a long pursuit, of the OIPID.
2. Weather conditions at the time of the OIPID.
3. Lighting condition at the time of the OIPID.

### **Questions covering the Pursuit Incident**

These questions should be considered during the interview of the involved subject officer(s) or witness officer(s). A distinction is made in these questions between the operation of a police vehicle during a Code 3 assignment and during immediate pursuits of suspected offenders. Some provisions equally apply to both circumstances. Not all questions will apply to each pursuit incident and the officer's narrative response may address several questions.

1. Have the officer set the scene of the incident, time, date, location, and parties involved.
2. Did the officer have any prior knowledge of the developing situation before the OIPID took place?

3. What brought the driver/person or situation to the attention of the officer? Validate the reason for the first contact.
4. Did the officer have prior knowledge of the driver/suspect(s) or witnesses?
5. Did the officer have knowledge of any other vehicle occupants, such as passengers, children, hostages, etc.?
6. Did the officer have prior contact with any of the driver/suspect(s) or witnesses?
7. Look at the officer's tactics prior, during, and after the OIPID incident. Did poor tactics facilitate the pursuit resulting in injury or death?
8. Were the vehicle's emergency and auxiliary lights in operation as required by 21055 CVC?
9. Was the siren on automatic or sounded intermittently?
10. Was there any non-OPD person in the vehicle? If so, who was that person and their reason for being in the vehicle?
11. What actions by the suspect exhibited their intent to flee?
12. What was the underlying criminal violation justifying the pursuit?
13. What was the gravity of the offense and the importance of and necessity for immediate apprehension in relationship to community safety?
14. Did the officer know the suspect, and could they be apprehended at a later time?
15. Was the suspect known to be a juvenile?
16. How close was the police vehicle to the subject's vehicle before the pursuit was initiated?
17. Did the distance between the pursuit and fleeing vehicles increase?
18. Did the officer immediately notify the dispatcher, on the primary patrol channel, the known reason for the pursuit? Was the description of the vehicle pursued given; the number and description of known occupants; the location and direction of travel; and speed of the vehicle?
19. Did the officer stay in radio contact with the Communications Division and continuously update the information provided in the preceding question?
20. Did the officer hear a supervisor or command officer advise they were monitoring the pursuit?
21. Was the officer operating a motorcycle or unmarked vehicle and did they yield the pursuit to a marked unit upon their arrival on the scene?
22. How many police units were in the pursuit?
23. Was the officer a second unit in the pursuit and did they notify Communication Division that they were in Code 3 status?
24. Were there public safety issues in the area of the pursuit?

25. Were schools close-by?
26. What was the volume of vehicular traffic in the area?
27. What was the pedestrian traffic in the area?
28. What was the location of the pursuit? Is the officer familiar with the area?
29. What were the road conditions?
30. What were the weather conditions?
31. What were the speeds involved?
32. What time of day did this occur?
33. Were the pursuing officers able to maintain radio communication with dispatch and/or supervisors?
34. Was air or field support available?
35. Did the officer have a ride-along passenger with them?
36. Did a non-suspect vehicle and/or pedestrian accident occur during the pursuit?
37. Was a Pursuit Intervention Maneuver completed or attempted?
38. Which supervisor or commander approved the Pursuit Intervention Maneuver?
39. Which Pursuit Intervention Maneuver was done? Channelization, Boxing In, or Pursuit Immobilization Technique?
40. Is the officer trained in the Pursuit Intervention Maneuver that was used?
41. What was the speed of the vehicles at the time of the maneuver if the Pursuit Immobilization Technique was used?
42. Was the officer wearing their seatbelt during the Pursuit Immobilization Technique?
43. Did the pursuit travel into another jurisdiction?
44. Was the pursuit relinquished to another jurisdiction?
45. If so, did the officer travel to the end location of the pursuit?

#### **The Pursuit Travels into Oakland From Another Jurisdiction**

1. What were the circumstances of the officer joining an outside pursuit?
2. Who authorized joining the pursuit?

#### **Termination of the Pursuit**

1. Did the Initiating Unit, Supervisor, or Command Officer terminate the pursuit?
2. Did the officer notify the Communications Division?
3. Did the officer revert to Code 2 and abandon the pursuit?

## Ending the interview

1. Is there anything that the officer thinks we need to know that has not been asked?
2. Does the officer have any questions?
3. End the interview, secure the video or audio tapes.
4. The officer or employee signs and dates any 'rough' scene diagram.

Retain audio tape recording, diagram, and all notes as evidence.

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