I. POLICY

The Davis Police Department will objectively evaluate the use of force by its members to ensure that their authority is used lawfully, appropriately and is consistent with training and policy.

II. 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 other action(s) of an officer.

In other incidents involving the use of force by department members, including those that result in serious bodily injury, the Office of the Police Chief may decide that the investigation will follow one or more of the processes provided in this policy.

III. 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.

IV. 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.

Jurisdiction is determined by the location of the shooting or death and the agency employing the involved officer. The following scenarios outline the jurisdictional responsibilities for investigating officer-involved shootings and deaths.
A. 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 Davis Police Department would generally control the investigation if the suspect’s crime occurred in Davis. However, the Office of the Police Chief may assign the investigation to an outside agency to assist.

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 Office of the Police Chief and with concurrence from the other agency.

B. Criminal Investigation of Officer Actions

The control of the criminal investigation into the involved officer’s conduct during the incident will be determined by the employing agency’s protocol. When an officer from this department is involved, the criminal investigation will be handled according to the Criminal Investigation section of this policy.

Requests made of this department to investigate a shooting or death involving an outside agency’s officer shall be referred to the Office of the Police Chief for approval.

C. 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.

V. INVESTIGATION PROCESS

The following procedures are guidelines for use in investigations of an officer-involved shootings or deaths.

A. Uninvolved Officer Responsibilities

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

1. Secure the scene, and identify and eliminate hazards for all those involved.
2. Take reasonable steps to obtain emergency medical attention for injured individuals.
3. Request additional resources from the Department or other agencies.
4. Coordinate establishing and maintaining a perimeter or the pursuit of suspects.
5. Check for injured persons and evacuate as needed.
6. Brief the supervisor upon arrival.

B. Watch Commander / Scene Supervisor Responsibilities

1. The Watch Commander shall be notified as soon as practical following:
   a. The use or attempted use of deadly force.
   b. When a person dies in the process of being arrested.
   c. When a person dies in the temporary holding facility, as defined in PP 3.15-A.
   d. Whenever a peace officer discharges a firearm at a person.
2. Duties of Watch Commander or Scene Supervisor

   a. The Watch Commander shall take all reasonable steps to obtain emergency medical attention for all apparently injured persons.

   b. Attempt to obtain a brief overview of the situation from any uninvolved officer. In the event there are no uninvolved officers present during the actual event leading to the use of force or death, the supervisor should attempt to obtain a brief overview from one involved officer.

   c. If necessary, the supervisor may administratively order any officer from this department to immediately provide public safety information necessary to secure the scene and pursue suspects. Public safety information shall be limited to such things as outstanding suspect information, number and direction of shots fired, parameters of the incident scene, identity of known witnesses, and similar information.

   d. Absent a voluntary statement from any involved officer(s), the initial scene supervisor should not attempt to compel or order an officer to provide any information, except for pertinent public safety information as specified above.

   e. The Watch Commander should take command and secure the scene with additional personnel until relieved as specified in this policy. When feasible, the scene shall be secured by at least two law enforcement personnel.

   f. The Watch Commander shall notify the Office of the Police Chief as soon as reasonably possible. The Office of the Police Chief shall subsequently notify all administrative staff.

   g. The Watch Commander should safely remove the involved officer(s) from the scene and take possession of any discharged firearms and any expended or unexpended ammunition when it is reasonable to do so. A replacement weapon will be provided, by the department, as soon as practical. If the Watch Commander discharges their firearm they shall be removed from the scene as soon as a supervisor or manager arrives at the scene and assumes command. Each involved Davis police officer will be given an administrative order to not discuss the incident with other involved officers or Davis police members pending further direction from a supervisor/manager.

C. Involved Personnel

   The Watch Commander or other supervisor shall direct each officer not to discuss the incident, except with authorized investigative personnel.

1. Investigations will be conducted in accordance with the provisions of the Peace Officers’ Bill of Rights Act (Gov’t Code §§ 3300 et seq.) – P.O.B.R.

2. Any request for department or legal representation will be accommodated, however, no involved officer shall be permitted to meet collectively or in a group with an attorney or any representative prior to providing a formal interview or report (Government Code § 3303(i)).

   a. Discussions with licensed attorneys will be considered privileged, as attorney-client communications.

   b. Discussions with department representatives (e.g., employee association) will be privileged only as to the discussion of non-criminal information (Government Code § 3303(i)).
c. A licensed psychotherapist shall be provided by the Department to each involved officer, or any other officer, upon request.

1. Interviews with a licensed psychotherapist will be considered privileged and will not be disclosed except to the extent that the officer is or is not fit for return to duty.

2. An interview or session with a licensed psychotherapist may take place prior to the involved officer providing a formal interview or report, but the involved officers 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. Although the Department will respect the sensitivity of communications with peer counselors, there is no legal privilege to confidentiality. Peer counselors are cautioned against discussing the facts of any incident with an involved or witness officer.

3. Care should be taken to preserve the integrity of any physical evidence present on the officer’s equipment or clothing, such as blood or fingerprints, until investigators or evidence personnel can properly retrieve it.

4. Detectives/supervisors shall make reasonable accommodations to the officer’s physical and emotional needs (Government Code § 3303(d)).

5. In the event suspects remain outstanding, or subject to prosecution for related offenses, this department shall retain the authority to require involved Davis police officers to provide sufficient information for related criminal reports to facilitate the apprehension and prosecution of those individuals (Government Code § 3304(a)).

a. While the involved officer(s) 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.

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

c. Reports related to the prosecution of criminal suspects will be processed according to normal procedures but should also be included for reference in the investigation of the officer-involved shooting or death.

6. Each involved Davis police officer shall be given reasonable paid administrative leave following an officer-involved shooting or death.

D. Criminal Investigation of the Suspect’s Actions

1. 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 personnel for the following:

   a. Identification of all persons present at the scene and in the immediate area.
1. When feasible, a recorded statement should be obtained from those persons who claim to have not witnessed the incident, but 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, officers should attempt to identify the witness prior to their departure.
   a. Video or photographic images may be helpful in later identifying potential witnesses who were unwilling to identify themselves. However, they may not be detained without proper legal justification in an effort to obtain such images.
   b. Witnesses who are willing (legal consent) 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.

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.

2. The Lieutenant and/or Sergeant assigned to Investigation’s, or in their absence the Patrol Commander, shall report to duty and shall, unless another agency has been directed by the Office of the Police Chief to do so, be primarily responsible for the investigation of the crime leading to the discharge of firearm and any related crime reports. They may call appropriate personnel to assist in the investigation and to complete crime scene work. The Investigations Division shall be responsible for the origination of a crime report(s), arrest report(s) and all other investigative narratives and reports. The Investigations Lieutenant and/or Sergeant shall approve any document prior to it being included with the original report.

E. Criminal Investigation of Involved Officer Actions

1. The Office of the Police Chief will contact the on-call Yolo County District Attorney Investigator and the on-call Yolo County Deputy District Attorney. The District Attorney’s Office may investigate where any injury or death occurs to any person as a result of the use of firearm by a peace officer or when a firearm is fired at a person by a peace officer, whether or not injury or death resulted. However, the Yolo County District Attorney’s office may refuse to investigate, in which case the Office of the Police Chief may appoint another investigative agency to conduct the investigation.

2. 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. Davis police supervisors and Professional Standards Division personnel should not participate directly in any voluntary interview of Davis police officers. This will not prohibit such personnel from monitoring interviews or providing the criminal investigators with topics for inquiry.
   b. If requested, any involved officer will be afforded the opportunity to consult individually with a representative of their choosing or an attorney prior to speaking with...
criminal investigators (Government Code § 3303(i)). However, in order to maintain the integrity of each involved officer’s statement, involved officers shall not consult or meet with a representative or an attorney collectively or in groups prior to being interviewed.

c. 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.

d. 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.

F. 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 Davis police officers to determine conformance with department policy. In some cases, the Administrative Investigation will be handled in accordance with section V. G. (Use of Force Review Board) of this policy. The investigation will be conducted under the supervision of the Professional Standards Division. The results and associated documents will be considered part of the officer’s/officers’ confidential personnel record(s).

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

2. If any officer voluntarily elects 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.

3. 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 their prior statement before proceeding with any subsequent interviews.

4. In the event an involved officer has elected to not provide criminal investigators with a voluntary statement, the assigned administrative investigator shall conduct an administrative interview to determine all relevant information.

   a. 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.

   b. 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 or attorney collectively or in groups prior to being interviewed (Government Code § 3303(i)).

5. Administrative interviews should be recorded by the investigator. The officer may also record the interview (Government Code § 3303(g)).

6. The officer shall be informed of the nature of the investigation. If an officer refuses to answer questions, they should be advised of their Lybarger/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.

7. The Professional Standards Division shall compile all relevant information and reports necessary for the Department to determine compliance with applicable policies.

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

G. Use of Force Review Board

The Office of the Police Chief may use the Use of Force Review Board to investigate the circumstances surrounding any use of force incident. The Use of Force Review Board will also investigate and review the circumstances surrounding the discharge of a firearm, whether the member was on- or off-duty, excluding training or recreational use.

1. Composition of the Board

The Office of the Police Chief will select five Use of Force Review Board members from the following, as appropriate:

a. Commanding officer in the involved member’s chain of command.
b. Professional Standards Lieutenant.
c. A sergeant.
d. A peer officer.
e. A sworn peace officer from an outside law enforcement agency.
f. Department instructor(s) for the type of weapon, device or technique used.

The senior ranking command representative will serve as chairperson.

2. Responsibilities of the Board

a. The Use of Force Review Board is empowered to conduct an administrative review and inquiry into the circumstances of an incident.

b. The board members may request further investigation by Professional Standards, request reports be submitted for the board’s review, call persons to present information and request the involved member to appear. The involved officer will be notified of the meeting of the board and may choose to have a representative through all phases of the review process.

c. The board does not have the authority to recommend discipline.

d. The Office of the Police Chief will determine whether the board should delay its review until after completion of any criminal investigation, review by any prosecutorial body, filing of criminal charges, the decision not to file criminal charges, or any other action. The board should be provided all relevant available material from these proceedings for its consideration.

e. Absent an express waiver from the involved member, no more than two members of the board may ask questions of the involved member (Government Code § 3303). Other members may provide questions to these members.

f. The review shall be based upon those facts which were reasonably believed or known by the officer at the time of the incident, applying any legal requirements, department
policies, procedures and approved training to those facts. Facts later discovered but unknown to the officer at the time shall neither justify nor call into question an officer’s decision regarding the use of force.

g. Any questioning of the involved officer conducted by the board will be in accordance with the department’s Personnel Complaints Policy and any applicable state or federal law.

h. The board shall make one of the following recommended findings:

1. The officer’s actions were within department policy and procedure.
2. The officer’s actions were in violation of department policy and procedure.

i. A recommended finding requires a majority vote of the board. The board may also recommend additional investigations or reviews, such as disciplinary investigations, training reviews to consider whether training should be developed or revised, and policy reviews, as may be appropriate. The board chairperson will submit the written recommendation to the Office of the Police Chief.

j. The Office of the Police Chief shall review the recommendation, make a final determination as to whether the involved officer’s actions were within policy and procedure and will determine whether any additional actions, investigations or reviews are appropriate. If the Office of the Police Chief concludes that discipline should be considered, a disciplinary process will be initiated.

k. At the conclusion of any additional reviews, copies of all relevant reports and information will be filed with the Office of the Police Chief.

H. Audio and Video Recordings

Any officer involved in a shooting or death may be permitted to review available Mobile Audio/Video (MAV), body-worn video, or other video or audio recordings in accordance with applicable department policy.

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

I. 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.

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 the investigator(s) into those areas of concern shall be given reasonable access to all other investigations.

J. Debriefing

Following an officer-involved shooting or death, the Davis Police Department should conduct both a critical incident/stress debriefing and a tactical debriefing.
1. Critical Incident/Stress Debriefing

A critical incident/stress debriefing should occur as soon as practicable. The Office of the Police Chief is responsible for organizing the debriefing. Notes and recorded statements should not be taken because the sole purpose of the debriefing is to help mitigate the stress-related effects of a traumatic event.

The debriefing is not part of any investigative process. Care should be taken not to release or repeat any communication made during a debriefing unless otherwise authorized by policy, law, or a valid court order.

Attendance at the debriefing shall only include those members of the Department directly involved in the incident, which can include support personnel (e.g., dispatchers, other non-sworn). Family or other support personnel may attend with the concurrence of those involved in the incident. The debriefing shall be closed to the public and should be closed to all other members of the Department, including supervisory and Professional Standards Division personnel, unless they were directly involved in the incident.

2. Tactical Debriefing

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

K. Media Relations

Any media release shall be prepared with input and concurrence from the supervisor and department representative responsible for each phase of the investigation. Releases will be available to the Watch Commander, Investigations Division Commander, and Press Information Officer in the event of inquiries from the media.

The Department shall not subject any involved Davis police officer to visits by the media (Government Code § 3303(e)). No involved Davis police officer shall make any comment to the media unless they are authorized to do so. Department members receiving inquiries regarding officer-involved shootings or deaths occurring in other jurisdictions shall refrain from public comment and will direct those inquiries to the agency having jurisdiction and primary responsibility for the investigation.

L. Reporting

If the death of an individual occurs in the Davis Police Department jurisdiction and qualifies to be reported to the state as a justifiable homicide or an in-custody death, the Investigations Division Commander will ensure that the Records Manager is provided with enough information to meet the reporting requirements (Penal Code § 196; Penal Code § 13022; Government Code § 12525).

Darren Pytel
Police Chief
9/15

Rev. 03/17 minor revisions to titles
11/17
2/18 Use of Force Review Board added
11/19 Renumbered from 3.05-AAA to 3.05-AA
Reviewed 12/17, 05/19