

IN-CUSTODY DEATHS

This order outlines the rules and procedures to be followed in the investigation, review and reporting to the Police Commission of In-Custody Death Investigations.

I. DEFINITIONS

- A. In-Custody Death. Any death that occurs when a person is restrained by law enforcement personnel by means of (1) physical restraints and/or any use of force, as defined by Department Policy (DGO 5.01), (2) detention or confinement in a law enforcement vehicle, or (3) detention or confinement in a jail or detention facility while in the custody of the San Francisco Police Department.
- B. Involved Member. Member(s), who through facts that establish logical and consequential involvement, are reasonably responsible for the relevant physical restraint, detention or confinement at the time of death.

II. POLICY

It is the policy of the San Francisco Police Department to immediately respond to the scene and conduct a complete investigation of any death of a person(s) that occurred while in the custody of the San Francisco Police Department.

The In-Custody Death Review Board shall review every in-custody death.

The purpose of this review process is to determine if the SFPD members acted reasonably within policy at the time of the in-custody death and evaluate the Department's training, policies and procedures in light of circumstances that led to the in-custody death.

The San Francisco Police Department recognizes the public's right to know about circumstances involving an in-custody death. It is the policy of the San Francisco Police Department to provide as much information as is reasonable through its public reporting process while also complying with applicable civil and criminal laws and preserving the integrity of ongoing investigations.

III. PROCEDURES

- A. IN-CUSTODY DEATHS OCCURRING IN SAN FRANCISCO POLICE DEPARTMENT FACILITIES, VEHICLES, OR CUSTODY. As soon as practical after a person dies while in the custody of the San Francisco Police Department, reasonable efforts shall be taken to make the following notifications:
 - 1. When practical, an "involved member" shall notify the Department of Emergency Management (DEM), and his/her immediate supervisor, or the platoon commander of the district in which the in-custody death took place.

2. The supervisor should immediately notify the Field Operations Bureau Headquarters (Operations Center after normal business hours).
3. The Operations Center shall make the following notifications:
 - The on-call Homicide Detail investigators and Homicide O.I.C.
 - The Critical Incident Response Team,
 - The Photo Lab unit on duty or on-call,
 - The C.S.I. unit on duty or on-call,
 - The Management Control Division,
 - The Commanding Officer of the member(s) involved,
 - Chair of the In-Custody Death Review Board,
 - Deputy Chief of member(s) involved.
 - Legal Division,
 - Director of Risk Management,
 - Secretary of the Police Commission,
 - The District Attorney Office,
 - The Director or Designee of the O.C.C.,
 - Public Affairs Office,
 - All other notifications as necessary.

B. INVESTIGATION PROTOCOL. The investigation into an In-Custody Death will be generally divided into separate investigations, criminal and administrative.

1. Criminal Investigation. Investigations to determine if there is any criminal conduct on the part of any participant. This investigation will be conducted separately by the Homicide Detail and the Office of the District Attorney.
2. Administrative Investigation. Investigations to determine if the member acted within policy at the time of the in-custody death are conducted separately by the Management Control Division and by the Office of Citizen Complaint, if and when a citizen's complaint has been generated.
3. The Homicide Detail and the Management Control Division (MCD) shall respond promptly and conduct a timely investigation into every in-custody death. These investigations will utilize the same numbering system and be consistent with each other, e.g., ICD 03-01 (first in-custody death of 2003), ICD 03-02 (second in custody death of 2003), etc. The Homicide Detail Inspector shall contact the MCD Investigator and obtain the MCD in-custody death (ICD) case number.
4. The Homicide Detail's final report shall be routed to the Management Control Division for evaluation, prior to review by the Chief of Police.

C. SCENE. The member(s) who is involved in an in-custody death should limit his/her investigation to the following:

1. As soon as practical, protect the crime scene and preserve all evidence. Prior to the arrival of the Homicide Detail Investigators, as provided under III.C.3., no person(s) should be permitted to enter the scene except to perform emergency medical assistance or assist in the preservation of the scene and evidence.
2. As soon as practical, attempt to obtain the name and address of any witness who may not remain at the scene.
3. When an in-custody death occurs within the City and County of San Francisco, the crime scene(s) shall be under the control of the Homicide Detail upon the arrival of its investigators. No person shall be permitted to enter the crime scene without the approval of the Homicide Inspector assigned the investigation or the Homicide OIC.
4. Units maintaining the crime scene should ensure that all tools of medical intervention left at the scene by treating medical personnel remain at the scene for possible collection by C.S.I. personnel.
5. A crime scene log shall be maintained at the scene.
6. Nothing in this order shall prohibit a member from taking reasonable actions to ensure his/her safety or the safety of another person.

D. COMPOSITION. The In-Custody Death Review Board shall be composed of:

1. Deputy Chief of the Administration Bureau – Chair
2. Deputy Chief of the Field Operations Bureau
3. Deputy Chief of the Airport Bureau
4. Deputy Chief of the Investigations Bureau
5. Commanding Officer of the Training Division or Designee
6. Director of Risk Management - Advisory
7. Designated Public Health Physician - Advisory
8. The Director or Designee for the Office of Citizens Complaints - Advisory
9. San Francisco Police Commissioner (to be appointed by the San Francisco Police Commissioner President and to serve for one year) - Advisory
10. Medical Examiner-Advisory

E. INVOLVED OFFICERS. The following actions will be taken in all cases of in-custody deaths:

1. All members shall be afforded all substantive and procedural rights and remedies as provided by applicable law, including without limitation thereto, the Public Safety Officers' Bill of Rights.
2. When a supervisor arrives on the scene, the supervisor shall have the involved member(s) escorted from the scene unless their presence is necessary for investigative purpose. If more than one member is involved in the in-custody death, absent exigent circumstances the members shall be kept separated from one another and shall not discuss the incident with each other prior to being interviewed by the Homicide

Detail Inspectors. If possible, the supervisor shall contact the investigator from the Homicide Detail and ascertain if the involved member is directed to the Homicide Detail, the Investigations Bureau, or the involved member's station or detail, or another Department facility. In all circumstances, the members shall be taken to a Department facility.

3. Members of the department's C.I.R.T. program may assist the member(s) involved prior to their interview with investigators. However, they shall not knowingly discuss the facts or details of the in-custody death with the member.
4. Involved members shall be assigned to their respective Bureau Headquarters. The Officer shall not return to regular assignment for a minimum of 10 calendar days.
 - a. Within 5 business days of an in-custody death, the Chief of Police shall convene a panel to discuss whether it is appropriate for the involved member(s) to return to duty. The Panel shall include a representative of the Behavioral Science Unit, the officer-in charge of the Homicide Detail, the Deputy Chief, Commander, and Captain overseeing the involved officer's unit, the officer-in-charge of the Management Control Division, the Deputy Chief of Investigations and officer-in-charge of Risk Management.

The Chief, after consulting with the panel shall determine if the member should be returned to their regular field assignment, but only after completion of any mandatory debriefing (per DGO 8.04, Section 1.A.), and any recommended retraining. This decision, including the factors supporting the decision, shall be contained in a written report that shall be forwarded immediately to the Police Commission. A copy of the report shall also be forward to the Director of the Office of Citizen Complaints. This report will be part of the officer's confidential personnel file and shall not be disclosed to any member of the public except by court order. The Police Commission shall, at the first Commission meeting following receipt of the report, meet in closed session with the Chief of Police to review the Chief's findings and decision. Officers shall not be returned to their regular duty until the Commission has met in closed session with the Chief of Police.

This reassignment is administrative only and in no way shall be considered punitive.

5. The officer shall receive a debriefing by the Critical Incident Response Team and support as outlined in Section C., of Department General Order 8.04, unless upon the recommendation of the members Commanding Officer.

F. REVIEW OF THE INVESTIGATIONS.

1. Homicide Detail Investigation. The criminal investigation prepared by the Homicide Detail shall be completed and received by the Chair of the In-Custody Death Review Board within 90 calendar days of the in-custody death event, unless evidence material to the investigation is not yet available. If the investigation is not completed, the OIC

of the Homicide Detail, shall provide an updated report to the Police Commission every 30 days or upon its completion.

2. Management Control Division Investigation. The administrative investigation prepared by the Management Control Division shall be completed and submitted to the Chair of the In-Custody Death Review Board within 30 calendar days after receipt from Homicide Detail of the in-custody death event, unless evidence material to the investigation is not yet available. If the investigation is not completed, the OIC of the Management Control Division shall provide an update report to the Police Commission every 30 days or upon its completion.
3. The In-Custody Death Review Board shall review the submitted reports and interview the involved investigators, as necessary.
4. Within 120 days of the event, the Chair shall report the status of the matter to the Commission.
5. The In-Custody Death Review Board shall review written reports submitted by the Homicide Detail (Criminal Investigation) and the Management Control Division (Administrative Investigation). The Chair shall submit his/her finding within 60 days of receipt. If the report from either unit is not completed, the investigator responsible for the investigation and his/her commanding officer shall appear before the In-Custody Death Review Board and explain, orally and in writing, the reason for not complying with the time limits of this order.
6. The In-Custody Death Review Board can refer a case back to M.C.D. for further investigation or clarification, with a stated due date to the Review Board.
7. The In-Custody Death Review Board shall discuss the circumstances surrounding the in-custody death and the response of the officer(s). Within 15 days of completion of its investigation, the In-Custody Death Review Board will submit to the Chief of Police, for his/her concurrence, a written summary. This summary shall include recommendations concerning the following:
 - a. Adherence to department policy by the member(s) involved.
 - b. The need to develop new policy where none existed at the time of the incident.
 - c. The need to develop new training and techniques to improve department performance.
 - d. Consideration for commendation (Life Saving Award).

This summary shall also indicate one of the following findings:

- a. Proper Conduct,
- b. Improper Conduct (Recommendation for Discipline),

- c. Policy/Training Failure (Identify needs to develop or improve a policy and/or training for the type of incident when encountered in the future).
8. The chief shall review for concurrence and forward the In-Custody Death Review Board's written summary to the Police Commission, with a copy to the OCC Director, within 15 days of receipt. In the event of disagreement between the Management Control Division and the In-Custody Death Review Board, the Chief of Police shall make the final decision. This summary report with the Chief's decision shall be a public record. No report that is made public shall disclose any information deemed confidential by law.

The Director of the O.C.C. shall review the investigation and summary and recommend any further action (including an independent investigation) that the Director concludes is warranted. A summary of the O.C.C. Director's recommendations shall be a public record. No report that is made public shall disclose information deemed confidential by law.

The Police Commission shall review the In-Custody Death Review Board's summary and the O.C.C. Director's recommendations and take action as appropriate. No report that is made public shall disclose information deemed confidential by law.

G. MANDATORY CALIFORNIA ATTORNEY GENERAL REPORT. California Government Code Section 12525 requires that in any case in which person dies while in the custody of a local law enforcement agency or local or state correctional facility, the agency shall report facts concerning the death, in writing, to the California Attorney General within ten (10) days after the death. In addition, each agency must report annually regarding the deaths that occurred within their jurisdiction for that calendar year.

1. The O.I.C. Homicide Detail, will complete both of these documents and forward a copy to Management Control Division for review and transmittal.

H. POLICE COMMISSION YEARLY REPORT. The Chair of the In-Custody Death Review Board shall prepare and provide a yearly report to the Police Commission, and a copy to the Director of the O.C.C., that contains a summary of each in-custody death occurring in the San Francisco Police Department. Any disciplinary action, training issues and proposals for modifying department policy shall be included. This report shall be a public record. No report that is made public shall disclose any information deemed confidential by law.

I. AIRPORT BUREAU OPERATIONS: Police Department operations at the San Francisco International Airport (SFO) are conducted, in part, pursuant to policies required to meet federal mandates and necessary to interface effectively with San Mateo County Agencies. Airport Bureau policies sometimes differ from department-wide policies contained in General Orders and Department Bulletins. The policies contained in this order are applicable to all members, including those assigned to the Airport Bureau. However, as to those parts, if any, of this General Order that conflict with or differ from Airport Bureau written policy, members assigned to the Airport Bureau shall

follow Airport Bureau Policy. If in doubt as to the controlling policy, Airport Bureau members shall immediately notify their supervisor of the conflict in policy.

Notifications to the Department of Emergency Management (DEM) will be made by SFO Communications. Related criminal investigations will be conducted by the San Mateo County Sheriff's Office and the San Mateo County District Attorney, consistent with San Mateo County protocols.
