



## DEPARTMENT OF PUBLIC SAFETY POLICIES & PROCEDURES



<b>POLICY NUMBER</b>	
<b>OPR:29</b>	
<b>EFFECTIVE DATE:</b> 10/07/2021	<b>ORIGINAL ISSUED ON:</b> 04/03/2002
<b>REVISION NO:</b> 6	

**SUBJECT: INVESTIGATION OF USE OF FORCE INCIDENTS RESULTING IN DEATH OR GREAT BODILY HARM**

### 1.0 PURPOSE

The purpose of this policy is to establish procedures and provide Department of Public Safety personnel with guidance during the investigation of the use of force incidents involving DPS personnel that result in death or great bodily harm.

### 2.0 POLICY

It is the policy of the Department of Public Safety to thoroughly investigate all cases where DPS personnel use force resulting in death or great bodily harm or when citizens/arrestees die or are seriously injured while in DPS custody or as a result of a DPS action. This policy does not apply to incidents of negligent discharge (unless death or injury has occurred) or when an animal is shot by an officer (for humanitarian reasons). The Investigations Bureau is responsible for coordinating the investigation of use of force incidents resulting in death or great bodily harm, or the discharge of a firearm by DPS personnel at or in the direction of a person that did not otherwise result in death or serious bodily injury. This includes warning shots fired by DPS employees at or in the direction of suspects or citizens.

### 3.0 APPLICABILITY

This policy is applicable to all commissioned employees of the Department of Public Safety. This policy also will apply to investigations involving other agencies unless superseded by task force MOU.

### 4.0 REFERENCES

NONE

### 5.0 DEFINITIONS

- A. Commissioned Personnel** – Employees whose job specifications require that they maintain a Law Enforcement Officer Certification from the New Mexico Law Enforcement Academy, and are commissioned as peace officers by the DPS.
- B. Companion Officer** – A DPS commissioned officer designated by the on-scene uniform supervisor who is assigned to accompany/support the principal officer..
- C. DPS** – The Department of Public Safety.
- D. Great Bodily Harm** – An injury to a person which creates a high probability of death; or which causes serious disfigurement; or which results in permanent or protracted loss or impairment of the function of any member or organ of the body.
- E. Involved Officer** – Any DPS commissioned officer that observed, directed, influenced, participated in, or directly assisted the principal officer when using deadly force or

whose law enforcement actions resulted in death or great bodily harm of a citizen/arrestee.

- F. Peer Officer Support Team (P.O.S.T.) Representative** – A person who is a trained member of the P.O.S.T. will be assigned to the principal officer. The P.O.S.T. representative may assist with the emotional and physical needs of the principal officer.
- G. Principal Officer** – Any DPS commissioned personnel who, under the color of the law, has used force which has, or reasonably could have, resulted in death or great bodily harm or, who under the color of law, has discharged a firearm which has, or reasonably could have, resulted in death or great bodily harm.
- H. Witness Officer** – Any DPS commissioned personnel that witnessed a use of force incident involving another DPS commissioned officer that results in death or great bodily harm, or witnessed the discharge of a firearm by DPS personnel at or in the direction of a person that did not otherwise result in death or serious bodily injury, whether before, during, or immediately following the event.

## **6.0 PROCEDURE**

### **A. First Responding Personnel Responsibilities**

Any DPS personnel, regardless of rank and assignment, who are first to arrive on scene shall:

1. Evaluate injuries and render medical aid as deemed necessary and appropriate, while attempting to avoid the destruction or contamination of evidence.
2. Search the area for any additional suspects, secure the scene, and implement the seven (7) critical tasks, as appropriate.
3. Identify any witnesses at the scene and secure them separately in a police vehicle or with another officer to maintain credibility.
4. Start a Crime Scene Log.
5. Remain on scene until relieved by the NMSP Investigations Bureau (IB) supervisor.
6. Complete the appropriate supplemental report and communicate with the investigating case agent for direction on providing that report to the IB.
7. When authorized by a supervisor or IB personnel, turn off the lapel and/or in-car recording equipment.

### **B. NMSP Uniform Supervisor Responsibilities**

1. The New Mexico State Police Investigations Bureau will be responsible for the investigation of all use of force incidents involving DPS personnel that result in death or great bodily harm or the discharge of a firearm by DPS personnel at or in the direction of a person that did not otherwise result in death or serious bodily injury.
2. The New Mexico State Police on-duty uniform supervisor in the district where the use of force incident occurred is responsible for the notification of the NMSP

district commander or assistant district commander. The district commander will ensure that a district supervisor is sent and remains at the scene until otherwise directed by the IB case agent or IB supervisor. The district commander will ensure that the following individuals are notified:

- a. On-call NMSP IB supervisor.
  - b. NMSP Executive command duty officer.
  - c. NMSP or DPS Public Information Officer (PIO) as appropriate.
  - d. Standards Bureau Commander or his/her designee.
  - e. P.O.S.T. Commander.
3. The NMSP uniform supervisor on the scene will ensure that the seven (7) critical tasks were implemented as appropriate.
  4. The NMSP uniform supervisor will ensure that a Crime Scene Log has been started and that the access of persons permitted within the crime scene's inner and outer perimeter is controlled.
  5. The first NMSP uniform supervisor to arrive on the scene will advise the principal officer(s) who used deadly force that they are allowed legal representation beginning at the scene of the incident and continuing through the entire criminal investigation. ***This should not be confused with the advisement of the "Miranda Warnings."***
  6. If the principal officer is not injured, he or she should be removed some distance from the immediate scene and if at all possible should be documented (photographed) as they were at the time of the incident and secured until the arrival of the Investigations Bureau case agent in charge of the investigation. A P.O.S.T. member or companion officer should accompany the principal officer(s) and assist him/her with emotional and physical needs as deemed necessary. They shall not discuss the facts of the incident with the principal officer prior to the principal officer giving their formal statement to the Investigations Bureau (IB).
  7. The ranking NMSP uniform supervisor on the scene will be in command of the incident scene until the IB assumes command. Once personnel from the IB arrive on the scene, the NMSP uniform supervisor will relinquish command to the IB case agent/supervisor but will make him or herself available to assist with the larger incident, if required/requested.
  8. The on-scene NMSP uniform supervisor, prior to and after the arrival of the IB personnel, will ensure that all officers involved in the incident remain at the scene until released by the IB case agent or supervisor unless medical necessity or emergency needs dictate otherwise. All involved personnel, to include DPS or other agency specialty team members, should be interviewed by the IB prior to being released.
  9. The on-scene NMSP uniform supervisor will ensure that physical evidence pertaining to the incident remains at the scene and remains secured and undisturbed. The evidence may include but is not limited to;
    - a. The crime scene(s) itself;

- b. In-car/body camera video recordings;
  - c. Audio recordings;
  - d. Weapons.
10. The on-scene NMSP uniform supervisor will ensure that all in-car/body camera video recordings for the involved personnel are stopped when the scene has been secured.
  11. The on-scene NMSP uniform supervisor will ensure that control of the weapon used by the officer(s) during the incident along with all weapon companion equipment remains with the officer(s) for processing by the Investigations Bureau. If the weapon(s) has been dropped, it will be secured where it rests and preserved, and processed as part of the scene. The weapon shall **not** be cleared or made safe as the weapon is a crucial part of the investigation.
  12. In the event an officer's sidearm is seized as evidence, a replacement weapon will be provided to that officer as soon as practical to ensure that an officer is not weaponless while on-scene and/or on-duty. The department armorer will be responsible for the method in which department-issued weapons are replaced. The on-scene NMSP district or zone commander shall notify the Training and Recruiting Commander to arrange for replacement weapons from the department armorer.
  13. The on-scene NMSP uniform supervisor will attempt to gain the cooperation of civilian witnesses, if any, to remain at the scene until the arrival of the Investigations Bureau. If that is not possible, the supervisor will gather contact information to enable agents to obtain a statement from the witnesses at a later time.
  14. The NMSP uniform supervisor will ensure that officers at the scene refrain from making evaluative or judgmental comments about the officer's actions.
  15. The on-scene NMSP uniform supervisor may utilize attachment A, Uniform Supervisor Checklist, to document on-scene responsibilities.

**C. Investigation Bureau Agent Responsibilities**

1. Upon arrival, the Investigations Bureau case agent or supervisor will be briefed by the on-scene NMSP uniform supervisor and will assume command of the crime scene and incident.
2. The Investigations Bureau case agent or supervisor will ensure that a Crime Scene Log has been started and that the access of persons permitted within the crime scene inner and outer perimeter is controlled in cooperation with the on-scene NMSP uniform supervisor on scene.
3. The Investigations Bureau case agent or supervisor will secure and assume control of all the weapons used by the principal officer during the incident.
4. If not already done so by the NMSP uniform supervisor, the case agent will identify and locate all principal, involved, and witness officers at the scene and place them in separate locations. The case agent will also ensure that a companion officer or P.O.S.T. representative is assigned to the principal officer.

5. The case agent or supervisor will ensure that the officers involved are afforded an early opportunity to communicate with family members, and/or any other person that the officer wishes to speak with for counsel, advice, or support. The P.O.S.T. member or companion officer may be utilized to make the needed arrangements.
6. Conversations between all involved commissioned officers and the DPS personnel assigned to assist them should be considered evidentiary and shall be disclosed to the case agent or his/her supervisor.
7. The case agent will ensure that all principal, witness, and involved officers remain in the same attire and do not dispose of any items which were in his/her possession at the time of the incident until authorized to do so by the IB case agent or supervisor unless the attire and/or items contain infectious fluids and pose a health risk to the officer.
8. **The NMSP Investigations Bureau case agent and/or supervisor will utilize proper judgment and discretion in deciding upon the type of constitutional advisement to provide the principal officer(s). This decision is dependent upon the nature and circumstances of the incident and the available information at hand.**
9. At a minimum, it will be explained to the principal officer that the Investigations Bureau is conducting a criminal investigation of the incident and that the officer's cooperation and statements are voluntary and are not compelled as they would be in an administrative investigation. The case agent or supervisor will also ensure that the principal officer understands that his/her cooperation at the scene and during the later steps in the investigative process is voluntary and not required by department policy, procedure, or the law.
10. The Investigations Bureau case agent or supervisor will initiate or direct an area canvass to locate any witnesses who may have information regarding the incident, if applicable. This will also include the interviewing of emergency medical personnel.
11. The IB case agent, in communication with the IB supervisor, may utilize attachment B, Investigations Bureau Supervisor/Case Agent Checklist, to document on-scene responsibilities.
12. The Crime Scene Team (CST) will be contacted to process the officer and properly document and process the scene.

#### **D. Investigation Bureau Supervisor Responsibilities**

1. The lead IB supervisor on the scene will assume responsibility for the crime scene security and will coordinate the security with the NMSP Uniform Division supervisor. Access to the inner or outer perimeters of the crime scene will be directed by the lead IB supervisor.
  - a. With authorization from the IB supervisor, the following persons are permitted within the scene inner-perimeter will be limited to:
    - i. IB Agents and IB supervisors assigned to the investigation.
    - ii. Office of Medical Investigator (OMI), if death has occurred or upon the request of an IB Agent/Supervisor.

- iii. District Attorney representative.
  - iv. Internal Affairs representative (Upon completion of the crime scene processing).
  - v. NMSP uniform or DPS personnel as requested by the Investigations Bureau.
  - vi. Officer-Involved Shooting (OIS) Task Force officers as part of a joint investigation.
- b. Persons permitted within the outer-perimeter, but not within the inner-perimeter will be limited to:
- i. NMSP uniformed or DPS personnel assigned to the investigation or security.
  - ii. NMSP or DPS Public Information Officer (PIO) as appropriate.
  - iii. DPS Attorney, if required and/or appropriate.
  - iv. NMSP Chief/DPS Deputy Secretary of Operations and DPS Cabinet Secretary, or their designee.
2. The responsibility for contacting the Office of the Medical Investigator (OMI), as necessary, will be directed by the Investigations Bureau Supervisor.
  3. Upon completion of the evidence preservation and gathering at the crime scene, the lead IB supervisor and or case agent may take command staff, principal, involved and witness officers, and as deemed appropriate, members of the district attorney's office, on a walkthrough of the crime scene.
  4. The lead IB supervisor on the scene will oversee the overall progress of the criminal investigation and will ensure that the investigation is conducted in accordance with established investigative procedures. The same standards as set forth in this policy will be adhered to when the IB is the lead agency in the investigation of a use of force incident involving another agency.
  5. The IB supervisor, in communication with the IB case agent, may utilize attachment B, Investigations Bureau Supervisor / Case Agent Checklist, to document on-scene responsibilities.
  6. The IB supervisor will assure the completed case is presented to the appropriate DA's office. This supervisor will communicate with the DA's office to receive a determination regarding the legality of the use of deadly force.
  7. The IB supervisor will also assure all pertinent evidence is sent to the NMDPS Forensic Laboratory for examination and analysis.

**E. Interviews of Commissioned DPS Personnel**

1. Interviews of witness officers, involved officers, and civilian witnesses will be conducted without delay, prior to interviewing the principal officer, unless exigent circumstances exist.
2. If the IB supervisor on scene deems necessary, the principal officer may be briefly interviewed concerning specific information pertaining to the identification and care

of the injured, to aid in the apprehension of suspects(s), to protect the scene(s) and evidence, or to locate additional witnesses. During processing, DPS Crime Scene Team (CST) personnel will also ask additional questions to effectively aid in processing the officer.

3. The principal officer will be interviewed by New Mexico State Police Investigations Bureau personnel and requested to give a formal (recorded) statement. The formal interview should usually occur forty-eight (48) hours or more after the incident. Pursuant to case law regarding interrogations, "*Miranda Warnings*" will be given to the principal officer in those instances where it would be applicable.
4. No more than **two (2)** Investigation Bureau personnel will interview the principal officer at one time.
5. Internal Affairs (IA) investigators **shall not** be present during the interviews of DPS personnel while they are giving statements to the IB. IA investigators may, however, monitor the interviews out of sight or review the recordings of the interviews.
6. Unless directed by the NMSP Chief/DPS Deputy Secretary of Operations, IA investigators will not question any DPS personnel involved in the criminal investigation until that investigation is completed as determined by the commander of the Investigations Bureau. This is to avoid duplication of effort and potential conflicts regarding *Garrity v. New Jersey*.
7. All participating police personnel will submit a supplemental report in a timely manner and will communicate with the Investigations Bureau case agent for direction on providing a copy of that report to the IB.
8. The principal, witness, and involved officers will **NOT** submit a report regarding the incident. Their account of the incident will be documented in the IB case report through their statements.

#### **F. Investigations Bureau Captain/Commander Responsibilities**

1. It is the responsibility of the Investigations Bureau captain/commander to keep the NMSP Deputy Chief and NMSP Chief/DPS Deputy Secretary of Operations informed of the status of the investigation.
2. It is also the responsibility of the Investigations Bureau commander to provide a copy of the complete investigative report to the Standards Bureau Commander. This should be done when the case is provided to the DA's office.
3. It is also the responsibility of the Investigations Bureau Captain/Commander to ensure that all Investigations Bureau Agents under their supervision receive training in conducting the investigation of the use of force incidents, including officer-involved shootings, that result in death or great bodily harm.

#### **G. Training and Recruiting Bureau Responsibilities**

1. It is the responsibility of the Training and Recruiting Bureau to ensure that all Commissioned Personnel receive awareness training in the investigation of the use of force incidents, including officer-involved shootings, that result in death or great bodily harm, in recruit school and awareness through advanced Training.

**H. NMSP Chief/DPS Deputy Secretary of Operations Responsibilities**

1. During incidents where the use of force results in death or great bodily harm, the DPS Cabinet Secretary, in concurrence with the NMSP Chief/DPS Deputy Secretary of Operations, **will place** the principal officer on administrative leave with pay, for a minimum of three (3) days.
2. During incidents in which the use of force does **not** result in death or great bodily harm, the DPS Cabinet Secretary, in concurrence with the NMSP Chief/DPS Deputy Secretary of Operations, **may place** the principal officer on administrative leave with pay, for a minimum of three (3) days.
3. During administrative leave, the principal officer, at his/her discretion may be available to the Investigations Bureau.
4. Witness and involved officers may also be placed on administrative leave with pay, upon approval of the DPS Cabinet Secretary in concurrence with the NMSP Chief/DPS Deputy Secretary of Operations or his/her designee.

**I. Psychological Services**

1. In incidents where the use of force results in death or great bodily harm, the principal officer **shall** attend at least one (1) session with a Department-approved provider of psychological services.
2. Psychological services will also be made available to the principal officer in incidents where death or great bodily harm does **not** occur. Attendance in such incidents will be optional.
3. The spouse and children of the officer will also be afforded the opportunity to attend a group session with a Department-approved provider of psychological services.

**7.0 ATTACHMENTS:**

**A. Uniform Supervisor Checklist**

**B. Investigations Bureau Supervisor / Case Agent Checklist**

**8.0 APPROVAL:**

APPROVED BY: S/ Jason R. Bowie DATE: October 7, 2021  
DPS Cabinet Secretary