

OFFICE OF CITIZEN COMPLAINTS

CITY AND COUNTY OF SAN FRANCISCO



Kevin Allen
Director

Date: March 11, 2005

To: Hon. Louise Renne, President
Members, San Francisco Police Commission

Re: OCC's Report Concerning Department Practices In Returning Officers to
Enforcement Duty After Involvement in A Shooting and Suggested
Enhancements to DGO 8.11 and 3.10

Dear President Renne and Commissioners:

The purpose of this letter is to provide you an overview of several police departments' policies concerning the return of officers to enforcement duties after their involvement in a shooting. Section I summarizes police procedures in Austin, Dallas, Denver, Los Angeles Police Department, Portland, Phoenix, San Jose, and San Diego. Section II addresses the lack of empirical data concerning the optimal time for relief from enforcement duties when an officer has been involved in a shooting. Section III provides OCC's suggestions to enhance DGOs 8.11 and 3.10.

I. SUMMARY OF LAW ENFORCEMENT PRACTICES¹

Austin, Texas²:

1. General Policy: Officers involved in a shooting are put on administrative leave until they have been cleared by the grand jury. Cases are normally presented to the grand jury within two weeks and officers return to enforcement duties within two weeks.
2. Length of Administrative Leave: Average of two weeks.
3. Requirements for Returning An Officer to Enforcement Duties: grand jury clearance and chief's approval.

Dallas, Texas³

1. General Policy: Officers involved in a "death-in-custody incident or a shooting that leads to a death or injury will be automatically placed on Administrative Leave for

¹ I am in the process of contacting Seattle and Oakland Police Departments and will provide the Commission information about these Departments as soon as such information is made available to me.

² This summary is based on a telephone interview with a lieutenant from the Internal Affairs division of the Austin Police Department. I am awaiting a copy of the Department's written policy.

³ This summary is based on a telephone interview with a lieutenant in the Dallas Chief's office and Dallas Police Department Order 317.00-317.03. Also see Tanya Eiserer, Dallas Morning News, November 12, 2004, "Police Shootings Policy is Reversed, Chief Won't Require Desk Duty Until Grand Jury Clears Officers."

one day⁴” and then reassigned to restricted duty. Approximately one week following the incident, the officer’s Division Commander, the Crimes against Persons Division Commander, and the Internal Affairs Division Commander meet to discuss the appropriateness of whether to continue the restricted duty or to return the officer to normal assignment.⁵

2. Length of Administrative Leave: Average of two weeks
3. Requirements for Returning An Officer to Enforcement Duties: Recommendation by the aforementioned three Commanders and Chief’s approval
4. Additional information: Before the current Chief (David Kunkle) took over the department, Dallas had a one-day administrative leave policy for officers involved in shootings. Chief Kunkle replaced that policy with one that required an administrative leave until the case was cleared by the grand jury. However, because it was taking so long to get cases before the grand jury, Chief Kunkle instituted a new policy requiring that three of the department’s commanders meet and discuss the appropriateness of restricted duty or returning the officer to normal assignment.⁶ Officers are also required to attend three discussion sessions to be coordinated by the Psychological Services Unit.⁷

Denver, Colorado⁸

1. General Policy: Although Denver’s written policy states that “[i]f a death has resulted, the officer will be removed from any line duty assignment, pending results of administrative review,⁹” the general practice is that officers are given a 3-day administrative leave and then returned to their normal duties.
2. Length of Administrative Leave: 3 days
3. Requirements for Returning An Officer to Enforcement Duties: According to a sergeant within the Internal Affairs Division, officers are required to see a police psychologist and to requalify with their weapons before they may obtain the Chief’s approval to return to duty.¹⁰

⁴ See Dallas Order 317.02 (T).

⁵ See Dallas Police Department Order 317.02, Section V.

⁶ See Dallas Police Department Order 317.02, Sections T, U, V.

⁷ See Dallas Police Department Order 317.02, Section S.

⁸ This summary is based on a telephone interview with a sergeant in the Internal Affairs Division of the Denver Police Department and Denver’s Operations Manual which can be viewed at 105.03 Shooting By and/or Of Police Officers, p.100-123 <http://www.denvergov.org/police/opmanual/105a.pdf>.

⁹ See Police Department of the City and County Denver, Colorado, Operations Manual 105.03 Shooting By and/or Of Police Officers, p.100-123 <http://www.denvergov.org/police/opmanual/105a.pdf>.

¹⁰ These requirements are not reflected in the Operations Manual 105.03 Shooting By and/or Of Police Officers, p.100-123 <http://www.denvergov.org/police/opmanual/105a.pdf>.

Los Angeles Police Department¹¹

1. General Policy: Officers involved in "an officer-involved shooting resulting in an injury to any person, or a Categorical use of force resulting in death or the substantial possibility of death" are immediately removed from field duty and are allowed to return upon the recommendation of the Behavioral Sciences Services Section psychologist and the Chief of Police which normally takes just a few days.
2. Length of Administrative Leave: few days
3. Requirements for Returning An Officer to Enforcement Duties: Mandatory session with BSSS psychologist resulting in a recommendation for return to enforcement duties and Chief's approval
4. Additional information: The Commanding Officer is required to review the officer's discipline history including pending complaints, prior shooting and use of force incidents and information from the officer's immediate supervisor or officer in charge "to examine if a pattern in uses of force or discipline exists."¹²

Portland, Oregon¹³

1. General Policy: Officers involved in a shooting are put on administrative leave until they have been cleared by the grand jury and a psychologist has determined that the officer is fit for duty, a process which normally takes one to two weeks.
2. Length of Administrative Leave: one to two weeks
3. Requirements for Returning An Officer to Enforcement Duties: Grand jury clearance, psychologist's recommendation of fitness and Chief's approval
4. Additional information: Portland does not currently have a written policy and is in the process of writing one.

Phoenix, Arizona¹⁴

1. General Policy: Phoenix's written policy mandates a three-day leave followed by assignment to a non-enforcement position pending a finding by the Use of Force Review Board. In practice, officers are given a 3-day administrative leave followed

¹¹ This summary is based on e-mail correspondence with a Commander of the Internal Affairs Group of the Los Angeles Police Department and Los Angeles Police Department Special Order No.21 "Return to Field Duty of Personnel Involved in an Officer-Involved Shooting Resulting in Injury or a Categorical use of Force Resulting in Death or the Substantial Possibility of Death, July 9, 2003.

¹² See Los Angeles Police Department Special Order No.21 "Return to Field Duty of Personnel Involved in an Officer-Involved Shooting Resulting in Injury or a Categorical use of Force Resulting in Death or the Substantial Possibility of Death, July 9, 2003

¹³ Portland does not currently have a written policy but is in the process of writing one. Information about Portland's policy was obtained from a captain in Portland's Internal Affairs Division.

¹⁴ This summary is based on a phone interview with a detective from Phoenix's Professional Standards Bureau Division and the Department's Use of Force orders.

by a return to normal duties unless the Professional Standards of Bureau Division has concerns about the validity of the shooting in which case they can request the Police Chief to extend the officer's administrative leave.

2. Length of Administrative Leave: 3 days
3. Requirement for Returning An Officer to Enforcement Duties: Officers must attend a psychological debriefing and make an appointment with the Training Bureau Firearms Staff before returning to field duty.

San Jose, California¹⁵

1. General Policy: San Jose's written policy states that "officers directly involved in the shooting will be placed on Administrative Leave..." for an undetermined period of time authorized by the Chief of Police. Typically officers are placed on leave for one week.
2. Length of Administrative Leave: one week
3. Requirements for Returning An Officer to Enforcement Duties: None are identified in the written procedures.

San Diego, California¹⁶

1. General Policy: San Diego's written policy states that "involved officer(s) will be relieved of all field duties and given other assignments within their command pending an investigation." Typically, officers are given two days administrative leave.
2. Length of Administrative Leave: two days
3. Requirements for Returning An Officer to Enforcement Duties: Debriefing with psychological services and approval of Chief of Police.

II. LACK OF EMPIRICAL DATA ESTABLISHING THE OPTIMAL TIME THAT OFFICERS SHOULD BE RELIEVED FROM ENFORCEMENT DUTIES AFTER INVOLVEMENT IN A SHOOTING.

Of the eight departments reviewed, administrative leaves for officers involved in a shooting range from approximately 2-3 days (Denver, Phoenix, San Diego, Los Angeles) to 5 days (San Jose, San Diego) to 14 days (Portland, Dallas, Austin). Of the departments contacted, none could state why one particular period of administrative leave time had been chosen over another. University of Missouri-St. Louis Professor David Klinger (a former police officer whose research focuses on officer-involved shootings) stated that he

¹⁵ This summary is based on a phone interview with a lieutenant in the Internal Affairs Division and San Jose Police Department's Line/Operations Procedure L4700-4708.

¹⁶ This summary is based on a telephone interview with a lieutenant from San Diego's Internal Affairs Division and San Diego's Firearms Procedure 1.05.

did not know of any empirical data or studies that have evaluated what length of administrative leave is most conducive for an officer's well being after having been involved in a shooting.

III. OCC SUGGESTED CHANGES TO DGOS 8.11 AND 3.10

Portland and Austin currently require (among other factors) clearance by the grand jury before officers are returned to enforcement duties following their involvement in a shooting. Dallas until recently also required grand jury clearance but has implemented another review method because of the length of time grand jury review was taking. By presenting officer-involved shootings to the grand jury, these jurisdictions have involved community members serving as grand jurors, to make a determination concerning the lawfulness of police shootings. These jurisdictions have also deemed grand jury clearance as a crucial step in determining whether it is appropriate to return the officer back to the street.

Commissioner Veronese's current amendment to DGO 8.11 incorporates a similar clearance that Portland, Austin and formerly Dallas impose. Similar to a grand jury clearance, under Commissioner Veronese's proposal, the Firearms Discharge Review Board would have to determine the shooting is in policy before an officer would be returned to the street. However, because the Review Board can take up to 90 days to reach its findings, administrative leave could be significantly longer than contemplated under Portland's and Austin's system. Thus, to balance the safety of the public and the interests of the officer, the OCC suggests a rapid yet more comprehensive review process that does not harm the officer by imposing a lengthy leave from enforcement duties. The OCC suggests the following:

- 1) That the Firearm Discharge Review Board meet within one week of the incident and be briefed by the Homicide Detail and the Management Control Division as to the known facts, evidence, witnesses statements and documents concerning the incident.
- 2) That the Firearm Discharge Review Board make a preliminary determination as to whether the shooting is within policy and provide its written determination to the Chief of Police within 10-12 days of the incident.
- 3) That the Commander of Management Control Division review the officer's discipline history including pending complaints, prior shooting, use of force incidents and information from the officer's immediate supervisor or officer in charge to examine if a

pattern in uses of force or discipline exists and to present such recommendations to the Chief of Police within 10-12 days of the incident.


4) In addition to the written determination from the Firearm Discharge Review Board and the recommendation from the Commander of Management Control Division, the Chief of Police shall review recommendations made by the officer-in-charge of the Behavioral Science Unit (as currently contemplated under DGO 8.11). Such recommendations from BSU should be provided to the Chief of Police within 10-12 days of the incident.

5) After considering the recommendations provided by the Firearm Discharge Review Board, the Management Control Division and BSU, and within 14 days the Chief of Police shall make a written report deciding whether the officer should continue on restricted duty or return to the officer's normal assignment. Copies of this report shall be provided to the Police Commission and the Office of Citizen Complaints.

Several departments (San Diego, Los Angeles, Phoenix) stated that within a short period of time (often within 48 hours), their homicide and internal affairs officers could identify problems in a case, reach preliminary determinations concerning whether a shooting was in policy or not, and were called upon to identify any concern to their Chief who was deciding whether or not to place an officer back on the street. In fact, under the Department's current proposal, the Chair of the Firearm Discharge Review Board, the Deputy Chief of Investigations and the Homicide Section Lieutenant (individuals who would have been briefed on the facts of the case) are required to meet within three days of the officer-involved shooting to discuss issues delaying or preventing the officer's immediate return to duty. Under the OCC's proposal, these same individuals along with the other members of the Firearm Discharge Review Board would meet to discuss the identical issues—the only difference is that the Review Board would meet in 7 days (as opposed to 3 days) thereby providing homicide and MCD investigators more time to gather and organize evidence in the case.

The OCC believes that the suggested changes would provide more a more thorough and better documented decision-making process concerning the critical decision of when officers should return to the street after their involvement in a shooting.

Sincerely,


Samara C. Marion KENNETH ALLEN
OCC Policy Analyst STENING FOR
 SAMARA MARION

OFFICE OF CITIZEN COMPLAINTS

CITY AND COUNTY OF SAN FRANCISCO



Kevin Allen
Director

Date: March 15, 2005

To: Honorable Louise Renne, President
Members, San Francisco Police Commission

Re: Supplemental Information from Seattle and Oakland Police Departments Concerning
The Return of Officers to Duty After Involvement In a Shooting

Dear President Renne and Commissioners:

The purpose of this letter is to provide you information from two additional police departments: Seattle and Oakland. As I indicated in my letter of March 11, 2005 I had not yet received responses from these two departments.

Seattle, Washington¹

1. General Policy: Officers involved in a shooting are put on administrative leave² until they have been cleared by the Firearm Review Board and subject to the Chief's approval. The Firearm Review Board convenes within two weeks of the incident and decides whether or not the shooting is justified and whether the officer should be returned to line duty. The Firearm Review Board includes a citizen, appointed by the Mayor, whose responsibilities include observing and reporting on the proceedings.³
2. Length of Administrative Leave: Average of two weeks
3. Requirements for Returning An Officer To Enforcement Duties: Firearm Review Board's clearance and chief's approval.
4. Additional Information: The report from the Firearm Review Board is available to the public after an inquest has been held. (Inquests are similar to grand jury proceedings though the hearings are open to the public. Inquests are normally held within 7 months to a year in Seattle.)

Oakland, California⁴

1. General Policy: Officers are placed on administrative leave for three days.
2. Length of Administrative Leave: three days

¹ This summary is based on a telephone interview with Seattle's Deputy Chief who is in charge of the Seattle's Firearm Review board and Seattle Police Department Procedures 1.305 and 1.145.

² See Seattle Policy 1.145, V, "Any officer using or directly involved in the application of deadly force shall be placed on administrative leave with pay pending review..."

³ See Seattle Policy 1.305, VI "Citizen Observer"

⁴ This summary is based on a telephone interview with a Commander of Homicide. The Department is currently revising its policies on this topic and was not in a position to release its current draft.

Page Two

March 15, 2005


Supplemental Information About Seattle and Oakland Police Departments

3. Requirements for Returning An Officer to Enforcement Duties: Homicide lieutenant approves return to duty and can provide additional leave time if necessary though this rarely occurs. Officers must meet with a psychologist during the 3-day leave.
4. Additional Information: Oakland has a Shooting Review Board that meets within 30 days of the incident and determines whether the shooting was justified or not and also looks at training and policy issues that may arise from the shooting.

Seattle's model is virtually identical to the Commission Veronese's current amendment to DGO 8.11 except that under Seattle's system, the Firearm Discharge Review Board meets within two weeks and determines both the lawfulness of the shooting and the appropriateness of returning the officer to the street. Under Seattle's system, a civilian sits on the Board providing the public further confidence in the review process.

I look forward to discussing these issues with the Commission on Wednesday night.

Sincerely,



Samara C. Marion
OCC Policy Analyst

CC: Chief Heather Fong, Captain Charles Keohane, Steve Johnson, POA Representative

Attachments:

Seattle Police Department, Policies 1.145 & 1.305

Austin Police Department Policies A110 (Restrictive Duty) and B306(Officer Involved Shooting)