

San Francisco Police
General Order-Related MOUs

Agency (Title)/Description
<p>CA Dept of Justice (MOU Collaborative Review) 2018</p> <p>The Parties enter into this MOU for the sole purpose of evaluating and reporting on SFPD's implementation of the 272 US DOJ recommendations following the United States Department of Justice ("US DOJ") Office of Community Oriented Policing Services ("COPS Office") collaborative reform process. (TERM: 02/2018 to 02/2021)</p>
<p>Dept of Police Accountability (Complaints Against Officers)</p> <p>Establishes procedures for the complaints and attendant administrative investigation of SFPD personnel per DGO 2.04. (TERM: 05/2019 to N/A)</p>
<p>Dept of Public Health (SFDPH Behavioral Crisis Intervention 2016)</p> <p>This Memorandum of Understanding (MOU) outlines the programmatic agreement between the Department of Public Health (DPH) and the San Francisco Police Department (SFPD) to support officers who are responding to crises where behavioral health concerns may be present. (TERM: 12/2016 to 12/2019)</p>
<p>District Attorney (Officer Involved Shooting Investigations)</p> <p>Protocol for investigating critical incidents including OIS, in-custody deaths, and uses of force resulting in serious bodily injury. (TERM: 05/2019 to 05/2021) Two-year term or can be terminated providing 15 days notice by either party.</p>
<p>SF Unified School District (Community Oriented Policing MOU 2014-2019)</p> <p>School Resource officer MOU (TERM: 07/2014 to 06/2019)</p>
<p>SF Unified School District (Community Oriented Policing MOU First Amendment To SRO Program 2015)</p> <p>Replaces Chief of Staff coordinating efforts with Deputy Chief of Operations (TERM: 02/2016 to 06/2019)</p>

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MEMORANDUM OF UNDERSTANDING BETWEEN THE CALIFORNIA DEPARTMENT OF JUSTICE AND THE CITY AND COUNTY OF SAN FRANCISCO, ACTING THROUGH THE MAYOR'S OFFICE AND SAN FRANCISCO POLICE DEPARTMENT

This Memorandum of Understanding ("MOU") is made as of February 5, 2018, in San Francisco, California, by and between the City and County of San Francisco ("the City") acting through the Mayor's Office and the San Francisco Police Department ("SFPD") and the California Department of Justice ("Cal DOJ"), collectively referred herein as "the Parties." The Parties enter into this MOU for the sole purpose of evaluating and reporting on SFPD's implementation of the 272 US DOJ recommendations following the United States Department of Justice ("US DOJ") Office of Community Oriented Policing Services ("COPS Office") collaborative reform process.

RECITALS

1. In the spring of 2016, the Mayor's Office and the SFPD invited the US DOJ to partner with SFPD to provide technical assistance on a wide range of issues that affect SFPD's relationship with the community.
2. In response to the invitation, on or about April 29, 2016, the US DOJ's COPS Office entered into a Memorandum of Agreement (MOA) with the Mayor's Office and the SFPD. The COPS Office agreed to conduct a review of the SFPD to analyze policies, practices, training, tactics and systems of accountability and offer recommendations to enhance the relationship between SFPD and the community.
3. In the MOA, SFPD affirmed its willingness to implement the COPS Office's recommendations that would be based on professional standards, best practices, research, Collaborative Reform Initiative standards, the President's Task Force on 21st Century Policing, local circumstances, and the US DOJ priorities.
4. In October 2016, with the assistance of consultant, Hillard Heintze, the COPS Office completed its review of the SFPD and issued a public report (US DOJ Report). The US DOJ Report identified various areas for recommended improvement, including, but not limited to, use of force, bias, community policing, accountability, and recruitment, hiring, and personnel practices. The US DOJ Report included 272 recommendations to help SFPD improve its policies and practices, build community trust and implement industry best practices.
5. As part of the reform process, US DOJ arranged for Hillard Heintze to provide technical assistance to SFPD to help guide the SFPD in implementing the recommended reforms. US DOJ further tasked Hillard Heintze with evaluating the SFPD's progress and providing status reports to the SFPD and the public.
6. On September 15, 2017, the US DOJ announced significant changes to the COPS Office Collaborative Reform Initiative for Technical Assistance that changed the direction in which the COPS Office would provide technical assistance and support to local law enforcement agencies. The US DOJ also informed the Mayor's Office and the SFPD that it was terminating the MOA and partnership and that it would no longer assist in the evaluation of SFPD's progress and implementation of the reforms.
7. Notwithstanding the US DOJ's decision, the Mayor's Office and the SFPD are committed to implementing the reforms recommended in the US DOJ Report and have requested the Cal DOJ to

enter into this MOU for the sole purpose of evaluating and reporting on SFPD's implementation of the US DOJ Report's recommendations.

8. The overall goal is to implement reforms that increase public trust through improvements in policing practices, transparency, professionalism, and accountability, while taking into account national standards, best practices, current and emerging research, and community expectations.
9. Under the terms and conditions of this MOU, the Cal DOJ is not exercising its authority under California Civil Code, section 52.3, subdivision (b). Cal DOJ agrees that this MOU is a collaborative effort and is not a pattern or practice investigation.

THEREFOR, THE PARTIES MUTUALLY AGREED:

1. Reforms and Review

- a. The Mayor's Office and SFPD will implement all 272 recommendations set forth in the US DOJ Report pursuant to a timetable and work plan referenced in Section 2, subdivision (b) below.
- b. Cal DOJ will serve as the independent third party reviewer of SFPD's implementation of the US DOJ Report recommendations and issue periodic reports to the public. Cal DOJ will work with the Consultant as set forth in Section 2, subparagraphs (a) - (f) below on SFPD's implementation of the recommendations in the US DOJ Report. Cal DOJ will report on the SFPD's progress in effectively and timely implementing those reforms. The Parties agree the standard of review for Cal DOJ's evaluation of the SFPD's implementation of the recommendations in the US DOJ Report is substantial compliance. Copies of the reports will, upon issuance, be provided to the SFPD, the Mayor's Office, and the Police Commission
- c. In serving as the independent third party reviewer reporting agency, the Cal DOJ will in no manner supplant the roles and responsibilities of the Mayor's Office; SFPD, including its Chief of Police; Police Commission; or City boards, commissions, or officials.
- d. Under this MOU, it is imperative that the Cal DOJ have access to highly confidential and sensitive information. The information disclosed under this MOU is "official information" under California Code of Evidence, section 1040 and disclosure to Cal DOJ under this MOU shall not constitute waiver of the privilege as provided for under California Government Code, section 6254.5, subdivision (e). The Parties also agree that the Cal DOJ's input resulting from its review of the SFPD's implementation prior to Cal DOJ's public report shall also be subject to the aforementioned provisions and will in addition be treated by the Parties as drafts and recommendations of the Cal DOJ. These privileges will allow and foster the type of open and frank discussion between the Parties that will ensure the effective implementation of the 272 recommendations in the US DOJ Report. Nothing in this provision is intended to preclude the Cal DOJ from issuing periodic public reports as provided in Section 2, subparagraph (f) below and consistent with the confidentiality and privilege concerns set forth in this subparagraph.

2. Consultant

- a. In accordance with City laws and policies, SFPD will select and hire an independent third party consultant (Consultant) who is mutually agreeable to the Cal DOJ and who will assist the Cal DOJ with its role under this MOU. SFPD shall seek input from Cal DOJ in the creation of the

Consultant's scope of work that is mutually agreeable to all Parties. The duties of the Consultant shall include, but are not limited to:

1. Assisting the Cal DOJ (in consultation with the Mayor's Office and SFPD) as it evaluates and reports on the implementation of the reforms, including the development and review of any necessary plans, policies or procedures;
 2. Assisting the Cal DOJ in providing SFPD technical advice, excluding legal advice, as appropriate; and
 3. Preparing and submitting independent reports to the Parties assessing the implementation by the Mayor's Office and the SFPD of the reforms.
- b. Within 30 days of the date of the execution of the Consultant's contract, SFPD and Cal DOJ will develop a mutually agreeable work plan that sets forth the following:
1. Timetables and deadlines for the implementation of the various reforms based on the Parties' prioritization of the 272 recommendations; and
 2. The general process by which the Consultant and Cal DOJ will evaluate whether the SFPD is in substantial compliance with the US DOJ Report recommendations. Methods of evaluation may include, but are not limited to, reviews, audits, interviews, observations, and document review.
- c. The Mayor's Office and SFPD agree to cooperate with the Cal DOJ and the Consultant as they report on the implementation of the reforms, and, except to the extent prohibited by law, will provide the Cal DOJ and the Consultant with access to relevant information. The parties agree Cal DOJ will have the same access to information as SFPD provided to US DOJ pursuant to the COPS MOA, including, but not limited to, the following:
1. Interviews, on a confidential basis or otherwise, with any sworn and unsworn employees of the SFPD or Mayor's Office, and assistance with interviews of personnel in other City departments and County agencies. SFPD shall provide suitable facilities and arrange for such interviews to be conducted under conditions satisfactory to the Cal DOJ and Consultant;
 2. Compilation of statistics, reports, and any other information that may be directly related to the matters that are governed by the MOU; and
 3. Access to SFPD records, files, and papers maintained to the extent that such access is directly related to the matters governed by the MOU and not prohibited by law.
- d. The SFPD and a Police Commission representative will participate in regular status meetings with Cal DOJ and/or the Consultant.
- e. The Mayor's Office and SFPD agree that the SFPD will submit each plan, policy or procedure that the SFPD develops or implements under the US DOJ Report to Cal DOJ for its review. Cal DOJ will timely review said plans, policies, and/or procedures and will provide its recommendations, comments, or edits to SFPD within 45 calendar days. If Cal DOJ does not provide a response within 45 days, SFPD need not wait to implement the proposed plans, policies, and/or procedures.
- f. Working with the Consultant, Cal DOJ will issue periodic public reports regarding the status of SFPD's implementation of the reforms governed by this MOU, including whether the Cal DOJ has determined that a particular reform has substantially complied with the recommendation.

- g. Upon written notice to the other Party, any Party has the right to initiate a meet and confer process regarding the performance of the Consultant retained pursuant to this MOU. Upon receipt of such notice, all Parties agree to meet and confer within 30 days to discuss in good faith the reason for concern and steps to remedy. If the reasons for concern are not resolved, Cal DOJ may request that the SFPD find an alternative Consultant to fulfill the role and responsibilities set forth in Section 2 of the MOU.

3. Applicable Costs to the City

SFPD will pay for all costs for the services of the Consultants, including those services provided to Cal DOJ. There is no cost to SFPD for Cal DOJ's services.

4. Open-Lines of Communication

- a. The Parties agree to work collaboratively and in good faith in executing their responsibilities under this MOU.
- b. SFPD agrees to assign a primary point of contact for the Cal DOJ within SFPD's Command Staff for the duration of this MOU.

5. Term of MOU

- a. This MOU shall be effective upon its execution of all Parties and shall continue for 36 months; provided Section 3 survives the term of this MOU.
- b. If any Party wishes to terminate the MOU prior to its expiration, it shall initiate a meet and confer process regarding the Party's concerns upon written notice to the other parties. Upon receipt of such notice, all Parties agree to meet within 30 days to discuss the reason for concern and steps to remedy. If the Parties are unable to reach a mutually agreeable resolution, any Party may terminate the MOU with no fewer than 15 days notice by providing notice of same in writing.

6. Severability

If any one or more of the words, phrases, sentences, clauses or sections contained in this MOU is deemed invalid, then it shall not affect the enforceability of the remaining portions of this MOU or any part thereof, all of which are inserted conditionally on their being valid in law, and, in the event that any one or more of the words, phrases, sentences, clauses, or sections contained in this MOU shall be declared invalid, this MOU shall be construed as if such invalid word or words, phrase or phrases, sentence or sentences, clause or clauses, or section or sections had not been inserted.

7. Waiver

Cal DOJ reserves the right to exercise the powers vested in the Attorney General by the California Constitution and state statutory law. The Mayor's Office and SFPD agree to waive any claim for breach or default of this MOU that might arise from the Attorney General's exercise of such authority.

8. Entire Agreement

This MOU contains the entire agreement of the Parties with respect to the subject matter of this MOU, and supersedes all prior negotiations, agreements, and understandings with respect thereto. This MOU may only be amended in a written document executed by the Parties.

9. Signing Authority

By signing this MOU, the persons executing this MOU represent that they have the capacity and authority to execute this MOU as the representatives of their respective agency, and to bind their respective agency to the terms of this MOU.

10. Counterparts and Facsimile Signatures

- a. This MOU and any and all other documents or instruments referred to herein may be executed with counterpart signatures, all of which taken together shall constitute an original without the necessity of all Parties signing each documents.
- b. This MOU may also be executed by signatures to facsimile or electronic transmittal documents in lieu of an original or machine generated or copied document.

Xavier Becerra, Attorney General of the State of California

Dated: 2/5/18

By: Angela Sierra
Angela Sierra
Senior Assistant Attorney General

City of San Francisco

Dated: 2/05/18

William Scott
William Scott
Chief of Police

Dated: 2/5/18

Mark E. Farrell
Mark E. Farrell
Mayor

Dated: 2/5/18

Alicia
Approved as to Form
Alicia Cabrera
Deputy City Attorney

COPY

**MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF
POLICE ACCOUNTABILITY AND THE SAN FRANCISCO POLICE DEPARTMENT
DEPARTMENT GENERAL ORDER 2.04, COMPLAINTS AGAINST OFFICERS**

I. PREAMBLE

The Department of Police Accountability ("DPA") and the San Francisco Police Department ("SFPD") hereby enter into this Memorandum of Understanding ("MOU") in order to establish procedures for the complaints and attendant administrative investigations of SFPD personnel.

The DPA is required to investigate all complaints against sworn members of on-duty police misconduct and off-duty police misconduct in which the sworn member is acting under the color of authority. The DPA shall completely, promptly, fairly and impartially investigate any incident occurring within the City in which a member of the uniformed ranks of the Department discharges a firearm resulting in the physical injury or death of a person, even if the discharge is accidental, and all complaints regarding police use of force, misconduct or allegations that a member of the SFPD has not properly performed a duty. The DPA shall investigate all such matters, except those complaints which clearly indicate that the acts complained of were proper, and those complaints lodged by other members of the San Francisco Police Department.

The SFPD is responsible for investigating all internal complaints made by members of the San Francisco Police department, both sworn and non-sworn, complaints against non-sworn members, complaints from Law Enforcement agencies, including prosecutors, and complaints of off-duty misconduct, both sworn and non-sworn, complaints referred to the SFPD by the Whistleblower program.

II. PARTIES

This MOU is between the SFPD and the DPA (collectively "Parties").

III. TERMS AND DEFINITIONS

- A. **MEMBER.** Member, as that term is used in San Francisco City Charter Section 4.136(d) and DGO 3.02 means; any employee of SFPD.
- B. **SWORN MEMBER.** Sworn member means any employee of the SFPD who qualifies as a peace officer under Penal Code section 830.1.
- C. **UNIFORMED MEMBER.** Uniformed member includes any employee of the SFPD who is either a peace officer as that term is used in Penal Code section 830.1 or a Police Services Aide (PSA).
- D. **CRIMINAL INVESTIGATION.** An investigation conducted to determine whether any person committed a crime during the covered incident.
- E. **ADMINISTRATIVE INVESTIGATION.** An investigation conducted by SFPD or DPA

administrative investigators to determine whether any involved SFPD personnel violated any general order, regulation, or other workplace rule during the covered incident. This includes "internal" investigations.

IV. DPA PROCEDURES

A. DPA Investigations.

1. When there is sufficient evidence to proceed the complaint will be classified as an investigation and will be assigned to a designated DPA investigator, except those complaints which on their face clearly indicate the acts complained of were proper and those complaints lodged by other members of the Police Department.
2. DPA shall quarterly complete and send updates on cases to IAD with expected completion dates and the statute of limitations deadline. (3304) govt. code
3. DPA shall notify the Chief of Police and IAD of all cases that reach the six month mark inclusive of cases which may be tolling. (3304) govt. code.
4. DPA shall use its best efforts to conclude investigations of complaints and, if sustained, transmit the sustained complaint to the Police Department within nine months of receipt thereof by DPA.
5. If DPA is unable to conclude its investigation within such nine-month period, the Director, within such nine-month period, shall inform the Chief of Police of the reasons therefor and transmit information and evidence from the investigation as shall facilitate the Chief's timely consideration of the matter.
 - a. Completed or pending DPA case files sent to the Chief of Police or IAD, shall contain a copy of the original complaint, chronological of investigation, all audio or video evidence, transcripts, investigative notes, investigative summary, pending or final conclusions, and pending or final recommendations.
 - b. For all cases that the DPA fails to meet the nine-month deadline, the Director shall advise the Chief of Police of the specific reasons for said failure and expected completion date(s).
6. The DPA shall send completed investigations to IAD within thirty (30) days of the DPA Director's approval except those over the nine (9) month deadline which shall be sent immediately.

In cases involving concurrent investigations, DPA shall not receive the IAD investigative conclusions and recommendations until IAD has received the completed DPA report.

7. Upon final disposition of an investigation of a complaint, the DPA shall issue a letter to the complainant and every named officer that includes the findings of each allegation in

the complaint.

B. DPA Morning Reports.

The DPA will transmit a Morning Report that will document the number and types of complaints, the district of occurrence, and officer information and if available identification of specific officer(s) involved. The Morning Report should have summaries of the incident and be sent weekly to IAD for review and analysis.

C. Allegations Involving Criminal Conduct.

If any portion of the complaint alleges criminal misconduct by a Department member, the DPA shall immediately forward the information presented by the complainant to the Department and District Attorney's Office. The District Attorney's Office shall only receive complaint forms or personnel files in accordance with Penal Code section 832.7(a).

The OIC of the assigned criminal investigative unit will notify the OIC of IAD that the District Attorney has dismissed or filed charges in the case. The OIC of IAD will coordinate the notification and the production of a copy of the completed criminal case file to DPA.

D. Government Claims.

SFPD will not forward these claims to the DPA. The City Attorney shall be responsible for production of government claims to DPA.

E. Controller's Office Whistleblower Complaints.

The Controller's Office designates the investigating agency. The Whistleblower complaints forwarded by the Controller's office to the SFPD shall remain confidential and not be forwarded to the DPA.

F. Notification and Review.

After completing an investigation, the DPA and SFPD shall ensure that every named officer and complainant receive a letter containing the disposition of the complaint and instructions for requesting a hearing. Notification shall be sent within thirty business days of the disposition.

V. CLASSIFICATIONS

DPA and the SFPD have agreed to formulate consistent language to refer to categories of alleged misconduct.

VI. TRANSMITTAL TO AND ACTION BY DEPARTMENT ON COMPLAINTS SUSTAINED BY THE DPA

- A. When a complaint has been sustained by a preponderance of the evidence, and the DPA investigation has been completed, the DPA's complete case file and findings shall be transmitted to the Police Chief or the Chief's designee for review and actions.
- B. The Chief or the Chief's designee shall complete his or her review and make an action recommendation within forty-five (45) days of receipt of a DPA case. (Section 4.136.(e))
- C. If, however, the Chief or Chief's designee cannot meet the deadline he/she shall seek an extension of time from the Police Commission. The Commission shall be advised of the reasons for the request for deadline extension, and accused officer(s), complainant(s) and witness(es) shall be informed of any delays and time extensions beyond the initial 60-day period.
- D. DPA shall recommend disciplinary action to the Chief of Police on those complaints that are sustained. The Director, after meeting and conferring with the Chief of Police or his or her designee, may verify and file charges with the Police Commission against members of the Police Department arising out of sustained complaints; provided, that the Director may not verify and file such charges for a period of 60 days following the transmittal of the sustained complaint to the Police Department unless the Director issues a written determination that the limitations period within which the member or members may be disciplined under Government Code Section 3304, as amended from time to time or any successor provisions thereto, may expire within such 60-day period and (1) the Chief of Police fails or refuses to file charges with the Police Commission arising out of the sustained complaint, (2) the Chief of Police or his or her designee fails or refuses to meet and confer with the Director on the matter, or (3) other exigent circumstances necessitate that the Director verify and file charges to preserve the ability of the Police Commission to impose punishment pursuant to Section A8.343.
- E. In cases where the DPA has sustained a complaint by a preponderance of the evidence against the Chief of Police, the DPA shall transmit its complete case file and findings to the Police Commission for review and action.

VII. MONTHLY REPORTS AND MEETINGS.

- A. Reporting on the status of Sustained Complaints.
The SFPD shall adhere to section SF Admin Code 96.2 (a-c) and San Francisco Police Commission Resolution 97-04 or successor resolution in the reporting of all DPA and IAD sustained complaints, per an agreed template.
- B. SFPD DPA Monthly Meeting.
There shall be a regularly scheduled monthly meeting, in which the Chief of Staff of the SFPD and the Chief of Staff of the DPA meet to discuss discipline, policy and training recommendations.

VIII. QUARTERLY REPORTS AND MEETINGS

A. DPA Policy Recommendations.

The Police Department and the DPA shall provide a quarterly report (commonly known as the Sparks' Report) to the Police Commission concerning the status of revisions to Department General Orders, new General Orders and DPA policy recommendations. Both the Department and the DPA shall collaborate on prioritizing the recommendations in the Sparks Report.

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|---------------------|---|
| 1. High-Priority: | Mandated by law, Police Commission, immediate public safety issue. |
| 2. Medium Priority: | The issue is important, but does not necessitate immediate implementation |
| 3. Low Priority: | The issue(s) identified occur infrequently and do not affect the day to day operations between the SFPD and the public. |

B. Statistics and Recommendations.

1. The DPA, as directed by the Police Commission, compiles and publishes monthly summaries and quarterly reports of complaint statistics.
2. DPA submissions shall include statistical data reports specifically related to the following; total number of complaints, the status of all investigations related to those complaints and data specific to their findings.
3. DPA shall identify the categories and demographic information of all complainants and sworn members. (Age, gender, ethnicity, occupation, or other demographic information collected on the DPA Form 293)
4. These summaries and reports include, but are not limited to, the disposition by the Chief of Police and the Police Commission of complaints and allegations referred to the Chief of Police by the DPA Director.
 - a. The DPA, as directed by the Police Commission, prepares and publishes quarterly recommendations concerning policies and practices of the Department.
 - b. The Department and DPA shall review quarterly statistical reports within two weeks of receipt. The Department and DPA shall cross-check information on cases sustained by the DPA, and confer on discrepancy and accuracy.

IX. DECONFLICTION OF REVIEW BOARDS

In cases where incidents being examined fall under multiple review board jurisdictions, the SFPD shall in consultation with DPA, determine the appropriate review board.

X. DOCUMENT CONTROL AND DISTRIBUTION

Immediately upon receipt, the DPA will provide a copy of any request for police personnel records to the Commanding Officer of Risk Management, unless prohibited by State or Federal law.

Dated: 5/22/19

William Scott
WILLIAM SCOTT
CHIEF OF POLICE
SAN FRANCISCO POLICE DEPARTMENT

Dated: 5/28/19

Paul Henderson
PAUL HENDERSON
DIRECTOR
DEPARTMENT OF POLICE ACCOUNTABILITY



INTERAGENCY MEMORANDUM OF UNDERSTANDING
SFDPH Behavioral Health Crisis Intervention Support for SFPD

This Memorandum of Understanding (MOU) outlines the programmatic agreement between the Department of Public Health (DPH) and the San Francisco Police Department (SFPD) to support officers who are responding to crises where behavioral health concerns may be present.

I. BACKGROUND

The DPH Crisis Intervention Specialist Team is a new initiative from the Mayor's Office and a collaboration between the San Francisco Department of Public Health (DPH) and San Francisco Police Department (SFPD).

DPH Crisis Intervention Specialist Team members (SPECIALISTS) will provide an enhanced partnership to assist the San Francisco Police Department in police crisis situations. The ultimate goal of this program is to support law enforcement in crisis situations where there is a behavioral health component to affect a positive outcome for the individual(s) in crisis. SPECIALISTS will ensure that individuals are adequately provided with immediate mental health crisis assessment and services to help them achieve stability, and to assist in diffusing the situation.

Under the supervision of the DPH Director of Comprehensive Crisis Services, SPECIALISTS will work closely with SFPD to assist as mental health professionals in a police crisis situation. When notified by SFSD that support is needed at an incident, SPECIALISTS will be deployed to provide support to the on-scene Operational Commander and will liaison with the on-scene SFPD Hostage Negotiation Team and SFPD Crisis Intervention Officer(s). Further, Comprehensive Crisis Services will be responsible for assisting SFPD with Crisis Intervention Trainings (CIT) and curriculum development.

II. TERM OF AGREEMENT

The term of this agreement is for three (3) years.

III. AVAILABILITY.

The Department of Public Health (DPH) will provide clinicians (SPECIALISTS) who will be available to support the SFPD throughout the course of Crisis Negotiation situations. SPECIALISTS will be available 24 hours a day/7days a week. Program activities will be co-supervised by DPH and SFPD, through their respective chains of command.

IV. COLLABORATION AND CONFIDENTIALITY.

SPECIALISTS will work collaboratively with the SFPD during crisis incidents in conformance with federal, state and local confidentiality laws.



INTERAGENCY MEMORANDUM OF UNDERSTANDING
SFDPH Behavioral Health Crisis Intervention Support for SFPD

A "crisis" for purposes of this MOU, is any situation in which a person's behaviors put them at risk of hurting themselves or others and/or when due to a grave mental health disability the person is not able to resolve the situation with the skills and resources available. As defined by California law, a mental health crisis is an incident when an individual due to a mental disorder, is a danger to self or others, or immediately unable to provide for or utilize, food, shelter or clothing, and requires psychiatric inpatient hospital or psychiatric health facility services.

The HIPAA Privacy Rule allows covered entities to disclose protected health information to law enforcement officials in order to prevent, or lessen, a serious and imminent threat to the health and/or safety of a person or the public. (45 CFR 164.512(j)(1)(i).)

Except when otherwise required by law, SPECIALISTS may only disclose the "minimum necessary" information in the context of the specific crisis incident to provide an appropriate assessment of, and related services to the individual (45 CFR 164.502(b), 164.514(d).)

Moreover, if the law enforcement official making the request for information is not known to the SPECIALIST, the SPECIALIST must verify the identity and authority of such person prior to disclosing the information (45 CFR 164.514(h).)

Following the resolution of the individual's crisis, SPECIALISTS will not be permitted to share protected health information with SFPD without a HIPAA-compliant authorization to do so.

V. ACTIVITIES UNDER THIS AGREEMENT

a. Crisis Response:

1. SFPD will notify the designated DPH Crisis Intervention Specialist Team Director when support is needed at an incident, describing the situation in as much detail as possible to allow the SPECIALIST to determine the minimally necessary protected health information that can be shared orally, to the extent the SPECIALIST may have such protected health information relevant to resolving the situation.
2. DPH SPECIALISTS will show official identification upon arriving at a scene and will check in with the Operational Commander on site.
3. DPH SPECIALISTS will function as mental health professionals in a police crisis situation to provide support to Operational and/or Tactical Commands, and will follow the instructions of the Operational Commander to preserve the SPECIALISTS' and the public safety.
4. DPH SPECIALISTS will provide crisis intervention support and/or debriefing to individuals affected by a crisis situation (e.g., individual, family, community members) to determine how best to meet individual needs both short and long term.
5. DPH SPECIALISTS will provide additional support, including case management and/or therapy services to support reduced contacts between the individual and SFPD and the need for crisis intervention services.
6. DPH SPECIALISTS will rotate on-call staff to ensure a response 24 hours a day, 7 days a week.



INTERAGENCY MEMORANDUM OF UNDERSTANDING
SFDPH Behavioral Health Crisis Intervention Support for SFPD

b. Planning and Strengthening System:

1. SFPD and DPH will work together to further develop and continue SFPD's Crisis Intervention Team (CIT) training efforts.
2. SFPD and DPH will work together to address program evaluation efforts, including gathering and evaluating data to document program's progress.
3. Leadership of the San Francisco Department of Public Health's Crisis Intervention Specialist Team, San Francisco Police Department and the San Francisco Mayor's Office will work together to continually improve this joint program.

VI. EVALUATION.

The DPH and SFPD will support data collection as allowed by confidentiality regulations to evaluate the magnitude of challenges facing first responders in crisis situations and to design a crisis intervention structure to work effectively in critical incidents where there is a behavioral health component. Evaluation data will include demographics of those served by the program, outcomes of negotiations and crisis assessments, and de-identified (as approved by the DPH Privacy Officer) DPH information covering frequency and type of services provided including short term case management services, linkage to long term care, and reduction in crisis contacts.

VII. TERMINATION.

This agreement can be mutually terminated in writing upon agreement between DPH and SFPD, but expires three years from the most recent signature date below.

The signatures below confirm agreement to the terms of this Memorandum by all parties concerned.

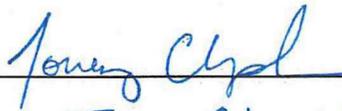
Signed

Signed



Barbara A. Garcia, MPA
Director of Health
San Francisco Department of Public Health

Date: 12/7/16



Print: Toney Chaplin
Chief Police Officer
San Francisco Police Department

Date: 12/27/16

**MEMORANDUM OF UNDERSTANDING BETWEEN THE SAN FRANCISCO
DISTRICT ATTORNEY'S OFFICE AND THE SAN FRANCISCO POLICE
DEPARTMENT REGARDING THE INVESTIGATION OF OFFICER-INVOLVED
SHOOTINGS, IN-CUSTODY DEATHS, AND USES OF FORCE RESULTING IN
SERIOUS BODILY INJURY**

PREAMBLE

Peace officers perform a vital and often dangerous job in our communities. Situations will occur where peace officers must use force, including, at times, deadly force; however, the community expects that such force will be used only when reasonable and necessary under the totality of the circumstances. When peace officers use deadly force or force resulting in serious bodily injury, the public has a right to expect that a thorough and neutral examination will be conducted.

The San Francisco District Attorney's Office ("SFDA") and the San Francisco Police Department ("SFPD") agree that SFDA personnel will immediately respond to the scene of SFPD officer-involved shootings and investigate them as well as in-custody deaths and certain incidents where uses of force result in serious bodily injuries. The policies and procedures to be followed are set forth in this Memorandum of Understanding ("MOU").

PURPOSE

The purpose of this MOU is to outline the agreement between SFPD and SFDA regarding the procedures for the criminal investigation of "Covered Incidents" to determine if an officer committed a criminal offense.

TERMS AND DEFINITIONS

- A. **Officers:** For purposes of this MOU, the term "officer" shall mean any person employed by SFPD who meets the definition set forth in California Penal Code § 830.6.
- B. **Covered Incidents:** For the purposes of this MOU, "Covered Incidents" shall mean the following incidents wherein SFPD officers are acting under color of law or color of authority: (1) officer-involved shootings, (2) in-custody deaths, and (3) uses of force resulting in serious bodily injury, as outlined below:
 - 1. **Officer-Involved Shooting:** An officer's discharge of a firearm, with or without physical injury or death to a person, or a negligent discharge that results in physical injury or death of a person. For purposes of this MOU, Covered Incidents do NOT include an officer's discharge of a firearm (i) that is intended to kill a dangerous or wounded animal; (ii) that is intended to signal help for an urgent purpose; (iii) that is unintended and does not cause injury or death to a person; (iv) that occurs outside the borders of the City and County of San Francisco; or (v) that occurs as a training, sporting or recreational activity.
 - 2. **In-Custody Death:** Any death that occurs when a person is restrained by an on-duty SFPD officer by means of (i) physical restraints and/or any use of force, as defined by SFPD policy; (ii) detention or confinement in an SFPD vehicle; or (iii) detention or confinement in a jail or detention facility while in the custody of an SFPD officer.

3. **Uses of Force:** Any uses of force resulting in injury that requires admission to the hospital or upon an SFPD supervisory evaluation, as outlined in General Order 5.01 (Use of Force), that the use of force appears unreasonable and resulted in serious bodily injury. "Serious bodily injury" is defined in the California Penal Code, section 243(f)(4), as a serious impairment of physical condition, including, but not limited to, loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of any bodily member or organ, a wound requiring extensive suturing, and serious disfigurement.

Whenever there is a question of whether an incident meets the criteria of this MOU, an SFPD supervisory officer shall consult, as soon as practicable, with the SFPD Commanding Officer of Risk Management who will consult with the on-call SFDA personnel to determine if a Covered Incident investigative response is appropriate.

- C. **Ancillary Criminal Investigation:** Notwithstanding the SFDA's investigation to determine whether an officer committed a criminal offense during any Covered Incident, SFPD shall retain the authority to conduct ancillary criminal investigations. An "ancillary criminal investigation" is a criminal investigation of conduct by non-law enforcement personnel. Should there be an ancillary criminal investigation, including but not limited to underlying criminal activity that preceded or occurred at the same time as the covered incident or an on-going investigation outside of the covered incident, that investigation shall remain with SFPD.
- D. **Administrative Investigation:** An investigation conducted by SFPD administrative investigators to determine whether any involved SFPD personnel violated any general order, regulation, policy, or other workplace rule during the Covered Incident. These investigations are administrative in nature only.

SEPARATION OF CRIMINAL AND ADMINISTRATIVE INVESTIGATIONS

SFDA and SFPD will jointly and cooperatively investigate all Covered Incidents. SFDA's role will be to lead the independent investigation and assessment of whether SFPD personnel committed any violations of criminal law during a Covered Incident. Independent of SFDA, SFPD's role will be to conduct ancillary criminal and administrative investigations of a Covered Incident. SFDA and SFPD will coordinate their respective investigations and work cooperatively to ensure that all evidence and investigative results are shared when legally permissible.

SFPD has the responsibility to address several issues. As to any ancillary criminal investigations, SFPD will determine whether criminal law violations occurred. In any administrative investigations, SFPD will determine whether departmental policies were followed. Thus, SFPD may conduct its administrative review and investigation concurrently with all criminal investigations into a Covered Incident.

During the course of an administrative inquiry, a law enforcement agency is authorized by law to compel its officers to give statements regarding matters that are subject of the administrative investigation. (Public Safety Officers Procedural Bill of Rights Act ("POBRA"), Government Code §§ 3300-3313.) However, the law limits the admissibility of such a compelled statement in a criminal prosecution. Therefore, the administrative investigation must be separate from the criminal investigation.

Assistant district attorneys and inspectors from SFDA will respond to the scene and will lead the criminal investigation into the covered incident with assistance from the SFPD. The primary objective of SFDA's investigation is to accurately, thoroughly, and objectively investigate the incident and to determine the potential criminal liability, or lack thereof, of SFPD officers involved in a Covered Incident.

NOTIFICATION REQUIREMENTS

Immediately upon occurrence or discovery of a Covered Incident in San Francisco, SFPD shall notify the on-call SFDA investigator. SFPD shall provide the on-call SFDA investigator with a brief summary of all the facts known at the time, including: the location of the incident, the location of the command post, suggested access routes, and any safety concerns.

AT THE SCENE

SFPD shall remain the lead agency responsible for securing the location, collecting all physical evidence, and photographing and diagramming the scene; thereby maintaining the chain of custody and proper processing of all evidence. Both parties agree and understand that SFPD will be in command of and direct the activities of all SFPD personnel and SFDA will be in command of and direct the activities of all SFDA personnel. SFDA and SFPD criminal investigative responsibilities at the crime scene location are as follows:

SFDA responsibilities:

- A. Check into the crime scene with the officer maintaining the crime scene log upon arrival and before departure.
- B. Lead all interviews related to the criminal investigation of a Covered Incident. SFPD investigators shall participate in and ask questions related to any ancillary criminal investigations during such interviews.
- C. When feasible, advise investigating SFPD personnel about criminal legal issues as they relate to SFDA's investigation.
- D. Record their observations.
- E. Consult with SFPD investigative personnel regarding the collection of evidence.
- F. Conduct an independent investigation of the facts and circumstances of the Covered Incident, which may include independent analyses of evidence collected and logged by SFPD and witness interviews.

SFPD responsibilities:

The SFPD ranking member, or his or her designee, shall brief the ranking member of SFDA personnel of the following:

- A. All relevant information known at the time.

- B. The names and current locations of the officers who were involved in, or witnesses to, the incident.
- C. The names, addresses, and current location of all civilian witnesses to the incident.
- D. The statements of the officers, including any "public safety statements."
- E. The physical evidence discovered, including any Body Worn Camera recordings or other audio or video recordings.
- F. The medical condition of any injured parties.

Ensure that SFDA personnel have access to the scene of the Covered Incident once approved by the ranking police member of the unit on scene that is responsible for the investigation.

DEPARTMENT OF POLICE ACCOUNTABILITY

SFDA and SFPD acknowledge that pursuant to Prop D, the Department of Police Accountability (DPA) is responsible for "conducting timely and complete [administrative] investigation of any incident occurring within the City and County of San Francisco in which a member of the uniformed ranks of the San Francisco Police Department discharges a firearm resulting in the physical injury or death of a person, even if the discharge is accidental." S.F. Admin. Code §96.11

INTERVIEWS OF CIVILIAN WITNESSES

SFDA personnel, along with SFPD, shall make every attempt to locate, identify, and interview all potential witnesses to an incident. SFDA personnel will lead interviews of all civilian witnesses related to the Covered Incident. SFPD investigators shall participate in and may ask questions related to any ancillary criminal investigations during such interviews. In addition, SFDA investigative personnel shall ascertain from SFPD officers at the scene the names, addresses, and contact information of any civilian witnesses who cannot or will not remain at the scene. All witnesses shall be interviewed separately from each other by investigative personnel to maintain the integrity of their statements. All interviews shall be electronically recorded by both SFPD and SFDA, unless the civilian witness refuses to be electronically recorded.

INTERVIEWS OF SFPD OFFICERS

Prior to interview, all SFPD officers directly involved in, or witness to, a Covered Incident shall be physically sequestered from one another and directed not to communicate with each other to maintain the integrity of their statements. All SFPD officers who are witnesses to the incident shall be separately interviewed. The interviews shall take place as soon as practicable after the incident and shall be electronically recorded.

1. Criminal Investigations
 - (a) Police Officers have the same rights and privileges regarding criminal investigations as other citizens.

- (b) SFDA personnel shall lead criminal interviews of all SFPD personnel involved in a Covered Incident with SFPD participation, when SFPD deems necessary, to conduct any ancillary criminal investigations.
- (c) SFDA personnel shall advise an officer at the outset of the interview that the interview concerns a criminal matter and is voluntary.
- (d) No punitive action can be taken by the Employer Agency against the interviewee if he/she exercises his or her right against self-incrimination when speaking with investigators.
- (e) If the interview is or becomes a custodial interrogation, the officer will be so advised. *Miranda* is applicable if and when the interview becomes a custodial interrogation.
- (f) Officers have the right to consult with representatives and/or support personnel prior to interviews and to have their representatives present during criminal investigation interviews. Representatives are usually lawyers or union officials, while supporters are usually spouses, co-workers, friends or clergypersons.
- (g) SFDA acknowledges that the Police Commission's General Order 10.11 (DGO 10.11), concerning body-worn cameras, applies to SFPD officers so long as General Order 10.11 is in effect and is not superseded by state law.
- (h) SFPD administrative investigators shall not be physically present during criminal interviews. However, SFPD administrative investigators may monitor criminal interviews either through visual observation and audible reception of the interview through glass or through observation of real-time video or closed-circuit transmission of the criminal interview.

2. Administrative Investigations

- (a) If an officer chooses not to make a voluntary statement, SFPD may notify SFDA before compelling the officer to submit to an interview.
- (b) If an officer is subjected to a compelled interview, the officer will be provided with all rights afforded under the Public Safety Officers' Procedural Bill of Rights Act and the *Lybarger* cases.

Administrative interviews shall be conducted pursuant to SFPD General Orders, including General Order 10.11 (DGO 10.11), concerning body-worn cameras.

MEDICAL EVIDENCE

SFDA personnel should remain at the scene of a fatal shooting or in-custody death until the Medical Examiner's personnel arrives and completes its on-scene investigation. When medical personnel determines an individual shall be transported to a medical facility, SFDA and SFPD personnel shall attempt to question the medical personnel who treated the individual and make efforts to preserve evidence.

JOINT TRAININGS

SFPD and SFDA will endeavor to conduct joint training regarding Covered Incidents and other related issues.

INVESTIGATIVE REPORTS

It is the intent of SFDA and SFPD to complete their respective reviews of Covered Incidents as quickly as possible, consistent with the primary goal of conducting thorough and objective reviews of the facts.

As the criminal investigation proceeds, and as the information becomes available, copies of all reports, statements, forensic analysis, chronological records, digital recordings (video, audio, photos), and any other information received by SFPD shall be forwarded to the assigned SFDA personnel. This procedure will permit SFDA's review process to proceed simultaneously with the investigation, and it will permit SFDA to request SFPD to clarify reports or conduct any additional investigation, if required. Any requests by SFDA for additional crime scene investigation or laboratory tests shall be made in writing to SFPD. Upon written request by SFDA, SFPD shall promptly provide copies of all materials as permitted by applicable law.

In any event, SFDA and SFPD shall endeavor to complete the criminal investigation within six months of the Covered Incident, depending on the complexity of the investigation. SFDA will notify SFPD, in writing, when it is determined the investigation will take longer than six months to complete.

DISCLOSURE OF SFDA INVESTIGATIVE MATERIALS

SFDA shall maintain and preserve all evidence it gathers during its investigation of a Covered Incident and all documentation of such investigation. SFDA shall designate materials as either "Evidentiary" or "Protected," which are defined as:

1. Evidentiary Materials: All evidence collected, received, or otherwise discovered during the course of the investigation. For illustration purposes only, "Evidentiary Materials" includes photographs, videos, the identities of witnesses to a Covered Incident, and factual portions of recorded statements of witnesses to a Covered Incident, to the extent that SFDA does not have an articulable and reasonable legal basis to believe that disclosure of the Evidentiary Materials will create a legitimate security risk or risk to subsequent criminal prosecutions.
2. Protected Materials: All materials upon which SFDA has an articulable and reasonable legal basis to claim privilege or protection, or materials which could create a legitimate security risk or risk to subsequent criminal prosecutions if disclosed.

Upon declination of criminal charges or upon completion of all prosecutions relating to the investigation, SFDA shall review all of its investigative materials and provide all Evidentiary Materials and, at its discretion, any appropriate Protected Materials to SFPD.

FINAL ACTION

At the conclusion of SFDA's investigation of a Covered Incident, the District Attorney or his/her designee, shall review and analyze all the evidence to determine whether any SFPD officer acted unlawfully. If the District Attorney declines to file criminal charges, the District Attorney or his/her designee shall notify the SFPD of the findings in writing. SFDA's policies regarding crime charging are set forth in the 2016 CDAA Professionalism Manual, which states in pertinent part:

The prosecutor should [file criminal charges] only if the following four basic requirements are satisfied:

1. There has been a complete investigation and thorough consideration of all pertinent information.
2. There is legally sufficient, admissible evidence of corpus delicti.
3. There is legally sufficient, admissible evidence of the accused's identity as the perpetrator of the crime.
4. The prosecutor has considered the probability of conviction by an objective fact finder hearing the admissible evidence.

The admissible evidence should be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact finder after hearing all the evidence available to the prosecutor at the time of charging and after hearing the most plausible, reasonably foreseeable defense that could be raised under the evidence presented to the prosecutor. (See Uniform Crime Charging Standards, CDAA 1989.)

Effective Date: This MOU shall be effective on May 4th, 2019.

Duration of MOU: This MOU shall remain in full force and effect for a period of two (2) years or until terminated by the District Attorney or the Chief of Police after providing fifteen days' written notice to the other party. If there is any disagreement regarding the implementation of the provisions contained in this MOU, both parties agree to immediately meet, no later than five business days thereafter, to resolve the disagreement.

IN WITNESS WHEREOF, the parties hereto have executed this MOU as indicated below.



George Gascon, District Attorney



William Scott, Chief of Police

Date: 4-10-19

Date: 04/09/2019