



# Alexandria Police Department

## Directive 10.35



# Investigation of Police Lethal Force and In-Custody Deaths

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### 10.35.01 POLICY AND PURPOSE

It is the policy of this Department to recognize both the constitutional and administrative rights and responsibilities of its employees. This directive attempts to balance the rights of the individual with the needs of the Department and society at large.

The nature of a criminal investigation is to determine if any laws were violated, and to identify the person(s) responsible for the violation. This holds true whether that person is a police employee or someone else. In most cases where police officers use lethal force, it is they who are the victim or witness to a criminal offense.

When police lethal force is used, the focus of the investigation is to apprehend the criminal(s) involved.

The trauma that can be involved in police lethal force or in-custody death incidents must be recognized. We must treat the involved employee with concern and compassion, while still meeting the needs of the appropriate incident investigation.

The purpose of this directive is to establish guidelines for the investigation of incidents involving the police use of lethal force, in-custody deaths of arrestees, *or other action by an officer resulting in death or serious bodily injury to any person.*

### 10.35.02 AUTHORITY

Title 15.2 Chapter 17 of the Code of Virginia addresses Police and Public Order. Section 15.2-1704 addresses the powers and duties of a police force. Title 19.2 Chapter 7.1 addresses law enforcement conduct during an arrest or detention.

### 10.35.03 DEFINITIONS

**Administrative Investigation** – An employer’s administrative review of actions or incidents involving its employees for compliance with City and Department rules, regulations, or for identifying potential training issues.

**Administrative Liaison Officer -** An officer assigned during the initial investigative process to accompany another officer involved in a use of lethal force or an in-custody death incident.

**Criminal Investigation** – A criminal investigation of actions or incidents involving anyone for potential violations of federal, state or city code.

**Directly Involved Officer** – The officer(s), who applied the lethal use of force, or in the case of an in-custody death, had actual custody of the deceased detainee.

**Firearm** – A lethal force weapon from which a lead/metallic projectile is fired.

**In Custody Death** – Any death of an arrested or detained person which occurs between the time an officer announces or formulates his/her intent to arrest and the time an individual is transferred to another agency’s custody (i.e., the Sheriff’s Department, hospital, another jurisdiction, etc.) or released.

**Lethal Force** – Force that is intended and likely to result in serious physical injury or death.

**Serious Physical Injury** – An injury that creates a substantial risk of death, or which causes serious and protracted disfigurement, or impairment of the function of any bodily organ or limb.

**10.35.04 GARRITY AND CONSTITUTIONAL PROTECTIONS**

- A. Since most uses of lethal force will necessitate both an administrative investigation and a criminal investigation, involved employees may find themselves faced with conflicting legal duties or responsibilities. For example, in an administrative review, an employee can be required to give a statement about what occurred. However, in the context of a criminal investigation, an employee has a 5th Amendment right to decline to provide a statement. The seminal authority on the interplay between an administrative review and a criminal investigation is the United States Supreme Court case, *Garrity v. New Jersey*, 385 U.S. 493 (1967).
- B. The Department is committed to ensuring that employees understand the legal distinctions between administrative reviews and criminal investigations, and that the legal rights and due process protections of employees are respected in both contexts.
- C. Police employees enjoy the same protections as any other citizen against being coerced into self-incrimination in a criminal investigation. Police employees have the free choice to provide or not to provide information to criminal investigators at their own discretion if such information could incriminate them in a criminal act. No adverse job-related threats are appropriate or permitted.
- D. Police employees are required to respond truthfully, completely, and without omission to any questions put to them by a supervisor conducting an administrative investigation for their employer (City/Department). An employee can be compelled to respond and failure to do so is subject to disciplinary action up to and including termination. (See Directive 2.3, Section 2.3.04C)
- E. If the administrative investigation statement is considered compelled, the information contained therein cannot be used in a criminal investigation or prosecution of the interviewee absent a grant of immunity, although it may be used in the criminal investigation or prosecution of another person. Generally, the information is considered privileged, and the employer cannot relay or convey it in any way that would result in the information being brought to the attention of criminal investigators or to anyone with access or involvement in a criminal investigation.
- F. An administrative investigation investigator shall have access to all investigative and criminal interviews. Anyone who is involved in a criminal investigation cannot have access to information from an administratively compelled statement that contains or likely could contain self-incriminating information, unless the Commonwealth's Attorney is willing to grant immunity related to the information.
- G. This administrative protection only applies to police employees, and then only if the revealed information is criminally self-incriminating. It does not apply to any other citizens, witnesses, etc.

- H. In any criminal investigation or administrative investigation interview of a police employee, the interviewer shall clearly state whether the interview is criminal or administrative in nature.

**10.35.05 RESPONSIBILITIES IN POLICE LETHAL FORCE OR IN-CUSTODY DEATH SITUATIONS**

- A. Commanders/supervisors/officers responding to, or involved in, these incidents will recognize them as a criminal investigation until a preliminary assessment has been completed.
- B. The on-duty Watch Commander will make the initial preliminary assessment as to whether an incident should be investigated as a criminal investigation or solely as an administrative investigation. Until a clear determination is made, the incident will be handled as a criminal investigation. If in doubt, the Watch Commander will consult with the Investigations Division Commander and the Office of External Affairs and Professional Responsibility Commander.
- C. If the possibility of serious criminal violations on the part of an employee does not exist, the Office of External Affairs and Professional Responsibility will take over responsibility for the investigation and complete its administrative investigation.

**10.35.06 PROCEDURES**

- A. An application of police lethal force or an in-custody death incident will be handled preliminarily as a criminal investigation as noted above. Accordingly, commanders/supervisors/officers shall be responsible for the initial incident command and scene management.

**B. INITIAL RESPONSE**

The Watch Commander or designee shall immediately address the following:

1. Identify any remaining threats to life or public safety and take necessary action to address them;
2. Ensure all persons requiring medical attention are identified and needed medical resources are requested;
3. Begin to secure inner and outer perimeters and establish crime scene security;
4. Question the directly involved officer(s) to obtain a public safety statement. Such questioning may be conducted by a commander, supervisor, or officer

designated by the Watch Commander. The scope of the questioning should be limited to the following exigent and public safety needs:

- a. Whether the directly involved officer(s) needs medical attention;
- b. Whether anyone else needs medical attention;
- c. Whether there is any lookout information on suspects and/or vehicles (if applicable);
- d. The description and location of known witnesses;
- e. The direction of weapon discharges for purposes of locating other victims;
- f. Any other information necessary to ensure officer and public safety and to assist in the apprehension of at-large suspects.
- g. Whether a firearm was discharged, the number and direction of discharges;
- h. The type of force or other weapons, if any, used; and
- i. Determining the location of the officer(s)' firearm or any other instrument used.

**The directly involved officer(s) will not be compelled to answer questions, write supplements, or complete a use of force statement at this point in the investigation.**

All personnel will thoroughly document any information obtained during the initial response.

5. Contact the Criminal Investigations Division commander and inform them of the incident involving a police in-custody death, or a police involved application of lethal force. The Criminal Investigations Division commander will then contact the Virginia State Police or other sworn multi-jurisdictional task force or other sworn independent investigative organization that the Alexandria Police Department has entered into a Memorandum of Understanding with and request that they respond. The Criminal Investigations Division commander will also contact the Commonwealth's Attorney's Office and ask the Commonwealth Attorney, or his/her designee to respond. The Watch Commander may request additional resources or specialized personnel needed to complete the tasks required in the initial response.
6. Immediately isolate the directly involved officer(s) and any police witnesses and have them removed from the scene and kept separated until they are interviewed by Virginia State Police or other sworn multi-jurisdictional task force or other sworn independent investigative organization personnel. These persons should

be transported to Police Headquarters as soon as practical after obtaining the public safety statement and receiving any needed medical care.

- a. Prior to being transported to Police Headquarters, the involved officer should be photographed/ video recorded to document how they appeared on the scene, to include any injuries sustained. Attempts to document an officer's appearance must not interfere with the receipt of medical care.
  - b. Unless otherwise authorized by Virginia State Police or other sworn multi-jurisdictional task force or other sworn independent investigative organization investigators, only the Administrative Liaison Officer, CISM personnel, and a CIS supervisor designated by the CID Commander shall have access to the involved officer. The designated CIS supervisor will serve as the initial liaison with Virginia State Police or other sworn multi-jurisdictional task force or any other sworn independent investigative organization.
  - c. If the involved officer uses a firearm as lethal force, it should remain with the involved officer until turned over directly to the Virginia State Police or other sworn multi-jurisdictional task force or other sworn independent investigative organization investigator or other personnel at the direction of the CID commander. Barring evidentiary or safety concerns, the firearm should not be manipulated or handled without authorization from the Virginia State Police or other sworn multi-jurisdictional task force or other sworn independent investigative organization.
  - d. The CID commander will ensure that once the involved officer's firearm is taken, the involved officer will not be left unattended without a firearm and that a replacement firearm is issued promptly.
7. Seek to preserve all potential evidence on scene.
  8. Identify potential witnesses and attempt to have them remain on scene. If a witness is unwilling to remain on scene until the arrival of personnel conducting the criminal investigation, attempts should be made to obtain an initial statement and contact information from the witness.
  9. Provide briefing to arriving Virginia State Police or other sworn multi-jurisdictional task force or other sworn independent investigative organization personnel and turn over crime scene to them when ready.
  10. Ensure sufficient Alexandria Police personnel remain on scene to support the Virginia State Police or other sworn multi-jurisdictional task force or other sworn independent investigative organization investigation.

### **C. ADMINISTRATIVE LIAISON OFFICER**

The Watch Commander or designee shall assign an Administrative Liaison Officer not directly involved in the incident or the subsequent investigation to accompany

the involved officer. If there are multiple involved officers, they should be separated and assigned individual Administrative Liaison Officers. Administrative Liaison Officers shall:

1. Provide support for the involved officer prior to the arrival of CISM personnel.
2. Refrain from talking about the details of the incident. Any information disseminated by the involved officer to the Administrative Liaison Officer is subject to disclosure as part of the criminal investigation.
3. Serve as part of the chain of custody for potential evidence to be collected from the involved officer, if directed.
4. Remind the involved officer that he/she should not discuss the incident with anyone other than personnel assigned as criminal investigators or the Office of External Affairs and Professional Responsibility.
5. Submit a written supplement documenting their actions as an administrative liaison officer.

**D. CRIMINAL INVESTIGATION**

If the incident involves a police in-custody death, or a police involved application of lethal force, the Virginia State Police or other sworn multi-jurisdictional task force or other sworn independent investigative organization will conduct the criminal investigation.

**[11.3.4a]**

1. The Virginia State Police or other sworn multi-jurisdictional task force or other sworn independent investigative organization shall determine all facts, identify all available evidence, and ultimately present its findings directly to the Commonwealth's Attorney. All facts, evidence, and findings shall also be presented to the Commander of the Office of External Affairs and Professional Responsibility.
  - a. The Alexandria Commonwealth Attorney's Office will make all prosecutorial decisions. **[11.3.4c]**
2. A member of the Virginia State Police, or other sworn multi-jurisdictional task force or other sworn independent investigative organization and the Commander of the Office of External Affairs and Professional Responsibility, or their designees, will meet with the involved officer(s) at the beginning of the criminal investigation to explain the investigative process.
3. Each time a directly involved officer is interviewed he or she will be clearly and appropriately advised as to whether the interview is part of the criminal investigation or the administrative investigation. If the interview is for the criminal investigation, the directly involved officer(s) will not be compelled to answer

questions, write supplements, or complete a use of force statement. If the interview is part of the administrative investigation the directly involved officers will be expected to accurately and truthfully respond to all questions.

4. The Virginia State Police, or other sworn multi-jurisdictional task force or other sworn independent investigative organization has the discretion of determining when the directly involved officer will be interviewed.
5. Department employees are expected to participate as requested by the investigating agency subject to any protections afforded by their constitutional rights.

#### **E. ADMINISTRATIVE INVESTIGATION**

The Office of External Affairs and Professional Responsibility is responsible for completing an independent administrative investigation. The investigation will seek to determine whether the involved officer(s) actions were in accordance with Department policy, procedures, and training.

1. Unless otherwise directed by the Chief of Police, the administrative investigation shall include:
  - a. A review of the findings of the criminal investigative file and findings provided by the outside investigative agency;
  - b. A review of all interviews, documents, recordings, and videos related to the incident;
  - c. A review and analysis of all applicable policies and procedures; and
  - d. Additional interviews or other investigative steps, if needed.
2. The Office of External Affairs and Professional Responsibility will complete an administrative investigative report with administrative recommendations and provide it directly to the Chief of Police.

#### **F. INCIDENTS OCCURRING OUTSIDE ALEXANDRIA**

1. Incident command and criminal investigation are the responsibility of the jurisdiction where the incident occurred.

**[11.3.4a]**
2. Involved officer(s) shall be advised that the criminal investigation is handled by the jurisdiction where the incident occurred and that they will still be afforded all their constitutional rights.

3. Personnel from the Office of External Affairs and Professional Responsibility will respond to the scene and make contact with the investigating jurisdiction. The Office of External Affairs and Professional Responsibility will conduct an administrative investigation as described in Section 10.35.06 E above. **[11.3.4b]**
4. The involved officer(s) will be provided an administrative liaison officer throughout the process. The administrative liaison officer will remain with the officer while in another jurisdiction.
5. The Department will provide the involved officer(s) firearm and/or other physical evidence to the investigating jurisdiction upon request.
6. Department employees are expected to participate as requested by the investigating jurisdiction subject to any protections afforded by their constitutional rights.

#### **G. OFFICER DUTY STATUS**

1. The involved officer shall immediately be removed from operational assignments pending a review of the incident. The Chief of Police shall determine duty status of the involved officer and may elect to place them on administrative leave or assign them to administrative duties.
2. Prior to returning to full duty, the involved officer shall undergo a psychological evaluation which shall be reviewed by the Chief of Police as part of the determination to return the involved officer to full duty.
3. Six months after returning to full duty, a second psychological evaluation will be completed, and the results forwarded to the Chief of Police for review.

#### **H. DISPOSITION OF FIREARM**

1. Officers who have their firearm or other equipment seized, as a result of a **criminal investigation**, must receive written authorization from the investigating agency or task force and the Office of External Affairs and Professional Responsibility before their firearm/equipment is released.
2. Officers who have their firearm or other equipment seized, as a result of an **administrative investigation**, must receive written authorization from the Commander of the Office of External Affairs and Professional Responsibility before their firearm/equipment is released.

#### **I. PUBLIC INFORMATION OFFICE**

**[11.3.4d]**

1. The Watch Commander or designee should notify the Alexandria Police Department Public Information Officer (PIO) of the incident and provide a summary of what happened. The PIO will report to the scene of the incident.

2. Upon arriving at the scene, the PIO should gather information from the Watch Commander or designee and/or the Criminal Investigations Commander or designee.
3. The PIO will confirm the Chief of Police was notified about the incident.
4. The PIO will release information to the news media regarding the incident, at the direction of the Chief of Police. News media questions and inquiries about the investigation will be handled by the investigating agency or task force.
5. The PIO will coordinate with the investigating law enforcement agency's Public Information Officer (PIO) or functional equivalent.
6. The PIO will have the Chief of Police and Criminal Investigations Commander review all material before it is released.
7. The name(s) of the officer(s) involved will only be released at the discretion of the Chief of Police or the investigating agency.
8. If an incident involves more than one police agency, the Public Information Officers or equivalent of the involved agencies will coordinate on any news media releases. The agency given control of the operation will disseminate the news releases.

**J. TRAINING**

1. Commanders and supervisors shall receive training on the process of managing incidents involving police lethal force and in-custody deaths. **[11.3.4e]**
2. The APD Training Manager shall ensure all police staff impacted by the investigation of police lethal force and in-custody deaths receive annual awareness training. **[11.3.4f]**

<b>10.35.07 CISM ISSUES</b>
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- A.** A Critical Incident Stress Management Team (CISM) debriefer from the Department's Peer Support Team will be made available to assist involved officers in dealing with the emotional stress brought on by these events. In some circumstances, a debriefer from CISM may actually speak to the involved officer(s) before an official criminal or administrative interview is conducted. However, CISM debriefers must realize that the investigation takes priority over the debriefing, and they will not begin debriefing without approval from the investigating agency or task force.

- B.** When an incident occurs involving the use of lethal force by police, or an in-custody death, the CISM team will make every effort to contact a CISM Mental Health Clinician to conduct a debriefing with the involved officer(s). CISM debriefers and Mental Health Clinicians acting as debriefers are afforded patient/client confidentiality in their relationships with the involved officer(s).
- C.** In the event an officer is used as a debriefer, he/she will not be interviewed or compelled to provide written statements about their discussions with the involved officer(s) by personnel from the investigating agency or task force or the Office of External Affairs and Professional Responsibility. However, pursuant to Code of Virginia § 19.2-271.4, privileged communications between the involved officer and officers acting as CISM debriefers does not apply when criminal activity or information that would indicate that the involved officer poses a threat to themselves or others is revealed.
- D.** If information that is exempt from privileged communications is received by the debriefer, it will be promptly reported to the investigating agency or task force. The debriefer may then be subjected to further interview by the investigating agency or task force or the Office of External Affairs and Professional Responsibility and may be compelled to write statements about their discussions with the involved officer(s).

**BY AUTHORITY OF:**

**Don Hayes  
Chief of Police**



## APPENDIX A - OFFICER INVOLVED SHOOTING TRAINING HANDOUT

IF YOU ARE INVOLVED IN AN OFFICER INVOLVED SHOOTING (OIS), YOU SHOULD EXPECT THE FOLLOWING:

- Both a criminal and administrative investigation will be conducted. The criminal investigation will be turned over to the *investigating agency or task force*. The administrative investigation will be conducted by OPR.
- Per Directive 10.35, you may be asked the following questions on scene:
  - whether you or anyone else needs medical attention.
  - if there is a lookout for any suspects
  - the number of times you fired your weapon and the direction you fired it (to assure there are no other injuries)
  - if you used any other force or weapons (taser, asp, etc.)
- At this point, you will not be compelled to give any other oral or written statements.
- You will be transported to CIS where you will remain until the *investigating agency or task force* arrives.
- You will be assigned an "Administrative Liaison Officer" (ALO) to provide you with support until investigators from the *investigating agency or task force* arrive. You should be aware that the ALO is required to document any statements you make about the OIS.
- Access to you will be restricted to the ALO, and/or the CIS Supervisor or his/her designee.
- You will be photographed. Your weapon and equipment/uniform may be seized.
- You will be advised of your Miranda warning by assigned *investigating agency or task force* investigators. If you choose to give a statement, an interview will be conducted by the *investigating agency or task force* at that time.
- After the *investigating agency or task force* has completed the initial interview and documenting of evidence, you will meet with OPR.
- OPR will provide you with a replacement weapon, and you will then be placed on paid Administrative Leave.
- A CISM Team member will be assigned to you.

**YOU SHOULD BE AWARE THAT ALL OF THE ABOVE ACTIONS ARE STANDARD OPERATING PROCEDURES AND NO INFERENCES SHOULD BE DRAWN BY YOU.**

- At some point during the investigation, you may be moved from Administrative Leave to Administrative Duty at the discretion of the Chief of Police.
- You may be ordered by OPR not to discuss the details with any other employee. This does not apply to members of the CISM team.
- When the criminal investigation is complete, you may be compelled by OPR to give a statement. This statement is not protected by Miranda and may not be used against you in any criminal proceeding.

### REMEMBER THAT:

- Post-traumatic stress is a normal reaction to an abnormal event such as a shooting.
- You may or may not experience reactions such as sleeplessness, fatigue, anxiety, etc.
- Members of CISM will provide you with whatever support you need.
- It is important that you take care of yourself after experiencing a traumatic event such as maintaining your routines, getting proper rest, eating right and exercising.
- If needed, CISM can arrange for debriefing by a Mental Health Clinician.
- Before returning to full duty, you will be required to undergo a psychological evaluation.