



# Alexandria Police Department

## Directive 10.35



# Investigation of Police Lethal Force and In-Custody Deaths

Effective Date: 08-28-2018		Cancels: 04-28-2016
Updated Date:	Section(s):	SME Review Date:
Updated Date:	Section(s):	2022
Updated Date:	Section(s):	

### CONTENTS

10.35.01	POLICY/PURPOSE
10.35.02	AUTHORITY
10.35.03	DEFINITIONS
10.35.04	GARRITY AND CONSTITUTIONAL PROTECTIONS
10.35.05	RESPONSIBILITIES
10.35.06	PROCEDURES
10.35.07	CISM ISSUES

#### 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 or in-custody deaths of arrestees.

### 10.35.02 AUTHORITY

Title 15.1 Chapter 3 of the Code of Virginia addresses Police and Public Order. Section 15.2-1704 addresses the powers and duties of a police force. The Code of Virginia does not provide guidelines for police officers on the use of force, but Federal and State Court decisions have given police agencies authority and guidance to establish standards of conduct in this area.

### 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.
- 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.

<b>10.35.05      RESPONSIBILITIES IN POLICE LETHAL FORCE OR IN-CUSTODY DEATH SITUATIONS</b>
---

- 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*.

<b>10.35.06      PROCEDURES</b>
---------------------------------

- 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 maybe 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 location 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 memorandum 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 and request that they respond. The Criminal Investigations Division commander will also contact the Commonwealth's Attorney and ask him to respond. The Watch Commander may request additional resources or specialized personnel needed to complete the tasks required in the initial response.*

6. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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 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 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.*

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
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 will conduct the criminal investigation.*

1. *The Virginia State Police 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.*
2. *A member of the Virginia State Police 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 memorandum. 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 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.*
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.*
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.*



[REDACTED]

[REDACTED]

#### 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 *Virginia State Police 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.

#### 10.35.07 CISM ISSUES

- 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 Virginia State Police*.
- 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 Virginia State Police 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 pose 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 Virginia State Police investigators*. The debriefer may then be subjected to further interview by *the Virginia State Police* 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:**

**Michael L. Brown  
Chief of Police**