



C A L I F O R N I A

DEPARTMENT OF JUSTICE

D I V I S I O N O F L A W E N F O R C E M E N T

# ***CALIFORNIA POLICE SHOOTING INVESTIGATION TEAMS***

**ASSEMBLY BILL 1506 STATS. 2020, CH. 326  
GOVT. CODE § 12525.3(A)**

**INVESTIGATION PROCEDURAL GUIDELINES**

***JULY 2021***



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# CaPSIT INVESTIGATION PROCEDURAL GUIDELINES

## FOREWORD

In California, approximately 150 cases per year involve either an officer involved shooting (OIS) or a use of force by a peace officer that results in death of the involved subject(s). On average, an officer involved use of force resulting in a fatality occurs every 2.5 days.

On September 30, 2020, Assembly Bill (AB) 1506 (Stats. 2020, ch. 326) was signed into law, which requires the California Department of Justice (DOJ) to investigate incidents of an OIS resulting in the death of an unarmed civilian. This mandate will be in effect starting on July 1, 2021, at which point the DOJ, while working collaboratively with the respective local law enforcement agency (LEA), will be responsible for the OIS investigation from the inception to the conclusion. The investigation will include the totality of the circumstances and analysis per California Penal Code § 835a, along with the legal review by California Department of Justice Deputy Attorneys General. Based on Fiscal Year 2019-2020 California use of force data, and the definition of unarmed as used in AB 1506, the DOJ estimates this will result in the investigation of approximately 40 to 50 OIS incidents annually by the Division of Law Enforcement (DLE).

All AB 1506 incidents shall be thoroughly investigated in a comprehensive, and timely manner. The initial crime scene response and preliminary investigation serves as the foundation for the entire investigative process, and often lasts unabated for several days or longer depending on the circumstances involved in each unique situation. The DLE investigative teams have the inherent obligation to ensure that the investigative process and the investigations are continually improving while taking advantage of all new technology, methodology, and techniques by constantly reviewing the technological, scientific, legal, academic, and nationwide law enforcement environments.

The DLE investigative teams will work collaboratively with the respective LEA in conducting a collaborative OIS investigation. This will involve investigators from the DLE and respective agencies working cooperatively in all aspects of the investigation, which will entail the sharing of all investigative information and all duties related to the OIS.

This comprehensive investigative process will ensure that the AB 1506 OIS Program's investigations accurately provide the overall findings as to what occurred during the incident based on the facts investigated, which in turn, will allow the investigation to withstand the scrutiny of subsequent reviews by civilian and law enforcement review panels, as well as criminal and civil courts whether in the state or federal justice systems. The goal of the DLE's California Police Shooting Investigation Teams (CaPSIT) is to produce the most comprehensive, thorough, accurate and timely investigation possible which can be confidently relied on by all concerned.

This manual will serve as a guide for the CaPSIT investigative process implemented by the DOJ, DLE and the Office of the Attorney General Legal Divisions. The CaPSIT investigative process will be reviewed regularly, as needed, to remain consistent and contemporaneous with the current best practices in Officer Involved Shootings and Use of Force law enforcement investigations.

## **DIVISION OF LAW ENFORCEMENT MISSION STATEMENT**

“Protecting the promise of California by pursuing truth, enforcing the law and seeking justice for a safer California.”

## **HISTORICAL INFORMATION**

Statewide Research Survey:

The DLE utilized the DOJ Criminal Justice Information Services Division Research Center, along with subject matter experts from the DLE, to find publicly available studies and/or data that could assist in establishing a framework for the allocation of resources and funding. It was immediately evident that the information sought either did not exist or was not readily available. There were no known published studies or reports that the DOJ could identify at the time that could provide guidance on the actual costs and resources needed to evaluate the funding and resources needed to meet the requirements of AB 1506. In the absence of such empirical research, the DOJ was required to conduct its own statewide study of law enforcement entities as noted below. With the assistance of the Research Center, and under the supervision of several Ph.D. data specialists, the DOJ created a survey focused on three primary entities responsible for the OIS investigative process; (1) Law Enforcement Agencies, (2) County District Attorneys, and (3) City and County Crime Laboratories.

In July 2020, the DOJ distributed surveys to 393 law enforcement agencies, 58 district attorney offices, and 19 crime laboratories in California. When the survey closed, the DOJ collected data from 326 law enforcement agencies, 54 district attorney offices, and 14 crime laboratories. The survey results varied and provided only a starting point for additional study on the matter. Many organizations did not collect or track the data the DOJ needed in order to evaluate the true costs and resources for OIS investigations. Many of the organizations admitted to guessing and providing low-confidence estimates, because they simply did not track the information. The survey validated that more research was necessary. Thus, the DLE systematically conducted, and continues to do so, interviews to provide additional data and context to the survey results. By September 2020, the DLE interviewed eight of the ten most active OIS involved agencies per calendar year in California. Following the interviews, the Research Center evaluated the information and conducted further inquiries to ensure the validation of the data. This process is ongoing and will require intensive time and methodology to accomplish the goal of producing a comprehensive empirical study of the data required to establish a reliable baseline for the costs and resources needed to conduct the anticipated number of AB 1506 investigations.

## **AB 1506 (STATS. 2020, CH. 326)**

(a) For purposes of this subdivision, the following definitions apply:

(1) “Deadly weapon” includes, but it not limited to, any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged, or a switchblade knife, pilum ballistic knife, metal knuckle knife, dagger, billy, blackjack, plastic knuckles, or metal knuckles.

(2) “Unarmed civilian” includes anyone who is not in possession of a deadly weapon.

(b) (1) A state prosecutor shall investigate incidents of an officer-involved shooting resulting in the death of an unarmed civilian. The Attorney General is the state prosecutor unless otherwise specified or named.

(2) The state prosecutor is authorized to do all of the following:

(A) Investigate and gather facts in an incident involving a shooting by a peace officer that results in the death of an unarmed civilian.

(B) For all investigations conducted, prepare and submit a written report. The written report shall include, at a minimum, the following information:

(i) A statement of the facts.

(ii) A detailed analysis and conclusion for each investigatory issue.

(iii) Recommendations to modify the policies and practices of the law enforcement agency, as applicable.

(C) If criminal charges against the involved officer are found to be warranted, initiate and prosecute a criminal action against the officer.

(3) The state prosecutor shall post and maintain on a public internet website each written report prepared by the state prosecutor pursuant to this subdivision, appropriately redacting any information in the report that is required by law to be kept confidential.

(c) (1) Commencing on July 1, 2023, the Attorney General shall operate a Police Practices Division within the Department of Justice to, upon request of a local law enforcement agency, review the use of deadly force policies of that law enforcement agency.

(2) The program described in paragraph (1) shall make specific and customized recommendations to any law enforcement agency that requests a review pursuant to paragraph (1), based on those policies identified as recommended best practices.

(d) This section does not limit the Attorney General’s authority under the California Constitution or any applicable state law.

(e) Subject to an appropriation for this purpose by the Legislature, the department shall implement this section.

## **PURPOSE**

To establish recommended uniform guidelines for the investigation of AB 1506 (Stats. 2020, ch. 326) incident investigations.

## **GOALS**

To investigate OIS incidents involving unarmed civilians with fact-based investigations based on foundations of objectivity and transparency.

To utilize to the fullest capacity those leading investigative techniques and technological resources which will meet the highest OIS investigative industry standards

To ensure that the comprehensive joint investigation is accomplished in a timely manner for all involved.

## **DEFINITIONS**

The definitions have been reviewed and provided by the Office of the Attorney General, Division of Criminal Law. For the purpose of this guideline, reference the below definitions to assist in understanding these highly complex and time intensive investigations:

### **AB 1506 PROGRAM**

The “AB 1506 Program” is the DOJ personnel assigned to fulfill the legislative mandate to investigate incidents of an OIS resulting in the death of an unarmed civilian in California.

### **OFFICER-INVOLVED**

A shooting is “officer-involved” if the death to the unarmed civilian is caused by a California peace officer, within the meaning of Penal Code § 830, acting under color of authority. Shootings committed by officers while on-duty are considered officer-involved shootings. Shootings committed by officers while off-duty are considered officer-involved shootings only if the officer is acting under color of authority.

### **COLOR OF AUTHORITY**

Officers are acting under “color of authority” when they are performing an act that is made possible only because they are clothed with the authority of law, or when they are acting under pretense of law. Conversely, officers are not acting under “color of authority” when they commit private acts in furtherance of personal pursuits. Shootings by correctional officers as defined in Penal Code § 830.55 are excluded.

### **AB 1506 INCIDENT**

An “AB 1506 Incident” is any officer involved shooting resulting in the death of an unarmed civilian. A “shooting” is the discharge of a metal projectile by a firearm. A “firearm” is a “device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion.” (Pen. Code, § 16520.) A “shooting” does not include incidents involving the use of electronic control devices, stun guns, BB, pellet, air, gas-powered guns, or weapons that

discharge rubber bullets or beanbags.

## **UNARMED CIVILIAN**

An “Unarmed Civilian” is “anyone who is not in possession of a deadly weapon.” (Gov. Code, § 12525.3, subd. (a)(2).)

A civilian is in “possession” if the weapon is under the civilian’s dominion and control at the time of the shooting. Possession usually requires that the weapon is available for use. Where a civilian attempts to take control of an officer’s firearm, the civilian is not in possession unless the officer loses control of the firearm.

## **DEADLY WEAPON**

A “Deadly Weapon” includes, but is not limited to, any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged, or a switchblade knife, pilum, ballistic knife, metal knuckle knife, dagger, billy, blackjack, plastic knuckles, or metal knuckles. (Gov. Code, § 12525.3, subd. (a)(1).) All firearms, and BB/pellet guns, even if unloaded or inoperable, are deadly weapons.

Objects that have a legitimate non-weapon purposes are considered deadly weapons only when, based on all the circumstances, they are used in a manner likely to produce death or great bodily injury. The following are examples of objects that have been considered a deadly weapon when used in that manner: knives, box cutters, screwdrivers, bottles, chains, automobiles, rocks, razor blades, and iron bars. Replica firearms are not considered deadly weapons unless they are used in some particular manner likely to produce death or great bodily injury (e.g., as a bludgeon).

## **DEATH**

“Death” occurs when “[a]n individual ... has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem[.]” (Health & Saf. Code, § 7180.) DOJ may assume responsibility for cases where death appears to be imminent.

## **CRIMINAL INVESTIGATION**

A “Criminal Investigation” is a type of investigation performed by the Incident Investigative Team for criminal (e.g. non-administrative or civil) purposes. Criminal investigations are conducted to determine whether any of the Involved Officers did or did not commit a crime. The DLE will conduct criminal investigations pursuant to the mandate of AB 1506.

## **ADMINISTRATIVE INVESTIGATION**

An “Administrative Investigation” is a type of investigation performed by the Employing Agency for administrative (e.g. non-criminal) purposes. Administrative investigations are conducted to determine if the Involved Officer(s) acted within the Employing Agency’s policies, procedures, training and orders; determine if and how the Employing Agency can improve any aspect of its operations; and provide information about the incident to the Employing Agency’s leadership for management purposes.

## **JURISDICTION**

The “Jurisdiction” is determined by the location of the incident and/or the Employing Agency of the Involved Officer(s). The Employing Agency and/or LEA having jurisdiction is responsible for any additional criminal investigations that are potentially related with the OIS, the civil investigation, and the administrative investigation. However, for the purposes of these guidelines, the DLE shall conduct the AB 1506 mandated criminal investigation of the Involved Officer(s) regardless of local LEA jurisdiction.

## **PEACE OFFICER**

A “Peace Officer” is any law enforcement officer as defined by Penal Code § 830-832.19, any out of State (Penal Code § 830.39 only officers)<sup>1</sup> or Federal law enforcement officer is not a peace officer pursuant to Penal Code § 830.8.

## **PRIMARY AGENCY**

The “Primary Agency” is the LEA with primary law enforcement jurisdiction over the area where the incident occurred. However, for the purposes of these guidelines, the Primary Agency is the DLE which is the agency responsible for investigating all AB 1506 Incidents in California, but will include investigative assistance of an LEA(s) having geographic jurisdiction over the incident.

## **INVOLVED OFFICER**

The “Involved Officer” is the officer(s) whose act may be a proximate cause of the death to the unarmed civilian. The “Proximate Cause” is a cause which, in a natural and continuous sequence, produces the injury, and without which the injury would not have occurred.

## **EMPLOYING AGENCY**

The “Employing Agency” is the LEA that employs the Involved Officer(s).

## **INVOLVED-AGENCIES**

The “Involved-Agencies” refers to multiple LEAs directly or indirectly involved in the incident. The Involved Agencies may or may not be the employer of the Involved Officer(s).

## **AGENCY OF JURISDICTION**

The “Agency of Jurisdiction” is the LEA with responsibility where the incident occurred.

## **AB 1506 OIS TEAM**

The “AB 1506 OIS Team” consists of the DLE agents, analysts, criminalists and associated personnel assigned to conduct the criminal investigation.

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<sup>1</sup> Subject to certain exceptions involving Oregon State Police, the Nevada Department of Motor Vehicles and Public Safety, or the Arizona Department of Public Safety.

## **CASE AGENT**

The “Case Agent” or incident investigator is the lead DLE special agent assigned to the Incident Investigative Team.

## **CO-CASE AGENT**

The “Co-Case Agent” is a special agent who assists the Case Agent in all matters of the investigation.

## **SENIOR CRIMINALIST**

The “Senior Criminalist” is the Bureau of Forensic Services (BFS) Forensic Scientist who will conduct crime scene processing and forensic analysis for AB 1506 incidents.<sup>2</sup>

## **LATENT PRINT ANALYST**

The “Latent Print Analyst” is the BFS Forensic Scientist who will conduct latent print processing and analysis for AB 1506 incidents.<sup>3</sup>

## **CRIME SCENE AGENT**

The “Crime Scene Agent” is a special agent who manages the crime scene, coordinates with criminalists, liaises with participating agencies, safeguards evidence, controls entry/exit into the crime scene, and delegates other crime scene tasks.

## **CANVASSING AGENT**

The “Canvassing Agent” is a special agent who coordinates, collects, and evaluates all interviews during the investigative canvassing process, facilitates the interviewing of all actual and potential witnesses who may have relevant information.

## **INCIDENT INVESTIGATIVE TEAM**

The “Incident Investigative Team” is comprised of the DLE special agents, respective LEA investigators and crime scene responders, and professional staff conducting the AB 1506 Incident investigation. It may also include both Employing Agency and allied agencies’ support personnel as assigned by the DLE (Primary LEA), BFS senior criminalists, and/or Deputy Attorneys General with the Office of the Attorney General. Personnel from other agencies may also be assigned to the Incident Investigative Team upon mutual agreement of the DLE and the Office of the Attorney General.

## **INVESTIGATION MANAGEMENT TEAM**

The “Investigation Management Team” generally consists of DLE (Primary Agency) command personnel and designees of the Office of the Attorney General. However, it may also include personnel from the Employing Agency, other local LEA(s) having jurisdiction, and the local District Attorney’s Office.

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2 The actual duties will be contingent upon crime scenes that are the responsibility of BFS.

3 The actual duties will be contingent upon crime scenes that are the responsibility of BFS.

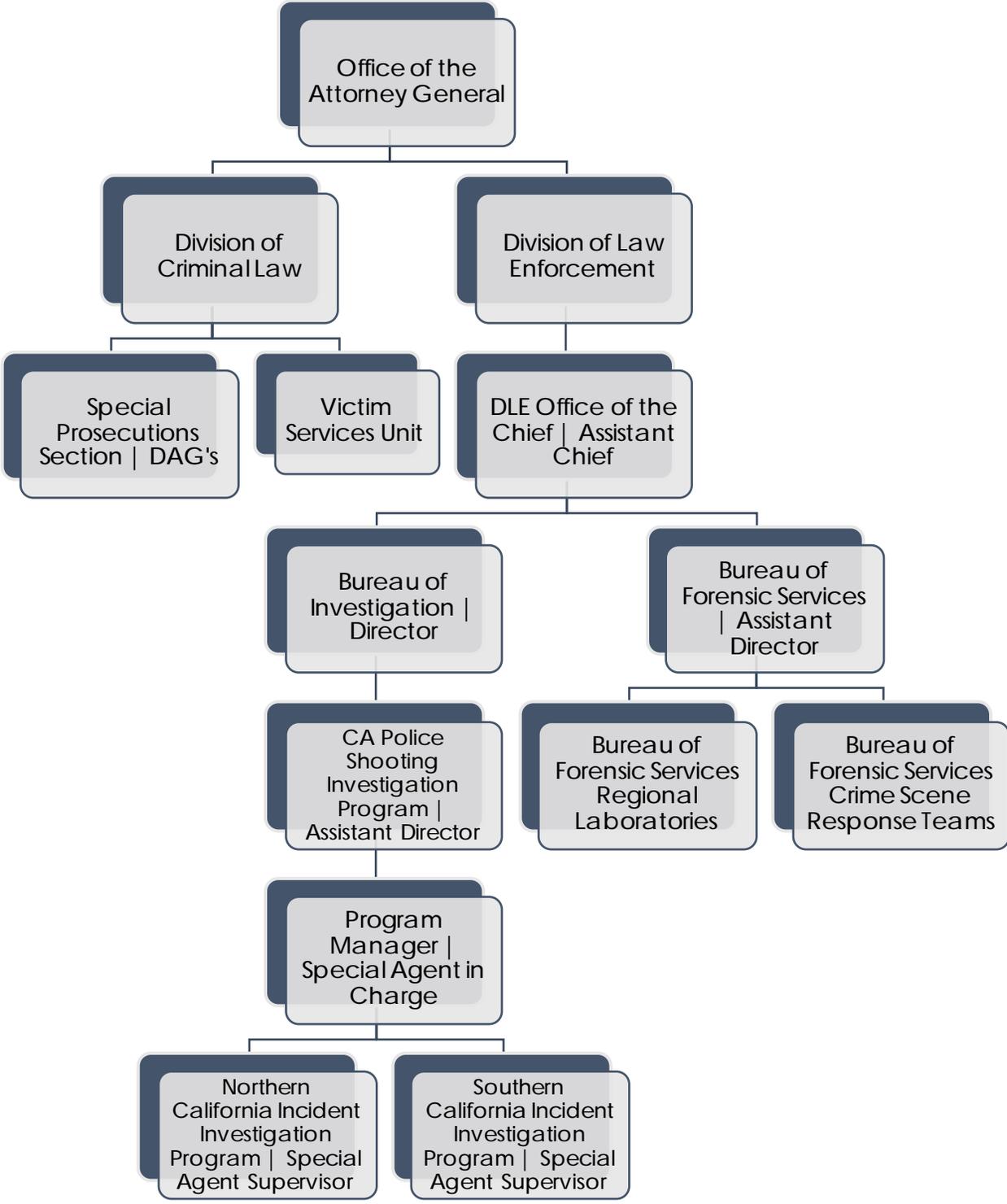
## **APPLICATION**

The procedures contained herein are recommended guidelines for the Incident Investigative Teams. It is also important to recognize the respective jurisdictional OIS investigative protocols of the Involved Agencies. The Incident Investigative Team has the authority, subject to the approval of the Special Agent in Charge, to adopt, reject, and/or modify these guidelines in accordance with the investigative protocols of the Employing Agency(s) in order to accomplish the goals of AB 1506 investigations. Any deviations to the guidelines should be documented accordingly and reviewed for any potential changes to the procedural guidelines. This authority allows for the requisite accountability and adaptability for the Incident Investigative Teams.

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# CALIFORNIA POLICE SHOOTING INVESTIGATION TEAM

## PROGRAM ORGANIZATION CHART



## CaPSIT STRUCTURE

The AB 1506 OIS Program is a program within the DLE, Bureau of Investigation (BI). The designated BI Assistant Director and one BI Special Agent in Charge lead the CaPSIT. The DLE's Bureau of Forensic Services leads the forensic response involving criminalists and other laboratory personnel for their respective areas of responsibilities.<sup>45</sup> The BFS serves a support role for the CaPSIT by providing crime scene functions while working collaboratively with the respective local LEA that will be responsible for the evidence collection, documentation and preservation as well as forensic evidence analysis. The BFS will be responsible for the crime scene and evidence processing in areas of responsibility that do not have forensic capabilities. The CaPSIT chain of command is as follows:

- DLE Office of the Chief
  - Chief and Assistant Chief
- BI Director (Program Executive Manager)
- BI Assistant Director (Program Director)
- BI Special Agent in Charge (Program Manager)
- Special Agent Supervisor (Team Supervisors)
- Special Agents (Criminal Investigators)
- BFS Assistant Director (Program Director)
- Professional Staff and Support Personnel (Crime Analysts, Senior Criminalists, etc.)

The DLE CaPSIT consists of two investigative/enforcement teams. The teams are geographically and strategically located throughout California in alignment with the highest number of OIS incidents, as reported to the DOJ under Assembly Bill (AB) 71, since the data collection started in 2017. Southern California accounts for the highest frequency of OIS incidents in the state; therefore, a higher number of investigative personnel are located in Southern California. The Headquarters administrative support unit is located in Sacramento and consists of the following:

- BI Director
- BI Assistant Director
- BFS Assistant Director
- Staff Services Manager
- Associate Governmental Program Analyst
- Staff Services Analyst

The DLE's response to AB 1506 incidents will vary based on the complexity of the investigation. At a minimum, the typical response may include the following:

- Special Agent in Charge
- Special Agent Supervisor (e.g. Case Agent in special circumstances)
- Special Agents (e.g. Case Agent, Co-Case Agent, Crime Scene Agent, etc.)
- Crime Analyst(s)<sup>6</sup>
- Senior Criminalist(s)<sup>7</sup>

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4 The BFS is responsible for 46 counties in the state, however, within the respective 46 counties there are a limited number of police departments that have their respective crime scene processing protocols.

5 The respective LEA will have the primary responsibility for the crime scene processing, unless it is designated as the area of responsibility for BFS.

6 The actual duties will be contingent upon crime scenes that are the responsibility of BFS.

7 The actual duties will be contingent upon crime scenes that are the responsibility of BFS.

## TRAINING REQUIREMENTS

Due to the complexity of OIS incidents and the specialized training necessary to conduct OIS investigations, the DLE initiated an extensive training program and process. The training includes courses certified by the Commission on Peace Officer Standards and Training (POST). All personnel are required to complete a highly detailed and expansive training curriculum. Not only is there a scholastic requirement, but also significant amounts of on-the-job experience necessary for industry standard competency. The amount of specialized training is anticipated to exceed 270 hours per special agent, and includes, but not limited to the following: POST Homicide Investigation Course (80 Hours), POST Officer Involved Shooting Course (40 Hours), POST Internal Affairs Investigations Course (24 Hours), Human Performance Training Institute - Force Dynamics Course (24 Hours), Crime Scene Investigation Course (24 Hours), Cognitive Bias Training Course (24 Hours), POST Use of Force (AB 392) Training (4 Hours) and POST Cognitive Interviewing Course (24 Hours). The BFS senior criminalists complete 332 hours of crime scene investigative training including but not limited to the following: Introduction to Crime Scene Investigation (24 Hours), Crime Scene Investigation II (38 hours), Forensic Photography (40 Hours), Ethics in Forensic Science (8 Hours), Cognitive and Human factors in Forensic Decision making (16 Hours), Courtroom Presentation of Evidence (16 Hours), Laser Scanner Operation (40 Hours), Pathology of Wounds (24 Hours), Bloodstain Pattern Interpretation (38 Hours), Crime scene Reconstruction (38 Hours), Shooting Incident Reconstruction (38 Hours), Legal Aspects of Officer Involved Shootings/Officer Processing (4 Hours), and Overview of Police Use of Force (8 Hours).

In addition, it is the DLE's responsibility to continue to seek and provide new and updated training to ensure the AB 1506 OIS investigative teams receive the most current invaluable, practical, and necessary training to develop and maintain the required expertise in order to conduct the most comprehensive, thorough, accurate, that minimizes bias and timely investigations in the state.

## CaPSIT PROCEDURES

The investigation of OIS incidents is often the most complex and demanding law enforcement responsibility because it involves death, intense public scrutiny and emotional impact. During the course of the investigation, the teams will utilize the administrative, criminal statutes, and case law as well as the numerous respective LEAs' applicable policies and training that are complex and subject to interpretation. The collection of evidence and its analysis remains critical for years after the completion of the investigation. OIS incidents attract major consequential attention and scrutiny from family members, segments of the public, the news media, and from various civilian and governmental organizations, institutions and agencies. Such incidents may be the catalyst for civil unrest or other disturbances resulting in significant injuries and deaths to civilians and law enforcement personnel, as well as looting and extensive property damage. The potential social, civil, administrative, and criminal consequences of OIS incidents are profound and affect both the involved parties and the public. These guidelines have been developed to assist the DLE in conducting CaPSIT Incidents. The goal of these guidelines is to properly ensure all investigations are conducted efficiently, thoroughly and impartially, and that proper dispositions of such investigations are based upon all relevant evidence.

### NOTIFICATIONS AND INCIDENT INVESTIGATIVE TEAM RESPONSE

When a LEA notifies the DOJ/DLE via the Los Angeles Regional Criminal Information Clearinghouse (LA CLEAR) of a possible AB 1506 qualifying incident and requests DOJ/DLE assistance, the LA CLEAR representative will make the notification to the "on-call" DOJ/DLE Special Agent Supervisor. The Special Agent Supervisor is responsible for notifying the on-call DLE Special Agent in Charge or designee in the appropriate jurisdiction. The Special Agent Supervisor will determine if the incident qualifies for an AB 1506 investigation based on the telephonic discussion with that LEA. If the Special Agent Supervisor is unable to make such a determination, he or she may conduct an in-person assessment or assign a Special Agent to respond to determine if an AB 1506 investigation is required.

If a DLE response is initiated, the Special Agent Supervisor in conjunction with the Special Agent in Charge is then responsible for making the following notifications:

1. Bureau Assistant Director or designee;
2. On-call Special Agents, Crime Analyst;
3. On-call Bureau of Forensic Services designee; and
  - a. Each BFS Laboratory will maintain an "on call" schedule which is sent to the DOJ Command Center.
  - b. Additional copies of the "on call" schedule will be maintained by the Special Agent in Charge.
4. On-call Supervisory Deputy Attorney General or designee.

The Special Agent in Charge may also, as needed, request additional DLE special agents and support personnel through the chain of command. The Special Agent Supervisor will notify the team members and coordinate their responses<sup>8</sup> either directly to the main scene, to a secondary scene, medical facility,

<sup>8</sup> The number of DLE personnel assigned to respond will be contingent on the investigation and will be determined by the Special Agent Supervisor along the BFS designee.

or other locations as needed to conduct respective investigative functions and ensure the efficient utilization of personnel and time.

If the incident does not meet AB 1506 requirements, the Special Agent in Charge will notify the BI Assistant Director or designee of the determination. Additionally, the Special Agent Supervisor or designee will complete a “Non-Response” Opening/Closing Report for statistical purposes on his or her next regular scheduled workday. Any “Non-Response” reports will be forwarded to Headquarters for review. All notifications from LEAs with regard to the OIS program will be documented for statistical record keeping processes.

## **GENERAL INCIDENT INVESTIGATIVE TEAM RESPONSE**

The AB 1506 Incident investigations will be conducted to develop all available relevant information about the incident. All investigations will be conducted in a manner that provides for a thorough and credible investigation that minimizes bias and conflict-of-interest. For designated “AB 1506 Incident” investigations, the goals are to determine the following:

1. The identity of all involved person(s);
2. The identity of all pertinent witnesses;
3. The conduct of the involved officer(s) which may or may not constitute a criminal act.

The investigations will be conducted in a manner consistent with the laws of evidence in a criminal proceeding. Any administrative or civil investigations are the sole responsibility of the Employing Agency and are separate and distinct from the AB 1506 Incident investigation. The AB 1506 Incident investigation will commence as promptly as practicable after the occurrence.

## **DIVISION OF CRIMINAL LAW**

It is the responsibility of the Division of Criminal Law to coordinate OIS incident matters with the local District Attorney’s Office. The DLE Special Agent in Charge may provide guidance regarding this matter and may be available to District Attorney personnel for further consultation. The majority of District Attorney’s Offices have units that are available as needed to respond to the scene of OIS incidents. They will be responsible for exercising their respective discretion regarding a response. In addition, the Division of Criminal Law will assign a Deputy Attorney General (DAG) to the Incident investigation.

## **CORONER’S OFFICE**

The Special Agent Supervisor or designee shall be responsible for ensuring that notification has been provided to the Coroner’s Office and for obtaining a Coroner’s case number. In most cases, the local LEA will make this notification. The Coroner’s Office will require a brief summary of the incident. After the scene has been photographed and any scene “walkthroughs” by the investigators have been conducted, the call requesting the Coroner’s response to the scene will be made by the Crime Scene Agent or the respective LEA’s designee as is appropriate.

## NOTIFICATION OF NEXT OF KIN<sup>9</sup>

Notification of next of kin is commonly the responsibility of the Coroner's Office. However, under certain circumstances, the Coroner's Office may request the assistance of local LEA. For example, if the family members live in another jurisdiction, they may request peace officers from that jurisdiction to make the death notification. In some situations, it may be beneficial to the overall investigation if special agents from the Incident Investigative Team accompany the Coroner's investigators. The special agents may be able to interview the family members to obtain information regarding the decedent that may explain their behavior at or around the time of the incident. In other situations, family members may already be present at the scene when the Incident Investigative Team arrives because other parties called the family or they were witnesses to the incident. Whenever possible, the Incident Investigative Team should interview family members and audio record the interviews. Prior to participating in any next of kin notifications and/or the interviewing of family members, special agents should consult with the Investigation Management Team, specifically the Special Agent in Charge and assigned Deputy Attorney General (DAG).<sup>10</sup>

The Special Agent in Charge should notify the Victim Services Unit and let the assigned DAG know, within 24 hours of notification to family, the following details: (1) decedent's name; (2) decedent's address (if known); and (3) decedent's family members names and contact information (if known).

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9 Reference California Department of Justice Victim Services Unit Protocol

10 As circumstances dictate this notification process is flexible and is recommended.

## **MEDICAL EXAMINER'S OFFICE - AUTOPSY**

In the interest of independent review and per Government Code § 27522(f)(2), the Medical Examiner's Office does not allow law enforcement personnel directly involved in the death of a subject to be present during the autopsy post-mortem examination. The local LEA protocol will be followed with regard to the law enforcement investigators or crime scene investigators presence at the post-mortem examination. The designated Medical Examiner will generally brief the investigators after the post-mortem examination. In some cases, the Medical Examiner may allow investigators from a non-involved LEA to be present during the examination. In these cases, the assigned Case Agent, Co-Case Agent, and Senior Criminalist of the Incident Investigative Team may attend the autopsy. Regardless, the following should be noted:

1. The Medical Examiner has the responsibility for collection and documentation of physical evidence discovered during the autopsy with the assistance of the respective crime scene responder or senior criminalists who are responsible for the crime scene.
2. The Incident Investigative Team should coordinate with the Medical Examiner for any external examination and/or forensic testing of physical evidence discovered during the autopsy to ensure preservation of the chain-of-custody.
3. The Incident Investigative Team should coordinate with the Medical Examiner to ensure any evidence maintained by the Medical Examiner's Office is properly handled, packaged, and secured.

The Incident Investigative Team should provide the Medical Examiner a full and complete briefing prior to the post-mortem examination. The briefing should include all relevant information available at the time that may aid in determining cause, manner and means of the decedent's death.

As soon as practicable, in compliance with Government Code § 27522(g), the Medical Examiner's Office will be provided with the following available items:

1. Relevant recordings (911 Calls, Body-Worn Video Recording Device, Vehicle Dashboard Cameras, etc.);
2. Crime scene photographs
3. Involved Officer(s)' interview recordings
4. Any video recording of the incident (Surveillance, Civilian Telephone Video, etc.).

# INCIDENT INVESTIGATIVE TEAM RESPONSIBILITIES

## INVESTIGATION MANAGEMENT TEAM

The DLE command and designees of the Division of Criminal Law, assisted by the respective law enforcement LEA(s), will comprise the Investigation Management Team. Although the DLE is ultimately responsible for managing the AB 1506 Incident, and for the supervision of the special agents assigned to the Incident Investigative Team, the function of the Investigation Management Team is to co-manage the incident and to ensure the following:

1. The provisions of the Employing Agency's protocols are known to the Incident Investigative Team and are followed by the Incident Investigative Team when appropriate. (Note: The County Interagency OIS protocols will provide guidance. In the event that this interagency protocol does not exist, the DOJ Team will have to review investigative protocols individually at beginning of assessment.)
2. The members of the Investigation Management Team collaborate within their authorities to ensure that the quality of an investigation is beyond reproach.

Generally, the members of the Investigation Management Team should be of the rank of supervisor or above. These members shall be experienced and knowledgeable in OIS investigations; shall have supervisory authority over investigators from their respective associated law enforcement agencies; and shall have sufficient knowledge and authority to make a variety of decisions pertaining to OIS incidents. The Investigation Management Team's primary function is to manage and coordinate efforts for the OIS investigation. If a conflict develops amongst the members that cannot be resolved, and such conflict would have a material and adverse effect on investigation, the associated LEA, the DLE's Chief or designee shall be consulted along with the Division of Criminal Law or designee.

## INCIDENT INVESTIGATIVE TEAM

The responsibility for conducting the AB 1506 Incident investigation rests with the Incident Investigative Team comprised of special agents, investigators from the assigned LEA, and supporting professional personnel. The DLE will assist the investigating LEA that has the responsibility for the preservation and security of the scene(s), collection of evidence at the scene(s) and from the Involved Officer(s), including their equipment and/or vehicle(s).

1. The first special agent(s) on scene will coordinate with the local LEA to stabilize, preserve, and secure the scene, pending the arrival of the complete Incident Investigative Team and support personnel.
2. Upon arrival, the first special agent(s) will contact the respective LEA's officer in charge of the incident and obtain a briefing of the incident and a familiarization of the incident crime scene as soon as practicable. If practical, it is preferable to wait for the arrival of the Special Agent Supervisor and the Incident Investigation Team before the briefing.
3. The Incident Investigative Team will conduct the AB 1506 Incident investigation while working jointly with the respective LEA.

4. If investigative assistance is obtained from another LEA in the area, the Incident Investigative Team will maintain joint control of the investigation, however, the Investigative Team will coordinate all aspects of the investigation with the agencies as deemed appropriate, subject to the respective agencies' concurrence.
5. In AB 1506 Incidents where a vehicular collision or other vehicular movement is involved, the Incident Investigative Team may request investigatory assistance from another LEA for that aspect of the investigation (e.g. California Highway Patrol, Major Accident Investigation Team).

## **SPECIAL AGENT SUPERVISOR**

Once the Special Agent Supervisor or designee has arrived at the scene, he or she shall conduct an on-scene assessment to determine if the incident is still in a tactical phase or is secure and has moved into an investigative phase. If the incident is still in a tactical phase, the DLE Incident Investigative Team shall not assume responsibility for the incident. As soon as the tactical situation is resolved and the scene is safe, the Incident Investigative Team will assume the appropriate AB 1506 investigative collaborative responsibilities with the support from the Involved Agencies. When appropriate, the Special Agent Supervisor will:

1. Ensure that both inner and outer perimeters are established and clearly marked and are controlled with crime scene logs monitoring the ingress and egress of all personnel. The outer perimeter should be secured in a way that it is distinguished from the inner perimeter (e.g. using yellow crime scene tape for outer perimeter and red crime scene tape for inner perimeter). The Incident Investigative Team may request assistance from the LEA(s) having jurisdictions. If local LEA assistance is not available, the Special Agent in Charge will request additional special agents from DLE regional offices and/or task forces.
2. Identify involved and percipient officers and recommend their separation in different locations while monitoring the status and ensuring that all respective LEA protocols are being followed according to its policy and procedures.
3. Identify the respective LEA's Incident Commander (IC) and the Public Safety Statement (PSS) supervisor who has the safety information related to the incident.
4. Ascertain if Body Worn Video Recording Device (BVRD) and / or Digital In-Car Video System (DICVS) documented the incident. If so, identify the respective LEA's supervisor in possession of all BVRD and who collected the BVRD. If this has not been completed prior to the arrival of the Incident Investigative Team, the Special Agent Supervisor or designee will coordinate with the respective LEA to ensure the upload of the BVRD footage and obtain a copy of the BVRD data. In addition, the Incident Investigative Team will identify any involved vehicles with DICVS and, with the assistance of the respective LEA, obtain a copy of the uploaded DICVS data prior to the Involved Officer(s) interviews.
5. Ascertain if any GPS data of the Involved Officer(s)' vehicle(s) related to the incident exists. If such data exists, arrange with the respective LEA for uploading of such data.

6. Coordinate efforts to identify all critical witnesses and their locations. Ensure all witness names and contact information is collected/documentated by the Incident Investigative Team. Civilian witness interviews may be conducted in partnership with the respective LEA. If a witness requests to leave the scene, a recorded interview should be attempted/conducted prior to departure. The Incident Investigative Team shall ascertain whether any canvassing was completed prior to the Incident Investigative Team's arrival and collect all Field Interview information completed by any Involved-Agencies as a result of the initial canvass. If local law enforcement assistance is not available, the Special Agent in Charge will request additional resources from the DLE regional offices and/or task forces.

## **CASE AGENT, CO-CASE AGENT, AND CRIME SCENE AGENT**

After all of the assigned Incident Investigative Team special agents<sup>11</sup> have arrived at scene, the Special Agent Supervisor shall assign or delegate investigative responsibilities to the special agents and investigators from the respective LEA will usually work in groups of two. This will include a Case Agent, Co-Case Agent, and Crime Scene Agent to work in concert with all investigative support personnel. If a mobile command post vehicle is present, an Assignment Log will be posted listing all Incident Investigative Team personnel and their assignments, along with the Involved Officers' names, ranks, identification numbers, and all other pertinent personnel. When the Assignment Log is completed, a copy or photograph of the log will be placed in the investigation case file for future reference. If a mobile command post vehicle is not present, the Special Agent Supervisor will designate a member of the Incident Investigative Team to maintain an Assignment Log for the team.

The Case Agent will:

1. Coordinate and assign duties: investigative assignments, crime scene assignments, witness identification/interviewing assignments, area canvassing assignments, and any other assignments deemed appropriate.
2. Assemble the Incident Investigative Team members for a briefing by the respective LEA supervisor who obtained the Public Safety Statement.
3. Identify, protect, and secure all potential evidence.
4. Coordinate with representatives of the Employing Agency and/or law enforcement union attorneys for the scene assessment "walkthroughs" and interviews. *Note: Peer support personnel may aid the involved officer, however, the peer support personnel cannot impede the investigation. Conversations between the two are not considered confidential.*

The Co-Case Agent<sup>12</sup> will work in conjunction with the Case Agent to ensure the completion of the investigation. In the absence of the Case Agent, the Co-Case Agent will become the lead investigator.

The Special Agent Supervisor shall designate a Crime Scene Agent, a special agent responsible for the security and integrity of the crime scene. The Crime Scene Agent will liaise with arriving and participating LEA personnel. The Crime Scene Agent will ensure that both inner and outer crime

<sup>11</sup> The number of special agents assigned to an incident will be contingent on the investigation and will be determined by the Special Agent Supervisor.

<sup>12</sup> The determination as to the assignment of the Co-Case Agent will be contingent on the investigation and will be the decision of the Special Agent Supervisor.

scene logs have been started and are continuously updated and that the local officers responsible for those logs are posted at entry points. The crime scene log local officers will be instructed that no one is allowed inside the inner perimeter without the express permission of the Crime Scene Agent. Assistance from the local law enforcement personnel will be utilized on a limited basis contingent on the needs of the investigation.

In addition, the Crime Scene Agent will:

1. Work with the Special Agent Supervisor to ensure the Incident Investigative Team obtains copies of the BVRD, DICVS, and any other digital evidence from the respective LEA(s).
2. Work with the Special Agent Supervisor to ensure the Coroner's Office was notified, obtain Coroner's case number, and that a notification call was made requesting the Coroner's Office response to the scene, generally after the scene is photographed and before any scene "walk-throughs."
3. Coordinate the taking of positional photographs (if needed) based on the placard placements. He or she shall also coordinate photographs of the Involved Officer(s), their uniforms, the equipment they were wearing, any identifying features, magazine ammunition counts, and injuries, if any.
4. Liaison with the Coroner's investigator and document any evidence he or she notes on the body, including taking additional photographs of that evidence at the scene. If significant evidence is discovered (e.g. guns, knives, suicide notes), the Case Agent will be notified by the Crime Scene Agent who will evaluate the evidence and make all the appropriate notifications to the Special Agent Supervisor, the Incident Investigative Team, and the Special Agent in Charge. The Special Agent in Charge will update the chain of command on the progress of the investigation.

**Note:** The Coroner's Office is responsible for taking photographs of the body at autopsies and conducting ballistic trajectories (involving the body), along with the assistance of the criminalists. With regard to the respective Coroner's Office process, the local Coroner's Office protocol will be followed.

## **CANVASSING AGENT**

The Canvassing Agent is responsible for coordinating the canvass of the area/location. The canvass is a systematic approach to identifying and interviewing potential witnesses who may have relevant information as well as locating any other potential relevant evidence (e.g. security cameras). It is an integral part of the investigation to identify witnesses to the incident. The canvass is not complete until the Incident Investigative Team or supporting law enforcement personnel have contacted all potential witnesses. All interviews should be recorded, collected, and evaluated by the Canvassing Agent for potential follow-up interviews. If any additional witnesses are discovered during the canvass, the Canvassing Agent should immediately notify the Case Agent, Co-Case Agent, and/or Special Agent Supervisor. In addition to the witness contacts and interviews, the Canvassing Agent will coordinate with the Crime Analyst for the identification, location, retrieval, and analysis of all audio and video evidence relevant to the OIS incident.

The Canvassing Agent will:

1. Assist the respective LEA in locating and collecting video evidence from cellular telephones, personal and/or commercial security cameras at or around the scene. In many cases, the Incident Investigative Team will request the assistance of the respective LEA or local law enforcement LEA having jurisdiction to collect and download the data onto an appropriate platform for evidentiary purposes. Once downloaded, the Incident Investigative Team will collect the data for inclusion into the investigation file.
2. Assist in collecting and uploading of all video obtained from the respective LEA's issued BVRD and DICVS.
3. Work with the Crime Analyst to edit and/or convert audio/video recordings to appropriate format for investigative and presentation purposes.
4. Prepare and maintain media equipment for evidentiary purposes and/or presentations to the Office of the Chief and/or the Office of the Attorney General. This especially pertains to social media and news media information. The request will be made of the local media for all unedited and "raw" footage related to the investigation.

## INCIDENT BRIEFING

The Incident Investigative Team shall coordinate with and ensure that the Employing Agency's personnel who has the Public Safety Statement is available to provide the requisite information to the team.<sup>13</sup> After all Incident Investigative Team personnel have arrived, the Public Safety Supervisor shall provide public safety information to representatives from the Incident Investigative Team, the respective LEA(s), and any appropriate personnel authorized to have such information.

**Note:** Based upon the respective LEA policy, officers do not have the right to wait for representation before giving a Public Safety Statement.

## SCENE "WALKTHROUGHS"

The Incident Investigative Team will coordinate with the respective LEA(s) to conduct the comprehensive scene "walkthroughs" with percipient and Involved Officer(s) placing placards or markers to identify the officer(s)' and suspect(s)' position(s). On occasion, when necessary, the Incident Investigative Team may conduct scene "walkthroughs" with critical civilian witnesses and place markers to document their locations at the times of their observations. The "placard" or "marker" or any standard crime scene equivalent can be used to document positioning and distances of involved personnel and/or witnesses. However, investigators should use caution to ensure the placards remain in place and decontaminate all reusable placards prior to use in the crime scene which is the responsibility of the agent assigned to the scene.

The Incident Investigative Team will write the title of the officer or civilian providing the positional information on the placard, including their first and last names (if officers, include LEA identification numbers), and a directional arrow at the top of the placard indicating the direction the officer and/or

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<sup>13</sup> As there are situations that arise where the person with the public safety statement is not readily available, all reasonable measures will be made to ensure the Incident Investigative Team will receive the requisite information.

civilian was facing at the time of the shooting. In those incidents involving moving multiple shootings, it will be necessary to repeat this process accordingly. The officer and/or civilian may also be requested to indicate the suspect's position and direction he or she was facing at the time of the shooting. If this occurs, the placard should have a note indicating the officer or civilian's name.

Generally, Involved Officer(s) scene "walkthroughs" are conducted prior to audio-recorded interviews. If the officer requests to be compelled to provide a scene walkthrough, the Incident Investigative Team will coordinate the process with the Employing Agency. Compelled scene "walkthroughs" cannot be used against Involved Officers in criminal proceedings. No recordings or notes are made during compelled officer scene "walkthroughs." Every effort should be made to conduct the "walkthrough" with consideration of the environmental (e.g. time of day, lighting, etc.) conditions at the time of the actual event.

**Note:** The primary purpose of conducting scene "walkthroughs" with the involved and percipient officers is to document their approximate positions at the time of the incident. It also aids in memory recall of the incident and scene prior to the officer's interviews. The "walkthroughs" are not interviews; therefore, questions should be kept to a minimum. As such, notes or recordings are an option for utilization to be used during the scene "walkthroughs."

Before any scene "walkthroughs" occur, the Crime Scene Agent shall provide instructions regarding safe ingress and egress into the crime scene to prevent any evidence contamination. When possible, the access routes should be clearly marked. Additionally, the entire scene should be photographed prior to any scene "walkthroughs" to document the evidence prior to adding any additional evidence markers and placards.

If, during the walkthrough process, the Involved Officer(s) makes a statement of evidentiary value, the statement should be referenced during the subsequent formal interview where it will be audio-recorded. If the officer makes an incriminating statement, the scene walkthrough should continue and the Special Agent in Charge and the Employing Agency should be notified as soon as practicable. Only two special agents should ask questions during the scene walkthrough. Although it is important to limit the number of personnel during the scene walkthrough, the Special Agent Supervisor, Special Agent in Charge, Criminalist, Deputy Attorney General (DAG), Employing Agency(s), and authorized Involved Officer's representatives should participate in this process. If the Involved Officer requests to be compelled, the Incident Investigative Team (criminal investigators) cannot participate in the Involved Officer(s)' scene "walkthroughs." The "walkthrough" process will follow the established local LEA protocols.

## **INVOLVED OFFICER INTERVIEWS**

The Incident Investigative Team will conduct interviews with the Involved Officer(s) and any critical witnesses contemporaneous to the incident. The initial interview(s) may be condensed due to fatigue on the part of the Involved Officer(s) or interviewing special agents. If a condensed interview(s) is conducted, the special agents will schedule follow up interviews within 72 hours. The Office of the Chief and/or the Division of Criminal Law must approve any deviation of the 72-hour time parameter. In some instances, the respective LEA(s) may have policy, procedures, and/or union agreements that the Involved Officer(s) will not be required to give an interview or statement for a 24 to 48 hour period. However, the Involved Officer may willingly provide an initial statement at the scene if he or she chooses to do so upon advice of counsel. In other instances, the respective LEA may have policy, procedures, and/or union agreements that the Involved Officer(s) only provide written statements. The Incident Investigative Team will make all efforts to work within the respective LEA(s)' normal practices. Whenever there is compliance with such LEA practices it must be documented. A copy of the respective LEA's policy and procedures or union agreement, regarding these practices should

be obtained, verified, and included in the investigation's Case File book. (Note: The relevant County Interagency OIS protocols will provide guidance. In the event that this interagency protocol does not exist, then the DOJ Team will have to review investigative protocols individually at beginning of assessment.)

The Incident Investigative team will determine who will participate in the interview(s) of any Involved Officer(s) or witnesses and where the interview(s) will take place, taking into consideration the Employing Agency's policy, procedures, and/or union agreements.

1. Prior to the interview, the Incident Investigative Team's interviewing special agents and local investigators should review all available audio/video recordings from law enforcement vehicle in-car cameras, officer body-worn cameras by the Involved Officer(s), responding officer(s), third parties, and other independent sources.
2. The interview of the Involved Officer should take place in a conference room, office, or other suitable location at a mutually convenient location, date and time. The Incident Investigative Team should consider the respective LEA's policy, procedures, and/or union agreements in this matter. Involved Officer(s) interviews should not take place in an LEA's Suspect Interrogation Room or in the back seat of an LEA's police vehicle.
3. The interviews of Involved Officer(s) and witnesses to the incident shall be audio recorded.
4. Interviews should be video recorded.
5. The assigned Deputy Attorney General (DAG) and the Involved Officer's attorney representative, if not physically present during the interview(s), are permitted to monitor the interview and/or have immediate access to any recordings made of the interview(s).

The Incident Investigative Team shall conduct the initial interview of an Involved Officer(s) which will take place before the Involved Officer(s) has reviewed any audio/video recordings of the incident. The respective LEA's policy and procedures, or union agreements, may determine whether the Involved Officer(s) may view recordings of the incident prior to the initial interview. The Incident Investigative Team should be mindful that audio/video recordings have limitations and may depict events differently than the events recalled by the Involved Officer(s). If the Incident Investigative Team provides any audio/video recordings to the Involved Officer(s) after the initial interview, it must be documented and the Incident Investigative Team has the discretion to admonish the Involved Officer(s) about the limitations of audio/video recordings. Follow up interviews are a significant opportunity to clarify and refine the details of the information provided during the initial interview.

To ensure the voluntariness of an interview with the Involved Officer(s), that has not reached the level of a custodial interrogation, the Incident Investigative Team should advise him or her as follows:

1. The Involved Officer is not in custody and is free to leave the interview at any time.<sup>14</sup>
2. The Involved Officer is not obligated to answer incriminating questions, and answers that are given may be used against him or her in court.

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14 Beheler Admonition

At any time during the interview, if it is deemed that the Involved Officer(s) may be charged with a criminal offense; and the interview becomes custodial, the Involved Officer(s) shall be immediately informed of his or her constitutional rights pursuant to the Miranda decision.

The Involved Officer(s) may consult with a representative prior to being questioned by the Incident Investigative Team.

1. The representative consultation should not be allowed to materially impede the interview.
2. To ensure the integrity of each interview, it is important that statements about the incident not be relayed through such representatives; rather, the Involved Officer and witnesses should answer the questions directly even if they need to consult with their representative prior to answering the question.
3. The representative may ask questions of their client during the interview.

The Incident Investigative Team will work with the Employing Agency to obtain:

1. A voluntary blood sample for alcohol and/or drug testing, and/or a urine sample for alcohol and/or drug testing, as well as a breath analysis testing application with the Involved Officer's consent or per the applicable Memorandum of Understanding (MOU), or
2. A blood sample for alcohol and/or drug testing and/or urine sample, incidental to the arrest of that person for a crime; or

If objective signs of impairment are observed then an assessment by a drug recognition expert, if available, will be completed to determine if probable cause exists to seek a search warrant for a subsequent blood sample for alcohol and/or drug testing and/or urine sample, by the Incident Investigative team member.

The Involved Officer(s) may volunteer to provide a physiological fluid sample for intoxicant testing even if the Incident Investigative Team has not asked for a sample. Similarly, the Involved Officer may request a second sample or a portion of the original sample for independent testing. Such requests should be accommodated with the understanding that the Involved Officer will bear the expense for any additional testing.

## **WITNESS IDENTIFICATION AND INTERVIEWS**

Due to the possibility of the potential witnesses becoming unavailable or the integrity of their statements being compromised with the passage of time, the Special Agent Supervisor should take reasonable steps to promptly coordinate with the respective LEA to utilize available personnel as follows:

1. To identify all persons present at the scene and in the immediate area.
2. When feasible, to obtain a recorded statement from those persons who claim not to have witnessed the incident, but were present at the time of the incident.

3. Any potential witness who is unwilling or unable to remain for a formal interview should not be detained absent reasonable suspicion to detain or probable cause to arrest.
4. Without detaining the person, the interviewing personnel should attempt to identify and document the person prior to the person departing the scene.
5. Witnesses who are willing to provide an immediate formal interview should be asked to meet at a suitable location where the interviewing personnel may obtain a recorded statement. Such witnesses, if willing, may be transported by law enforcement. Witnesses who are willing to provide an interview, but are not able to do so immediately, may be interviewed at a mutually convenient location and date and time.

## **ADDITIONAL RESOURCES**

Depending on the circumstances, the Incident Investigative Team may require additional resources, including DLE special agents from other regional offices and programs via the respective Special Agent in Charge, and/or other personnel from the Employing Agency or other agencies. It is the Special Agent in Charge or designees' decision and responsibility to request other resources when necessary.

## **LAW ENFORCEMENT UNION REPRESENTATIVES**

The Involved Officer(s) is responsible for notifying any law enforcement union representative. The local LEA protocol will be followed regarding this notification process. The Incident Investigative Team will work with the Employing Agency to ensure that there is timely communication between all involved parties.

## **CRIMINAL APPREHENSION RESPONSIBILITIES**

Any other criminal investigations associated with the OIS will be the responsibility of the appropriate LEA. For example, the unarmed civilian decedent was driving a stolen car and committing a bank robbery prior to the OIS incident, the investigation of the stolen vehicle and bank robbery would be the responsibility of the appropriate LEA that has jurisdiction.

It is the responsibility of the Employing Agency or the respective LEA having jurisdiction to coordinate and apprehend any suspect(s) of peripheral crimes related to the OIS investigation. This includes all aspects of the apprehension process, including surveillance, enforcement, search warrants, arrest reports, booking, filing case, etc. In addition, it is the Employing Agency's responsibility for any preliminary assessment of any possible threats against the LEA related to the incident. If suspect(s) are outstanding, all of the above, as well as apprehension of the suspect(s) are the responsibility of the Employing Agency or any local LEA having jurisdiction.

In the event that suspects who remain outstanding are facing prosecution for related offenses, the Employing Agency may retain the authority to require the Involved Officer(s) to provide sufficient information for related criminal reports to facilitate the apprehension and prosecution of those suspects per Government Code § 3304(a). While the Involved Officer(s) may write the report, it is recommended that the Employing Agency's assigned detectives should interview the Involved Officer as a victim/witness and complete the reports. Since the purpose of these reports will be to facilitate criminal prosecution, statements of the Involved Officers should focus on evidence to establish the

elements of criminal activities by involved suspects. The reports related to the prosecution of the criminal suspect(s) will be processed according to Employing Agency procedures, however, the reports should be included for reference in the AB 1506 Incident investigation of the Involved Officer.

## **EVIDENCE**

The Case Agent, Co-Case Agent and Crime Scene Agent will work with the BFS senior criminalists at the crime scene to ensure that all evidence is properly and thoroughly identified, documented, processed, and collected by the respective LEA that is jointly conducting the investigation. In those instances when the Incident Investigative Team does not have the capacity or technology to process, collect, and/or store evidentiary items, the Incident Investigative Team will rely on the respective LEA and may utilize the BFS evidence storage vaults or seek the assistance of other agencies upon approval by the Office of the Chief and/or the Office of the Attorney General.

## **EMPLOYING AGENCY PROPERTY**

The Involved Officer(s)' firearms and other Involved Officer's department issued or personal property will be examined, documented and collected by the respective LEA that is jointly conducting the investigation. The Incident Investigative Team with the guidance of the senior criminalist will assist in obtaining this equipment in accordance with the Employing Agency(s)' policy and procedures. In cases where the BFS is responsible for the crime scene and evidence, the Incident Investigative Team will work with the BFS laboratory or other crime laboratory to ensure the equipment, particularly firearms, is processed and returned to the Employing Agency(s) as soon as practicable, when applicable and appropriate. The Incident Investigative Team, when BFS is not available, may utilize outside experts for testing and evaluation.

Additionally, as it relates to vehicle collisions, the Incident Investigative Team may request the Employing Agency or other qualified LEA to perform the portion of the investigation related to any vehicle collisions. Prior to such requests, the Investigation Management Team should be consulted and approval obtained from the Office of the Attorney General.

## **BUREAU OF FORENSIC SERVICES RESPONSIBILITIES**

The BFS Crime Scene Unit will provide investigative support as it relates to crime scene processing and analysis of evidence in the areas of responsibility that do not have crime scene processing capabilities. The Incident Investigative Team's Case Agent, Co-Case Agent, and Crime Scene Agent will work with the BFS senior criminalists to ensure the following:

1. Documenting scenes by capturing locational data with 3-D laser mapping technology. The data will be downloaded onto suitable storage media and the Incident Investigative Team will be provided with a 3-D or 2-D digital renderings for use as evidence and in the presentation of the investigation to the Office of the Attorney General;
2. Coordinating with the Incident Investigative Team members and BFS senior criminalists and latent print analysts for the proper identification and documentation of all evidence and other items relevant to the incident;
3. Participating in ammunition counts and conducting firearm(s) exchange with the Involved Officer(s) when appropriate. With the assistance of the Employing Agency, a designated special agent and the Special Agent Supervisor or designee will conduct the magazine ammunition

counts. The Employing Agency, Involved Officer, and his or her attorney or representative, may witness the magazine ammunition counts. The Employing Agency may conduct any firearm or equipment exchange. If, during the magazine ammunition counts, the Involved Officer(s)' primary duty weapon is examined and there is a cartridge in the chamber, it will be removed and documented. The ammunition cartridges inside the primary weapon's magazine are removed and counted separately. In addition, the cartridges in the officer's remaining magazines are counted. The firearm, magazines, and all cartridges are photographed and documented. If the Involved Officer had any "backup" firearm(s) during the OIS incident, a magazine ammunition count of that weapon shall also be conducted with an inspection of the firearm to verify the involvement and/or non-involvement in the incident.

4. In some instances the Involved Officer(s)' duty weapon may have DNA, trace, or other evidence. Additionally, suspected malfunctioning firearms require specialized collection. BFS senior criminalists or other specialists may conduct the magazine ammunition count and collection of those items as evidence while the designated special agent and Special Agent Supervisor or designee, Employing Agency, Involved Officer(s), and the Involved Officer's legal representative observe.
5. During the magazine ammunition count of any firearm, all unloading of the weapon may be conducted by the Involved Officer(s) assigned that weapon, or other firearms expert, in the presence of the Involved Officer's Employing Agency, his or her representative/attorney, and the Incident Investigative Team's designated special agent and Special Agent Supervisor or designee.

**Note:** All personnel must consider special precautions when inspecting firearms as to not transfer blood or other trace evidence from the person to the firearm.

6. An Incident Investigative Team designated special agent will transport the Involved Officer's firearm to the BFS laboratory or other authorized facility for proper testing unless BFS senior criminalists have taken control of the firearm(s) at the crime scene.
7. The Incident Investigative Team designated special agents or senior criminalists, when they have taken direct possession of the firearm(s), are responsible for the return of the Involved Officer's firearm to the Employing Agency, when applicable and appropriate. There is the possibility that firearm(s) may have to be retained for evidentiary purposes.
8. Assist with the positional photographs of the involved and percipient officers. The actual involved and percipient officers participate in the positional photographs. When the involved officers and percipient witnesses refuse to participate, it is permissible to use "stand in" officers of similar size and weight to be in the photographs.
9. Taking full-length and facial photographs of the Involved Officer(s) with their clothing and equipment to depict their appearance at the time of the incident.
10. Taking aerial overview photographs of the scene when appropriate and possible.

11. Observing crime scene “walkthroughs” when appropriate.

**Note:** The BFS criminalists and latent print analysts will respond when available to provide assistance to the investigative team for all OIS investigations. The BFS will respond to their respective areas of responsibility, pursuant to the local LEA protocol. They are present at the scene to assist and are the experts in the field of forensics and all matters related to evidence.

12. Providing crime scene investigation reports and related laboratory analysis results to the Incident Investigative Team in order to create PowerPoint presentations for evidentiary purposes and/or presentations to the Office of the Attorney General. The Incident Investigative Team shall only request BFS assistance with PowerPoint presentations when it involves specialized technology and/or analysis related to evidence.

## **ROLE OF THE DEPUTY ATTORNEYS GENERAL<sup>15</sup>**

During the AB 1506 Incident investigation, the Incident Investigative Team will collaborate with the Division of Criminal Law assigned Deputy Attorney General. The Deputy Attorneys General may do the following:

1. Participate in the management of the incident along with the assigned command from the Incident Investigative Team as part of the Investigation Management Team.
2. Assist and advise the Incident Investigative Team regarding the various legal issues that may arise, including, but not limited to, search and seizure, use of force, admonitions, identification procedures, arrest(s), elements of crimes, and voluntariness.
3. Observe and monitor the investigation of the AB 1506 Incident.
4. Determine if there is criminal culpability of the Involved Officer(s).

## **CRIMINAL INVESTIGATION VERSUS ADMINISTRATIVE INVESTIGATIONS**

These guidelines are to assist the DLE in investigating AB 1506 Incidents which are criminal investigations and not meant to address any administrative or civil investigations that may be related to the incident. Any administrative and/or civil investigations are the responsibility of the Employing Agency. There must be a clearly defined distinction between the AB 1506 Incident investigation and any administrative and/or civil investigation. The Employing Agency will have an interest in the outcome of the AB 1506 Incident investigation and may utilize the results of that investigation for its own non-criminal purposes.

## **NEWS MEDIA RELATIONS AND PUBLIC INFORMATION REQUESTS<sup>16</sup>**

Any media or public requests for information shall be referred to the DOJ Communications Office in compliance with the Officer Involved Shooting Investigation Media Protocol. It is crucial to ensure that information only is released to the media or the public upon the approval of and in coordination with

<sup>15</sup> Reference Criminal Law Division Protocol

<sup>16</sup> Reference Officer Involved Shooting Media Protocol

Office of the Chief and/or the DOJ Communications Office. This Media Protocol does not prevent the local LEA from making statements to the media and/or public requests.

## COMPLETION OF INVESTIGATION

All Incident Investigative Team members must ensure the confidentiality of the investigation. The Case Agent is responsible for starting and compiling all reports into the investigation's Case File and coordinating with the Employing Agency. The Case Agent is responsible for coordinating any follow-up interviews, including canvassing the scene for additional witnesses. The Crime Scene Agent should ensure all BFS crime scene investigation and associated crime laboratory reports, if any, have been completed, collected, and included in the Case File. The Case Agent and Co-Case Agent shall review every report, transcript, or other document related to the investigation. The Case Agent, Co-Case Agent, Crime Scene Agent, and Special Agent Supervisor will ensure the investigation's Case File is complete, accurate, and professional.

## INVESTIGATION REVIEW PROCESS

The Special Agent in Charge shall review and approve all investigation reports with the exception of the BFS scene investigation reports<sup>17</sup>, after peer review and Special Agent Supervisor approval. All reports should be complete with all addenda attached. The Bureau Assistant Director or designee may also review the reports when necessary. Once the review process is finished, the reports are returned to the Case Agent for edits and/or additional information. All reports are incorporated into the Case File after all edits and/or additions are completed, and given to the Special Agent in Charge for secondary review and signature.

Complete documentation of AB 1506 Incidents is critical to the outcome of the investigation. Readers can interpret minor errors as incompetency or dishonesty. A methodical and detailed review of all reports is essential to ensure utmost confidence in the investigation. Accordingly, the DLE's AB 1506 Program has implemented a strict review process that includes, but is not limited to:

1. Review AB 1506 Officer Involved Shooting Program's Incident Investigation Team Checklist(s).
2. Review the cover sheet to ensure the investigation number and type of incident are correct.
3. Review the table of contents to verify that the page numbers of the items listed correspond to the correct page numbers in the reports. Ensure the proper headings are included.
4. Ensure the accuracy of the Filing Report summarizing the overall investigation and referencing all attached reports.
5. Review all addenda items and compare them to the table of contents. The title of the addenda documents should be spelled-out completely. The dates should match the reports. Ensure the addenda items are accurate and easily understandable.
6. Review all reports and confirm that all footnotes, notes, and addenda items are relevant to their placement.

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<sup>17</sup> The BFS crime scene investigation reports review and approval process will be handled by the BFS established protocol.

7. Review any diagrams to ensure their accuracy.
8. Note in the margin any questions that arise during the review process to discuss with the Co-Case Agent, Crime Scene Agent, and Special Agent Supervisor.
9. Review all transcripts attached to interview reports. Compare the spelling of the name of the interviewee to the table of contents and reconcile any differences. Ensure the number of pages in the table of contents corresponds to the last page of the interview report. Ensure the witnesses were asked if the interview was conducted at a time and place convenient for them and that the identities of everyone in the interview room was documented on the recording.
10. Ensure that all relevant and/or significant discrepancies are noted in the Filing Report summarizing the entire investigation.
11. Utilize footnotes to clarify information and/or further describe anything in the reports. In these footnotes, include a page/line number so the reader can easily refer to the source.
12. Review the entire investigation again to verify the summary is accurate and reflects the chronological sequence of events. Read it mindfully, paying attention to words that may have accidentally been omitted or used incorrectly.
13. Do not use police jargon unless it is relevant to the investigation and properly explained in the reports.
14. Discuss the investigative findings with the Co-Case Agent, Crime Scene Agent, Special Agent Supervisor, and the Special Agent in Charge. After noting any errors and/or making any clarifications, print a clean copy of the investigation.

## **FINAL ACTION**

Within 90 calendar days, a summary of the overview and update of the investigation will be submitted to the Division of Criminal Law, absent any unusual circumstances. The Incident Investigation Team will conduct additional follow up investigation as needed to complete a comprehensive investigation. Upon completion of the investigation and the investigation review process, a package containing all relevant information will be submitted to the Division of Criminal Law for its review. The package will include all reports, photographs, and audio and video recordings. All materials will be provided in a format that allows attorneys to easily access the materials.