

Critical Incident and Administrative Reviews

301.1 GENERAL

At times, Department Members are confronted with situations in which varying degrees of force or actions are used to protect life and property, including effecting an arrest, or discharging firearms in the performance of their duties. Department Members are also involved in incidents where their actions cause great concern to the Department and general public. Therefore, in the interest of public safety and the safety of Department Members, the Orange County Sheriff's Department shall review critical incidents to ensure best practices are being utilized in policies, procedures, tactics, and training.

As determined by the Sheriff or the Sheriff's designee, critical incidents shall be given the prompt attention of Executive Command Staff utilizing the Critical Incident Review (CIR) process. When directed by the Sheriff or the Sheriff's designee, the S.A.F.E. Division shall begin to coordinate a *Critical Incident Review* meeting as soon as practical.

301.2 PURPOSE AND SCOPE

The purpose of the Critical Incident Review is to identify and discuss issues requiring immediate action and/or additional follow-up. By doing so, it increases the Department's ability to recommend necessary changes to policies, procedures, tactics, and training to assist personnel in dealing with future critical incidents.

The review shall provide to the Critical Incident Review Board and Attendees, a preliminary factual presentation by the most knowledgeable Member associated with the incident. As appropriate, a discussion of potential litigation, policy, training, and equipment issues shall occur and include subject matter experts in those areas. The Board and Attendees shall document these issues requiring further review. Prior to the close of the review, "Action Items (A/I's)" shall be provided by the Board Members on the issues requiring immediate attention.

Additionally, Members who exhibited acts of bravery, courage, and/or exceptional performance shall be discussed and recommendation for the appropriate Department commendation shall be considered.

301.2.1 DEFINITIONS

Critical Incident: any incident where the actions of Department Members in the performance of their duties, are likely to have a significant impact on the Department, community, citizens, or any other person, and/or incidents involving the use of deadly force or force resulting in serious physical injury.

Deadly Force: that which creates a substantial risk of serious bodily injury or death. See Policy 300 - Use of Force.

Serious Bodily Injury: A serious impairment of physical condition, including but not limited to the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of

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the function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement (Penal Code § 243(f)(4)). See Policy 300 - Use of Force.

Hospitalized/Hospitalization: Receiving some form of medical treatment at a medical facility, other than an x-ray or being cleared for booking. See policy 300 - Use of Force.

Action Items: directives to the responsible Divisions or Members requiring resolution.

In-custody Death: Per Penal Code §10008(c) an "In-custody death" means the death of a person who is detained, under arrest, or is in the process of being arrested, is en route to be incarcerated, or is incarcerated at a municipal or county jail, state prison, state-run boot camp prison, boot camp prison that is contracted out by the state, any state or local contract facility, or other local or state correctional facility, including any juvenile facility. "In-custody death" also includes deaths that occur in medical facilities while in law-enforcement custody.

If a death occurs post-custody and could be related to confinement while under the custody and control of OCSD personnel, the Department will notify the OCDA to determine if the circumstances will be investigated as a post-custody death, per MOU with the OCDA's office.

301.3 BOARD COMPOSITION

BOARD MEMBERS:

1. Assistant Sheriff of Professional Services Command (**Chairperson of the Board**)
2. Assistant Sheriff of Patrol Operations Command
3. Assistant Sheriff of Investigations & Special Operations Command
4. Assistant Sheriff of Custody Operations Command
5. Constitutional Policing Advisor

In order for a more comprehensive and complete review of the incident, additional Members and/or persons shall be invited to attend. For the purpose of the review, they shall be referred to as "Attendees" and shall be able to provide recommendations and/or comments to the Board.

301.3.1 ATTENDEES

1. Executive Command Staff
2. S.A.F.E. Division Representative
3. Training Division Representative
4. Internal Affairs Representative
5. Commander under whose jurisdiction the Critical Incident occurred
6. Captain under whose jurisdiction the Critical Incident occurred
7. Presenter of Facts
 - (a) Person designated to present before the Board all pertinent information, facts, and issues about the Critical Incident.

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8. Subject Matter Experts
 - (a) Persons identified who exhibit an advanced level of expertise in performing and/or explaining a specific duty assignment, task, or skill will be considered as, "Subject Matter Experts" (e.g., Drug Recognition Experts, K-9 Handler, Conducted Energy Device Instructor, or Arrest Control Technique staff Member).
9. Investigations Representative
10. Field Training Bureau Representative (if applicable)
11. Jail Compliance and Training Team Representative (if applicable)
12. Member from County Counsel*

**Matters and communications discussed in the review may be confidential and protected under the Attorney/Client Privilege; therefore the review will be limited to those Members mentioned-above.*

Any other Member interested in attending the review, must be approved by the Chairperson of the Board. This shall be based on the reason for the request and "Need to Know" basis, but ultimately decided at the discretion of the Chairperson of the Board.

301.4 PROCEDURE

The Critical Incident Review process consists of three (3) phases and is overseen by the Assistant Sheriff of the Professional Services Command who is the Chairperson of the Board.

The Chairperson of the Board's responsibility and authority includes, but is not limited to, the following:

1. Authorizes the release of all pertinent documents, records, and information for the Critical Incident Review.
2. Ensures only essential Members are present during the Critical Incident Review.
3. Gives opening remarks and sets the rules or guidelines for the review to the Board and Attendees.
4. Moderates the review and assists in the transition from each topic of discussion to the next.
5. Reviews all A/I's and approves them for distribution to the responsible Divisions or Members for resolution.

301.5 PHASE I - INITIAL REVIEW

At the conclusion of an Administrative Response Team (ART) briefing, Sheriff's Executive Command may request a Critical Incident Review. This request will be made through the Chairperson of the Critical Incident Review Board. The review will be assigned to the S.A.F.E. Division and the process of coordinating, notifying personnel, and organizing the review shall begin.

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The S.A.F.E. Division is the Critical Incident Review liaison and the "Presenter of Facts." They shall facilitate the review board process. The S.A.F.E. Division shall collect all documents, reports, and presentation material/equipment. Notification to Board Members/Attendees, and the scheduling of the review shall be done as soon as practical. The responsibility to prepare and design the presentation for the review shall be the "Presenter of Facts." Therefore, any Department Member or division receiving a request for documents shall comply with the request without delay. The presentation before the Board is designed to give a detailed review of the incident.

At the conclusion of the presentation, the Board shall engage in an interactive discussion on the incident relying on the "Presenter of Facts" and/or "Subject Matter Experts" for clarification. **These discussions shall focus on policies, procedures, tactics, training, equipment and use of force.**

Upon completion of the discussions, the review shall adjourn and reconvene in closed session (same day) with the **Board Members** and designated Attendees only. In this closed session meeting, the Board shall list action items for implementation and identify the appropriate divisions or responsible Members to address these action items.

Once the Board Members have identified these action items, the S.A.F.E. Division shall forward an "Action Item Summary" form to the Board Chairperson for approval. Once approved, these action items shall be forwarded to the designated Divisions or Members for resolution and should be completed prior to Phase II of the CIR process (usually within 60-90 days).

301.6 PHASE II - DISPOSITION OF ACTION ITEMS

Phase II of the Critical Incident Review shall reconvene usually within 60 to 90 days of the adjournment of Phase I. The composition of Members involved in this phase of the review shall be comprised of the Board, S.A.F.E./Risk Management Bureau Representative, and the designated Members who were assigned action items, if necessary.

Upon completion of Phase II, the S.A.F.E. Division shall submit a written "Final Summary-Findings and Disposition" report to the Chairperson of the Board for review and final approval. Based on the type of incident reviewed, this shall usually signify the conclusion of the CIR. However, the Board may recommend further review of the incident and decide to convene the Administrative Review Board (ARB).

301.7 ADMINISTRATIVE REVIEW BOARD (ARB)

Whereas, Phase I & II of the Critical Incident Review process focuses on the systemic and global impact of an incident and its immediate impact on the Department, the Administrative Review Board (ARB) examines the incident with a focus on specific conduct of personnel. The ARB serves as a quality control mechanism to ensure timely reviews of all specified critical incidents and to determine whether the facts warrant further administrative investigation.

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The ARB process will support the integrity of law enforcement administrative reviews by ensuring internal investigations into officer misconduct are conducted promptly, thoroughly, and fairly. The ARB will fully appraise specified critical incidents to determine whether the facts warrant further administrative investigation(s), and examine the department member's actions from a tactics, training, policy, and agency improvement perspective. Ultimately, the ARB will identify areas for improvement and provide recommendations to the Sheriff regarding the incident. The review process shall be in addition to the Administrative Response Team's Executive Briefing, the Critical Incident Review, or any other investigation of the incident.

301.7.1 BOARD COMPOSITION

BOARD MEMBERS:

1. Board Chair: The Assistant Sheriff with command authority over the area where the incident occurred
2. Executive Command: Two additional Assistant Sheriffs with Board Chairperson
3. Constitutional Policing Advisor
4. Division Commander of the Training Division
5. Division Commander of the involved Department Member(s)
6. Representative from County Counsel

The ARB may request the appearance of other uninvolved members of the department to obtain information, expertise, or documents necessary to carry out the duties of the Board.

301.7.2 INITIAL REVIEW AND PROCEDURE

At the completion of the Executive Briefing by the Administrative Response Team the Sheriff's Executive Command will determine whether the ARB should be convened. The ARB shall be convened on those incidents which are deemed by the Sheriff or the Sheriff's Executive Command, as significant enough to warrant a further review of the incident and actions of the Members. Reviewable incidents include but are not limited to: Members involved in traffic accidents resulting in serious bodily injury or death, in-custody deaths, officer-involved shootings, and uses of force resulting in hospitalization, serious bodily injury, or death.

The Board shall examine each incident, issue findings, and/or recommendations for preventative measures. The Board may issue findings and/or make recommendations based on their review of the incident. The Board's recommendations may include but are not limited to the following areas:

1. Policy
2. Tactics and Training
3. Equipment/Technology
4. Supervision
5. Continuous Improvement

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Upon completion of any related administrative investigation(s), criminal investigation(s), review by any prosecutorial body, and filing decision regarding criminal charges, the ARB will recommend to the Undersheriff and Sheriff whether the Department Member's actions were within the parameters of current OCSD policies and procedures.

The Board Chair will draft the notification to the employee regarding the Administrative Review Board's findings. The Division Commander will hand-deliver the Administrative Review Board determination identifying whether the use of force was within policy, simultaneously with any related disciplinary notice to the employee.

301.7.3 PHASE I AND II

The ARB will be divided into two phases. During the first phase, the ARB will receive a case presentation from the ART Team or other appropriate SAFE Sergeant assigned to Internal Affairs. The ARB will request the presence of any experts, such as a tactical expert, to inform its review. The intent of the presentation is to show, in chronological order, the events leading up to, during, and immediately after the incident.

The presentation should include all relevant evidence including, but not limited to:

- Photos
- Videos, including body-worn camera recordings
- Audio recordings, including voluntary statements by involved department members (if any)
- Diagrams
- Other evidence developed during the investigation of the incident under review

If the ARB identifies any potential policy violations, those shall be referred to the Internal Affairs Bureau for investigation.

The second phase of the ARB will include a presentation on any material not previously available for review, including any additional information obtained from the criminal investigation(s).

301.7.4 S.A.F.E. DIVISION RESPONSIBILITIES

The S.A.F.E. Division shall coordinate in facilitating meetings, notifications, and providing the results of any Critical Incident Reviews that were conducted. S.A.F.E. shall receive all requests to convene any Administrative Review and gather all necessary documentation for the Board's presentation, review, and retention.

As a result of the confidential nature of the review and due to Department Members being involved, only Members identified by the Board shall be permitted to participate in ARB proceedings. All documentation shall be returned to and retained by the S.A.F.E. Division in accordance with the law and established records retention schedule.