



<b>Policy Name:</b>	<b>DUTY STATEMENTS – WITNESS OFFICER</b>		
<b>Policy #:</b>	OP 4.30.2.2	<b>Last Updated:</b>	2022-07-13
<b>Issued By:</b>	INVESTIGATIVE SERVICES BUREAU	<b>Approved By:</b>	SURREY POLICE BOARD
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**RELATED POLICIES**

*AD 2.2 Complaints and Professional Standards*

*OP 2.4 IIO Notification*

*OP 4.30.2.1 Duty Statements – Respondent Officer and Subject Officer*

**1. PURPOSE**

1.1. During the performance of their duties, Surrey Police Service (SPS) Members are subject to many levels of accountability. Under the *Police Act*, Members’ actions are subject to possible criminal investigation as well as disciplinary investigation. The *Police Act* provides authority to investigative units (Independent Investigations Office (IIO), SPS Professional Standards Section (PSS), Office of the Police Complaint Commissioner (OPCC)) to conduct investigations into the conduct of Members that may lead to charges against the Member under the *Criminal Code* or other federal or provincial statutes. This policy ensures Members comply with the *Police Act* when required to provide a statement as a Witness Officer.

**2. SCOPE**

2.1. This policy applies to all Members.

**3. POLICY**

3.1. There are many situations where police officers are required to provide a Duty Report or a Witness Statement. Police officers are expected to provide a comprehensive Duty Report in compliance with the *Police Act*. Doing so will ensure a timely investigation while also assisting officers through complex and often stressful circumstances.

3.2. Members must provide a Duty Statement if they are designated a Witness Officer to an incident that results in conduct complaints or the Serious Harm or death of a person and would likely fall under the mandate of PSS, OPCC or the IIO.

#### 4. PROCEDURE

##### **IIO Reportable Injury**

4.1. An incident must be reported to the IIO if the injury meets the following criteria:

- i. A person dies or suffers Serious Harm or a Reportable injury:
  - a. while in the custody or care of a Member; or
  - b. as a result of the operations of SPS.
- ii. A person dies or suffers Serious Harm, or a Reportable Injury and the death, Serious Harm or Reportable Injury could be a result of:
  - a. the conduct of any Member; or
  - b. the operations of SPS (in this instance, the injury or death could occur due to the actions of a Member of another police service, but the involvement of SPS in the incident still requires that it be reported in compliance with this policy); or
  - c. any contact made on a Member of the public caused by the deployment of a firearm regardless of whether or not the person required medical attention or was transported to the hospital for treatment.

**Note:** This section does not apply when only a police Member is injured. The term “person”, as interpreted for use in this section, does not include a police Member.

##### **OPCC Reportable Injury**

4.2. An incident must be reported to the OPCC if the injury meets the following criteria:

- i. A person dies or suffers Serious Harm or a Reportable Injury
  - a. while in the custody or care of a Member, or
  - b. as a result of the operations of SPS, or
  - c. a person dies or suffers Serious Harm or a Reportable Injury and the death, Serious Harm or Reportable Injury could be seen to be the result of the conduct of any Member or the operations of SPS;
- ii. When a member of SPS is involved in an incident resulting in a person receiving an injury caused by the discharge of a firearm, or an injury requiring emergency care by a medical or nurse practitioner and requires transfer to a hospital; or
- iii. Injuries that appear to be self-inflicted or as a result of medical distress if the affected person was in the care or custody of SPS.

### **OPCC Reportable Injuries – Reporting and Notification**

4.3. When an incident involving a Reportable Injury occurs:

- i. the Involved Member must immediately notify their Supervisor of the incident and include:
  - a. the incident number;
  - b. a brief synopsis of the event; and
  - c. the nature of the injury.
- ii. the Supervisor must immediately notify the Duty Officer of the incident;
- iii. the Supervisor must ensure that the Professional Standards Section (PSS) is notified; and
- iv. the Inspector i/c PSS, or delegate must:
  - a. notify the Police Complaint Commissioner (PCC) the next business day, of Reportable Injuries;
  - b. notify the PCC or the Deputy PCC, immediately of death or Serious Harm; and
  - c. maintain a record of Reportable Injury notifications made to the PCC.

4.4. If a Member is off-duty and engages in an incident that requires them to take law enforcement action, beyond what would be expected of a citizen, they will be considered to have been put “on duty” due to the incident. Therefore, any Reportable Injury that occurs during the incident must be reported to the OPCC and IIO. When involved in an off-duty incident that results in a Reportable injury, the Member must notify:

- i. the attending officers that they are an off-duty Member; and
- ii. their Supervisor and the Employee Services Section as soon as practicable

### **IIO Reportable Injuries/Serious Harm/Death – Reporting and Notification**

4.5. Incidents of Reportable Injury, Serious Harm or death, involving a Member must be reported to the IIO, in compliance with the *Police Act*.

4.6. If a Member suspects that a person has died or suffered Serious Harm as a result of his or her own actions or the actions of another officer, the following reporting must occur as soon as practicable:

- i. the Member must notify their Supervisor;
- ii. the Supervisor must notify the Duty Officer;
- iii. the Duty Officer must notify the PSS Inspector; and
- iv. the Duty Officer must notify the IIO Liaison Officer, Deputy Chief and Chief Constable.

4.7. In the event of a death, the Duty Officer must also ensure the Coroner’s Office is notified if the death occurred while detained by or in the custody of a Member, or in a custodial facility; or as a result, directly or indirectly, of actions of a Member performed in the course of their duty.

### **IIO Liaison Officer**

4.8. The Chief Constable will designate an IIO Liaison Officer to immediately notify the IIO upon becoming aware of any on-duty or off-duty incident that may fall within the jurisdiction of the IIO.

4.9. The IIO Liaison Officer must notify the IIO, as required by section 38.09(1) of the *Police Act*, where an on-duty Member attends:

- i. any incident, including an in-custody death, where there is a reasonable belief that the presence, action or decision of an on-duty or off-duty Member may have resulted or been a contributing factor in causing Serious Harm to, or the death of any person; or
- ii. any discharge of a firearm by an on-duty Member where there are reasonable grounds to believe that any person (including a Member) may have been injured.

### **OPCC / PSS Investigations – Witness Officer**

4.10. Members who are deemed witnesses in an OPCC / PSS Investigation will be notified in writing by PSS that they are a Witness Officer. Witness Officers are required under the *Police Act* to cooperate fully with an investigator.

4.11. Members notified that they are a Witness Officer of an allegation must:

- i. answer questions with respect of matters relevant to the investigation and attend at a place specified by the investigating officer to answer those questions;
- ii. provide the investigating officer with a written statement with respect of matters relevant to the investigation, if requested; and
- iii. in all cases must maintain confidentiality with respect to any aspect of an investigation, including being questioned under paragraph (i) or being asked to provide a written statement under paragraph (ii).

4.12. Statements or reports a Witness Officer provides to an investigator are deemed involuntary, the statement or report cannot be used in any other court proceedings without the consent of the Witness Officer, except:

- i. in a discipline proceeding, public hearing or review on the record concerning the conduct under investigation;
- ii. in a prosecution for perjury in respect of sworn testimony;
- iii. in a prosecution for an offence under the *Police Act*, or
- iv. in an application for judicial review or an appeal from a decision with respect to that application.

4.13. If allegations are serious in nature, the Witness Officer may speak with legal counsel or a Surrey Police Union representative prior to completing a Duty Report or participating in an interview. However, it is critical that Duty Reports are submitted, and Members participate in an interview within a reasonable time.

4.14. Unless granted an extension, the Member must comply with any request to participate in an interview and/or provide a Duty Report within five (5) business days after it is made.

**IIO Investigations – Witness Officer**

4.15. When an incident is within IIO jurisdiction, the IIO investigator must designate all the Members involved in or present during the incident as either Subject Officers or Witness Officers and must notify those Subject Officers and Witness Officers and the Liaison Officer of the designations and subsequently confirm those designations in writing.

4.16. In an IIO investigation, “Subject Officer” means:

- i. an on-duty officer whose presence, action, or decision is on reasonable grounds believed to have been a contributing factor in the death of any person, including in-custody deaths;
- ii. an on-duty officer who has discharged a firearm, where there are reasonable grounds to believe that any person (including a Member) may have been injured by that discharge;
- iii. an on-duty Member whose presence, action, or decision is on reasonable grounds believed to have resulted in Serious Harm to any person; or
- iv. an off-duty Member whose action is on reasonable grounds believed to have been a contributing factor in the death of any person, or on reasonable grounds is believed to have resulted in Serious Harm to any person.

4.17. In an IIO Investigation “Witness Officer” means a Member involved in or present during the incident, who is not a Subject Officer.

4.18. If a Member’s designation has changed from Witness Officer to Subject Officer or vice versa, the IIO must immediately notify the Member, and will subsequently inform the Member and SPS in writing.

4.19. To ensure that the IIO is notified of off-duty incidents within its jurisdiction, off-duty Members involved in a Critical Incident must identify themselves as police officers to on-duty Members who attend, and in doing so are not using their position for an improper purpose contrary to the *Police Act*. Members must submit copies of all notes they make to the IIO Investigator.

4.20. An IIO investigator must advise a Member whether they are designated as a Witness Officer or a Subject Officer, when the IIO investigator is requesting any notes, reports, or data from the Member.

4.21. Witness Officers must, by the end of the shift during which an on-duty Critical Incident occurred, submit copies of their notes, reports, and data, to the IIO investigator, unless there are exceptional circumstances, as determined by the IIO investigator.

### **IIO Interview with Witness Officers**

- 4.22. When requesting to interview a Member, and at the beginning of every interview, an IIO investigator must tell the Member whether they have been designated as a Witness Officer or a Subject Officer.
- 4.23. As directed by an IIO investigator, a Witness Officer must participate in an interview with the investigator:
- i. before the end of the Witness Officer's shift;
  - ii. within twenty-four (24) hours of the Witness Officer being contacted by an IIO investigator;  
or
  - iii. at any other time and on additional occasions as determined by the IIO investigator.
- 4.24. During IIO interviews, Witness Officers must answer the questions of IIO investigators.
- 4.25. IIO investigators must determine the locations of interviews with Witness Officers.
- 4.26. An IIO investigator may request videorecording of an interview with a Witness Officer, and if the Member declines to be video-recorded, the Member's interview must be audio-recorded. If the interview is only audio-recorded, the Witness Officer must assist the IIO investigator in video recording any places or things that are relevant to the investigation, but the Member must not be video-recorded (unless the Member consents), except that any physical demonstrations by the Member must be video-recorded.

## APPENDIX A: DEFINITIONS

“Critical Incident” means pursuant to the *Police Act* and the Memorandum of Understanding respecting IIO Investigations, whenever on-duty Members attend:

- i. an incident where there are reasonable grounds to believe that the presence, action, or decision of an on-duty Member:
  - a. may have been a contributing factor in the death of any person, including all in-custody deaths;
  - b. may have been a contributing factor in a life-threatening injury to any person;
  - c. may cause disfigurement (permanent change in appearance) if there were no medical intervention; or
  - d. may cause permanent loss or impairment of any function or mobility of the body, if there was no medical intervention;
- ii. discharge of a firearm by an on-duty Member where there are reasonable grounds to believe that any person (including a police officer) may have been injured;
- iii. an incident where there are reasonable grounds to believe that the action of an off-duty officer:
  - a. may have been a contributing factor in the death of any person;
  - b. may have been a contributing factor in a life-threatening injury to any person;
  - c. may cause disfigurement (permanent change in appearance), if there was no medical intervention;
  - d. may cause permanent loss or impairment.

“IIO” means the Independent Investigations Office of British Columbia.

“Member” means a sworn Police Officer appointed by the Surrey Police Board.

“OPCC” means the Office of the Police Complaint Commissioner.

“PCC” means the Police Complaint Commissioner.

“PSS” means the Professional Standards Section.

“Reportable Injury” means as defined in the *Police Act*, any of the following: “an injury caused by discharge of a Firearm; an Injury requiring emergency care by a medical practitioner or nurse practitioner and transfer to a hospital; or any Injury described by s. 184(2)(c) [regulations under Parts 9 and 11]” of the *Police Act*.

“Respondent Officer” means the Member who is the subject of a *Police Act* investigation.

“Serious Harm” means as defined in the *Police Act*, “injury that may result in death, may cause serious disfigurement, or, may cause substantial loss or impairment of mobility of the body as a whole or of the function of any limb or organ.”

“SPS” means Surrey Police Service.

“Supervisor” means a Sergeant, Staff Sergeant, Inspector, Superintendent, Deputy Chief Constable, Chief Constable, and any other person acting in a Supervisory capacity who is accountable for a particular area or shift on behalf of SPS.

“Subject Officer” means:

- i. An on-duty Member whose presence, action, or decision is reasonably believed to have been a contributing factor in the death of any person, including in-custody deaths;
- ii. An on-duty Member who has discharged a firearm, where there is a reasonable belief that any person (including a Member) may have been injured by that discharge;
- iii. An on-duty Member whose presence, action, or decision is reasonably believed to have resulted in injury requiring emergency care by a medical practitioner or nurse practitioner and also requiring transfer to a hospital or community medical facility; or
- iv. An off-duty Member whose action is reasonably believed to have been a contributing factor in the death of any person, or is reasonably believed to have resulted in injury requiring emergency care by a medical practitioner or nurse practitioner and also requiring transfer to a hospital or community medical facility.

“Witness Officer” means a Member involved in or present during the incident who is not a Subject Officer or a Respondent Officer.



## **APPENDIX B: REFERENCES**

*Memorandum of Understanding Respecting Investigations Between the IIO and Municipal Police Departments, and others* (August 31, 2020)

*Police Act*, R.S.B.C. 1996, c. 367