



C A L I F O R N I A

DEPARTMENT of JUSTICE

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

# ***SPECIAL PROSECUTIONS SECTION PROTOCOLS***

**ASSEMBLY BILL 1506  
GOVT. CODE § 12525.3(A)**

***JULY 2021***



# AB 1506 SPECIAL PROSECUTIONS SECTION PROTOCOLS

## ATTORNEY GENERAL AB 1506 INVESTIGATIONS

Law enforcement officers perform a vital and often dangerous job in our communities that may sometimes require the use of deadly force. Such force, however, may be used only when legally necessary and as prescribed by law. Moreover, when officers use deadly force, the public has a right to expect that a thorough and neutral examination will be conducted of such incidents “in a manner that reflects the gravity of that authority and the serious consequences of the use of force,” and that all parties will be held legally accountable for their actions. (Pen. Code, § 835a(a)(3).)

AB 1506, which enacted Government Code section 12525.3 (“section 12525.3”), entrusts the Attorney General as the state prosecutor to investigate officer-involved shootings that result in the death of an unarmed civilian. The role of a prosecutor is a solemn one.

“[The prosecutor] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.” (*Berger v. United States* (1935) 295 U.S. 78, 88.)

In keeping with *Berger*, the Attorney General’s Office will at all times perform its duty to seek justice, and will operate with the highest level of legal, professional, and ethical standards in evaluating the use of deadly force under AB 1506.

### DEFINITIONS

Under AB 1506, DOJ is required to investigate “incidents of an officer-involved shooting resulting in the death of an unarmed civilian.” (Gov. Code, § 12525.3, subd. (b)(1).) The following is DOJ’s understanding of the terms used in this statute, and is to be used as guidance for all law enforcement partners in determining whether a case falls within the ambit of AB 1506. These definitions are meant to apply only in the context of AB 1506, and these terms may have different meanings in other contexts or in different statutes.

Notwithstanding these definitions, DOJ may elect to assume jurisdiction in cases where jurisdiction is unclear, or based on other extenuating circumstances, as determined by the Attorney General. (See Cal. Const., art V, § 13 [Attorney General is “chief law officer of the State” and has a duty “to see that the laws of the State are uniformly and adequately enforced”].)

#### 1. “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 section 830, acting under color of authority. All shootings committed by officers while on duty are 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.

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 section 830.55 are excluded.

## 2. “Shooting”

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.

## 3. “Unarmed civilian”

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

## 4. “Possession”

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.

## 5. “Deadly weapon”

“‘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 actually being 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).

## 6. “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.

## **NOTIFICATIONS**

Agencies responding to an incident falling within section 12525.3 (incident), shall promptly notify the 24-hour call center at LA Clear. LA Clear notifies the Department of Justice (DOJ) Division of Law Enforcement (DLE), which contacts the reporting agency to confirm the incident falls within the scope of section 12525.3. DLE informs DOJ’s Criminal Law Division through a Supervising Deputy Attorney General (SDAG). The SDAG may provide legal advice on whether a particular case falls within the scope of section 12525.3. The SDAG provides further notice to the Senior Assistant and Chief Assistant

Attorneys General. The SDAG will assign a Deputy Attorney General (DAG) to respond to the scene. The SDAG will also communicate with the local district attorney's office and coordinate handling of the incident and/or any related offenses.

## **INCIDENT SCENE AND IMMEDIATE INVESTIGATION**

A DAG responds to the scene of an incident whenever practical. Upon arrival, the DAG checks-in with the agent or officer maintaining a log of personnel at the scene. The DAG is accompanied by a DLE special agent or other peace officer at all times.

As soon as practical, the DAG will be given an initial briefing of the incident and a walk-through of the scene. The initial briefing includes all known information relevant to the DOJ investigation.

Responsibilities of the on-scene DAG include: advising DLE special agents on criminal legal issues, including whether a particular incident falls within the scope of section 12525.3; reviewing search warrants; reviewing the scene; observing the investigation; and, when appropriate, observing recorded witness interviews that are led by law enforcement agents and advising agents on the interview. The DAG does not physically assist in the investigation or participate in the collection of evidence. Nor does the DAG take, receive, or participate in administratively compelled statements from potential targets of investigation.

If a DAG cannot respond to the scene, a DAG will otherwise be available to provide advice on criminal law issues to DLE personnel

## **COLLATERAL OFFENSES**

At the same time that the investigation of the shooting occurs, there may be a parallel investigation occurring for collateral offenses, possibly committed by the decedent or the decedent's associates. Local law enforcement will maintain responsibility for the investigation of such collateral offenses, and any such crimes to be charged will be referred to the local district attorney's office for prosecution. DAGs working on matters falling within section 12525.3 will communicate and coordinate with local district attorneys' offices, and when collateral offenses are involved, will make sure that both offices have complete information needed for their review.

## **FOLLOW-UP INVESTIGATION**

After the investigation at the scene has concluded, a DAG will continue to communicate with DLE on the progress of the investigation, observe certain witness interviews as appropriate, and provide legal advice and assistance on the direction of the investigation.

## **REVIEW OF INVESTIGATION**

Once a thorough and complete investigation has been concluded by DLE agents and any collaborating law enforcement agency, DLE will present all the evidence, including reports, and video and audio recordings, to the Criminal Law Division. The Office of the Attorney General, led by the Division of Criminal Law, reviews and analyzes the reports and evidence to determine if criminal charges are warranted to be sought against the involved law enforcement officer(s). The determination does not include whether administrative or civil actions are warranted, or whether there were any violations of policy or procedure. Because of the importance of these matters to those involved and to the public, it is the intent of the Attorney General to complete the review as quickly as possible, consistent with the primary goal of conducting a thorough, careful, and objective evaluation of the facts and applicable laws.

If the Attorney General determines that the investigation has yielded sufficient legally admissible evidence to sustain a conviction by an unbiased jury weighing all relevant evidence and plausible defenses to a standard of beyond a reasonable doubt, criminal charges will be authorized and announced at the time of filing.

If the Attorney General determines that criminal charges are not warranted, a report stating the facts of the incident (i.e., witness statements, audio and video recordings, physical evidence, demonstrative diagrams, etc.) with a detailed analysis and conclusion for each investigatory issue is prepared and provided to the public. The Civil Rights Enforcements Section will be consulted for any recommendations to modify the policies and practices of the law enforcement agency, and such recommendations, if any, will be included in the report. When completed, the report will be posted and maintained on the Attorney General's public website, and may contain redactions to protect confidential information as required by law. (Gov. Code, § 12525.3(b).)

Before charges are filed or a report is issued, DOJ will notify the involved agency head and family of decedent.