

# Officers' Post-Shooting Interviews to Wait 2 Days

Sun, Sep 7, 2008



EL PASO - A new police policy preventing the questioning of officers who are the subjects of investigations such as into officer-involved shootings for 48 hours is prompting strong reactions from current and former police officials.

On Tuesday, the City Council approved a new contract with the El Paso Municipal Police Officers' Association that contains the new policy, and also restricts the use of polygraph testing in internal investigations.

"Our belief is that this (the 48-hour policy) is definitely a good move," said Robert "Bobby" Holguin, police association president. "I've been out there with the officers when they go through this, and they're in no condition to give a statement."

Holguin said other police departments around the country are also adopting a 48-hour questioning policy. Although the El Paso County Sheriff's Office and police departments in Tucson, San Antonio and Albuquerque do not have such a policy, the Austin Police Department will adopt the policy within the next two weeks, said Lt. William Bastow, of the Austin police internal affairs section.

"There are certain questions we can still ask an officer right after an incident in the interest of public safety, such as 'Did any suspects get away?'," Bastow said. "Anytime we're wanting to question an officer regarding a specific policy violation, then we have to give them 48 hours." Lucia Martinez, 22, said she disagreed with the policy. Martinez's husband, John "Scrappy" Dalton Martinez, was shot to death by police on March 29 in a Central El Paso grocery store. Police said at the time that Martinez had a weapon and refused to listen to the officers' demands to put the weapon down.

"They should question (the officer) right away and take them aside, whether they were in the right or wrong," Lucia Martinez said. "Just because they're officers doesn't give them an excuse to get away with it. That's the way I feel."

According to the August edition of the Americans for Effective Law Enforcement Monthly Law Journal, it is recommended that departments wait 48 to 72 hours before interviewing an officer, even if the officer is willing to participate beforehand, because "an officer's recall can improve during this period" and may experience perceptual distortions that "commonly occur during moments of peak stress."

Former El Paso police chief Richard Wiles said that although using deadly force can be traumatic to a police officer, officers react differently to such incidents.

"Some of them will need time to debrief and compose themselves, but I've seen other cases where the officer came to me and said, 'It was tough what I had to do, but I did my job to protect citizens and myself,' and they want to sit down and get (questioning) over with," Wiles said. "I'm concerned about them putting it in black and white, because they've limited management's abilities if the officer wants to give a statement right way."

Wiles said he was also concerned with investigators being able to get all the facts of the incident as quickly as possible, and added that civilians involved in criminal investigations are interviewed as quickly as possible.

"If it's a citizen defending themselves and lawfully using deadly force, typically we're not going to wait 48 hours," Wiles said. "When homicides occur, whether you're the suspect or a witness, police don't wait 48 hours to talk to you."

Police Chief Greg Allen said the 48-hour policy practice has already been in place unofficially, but was placed in the contract as a matter of officer rights. If an officer chooses, he or she is allowed to give a statement immediately, Allen said.

"What we're doing is giving the officer some time, because on a day-to-day basis they're putting themselves in harm's way," Allen said. "If we've got a definite violation of the law, then the officer will pay the same penalty (as a civilian), but we're looking at (the officer) as being a human being and entitled to some consideration."

Allen said he didn't expect the policy to be detrimental to walk-throughs, which usually take place after an officer-related shooting. A walk-through involves an officer or a witness officer retracing the incident with investigators.

But William Ellis, a former attorney with the police association, said he's concerned that such investigations would be compromised because of the new policy.

"Certainly if the shooting happened on private property, such as during a family violence call, in 48 hours the police may no longer have access to the property," Ellis said. "To delay the investigation for that long just makes absolutely no sense."

Adriana M. Chavez may be reached at [achavez@elpasotimes.com](mailto:achavez@elpasotimes.com); 546-6117.

Shootings by police officers since 2003

El Paso police officer-involved shootings

June 13: Officer Matthew Jones fatally shot Gregory Smith, who allegedly displayed a weapon that was later found to be a toy gun. An autopsy later revealed Smith had been shot 11 times.

March 29: Officers Edwin Mayorga and Rodolfo Moreno fatally shot John Dalton Martinez after he allegedly shot and wounded another man inside the Lucky Star Food Market in Central El Paso.

Oct. 8, 2007: An El Paso police officer whose name was not released shot at a pit bull while investigating a possible burglary. The dog was not injured.

Aug. 2, 2007: Officer Roberto Mendoza shot and killed Andrew Cordova, 35, during a domestic dispute in the parking lot of a Northeast restaurant.

July, 25, 2007: Officer Curtis Whitener fatally shot a pit bull that had broken loose and lunged at him and an unnamed Police Explorer at a homeless camp in a West Side arroyo.

July 21, 2007: El Paso police officers shot and killed a Rottweiler-shepherd mix after they said the dog attempted to attack several residents in the 5600 block of Pebble Beach.

May 29, 2007: Sgt. Robert Gomez shot and killed Guadalupe Perez, 24, in the parking lot of Cielo Vista Mall as the sergeant was being dragged by a van driven by Perez. Perez was a suspect car thief.

March 25, 2007: Officer Jorge Garcia shot and killed Steven Salguero, 29, twice with a shotgun after Salguero allegedly threw bleach at officers. He had been taken into custody earlier that month after a suicide attempt and a probation violation.

Aug. 28, 2006: Sgt. Christine Whitaker and Officers Joseph Duarte and Amanda Vega shot and killed William "Bill" Ecker after he allegedly pointed a gun at them. Duarte was later reprimanded by the chief of police for firing blindly around a corner.

May 6, 2006: Sgt. Kenneth Law fatally shot El Paso firefighter Alfonso "Larry" De Anda, 35, during a domestic violence call at De Anda's home in the 2000 block of Shadow Ridge.

Oct. 20, 2004: A police officer shot and killed two of four dogs that he said attacked him in the 2500 block of Pershing in Central El Paso. One of the dogs had bitten a 22-year-old woman in her calf.

Aug. 12, 2003: A police officer fired a shot but missed a mountain lion in a mountainside West Side neighborhood.

Source: El Paso Times archives.