

**OFFICER-INVOLVED INCIDENT
PROTOCOL OF THE
TENTH JUDICIAL DISTRICT**

STATEMENT OF LAW ENFORCEMENT AGENCIES IN THE CITY AND COUNTY OF PUEBLO, STATE OF COLORADO

There are no incidents more traumatic to a law enforcement officer/agency and simultaneously more scrutinized than the death or serious bodily injury that may occur while in the line of duty. As such, every precaution must be taken to ensure that an officer's training is performed at the highest level available and each critical incident is investigated with openness and with the credibility citizens of our community demand and deserve.

Whenever an agency is asked to investigate actions taken by its own employees, there may be an innate suspicion that must be overcome. A protocol has now been developed by Pueblo County Law Enforcement agencies and the Tenth Judicial District Attorneys Office in an effort to standardize the investigative process and provide guidelines when a critical incident occurs within the City and County of Pueblo. This manual is designed to insure an expeditious, unbiased approach that is not only fair to the Officer and Agency involved, but also designed to be responsive and responsible to the community, thereby building public confidence in law enforcement.

It is the consensus of the undersigned from the Pueblo Police Department, Pueblo County Sheriff's Office, Colorado State Patrol, Colorado Bureau of Investigations, District Attorneys Office and the Coroner's Office, that a team of investigators, made up of personnel of the Tenth Judicial District, from Law Enforcement Agencies, the District Attorneys Office and the Coroner's Office shall be formed to assist in the investigation of certain critical incidents involving peace officers. It is believed that such a team is desirable to provide any participating agency requesting assistance with a team of proficient investigators to assist in the investigation of a critical incident. Such a team will be able to provide a thorough investigation of such incidents without causing a serious drain on any one department's resources.

Law Enforcement Agencies of the City and County of Pueblo worked toward the development of an Officer-Involved Incident Protocol in an effort to ensure a thorough, unbiased investigation of any critical incident involving a Law Enforcement Officer(s). Along with an open investigation for public evaluation, the incident investigators and agency managers must understand the legal rights, obligations and authority of the agencies and individuals involved. These rights and responsibilities must be considered and balanced - thus the need for the following protocol.

We thank the Law Enforcement Agencies of the Eighth and the Eighteenth Judicial Districts for sharing their protocols, which provided the basic format for the following agreement. We commend them for the quality of their products. Their work and dedication to fairness and justice is clearly reflected in the procedures they established, which we adapted for this manual.

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OFFICER-INVOLVED INCIDENT PROTOCOL

INTRODUCTION

The integrity of a law enforcement agency is never more closely critiqued as during and following the investigation of an incident that results in death or serious bodily injury. Because the credibility of the Law Enforcement Agency involved is intensely scrutinized during these high-profile investigations, outside criminal justice agencies that include the District Attorney's Office and the Pueblo County Coroner's Office are intricately involved in the investigation of these incidents.

The public's right to know what occurred may require balancing, with investigative necessity, rights of privacy with rights to a fair trial. In addition to the knowledge, skill, and resources required to investigate civilian homicide cases, officer-involved critical incidents present a combination of unique complexities. These investigations often involve a homicide investigation that must be integrated and coordinated with an administrative investigation. Each incident has potential social, civil, administrative, and criminal consequences. Confusion and even conflict can occur among individuals and agencies based upon their different interests, duties, perspectives, authority, training, and resources. Unless resolved in advance, these complexities can unnecessarily compromise these types of investigations.

As a result, the undersigned agencies recognize the need to conduct an expeditious and thorough investigation of these types of incidents and determine whether or not the actions of the agency and its employees were justified and consistent with the law and agency policies, procedures, directives and training. Incident investigators and agency managers must understand the legal rights, obligations, and authority of the agencies and individuals involved. They must recognize and reconcile police officers' constitutional rights against their rights and obligations resulting from the employer/agency relationship.

One of the primary purposes of this protocol is to standardize the investigation of officer-involved critical incidents within the Tenth Judicial District. This protocol was developed by Pueblo County Law Enforcement Agencies and the District Attorney's Office in an effort to standardize the investigative process and to serve as a model or guideline for the investigation of officer-involved critical incidents in Pueblo County. The goal of the protocol is to help ensure such cases are thoroughly and fairly investigated.

While this protocol represents the understanding and agreement among Pueblo County Agencies about how such cases are to be investigated, it is anticipated that individual agencies will make minor modifications to meet their own agency requirements.

This protocol, which is not a statute, ordinance, or regulation, is not intended to increase the civil or criminal liability of member agencies or their employees. It shall not be construed as creating any mandatory obligations to, or on behalf of, any third parties.

DEFINITIONS

A. Officer-Involved Incident (also referred to herein as Critical Incident)

Incidents occurring in the City and County of Pueblo, Colorado, involving two or more people, in which a police agency employee is involved as an actor, victim, or custodial officer and where Fatal Injury (*see definition*) or Serious Bodily Injury (*see definition*) occurs. Incidents do not include serious bodily injury caused by the deployment of Less-Lethal systems (*see definition*) or other Impact or Intermediate weapons (*see definition*).

The following examples are incidents where serious bodily injury or fatal injury has occurred and are, therefore, applicable to this protocol:

1. Intentional and accidental shootings, including police tactical incidents involving SWAT teams;
2. Intentional and accidental use of deadly weapons;
3. Assaults upon police officers or assaults on other police employees via a deadly weapon who are on-duty or are acting for a law enforcement purpose;
4. Attempts by police employees to make arrests or to otherwise gain physical control for a law enforcement purpose where fatal injury occurs;
5. Physical altercations, mutual combat and domestic violence in which the police employee is acting in a private citizen capacity;
6. Any custodial death, except those that occur while the prisoner is under physician's treatment for a disease or other natural condition which has been diagnosed prior to death and which does not involve custodial trauma, custodial suicide or custodial ingestion of toxic substance; however, for all custodial death investigations, the custodial agency shall also be deemed the Lead Agency;
7. Vehicular collisions resulting in death or serious bodily injury which:
 - a. Resulted from police gunfire directed at the suspect or suspect vehicle;
 - b. A police vehicle was used as a technique to apprehend a suspect (e.g. ramming, roadblock);
 - c. Was suffered by a person who was a passenger of a police officer (e.g. ride-alongs, emergency transports).

**Excludes police pursuits where suspect vehicle collides with another vehicle, pedestrian, or object, where that collision did not result from collision contact between the suspect vehicle and the police vehicle.

Notwithstanding the lack of death or serious bodily injury, any deliberately discharged firearm at another person or any type of discharge that results in the wounding of another person is an incident where this protocol is applicable.

B. Fatal Injury

Death or injury which is so severe that death is likely to result.

C. Serious Bodily Injury

Bodily injury which, either at the time of the actual injury or at a later time, involves a substantial risk of death, a substantial risk of serious permanent disfigurement, a substantial risk of protracted loss or impairment of the function of any part or organ of the body, or breaks, fractures, or burns of the second or third degree.

D. Venue Agency

The agency or agencies within whose geographical jurisdiction and within whose primary, usual and customary service delivery area the incident occurs.

E. Employer Agency

The agency with which the involved police employee is employed or is affiliated with (in many cases, the venue agency will also be the employer agency)

F. Lead Agency

The lead agency will have primary investigative authority as determined by venue and employer agency CEOs. Generally, the lead agency was not involved in the incident.

G. Less-Lethal Weapon Systems/Munitions

Any type of weapon or ammunition designed and intended primarily for use to temporarily incapacitate a person without causing death or serious injury.

H. Impact or Intermediate Weapons

Includes, but is not limited to batons, expandable batons, canines, Taser, pepper ball and other specialty impact weapon systems.

I. Police Employee

A person compensated by a particular law enforcement agency or authorized volunteer of that law enforcement agency who performs an act for the benefit of and subject to the control of that agency. However, an officer acting pursuant to authority of a special commission is not considered an employee of that agency.

J. Involved Officer

A police employee, whether on or off duty, who is involved in a critical incident as an actor, victim or custodial officer while acting in and under the color of their official capacity. When circumstances warrant, a witness officer may be deemed an involved officer for purposes of this protocol (e.g. shooting where one officer fires and the other does not).

K. Critical Incident Response Team Investigators

Those investigators assigned by the member agencies to conduct the criminal investigation of the incident.

L. Administrative Investigators

Those investigators assigned by the Employer Agency to conduct the Administrative Investigation of the Incident.

M. Member Agencies

The law enforcement agencies that are members of this Protocol agreement.

CRITICAL INCIDENT RESPONSE TEAM PERSONNEL

The Critical Incident Response Team shall consist of peace officers and ancillary personnel designated by the Chief Executive Officer (CEO) of each participating agency within the Tenth Judicial District.

A coordinator and alternate coordinator of the Team will be selected by the CEO's and shall serve at the pleasure of the CEO's.

The Team shall consist of at least one representative from each participating agency. Each member will serve at the discretion of the appointing or current CEO and with the approval of the member CEO's. A member's CEO may remove that member at any time said CEO desires. Also, any member may be removed upon recommendation of the coordinator and with the approval of the participating CEO.

INVOCATION OF PROTOCOL

- A. The Team is available to all participating law enforcement agencies within the Tenth Judicial District to assist the requesting agency with any applicable investigation.
- B. This protocol is immediately and automatically effective upon the occurrence of an officer-involved incident. Requests for the Team's assistance shall be made by the CEO of the agency having jurisdiction over the investigation as soon as possible, preferably no later than two hours after the actual time of the incident.
- C. All requests for assistance shall be made to the team coordinator, or if unavailable, the alternate team coordinator, who will then serve as the Team coordinator for the incident.
- D. The Team coordinator will assess the details of the incident and decide what personnel and equipment shall be needed for the investigation and will contact the necessary members of the Team with response instructions.
- E. The Team will investigate and present fact-finding reports to the requesting jurisdiction and the District Attorneys Office. This will be the sole responsibility of the Team unless otherwise directed by the requesting agency CEO.
- F. All existing procedures shall apply, including notification of the District Attorney's Office following a law enforcement officer's use of deadly physical force while acting in and under the color of their official capacity, as well as the notification of the Coroner's office when applicable.
- G. Each participating agency, when in the capacity of a venue or employer Agency, may invoke this protocol for any sensitive or critical event not previously defined as an officer-involved incident as follows:
 - a. Any fatality not covered by this protocol;
 - b. An officer-involved incident in which the injuries were not fatal and did not meet the definition of serious bodily injury;
 - c. Any fatal or serious bodily injury to a person who is a passenger of a police officer (e.g. ride-alongs, emergency transports);
 - d. Less-lethal weapon, impact or other intermediate weapon deployments involving serious or other bodily injury.
- H. Law enforcement vehicular fatalities shall be investigated by the Critical Incident Response Team investigators with the assistance of accident investigation specialists from another member agency. The accident investigation specialists have primary responsibility for documentation, collection and preservation of physical evidence.

INVESTIGATIVE AND PERSONNEL EXPENSES

- A. All necessary equipment shall be supplied by the requesting agency. If additional or specialized equipment is needed, the cost of obtaining such equipment shall be borne by the requesting agency upon the approval of the agency CEO. This does not prohibit any individual team member from supplying any piece of equipment he/she deems necessary, providing the requesting agency has no objection.
- B. Any specialized tests shall first be approved by the requesting agency that will be responsible for the costs involved with the tests.
- C. All normal personnel costs shall be the responsibility of the agency providing the members to the Team: not the requesting agency. Any other personnel costs must be approved by the requesting agency prior to being incurred.
- D. All Team members, while responding to a call out, regardless of jurisdiction, shall be deemed to be on duty and responding to a mutual aid call.

VENUE DETERMINATION

Generally, the Agency within whose venue the incident occurs, shall not investigate the incident when they are the Employer Agency of the involved officer.

When the Employer Agency is involved in an incident outside their jurisdictional boundary, a multi-agency investigatory team shall investigate the incident. The Lead Venue Agency shall assume the lead investigatory role of the multi-agency investigation and will have the ultimate authority to decide any irreconcilable investigative issues. The lead venue agency may relinquish its investigatory role to the employer agency.

When an incident occurs on the boundary of two jurisdictions, or at a location where the relevant boundary is not readily ascertainable or is in dispute, the lead venue agency shall not be:

- The Employer agency if the involved officer is employed by either boundary agency.
- The agency which has the greater interest in the case by virtue of having predominated police involvement in the incident or by virtue of having had the majority of acts leading up to the fatality occurring within its jurisdiction.

For custodial deaths, the Agency having custody of the person at the time his/her distress was first discovered is the venue agency.

When a venue or employer agency lacks sufficient resources, or when it believes it cannot properly investigate an incident for another reason, it may relinquish criminal investigative responsibility to another Pueblo County Law Enforcement Agency or to the Colorado Bureau of Investigation.

Vehicular collisions meeting the definition of an officer-involved incident shall be investigated with the assistance of accident investigation specialists from any of the participating agencies.

INVESTIGATIVE FORMAT

The criminal and administrative investigations are purposely separated to ensure that officers and their legal representatives know precisely what their rights and responsibilities are under each different investigative format. The criminal investigation has investigative priority over the administrative investigation and is the umbrella under which the administrative investigation takes place. This investigative structure ensures separation of the two (2) investigative formats and provides for the integration of the various other legitimate interests (District Attorney, Peer Support Team, Criminal Investigation, Administrative Investigation, and Media.)

In order to adhere to the various rules of law particular to the administrative and criminal investigations, the criminal investigation shall have investigative priority over the administrative investigation and is the umbrella under which the administrative investigation takes place.

The administrative investigation is subordinate to the criminal investigation in all aspects. The scope of the criminal investigative process is generally broad enough to cover most information needed in the administrative investigation and is deliberately structured to recognize and accommodate the interests of the administrative investigation.

Criminal Investigators may share information with administrative investigation personnel. Absent the limited purposes allowed by law, criminal investigators must ensure they do not receive any information by any means that is the result of the administrative investigation.

At the conclusion of the criminal investigation, the FBI may be briefed by the District Attorneys Office on the case when there are suspected Civil Rights Violations that come about from the investigation.

CRIMINAL INVESTIGATION PURPOSE

The purpose of the criminal investigation is two-fold:

1. To conduct a thorough investigation of the highest quality so that a decision can be made by the Pueblo County District Attorney's Office as to whether or not anyone committed a crime during the course of events which led up to and included the critical incident.
2. To incidentally provide factual information to the administrative investigators for the agency's internal use. Criminal investigators must recognize that while their priority is the criminal investigation, they must be aware of and collect information and evidence that may be germane to the employer's administrative purposes.

THE POLICE OFFICER INVOLVED

1. **Calm down and ensure all threats to your safety are over.**
 - Notify Communications and request a supervisor if one is not already on scene
 - Broadcast lookouts
 - Request backup and related support services
 - Assign responsibilities to responding units based on priority

2. **First Aid**
 - Request an ambulance, two if needed
 - Render aid

3. **Secure Scene**
 - Secure your weapon in the holster. Do not open, reload, remove shell casings or in any other manner tamper with involved firearms.
 - Should you become separated from your weapon during the shooting, the weapon is part of the crime scene and should not be moved (assumes a tactically stable situation).
 - Secure any shoulder weapon in the trunk or gunlock of your vehicle.
 - Secure any part of the scene that might be destroyed or damaged in the first few seconds (e.g. evidence kicked away or washed away by rain/snow).
 - Secure the perimeter and protect evidence.
 - Identify persons leaving the scene.
 - Identify witnesses and request cooperation.
 - As soon as a gatekeeper is assigned, and when it is safe to do so, shut off BWC and in-car camera (where applicable).
 - Secure your BWC on your person. Do not download, dock, view, or tamper with the BWC. After photographing, a supervisor will collect the BWC and initiate the downloading process.
 - Should you become separated from your BWC during the incident, the BWC is part of the crime scene and should not be moved (assumes a tactically stable situation).

4. **Absorb what you see and who you see.**
 - Take notes of what you deem important
 - If practical, begin taking photographs of the scene activity

5. **You may be asked by a supervisor what happened in order to locate suspects, witnesses, victims and evidence. These questions will generally focus on public safety and scene management.**
 - If you are an involved or witness officer, refrain from talking with other witness or involved officers

6. Once the situation is stable, you will be transported away from the scene to a designated location free from the distractions of the investigative process. You can expect the following:

- An officer or supervisor will be the “gatekeeper” and restrict access to you.
- Investigators will photograph you in your police attire, as well any injuries or anything else of evidentiary value.
- Your uniform or clothing may be taken, depending upon its evidentiary value.
- A Gunshot Residue Test (GSR) will be conducted as soon as possible if not completed on scene.
- Your gun belt will be retrieved by investigators and a replacement weapon issued to you.
- An opportunity to provide toxicology samples (blood/breath/urine) will be provided.
- The administrative or command personnel employing the involved officer(s) will be given the opportunity to compel the officers to submit to intoxicant testing under their respective departmental guidelines. If such results are obtained under the administrative employment relationship, the results will not be made available to the criminal investigation.
- Peer support personnel who are not involved in the incident or its investigation will be made available to you.
- You may contact family members and within reason have them with you.
- You will be given the opportunity to contact any legal representation that you desire
- A command officer will personally contact you to express concern and support during this stressful time. They will not question you about the incident.
- Expect a lengthy delay prior to your interview. If you wish, use this time to make notes about the incident. Every attempt will be made to provide an estimate as to when the interview will take place.

SUPERVISOR AT THE SCENE

1. Establish Control

- Go directly to the involved officer and establish control of the scene
- Ensure safety of scene
- Determine involved officer(s) condition and act appropriately
- Address the following public safety and scene management issues with the involved officer:
 - Injured people and medical attention needed
 - Outstanding suspect information, including identifying information, crimes committed, flight information, vehicle, level of hazard to the public, evidence proving guilt, etc.
 - Weapons information, including who fired, number of shots, direction of fire, current location of weapons
 - Identity of people involved in the incident as actors, witnesses and victims
 - The identity, location and size of the crime scenes and preservation of evidence concerns
 - The identity and location of physical evidence
 - Separate involved and witness officers when scene is tactically stable
- Ensure involved officer turns off BWC, when safe to do so, prior to transport by the gatekeeper.
- Ensure the scene is secured and consider expanding it.
- Once the scene is secured, the lead agency assumes control of the crime scene.
- Tactical debriefings (e.g. SWAT) will not occur until after the criminal investigation

2. Broadcast Information

- Suspects, vehicles and witnesses
- Use caution on radio broadcasts
- Protect sensitive investigative information

3. First Aid

- Ensure first aid is being administered

4. Establish incident command procedures

- Request additional officers as needed
- Establish a command post, neutral ground, outside perimeter and staging area
- Evaluate media perimeter. Are crime scene screens needed?
- Begin coordination of activities

5. Notifications

- Make notifications per agency policy

Upon identifying an occurrence as a multi-jurisdictional incident, the venue agency shall make the following notifications:

- Intra-departmental officers as required by the venue agency's procedures
- The employer agency if applicable and if not aware
- One-to-one contact with the investigative supervisor is imperative

6. Control Ambulance and Fire activity

- Restrict ambulance and fire activity to absolute minimum if not needed for life saving efforts
- Ambulance transport - assign an officer with a tape recorder, if available, to each injured person transported to the hospital for the following purposes:
 - o Protect, secure and recover physical evidence
 - o The shirt is often the most important piece of evidence in a shooting
 - o Record dying declarations or spontaneous statements
 - o Custody of arrestee
 - o Provide information to and receive information from medical personnel
 - o Identify relevant people, including witnesses and medical personnel
 - o Eventual contact of suspect/victim's families upon their arrival at hospital

7. Photograph or Videotape scene as it develops

- If time allows, assign an officer to photograph or videotape the scene while medical personnel are performing their duties. These photographs or video will document evidence that may be compromised during lifesaving efforts.

8. Scene Security

- Identify and secure all scenes
- Aggressively control and protect scenes not already protected
- Extend scene boundaries wider than what appears necessary
- Consider multiple crime scenes (original felony, escape/chase route, fatal scene, suspect, suspect's and officer's vehicles, arrest location, hospital, etc.)
- Escape route has potential for disposal of evidence
- Limit access and use crime scene entry log to identify all persons entering or exiting the scene, the reason for their entry and the date and time of entry and exit
- Establish a perimeter that distances the media from essential personnel
- Consider long-range media camera lenses and appropriately secure sensitive evidence (bodies, blood, etc.)

9. Perishable Evidence

- Preserve and protect the shooter and the suspect for GSR collection
- Consider collecting GSR from citizen or officer bystanders in close proximity to firearm discharge
- Document and collect any perishable evidence that cannot be secured

10. Involved officer's firearms

- If in his/her possession, firearms should be left in officer's holster. Removing a weapon from its holster may disturb critical trace evidence.

- Leave discarded weapons in place if scene is secure

11. Move involved officer from scene

- Arrange transport to a pre-designated location by a non-involved supervisor or officer
- Officers not employed by the venue agency may elect to be transported to their agency or any other location as determined by their agency supervision.
- Assign personnel to serve as the gatekeeper as it relates to access to the involved officer until relieved (see Gatekeeper Responsibilities)
- Sequester involved officer(s) with non-involved peer support officer until investigative interviews
- Involved witness officer(s) should not talk among themselves

12. Witness officer

- Primary responsibilities are scene safety and security until relieved.
- Officers should be separated but remain on scene for investigators.
- Witness officers should refrain from talking among themselves or with involved officer

13. Locate witnesses

- Interview witnesses as though it will be the only interview
- Identify and document witnesses who claim to have no knowledge of the incident
- Hostile witnesses should take priority
- Witnesses should remain on scene for preliminary investigation by criminal investigators
- Consider occupying witnesses by having them fill out a written statement

14. Area canvas

- Locate witnesses, relevant vehicles, weapons
- Pay attention to outdoor surveillance systems, “Ring” doorbells, etc.
- Document when people say they saw nothing
- Document addresses where no one was contacted

15. Prepare summary of activities accomplished and resource allocations

- What has been accomplished
- What needs to be accomplished
- Where personnel are assigned and their assigned duties

16. Briefing

- Take time to collect your information and thoughts so you can brief investigators when they arrive

17. **Contact ACOVA** (Victims' advocates) and have them respond to a safe location where any non-law enforcement victims or witnesses may be to provide support, Victim Rights information, and resources for the well-being of the victims and witnesses.

- Consider using ACOVA as appropriate for witnesses/victims on scene, other than law enforcement personnel.
- For law enforcement personnel, consider respective peer support personnel for the involved employees.

TRANSPORTATION AND SEQUESTRATION OF INVOLVED OFFICER

1. Transporting Officer Responsibilities

- Prior to transport, verify the involved officer's BWC is turned off.
- Transport the involved officer via a supervisor or non-involved officer to a pre-designated location
- Do not leave the officer unattended or discuss the incident details with the involved officer
- Perform gatekeeper responsibilities until relieved by other personnel
- After evidence processing (see Officer Involved as a Crime Scene) has been completed, officers' involvement in the investigatory process is voluntary

2. Sequestration

- The primary purposes of voluntary sequestration is to protect the integrity of the investigation by ensuring involved officers do not talk among themselves, to witnesses or third parties who may unintentionally relay information to interviewees and to ensure that any privileged conversations are protected.
- Ensure that sequestered involved officer (s) do not discuss the incident among themselves or with anyone else
- Make sure all digital recording devices are turned off.
- Do not allow any other direct (e.g. cell phone, BWC, in-car camera) or third-party communication about the incident until interviewed by the assigned investigator with the following exceptions:
 - o Conversations with the patrol supervisor or assigned investigator that are narrowly focused toward public safety, physical evidence or scene security (*see Supervisor Checklist*)
 - o One-on-one conversation with clergy, psychologist, legal counsel or spouse.

3. Psychological break

After the officer is processed for evidence, the officer should not be isolated. After consultation with administration of the involved officer, the officer is free to leave. The officer is a cooperative subject and can determine who has access to him at any point in time and is a voluntary participant in the investigation. The officer is provided a psychological break from the incident and some recovery time (privacy) for comments and actions that are part of stress relief. There is also a need to insulate the officer from contact with the suspect's family, press, witnesses, and curious but well-intentioned officers.

GATEKEEPER RESPONSIBILITIES

If at all possible, gatekeeper responsibilities should be fulfilled by a supervisor.

- Ensure compliance with sequestration responsibilities
- Notify Peer Support Team if not already accomplished
- Restrict access to involved officer to prevent contamination of possible trace evidence and communication about the incident.
- Restrict physical contact with the involved officer by all parties until evidence processing of officer is completed by investigators. Family members, Peer Support Team members and command officers may be present but shall have no physical contact with the officer until evidence processing is completed.

Coordinate with Investigator/Crime Scene Team (CST) assigned to collect evidence from the officer.

- Collect evidence from involved officer when requested by investigations supervisor (*see Officer as a Crime Scene*)
- Coordinate replacement uniform or personal clothing if needed
- Notify designated firearms officer for a replacement of officer's weapon.
- Do not isolate the Officer after physical evidence collection is completed. The officer should be allowed to move about freely.
- Act as a conduit for information exchange between the officer and the investigative team. Keep the officer informed throughout the investigative process as to what is happening and what will happen in the future.
- Work in concert with the assigned Peer Support Team member in order to accomplish peer support responsibilities (see "Peer Support Team") and protect the officer and family from unwanted intrusion.

CRIMINAL INVESTIGATION

Overview of Investigative Responsibilities

Investigations of critical incidents involving police employees often places extraordinary demands upon the individuals and agencies involved. These cases tend to attract considerable interest from segments of the public and from the news media. There will always be some suspicion about the propriety of law enforcement investigating officer- involved incidents. With this credibility perception at the forefront, we must ensure the investigation has the appearance and reality of a thorough, professional investigation.

Agencies should assign their very best personnel to investigate these incidents. The incident itself is often judged by the quality of the investigation.

In most other criminal investigations, we stop when we find no evidence of a crime. However, in an officer-involved incident, we do not stop the investigation when we find no evidence of a crime. Instead, we continue in an effort to prove factual innocence. It is this kind of defensive investigation that enhances law enforcement credibility, mitigates future civil suits and promotes the professional integrity of law enforcement. Even though the suspect may be deceased and therefore cannot be charged with a criminal offense, we will still seek to prove the offense the suspect committed. Those investigating an officer-involved incident should understand that every such investigation will be the most important investigation they do for themselves, the officer, and the agency.

The following officer-involved investigative protocol standards are modeled after civilian homicide investigation protocol standards. Revisions have been made to ensure coordination of the various parties and interests involved. The following procedures are intended to standardize the investigative process to aid the District Attorney in the review of such incidents, ensure a quality criminal investigation and ensure the officer involved knows what to expect. Two important goals of the criminal investigation are to:

1. Maximize the accuracy and thoroughness of the investigation and,
2. Minimize further trauma to the officer and his family. It is recognized that each agency has their own particular investigative practices and each incident is unique; therefore, some variation is expected in regard to the following procedures.

CIRT INVESTIGATIVE SUPERVISOR RESPONSIBILITIES

1. Investigative unit notification and call-out

- Establish phone or direct contact with the patrol supervisor or first officer on scene, whoever is more knowledgeable about the current situation. This information exchange is time critical in the efficient deployment of investigative personnel.

2. Venue determination

- Consult with the employer agency and the District Attorney prior to commencing an investigation under this protocol to ensure proper venue and to facilitate active collaboration.

3. Conflict of interest

- Ensure that no assigned criminal investigative personnel have any conflicts of interest (e.g. officer-involved supervisor, peer support, internal affairs investigator, spouse, etc.)

4. Priority assignments

- Some priority assignments will likely preclude some personnel from attending the on-scene briefing and crime scene walk-through.
- Make needed assignments prior to responding to the scene
- Assign detectives/lab personnel to the hospital scene
- Assign detectives/lab personnel to process the officer involved for evidence
- Ensure necessary notifications have been made (e.g. Chain of Command, Employer Agency if applicable, District Attorney, Crime Scene Investigators, Peer Support Team, PIO, Coroner's Investigator)

5. Protect and secure scene

Respond to the scene and aggressively take control of crime scene if it has not already been done. Consider the following:

- Should scene be expanded? Suspect's approaches and escape routes are protected? Escape route may contain discarded evidence (clothing, gun, etc.).
- Involved officers and witness officers may be crime scenes. If still on scene, consider photographing them, GSR collection, inspection of witness officer's firearms, and documentation of firearm status.
- Make arrangements for involved officer to be sequestered and transported from scene to pre-designated location with an assigned gatekeeper.
- Evaluate media perimeter. Are crime scene screens needed?
- Consider multiple crime scenes (e.g. body location vs. assault location, suspect himself, suspect residence, suspect/victim vehicle, arrest location)

6. Planning

The Investigations supervisor shall coordinate an on-scene briefing with the officer or supervisor in charge, ensuring that investigators are given an opportunity to view the scene and obtain all available information.

- The involved officer's attorney, peer support members, officers representing police

officer association interests and any other representatives of the involved officer should not attend the briefing.

- Review patrol supervisor's checklist with patrol supervisor or officer in charge. Address any uncompleted tasks.
- Assemble necessary personnel for briefing to include, Detective teams, Crime Scene Investigators (CSI), Coroner Investigator, Internal Affairs Investigator and employer agency personnel if applicable.
- Patrol supervisors may order an officer involved in a critical incident to answer questions directly related to scene management and public safety interests.

If not addressed by briefing supervisor or officer, consider the following:

- What was touched or moved? (By officers, witnesses, victim, suspect, etc.)
- Did ambulance/fire disturb anything or was lighting changed?
- What was first officer's path of travel through scene?
- Is there any transient evidence that may be lost if not seized immediately?

7. Witnesses

Ensure that the following has taken place:

- Isolate witnesses. This includes involved and witness officers. Do not allow them to talk among themselves.
- Remove unauthorized people from scene, being careful not to scare off potential witnesses. Do any of the witnesses have blood on them?
- Quickly obtain information from witnesses, including witness officers remaining on scene in order to more intelligently protect the scene and identify other scenes/evidence.

8. Suspect/decedent's family

- Establish an investigative point-of-contact for the suspect/decedent's family. This is critical in obtaining necessary background information and greatly minimizes the potential for an adversarial relationship.
- Do not delay contact or notification. Criminal investigators should accompany the Coroner's Office in any death notification to the decedent's family.
- Provide factual information. Treat family with care and respect.
- Provide information about the officer-involved incident process and any review or oversight that may exist.
- Consider advance notification to the family prior to news releases.
- Consider scene cleanup after criminal investigation is complete.
- Consider interim housing, meals, and other appropriate arrangements.
- Consider a separate walk-through with the family as part of the final survey if incident occurred on family's property.

9. Crime scene walk-through (investigative team)

- Determine if the scene allows for a walk-through at this time.
- Is a warrant required? Does transient physical evidence or a bloody scene preclude a walk-through?
- Will a walk-through occur under the legal authority of the coroner's office as part

of the exigency in determining the time of death?

10. Crime Scene Log

- Start a log if one has not already been started. Log is applicable to inner perimeter only.

11. Assignments

After completing the briefing and ensuring that all crime scenes are controlled and items on the patrol supervisor checklist have been assigned or completed, the following personnel assignments should be made:

- Assign employer agency personnel to investigative teams if applicable.
- Process involved and/or witness officers through detective/CSI teams if not already accomplished as a priority assignment (*See Number 4*).
- Conduct critical witness interviews based upon briefing information.
- Canvass for potential witnesses.
- Write applicable search warrant.
- Process crime scene with the applicable investigators and crime scene personnel.
- Suspect follow-up or interrogation.
- Officer interviews: Generally, detectives assigned to involved officer interviews can complete other assignments prior to involved officer interviews, as witness interviews and crime scene familiarity must occur first. When assigning detectives to interview the involved officer, consider pre-interview assignments that balance the need for familiarity against the need to conduct expedient interviews.

12. Manage and coordinate the investigation

- Continually assess the situation and assign necessary resources.
- Ensure timely and effective communication between detective teams assigned to crime scene, suspect, hospital, witnesses, and the involved officers.
- Manage the crime scene (see Crime Scene Management), preliminary and follow-up investigation and direct the investigation in accordance with the standards contained within this protocol.

CRIME SCENE MANAGEMENT

Overview

The goal is to marry evidence with testimony. Active communication to and from detectives/CSIs assigned to the suspect, crime scene, witnesses or hospital is critical and must be timely. Only with ongoing communication can we locate evidence that might not otherwise be obvious. Interviewing/interrogating detectives have to know if physical evidence is contrary to statements they receive.

The Crime Scene

A search warrant should be considered in all cases. An exception to a search warrant can be with consent, exigency or hot pursuit. Consultation with the district attorney's office in determining the need for a search warrant is paramount to a solid investigation. Exigent circumstances may exist where there is hot pursuit of a fleeing felon, imminent destruction of evidence is perceived, the prevention of escape is needed or there is a risk of danger inside or outside a dwelling. Transient evidence is that evidence which through time or environment deteriorates. Special care must be exercised to preserve transient evidence. This type of evidence presents exigency.

We must be careful not to replace exigency with zeal for investigating a particularly severe crime.

Control

Protecting the crime scene requires aggressive attention to the size, entrance, exits and environment. The purpose of control is to maintain the crime scene in as close to the conditions relevant to the criminal event being investigated as is possible. This control is exercised decisively and very quickly. Once control is established the likelihood for exigency is diminished and careful consultation with the district attorney, the coroner and investigating agencies should be maintained to determine proper technique.

Procedures

Once control of the scene is obtained and certain procedural issues such as the need for a search warrant is secured or determined, other procedures are important for a successful investigation. The following points to crime scene management are recommended.

Preliminary Survey

A warrant is not needed to enter scene during preliminary survey. Investigators are accompanying the coroner into the scene solely for the purpose of determining time of death. Time of death is the exigency. Once the coroner completes time of death activities, all personnel will leave the scene. The only exception would be to conduct a sweep for other victims or suspects and/or to protect any transient evidence that might be destroyed if not protected. The preliminary survey is not a search.

1. Preliminary survey purpose

- Allow coroner opportunity to determine time of death.
- Retrieve any evidence of a transient nature. (Think temperature sensitive evidence, weather related, trap potential telephone call evidence *57 *69.)
- Allow team detectives a cautious walk-through of the scene if necessary. Care should be taken to preserve the scene and limit the number of personnel within the scene.
- Determine what the crime scene consists of. What might be evidence? What types of collection procedures are required? What personnel will be needed?
- Did any security video or personal video capture the incident?

2. Path through the scene

- A bloody scene may limit the number of people through scene.
- Use path that first non-involved officer may have taken if possible.
- Protect areas that you have to walk through (butcher paper). Protect and document any transient evidence that might be altered or destroyed; (e.g. open window with wind/rain blowing in, animals in house, temperature-sensitive items).
- Choose an alternate path to body if scene is particularly bloody or likelihood that trace evidence might be destroyed/contaminated.
- Crime scene technician leads procession to body, taking photos and video. Make sure body is photographed prior to any activities by the coroner.
- Dictate a narrative description of the current condition of the scene, focusing on crime scene conditions that may change prior to processing and or any disruptions to the scene caused by officers, medical personnel, witnesses, coroner, etc.

3. Evaluate crime scene

- What could conceivably be considered evidentiary?
- Has the scene been staged?
- Has evidence been altered?
- What the crime scene tells you about the behavior of the suspect or victim?

4. Body as a separate scene

- Work in conjunction with the coroner's office to process the body as a separate scene.

5. Coordinate with other involved entities

- Allow Coroner's Investigator, District Attorney, and administrative investigators the opportunity to view the crime scene.
- Ensure evidence collection and processing needs of these agencies are addressed by crime scene personnel.

6. Outdoor crime scene

- Removal of the body and evidence collection associated with the removal, is an exception to not processing an outdoor crime scene at night.

7. Crime scene narration

- Dictate a narrative description of the scene's condition.
- The narrative will portray for the jury how the scene appeared at the time of the crime.
- Use a systematic approach. Narrate from general to specific.
- Consider a narration checklist (lighting, doors, shades, curtains open/closed, doors locked/unlocked, temperature, etc.)

8. Photograph scene

CSI and crime scene lead detective should collaborate to ensure all necessary photographs have been taken.

- Consider coordinating the photo marker number with evidence number (e.g. photo marker #22 of a bullet casing should be logged as "officer #-22" and an overall photo detailing the relationship of individual markers to each other.
- Perspective photographs: photos that detail the visual perspective of the officer, suspect and relevant witnesses
- Aerial photographs
- Consider digital photos and video due to their immediate availability to investigators and the coroner at autopsy. If retakes are necessary, they can occur prior to scene release.

9. UAV Documentation – Video & Images

10. Sketch scene/FARO Scan

- Arrange for a professional quality sketch of the crime scene.

11. Bullet trajectory

- Consider photographs (aerial/ "bird's eye" view) of reconstructed trajectories.
- Consider backdrop photos/video as it concerns down range projectiles.

12. BWC Processing

- The BWC will be inspected for functionality and docked for downloading by a supervisor of the employer agency.
- The BWC footage initially will be accessed and viewed by command members from the investigative and employer agencies.
- Command members and investigators will determine what additional personnel may view the footage to aid in investigative efforts.

13. Final survey

- Review crime scene from beginning to end.
- Have all possibilities of what the evidence is telling us been considered?
- Is all the evidence properly documented?
- Have we examined all possible hiding places?
- Discuss those issues we want the coroner to explore at the autopsy.
- Provide the opportunity for involved officer to conduct a videotaped walk- through of the scene prior to its release.

- Ensure that the final survey is discussed with all personnel involved, including the District Attorney, coroner, and administrative investigator.
- Make sure all necessary photographs (e.g. aerial, witness and officer perspective) have been taken. Have initial photos developed, review them and decide if more are needed prior to release of the scene.
- Consider holding scene until after autopsy in case an evidentiary issue arises during the autopsy.
- Access to law enforcement management of officer involved.
- Consider providing a walk-through of the scene to decedent's family, especially if incident occurred on their property.
- Consider holding the scene until after autopsy and consider additional search warrant(s).

14. Release of scene

- Decision to formally release scene is made only after it is discussed with everyone involved.
- Consider clean up issues. Make arrangements for blood cleanup. Do not leave blood, as it can appear insensitive to decedent's family.

15. Autopsy

It is essential that we make connections between evidence found at the scene and evidence discovered at autopsy. The coroner and investigator should be able to verify each other's findings.

- Investigators and CSIs assigned to the crime scene should also be assigned to the autopsy. Investigators must know the scene to know what is important at the autopsy.
- Bring pertinent evidence to autopsy (e.g. shooting victim's clothing).
- Consider bringing relevant crime scene photographs.
- Consider using gunshot wound markers (see attached) when the victim has sustained numerous gunshots. Placing marker keys at wound locations and photographing them can simplify documenting all entry, exit, penetrating, perforating and re-entry gunshot wounds.

HOSPITAL SCENE

Overview

Chaos is usually the norm. Coordinate with patrol officers already on scene. If both the officer and the suspect have been transported, consult with hospital authorities and attempt to establish separate waiting rooms for the respective families. Control the scene and focus on priorities. Determine if additional staffing is required.

1. Hospitalized suspect/victim/officer as a crime scene

- Safeguard and maintain chain of custody of the clothing of suspect and victim (e.g. clothing isn't thrown in one bag) and any other evidentiary items. The shirt is often the most important piece of evidence in a shooting.
- Work with medical staff and complete a GSR test if not already completed.
- Document injury and/or wounds and take custody of evidence obtained from surgery.
- If victim is DOA, notify coroner and work in concert with coroner prior to any removal of evidence from body.
- Ensure coroner has opportunity to view crime scene if victim dies at hospital.
- Note entry and exit on body diagram and any powder tattooing.
- Are projectiles still in body? Obtain x-ray so CST has an idea of how many projectiles to account for.
- Attempt to get wound photographed prior to surgery or any cleaning. Consider use of Patrol CSI Officers.
- Note location of blunt trauma on body and possible item that caused injury.
- Intoxicant testing: Per legal requirements consider obtaining samples for intoxicant testing (urine for drug screens; alcohol screen requires two samples separated by time).
- Serology: obtain pre-transfused blood (one purple top and one red top).
- Obtain applicable medical releases.

2. Medical personnel interviews

- Obtain medical opinion on prognosis of victim's condition and type and severity of suspect/victim's injuries.
- Determine if evidence was removed from victim (bullets, etc.) and ensure collection.
- Was a sample of pre-transfused blood taken? Attempt to obtain a red top and purple top blood sample.
- Any statements made by victim? Ideally, the patrol officer should ride in ambulance to hospital so as to obtain any statements or dying declarations.
- Medical opinion on type and severity of victim's injuries
- Interview fire and ambulance personnel as to what they saw or heard at scene, including any statements made by victim. Determine path they took through scene and anything they may have moved, altered or destroyed.

3. Suspect/victim interview

- Work with medical staff and attempt to interview suspect/victim. Communicate information to other detective teams.
- Dying declaration: Make sure you tape record when possible! Individual must be conscious of approaching death with no hope of recovery. Declaration has to be voluntary and victim must be of sound mind. Questions asked of victim can't be overbearing or leading.

4. Relatives and Friends

Many times, there will be too many people and too many tasks to perform for one person. Obtain additional resources.

- This is an opportune time to identify potential witnesses and family members.
- Background information on victim/suspect is essential.

OFFICER INVOLVED AS A CRIME SCENE (NON-HOSPITALIZED)

A supervisor or his designee should have transferred the officer involved to a pre- designated location. The CIT detective/CSI team assigned should process the officer at this location for the following physical evidence:

- Conduct a GSR test if it was not conducted on-scene.
- Provide the officer an opportunity to submit to a voluntary blood draw and/or a urine sample.
- Document and photograph the officer in his police attire/identification.
- Document and photograph any injuries to officer.
- Retrieve the officer's gun and provide a replacement weapon.
- Do not clear or open the weapon. Do not inspect magazine capacity unless specifically authorized by investigations supervisor.
- Examine officer and clothing for trace evidence and collect appropriate items.
- Collect officer's uniform shirt for trace evidence processing and other uniform/clothing items based on the circumstance of the incident.
- Intoxicant tests: If the criminal investigation determines a police employee's state of sobriety is relevant to the criminal investigation, they shall proceed as they would with any civilian subject. Results obtained by criminal investigators are available to administrative investigators

SUSPECT AS CRIME SCENE (NON-HOSPITALIZED)

Generally, evidence from an in-custody suspect will be collected (preferably not by interrogating detective) prior to interview. Investigators must balance the immediate collection of evidence against the chilling effect it might have on the suspect's willingness to be interviewed. Consider collecting the following:

- GSR
- Trace evidence
- Suspect's clothing, footwear, etc.
- Photograph suspect, clothing, wounds and any trace evidence that might be present
- Collection of blood or other invasive procedures may require a court order without consent. Consult with the District Attorney's Office.
- Transient evidence such as blood transfers or fingernail scrapings should be collected due to exigent circumstances. However, control samples from the suspect, even though he is in custody, may require a court order absent exigent circumstances. Consult with the District Attorney's Office before obtaining in-custody controls such as head hair, pubic hair, and saliva.
- Test for intoxicants, if applicable, via consent, warrant or incident to arrest

PRELIMINARY INVESTIGATION

Overview

The key to a successful investigation is how well we communicate developing information to the people that need it. Crime Scene Investigators can do a much better job if they are aware of what all the witnesses and suspects are saying. Obviously, interviewing detectives can do a much better job if they know the crime scene and are updated frequently.

- Conduct a thorough high-quality investigation.
- Resolve ahead of time contradictory facts and circumstances.
- Anticipate and address controversy through comprehensive crime scene work and follow up investigation.

1. Canvass

This may be the most important part of an officer-involved investigation. Eyewitnesses may provide critical collaboration as to officer and suspect actions.

- Give first priority to hostile witnesses.
- No witness should be quoted in the media who has not already been interviewed.
- Document who was interviewed as well as who wasn't.

2. Witness Interviews

- Consider accelerating interviews of hostile witnesses.
- Obtain preliminary information from on-scene witnesses prior to crime scene walk-through. Detailed interviews are conducted at the station.
- Obtain a written statement in addition to a focused detailed interview.
- Consider videotaping critical interviews. Videotape transient witnesses and those that might recant later.
- Consider walk-through video of witness when appropriate.

3. Officer-Involved Interview

Post-incident interviews are voluntary. Prior to the interview, the officer will have had an opportunity for a psychological break from the incident and the ability to talk with his or her attorney and any peer support. Most officers prefer to conduct the interview in the hours after the incident. Realizing that every incident is unique, every effort should be made to conduct this interview within four to five hours of the incident. However, nothing precludes an officer from conducting the interview at a later time (24 – 48 hours preferred).

Officer interviews are usually the last to be done, as interviewers need to know as much as possible about the incident in order for questioning to be as comprehensive and meaningful as possible. Assume this will be the only interview you will ever have with the officer.

- Audio and video tape the officer interviews. This will serve as the officer's police report.
- Avoid conducting the interview in rooms used for interviewing suspects.
- Coordinate delivery of replacement uniform or personal clothing if needed.
- Limit those present during the interview. Participants actively engaging in the interview should be limited to the criminal investigator from the lead agency, the involved officer and the officer's legal counsel. The lead agency may utilize a

separate investigator to be present during the interview with them as they determine necessary.

- Remind all parties that have contact with involved officer (e.g. legal counsel, family members, investigators) not to relay information between the officers being interviewed.
- Criminal investigators from the employer agency and the District Attorney's Office should not be present during the actual interview but should monitor the interview from a monitoring room.
- Administrative investigators will have an opportunity prior to the interview to brief the criminal investigator conducting the interview with respect to concurrent administrative issues that need to be addressed.
- Administrative investigators will observe the interview from the monitoring room and have the ability to meet with the criminal investigator during interview breaks to resolve any concurrent administrative issues not yet addressed. The goal is to conduct one interview that satisfies both criminal and administrative concerns.
- Consider use of an Officer Advisement form and interview checklist. (*see Addendum*)
- Investigator conducting the interview should be thoroughly familiar with the crime scene, witness interviews and dispatch recordings.
- Involved officer should narrate the incident from beginning to end without interruption. A question and answer format follows the free narrative.
- Be cognizant of critical-incident stress reactions, including time and space distortions, confusion, hearing, visual distortion, and emotional impairment, including shock. (*See Appendix*)
- Know what the unresolved issues are in the case. Every effort should be made to resolve these issues with the officer so as to avoid a second interview.
- Officers frequently remember details of the incident in the days after the incident. Within seventy-two hours, criminal investigators may voluntarily re-contact the officer involved and inquire about further details, address any discrepancies and attempt to resolve any conflict. Any additional details should be documented in the investigator's report.
- At the conclusion of the interview, the officer should be provided a criminal investigative point-of-contact and be referred to the appropriate management representative (see Command Officer Considerations; Post-Interview Procedures).

4. Video Walk-Through

- Walk-through should occur within a reasonable time (up to 72 hours) of the incident and is dependent on ensuring there are no cross-contamination issues present.
- The walk-through is completely voluntary as is the videotaping of the walk-through. The officer usually consults with the Peer Support Team psychologist and his attorney prior to consenting to the walk-through.
- Purpose of walk-through:
 - Opportunity for the officer to recount the incident (unrehearsed) from his/her perspective while at the crime scene
 - To supplement, confirm and clarify interview information
 - To resolve conflicts, confusion and any inconsistencies

- The walk-through should not be used to reenact the incident.
- At a minimum, ensure district attorney and administrative investigators are present, in addition to necessary criminal investigators and crime scene personnel.

5. Viewing Scene or Video of Incident by Involved Officer (taken from EPCSO)

- Scene: If determined to be beneficial to the investigation, or if requested by the involved officer or his attorney, the involved officer may be brought to the scene in order to complete a walkthrough at the direction of the CIRT. This walkthrough will only occur after evidentiary items have been recovered and removed and prior to comprehensive questioning. The walkthrough may assist the officer in remembering more accurately and fully what occurred and be beneficial to the investigation. The determination regarding the need and timing of this walkthrough will be made through discussion with the CIRT and administration, members of the District Attorney's Office, and the involved officer and their attorney if applicable.

INVESTIGATIVE SUMMARY REPORT FORMAT

Purpose

The purpose of the investigative summary report is to provide an accurate and thorough summary of the Critical Incident to the District Attorneys Office. This summary is a critical component to the District Attorneys Office's review of the incident and subsequent determination as to whether anyone involved in the Critical Incident committed a crime. The District Attorneys Office's decision letter is predicated on the receipt of a comprehensive and accurate investigative summary.

The Investigative Summary report shall consist of the following:

- Executive summary which provides a synopsis of the incident
- Law enforcement officers/agencies involved.
- Involved suspect including a summary of criminal history
- Summary or attachment of relevant computer-aided dispatch logs of the incident
- Summary or attachment of relevant radio log information/chronology concerning the incident
- Crime scene description which includes preliminary crime scene diagram
- Scientific analysis completed or pending
- Weapons segment which includes description of suspect and officer weapons involved
- Summary of relevant post-mortem examination details and evidence
- Listing of injuries sustained by suspect, law enforcement, and/ or civilians
- Detailed summary of involved officer's statements
- Summary of relevant details from witness officers
- Summary of relevant details from civilian witnesses
- Any relevant attachments (e.g. photographs, audio/video recordings)

DISTRICT ATTORNEY OFFICE RESPONSIBILITIES

Overview

The District Attorneys Office is a critical component to the investigative integrity of an officer-involved incident and is, therefore, intricately involved in all phases of the investigation. The District Attorney has independent investigatory power and responsibilities and may conduct an investigation apart from the Lead Agency. It is the intent of this protocol that the District Attorney shall be an active participant in the investigation in conjunction with the investigatory agency. The District Attorney shall designate the Assistant District Attorney and/or one or more Deputy District Attorneys to be assigned to the investigation of Officer-Involved Critical Incidents.

The role of the District Attorney includes, but is not limited to, the following:

- Monitor of and presence at critical phases of the investigatory process, to include the briefing, preliminary survey, crime scene walk-through, witness interviews, presence and participation during officer interview, crime scene processing, autopsy, hospital, officer walk-through and all investigatory briefings
- Access to all evidence
- Advise criminal investigators regarding legal issues associated with the investigation
- Prosecution of any suspect in regard to the commission of any crime during the course of events which led up to and included the critical incident

As soon as practical after the Critical Incident and the receipt of the investigative summary report, the District Attorney shall determine whether anyone committed a crime. The District Attorney shall communicate his findings, conclusions of law and decision via a Decision Letter to the Chief Law Enforcement Officer of the venue and employer agencies involved. The Decision Letter is also available to the public.

ADMINISTRATIVE INVESTIGATION RESPONSIBILITIES **(Subject to Individualization by Agency)**

Format

The criminal and administrative investigations are purposely separated to ensure that officers and their legal representatives know precisely what their rights and responsibilities are under each different investigative format. The criminal investigation has investigative priority over the administrative investigation and is the umbrella under which the administrative investigation takes place. This investigative structure ensures separation of the two investigative formats and provides for the integration of the various other legitimate interests (District Attorney, Peer Support Team, Criminal Investigation, Administrative Investigation, and Media.)

Criminal investigators may share information with administrative investigation personnel. Absent the limited purposes allowed by law, administrative investigators shall not, by any means, share information that results from the administrative investigation.

Purpose

The administrative investigation is another deliberate layer of review of officer-involved incidents, specific to the employer's administrative purposes. As such, the administrative investigator is integrated into the investigation through the monitoring of major phases of the criminal investigation. Such integration is designed to minimize secondary trauma to the involved officer by not conducting an administrative investigation that is duplicative of the criminal investigation.

It is the responsibility of the administrative investigator to anticipate administrative issues during all phases of the criminal investigation; communicate these issues, when applicable, to criminal investigators and ensure they are addressed under the umbrella of the criminal investigation.

At a minimum, the administrative investigator should monitor and dialogue with criminal investigators on the following primary criminal investigative stages:

1. Briefing

- Consult with investigative supervisor or lead investigator on any anticipated administrative issues.

2. Civilian witness interviews

- Monitor critical interviews, obtain briefing on less critical interviews and prioritize hostile witness interviews.

3. Officer witness interviews

- Prioritize monitoring interviews with non-involved witness officers.

4. Crime scene walk-through

- Determine crime scene issues that are pertinent to employer's purposes (policy and procedures, training, tactics).

5. Crime scene processing

- Review evidence collection and crime scene photography with crime scene supervisor/lead detective to ensure any associated administrative issues are considered.
- Consider witness and officer perspective photographs.

6. Hospital

- Respond to hospital, if appropriate, for administrative concerns.

7. Legal counsel introduction

- Coordinate with criminal investigator interviewer and contact the involved officer and the officer's legal representative and clarify the following points:
 - o Voluntary interview
 - o Single interview for criminal and administrative purposes is goal
 - o Administrative Investigator will not participate but will monitor
 - o Discuss video walk-through procedures/parameters.

8. Officer interview

- Consult with criminal investigator conducting interview prior to the interview and during pre-designated breaks.

9. Autopsy

- Attend if pertinent to administrative concerns.

10. Final survey

- Ensure all administrative issues pertinent to the crime scene have been addressed prior to release of scene.

11. Walk-through

- Address administrative issues with criminal investigators prior to walk-through. Monitor but do not ask questions.

12. Follow-up

- Monitor any pertinent follow up interviews with officers or witnesses.

Other Administrative Responsibilities:

1. Required intoxicant testing

- Intoxicant testing compelled by the employer agency's policy will be conducted by administrative investigators after specifically advising the officer such testing is separate and apart from the criminal investigation.

2. Criminal reports

- Retrieve completed report from criminal investigators and begin organizing administrative investigation file.

3. Scientific Analysis

- Continue liaison with criminal investigators on pending scientific analysis and/or other outstanding issues.

4. Follow-up Investigation

- Conduct further investigation on any issues solely of administrative concern.

5. Review Process

- If applicable, present administrative investigation file to appropriate command personnel.
- If applicable, coordinate with criminal investigators as it concerns case presentation to appropriate command personnel.

PEER SUPPORT TEAM

Overview

The Peer Support Team is part of each agency's comprehensive response to an officer- involved incident and is comprised of the agency psychologist and officers trained as peer counselors. The team strives to minimize trauma to the officer and his/her family by assisting them throughout the investigative and return to duty process. Effective intervention will result in the officer returning to duty as soon as possible and continuing to be a productive member of the agency.

Mission

The Peer Support mission is to provide the officer(s) and family members with emotional support, stress management, and education. In addition, help with trauma recovery, coping strategies to deal with the investigative process as it unfolds, issues surrounding the officer's response to colleagues and the media and the facilitation of the officer's return to duty. All interactions with the peer support psychologist are confidential and protected by the privileged communication statute.

Responsibilities

Peer Support serves a supportive rather than investigative or advocacy functions and does not interfere with the investigative process or elicit any details of the incident. The team has the following responsibilities:

- Respond to the pre-designated location where the officer is sequestered and coordinate with the officer assigned to gatekeeper and officer crime scene processing responsibilities.
- Team members must not be assigned any investigative, evidentiary or gatekeeper responsibilities.
- Assist the officer in calming down, regaining composure and putting the intense emotional and physical reactions likely being experienced into perspective.
- Facilitate officer's personal needs such as food and change of clothing.
- Provide attention to signs of a complicated stress response.
- Facilitate notification, contact and the needs of the officer's family
- Minimize the possibility of "secondary trauma" (i.e. feeling traumatized not by the event but by the reactions of others to the event and the officer).
- Mentally prepare the officer for the investigative process and the eventual community response.
- Assist the officer in determining their psychological readiness for the walk-through of the crime scene.

- Offer critical incident debriefing for all department personnel connected to the incident within 72 hours of the event.
 - No debriefing should occur with any employee who still needs to be interviewed by criminal investigators.

- Prepare the officer for return to duty (*see attached "Return to Duty Protocol"*).

MEDIA

Overview

Officer-Involved Critical Incidents are high-profile events and Law Enforcement can often create unwarranted controversy by refusing to provide facts of the incident. By impeding the community's opportunity to learn the truth, the agency can make an incident appear bad when in fact it was consistent with law and policy. Public confidence is eroded when the report is said to be confidential. The investigation is intended to be public at some point. The public's right-to-know must be balanced with the requirements of the investigation and with the rights of involved individuals.

Public disclosure becomes infinitely more complicated when a criminal investigation (attempted murder/assault on a police officer) on a living suspect is collateral to the deadly force investigation. Sealed affidavits and pre-trial publicity issues under the Colorado Rules of Professional Conduct 3.6 & 3.8, (see attached) may preclude the release of information. Under these circumstances, all parties (District Attorney, Public Information Officers, Investigators, and Command Officers) must consult and coordinate with each other prior to the release of information to the media.

1. The Employer Agency is responsible for public information responsibilities.

NOTE: Nothing precludes the venue agency from relinquishing its public information responsibilities to the employer agency as determined by venue and employer agency CEOs.

2. The District Attorney's office is responsible for public information responsibilities when:

- More than one officer is involved (does not include witness officers) and these officers are from both venue and employer agencies.

3. Employer Agency responsibilities:

- Irrespective of jurisdiction, the employer agency is solely responsible for any release of the officer's name, photograph, biographical information, agency assignment, years of service, and other information not related to the facts of the investigation.
- As a matter of mutual courtesy, the employer and lead agency will confer prior to the release of any public information.

4. Public information officer responsibilities:

- Ensure the existing perimeter/command post is established and adequate. If not, remedy situation with scene supervisors.
- Agencies and individuals who are not well informed and not intimately involved with the investigation's results and progress should not make statements to the media.
- Prepare press releases and coordinate such releases with other agencies involved.
- Consider officer's and family of decedent's interests when preparing media releases.

- Consider notification to officer and/or decedent's family prior to any media release.

5. **Public information/ Civil Unrest:**

- In coordination with the District Attorney's Office and the lead agency, the employer agency can release Body Worn Camera footage or other footage related to the incident that can prevent or restore civil unrest.

COMMAND OFFICER CONSIDERATIONS

Overview

Management should establish and maintain an atmosphere which promotes a comprehensive, fair and professional investigation of officer-involved incidents.

- Formulate adequate policies, procedures, protocols and inter-agency agreements.
- Ensure all personnel receive officer-involved protocol training.
- Know current policies procedures and protocol standards and act as a resource.
- Avoid pressuring criminal investigators for details they have not confirmed or premature conclusions.
- Avoid making inaccurate statements to the media. Speak only to the facts when they are known.

1. Pre-interview procedures

- Avoid physical contact with the officer until after the officer has been processed for evidence.
- Meet face-to-face with the officer and express personal concern and empathy for the officer during this stressful experience.
- Do not ask the officer what happened nor make any statements regarding legal or departmental resolution.
- Ensure that the officer's family has been notified and personal needs are being met.
- Explain or clarify the protocol procedures that will occur over the next several hours.

2. Post-interview procedures

A representative from management should contact the involved officer after their interview and accomplish the following. A handout for the officer detailing the following procedures should also be considered.

- Provide an administrative contact person for the officer for the next several days to handle any potential concerns the officer might have.
- Ensure officer involved has a peer support contact person.
- Explain return to duty protocol (*see "Return to Duty Protocol"*)
- Formally place officer on administrative leave (Administrative Leave form) with pay and explain process and responsibilities.
- Ensure officer has a criminal investigation point-of -contact for the coordination of additional investigatory information.

Addendum
Colorado Rules of Professional Conduct

Rule 3.6. Trial Publicity

- (a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

- (b) Notwithstanding paragraph (a), a lawyer may state:
 - (1) The claim, offense, or defense involved and, except when prohibited by law, the identity of the persons involved;
 - (2) Information contained in a public record;
 - (3) That an investigation of a matter is in progress;
 - (4) The scheduling or result of any step in litigation;
 - (5) A request for assistance in obtaining evidence and information necessary thereto;
 - (6) A warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and
 - (7) In a criminal case, in addition to subparagraphs (1) through (6):
 - (i) The identity, residence, occupation, and family status of the accused;
 - (ii) If the accused has not been apprehended, information necessary to aid in apprehension of that person;
 - (iii) The fact, time and place of arrest; and
 - (iv) The identity of investigating and arresting officers or agencies and the length of the investigation.

- (c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

- (d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

COMMENT

It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved. If there were no such limits, the result would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence. On the other hand, there are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures aimed at assuring its security. It also has a legitimate interest in the conduct of judicial proceedings, particularly in matters of general public concern. Furthermore, the subject matter of legal proceedings is often of direct significance in debate and deliberation over questions of public policy.

Special rules of confidentiality may validly govern proceedings in juvenile, domestic relations and mental disability proceedings, and perhaps other types of litigation. Rule 3.4(c) requires compliance with such rules.

The rule sets forth a basic general prohibition against a lawyer's making statements that the lawyer knows or should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding. Recognizing that the public value of informed commentary is great and the likelihood of prejudice to a proceeding by the commentary of a lawyer who is not involved in the proceeding is small, the rule applies only to lawyers who are, or who have been involved in the investigation or litigation of a case, and their associates.

Paragraph (b) identifies specific matters about which a lawyer's statements would not ordinarily be considered to present a substantial likelihood of material prejudice and should not in any event be considered prohibited by the general prohibition of paragraph (a). Paragraph (b) is not intended to be an exhaustive listing of the subjects upon which a lawyer may make a statement, but statements on other matters may be subject to paragraph (a).

There are, on the other hand, certain subjects, which are more likely than not to have a material prejudicial effect on a proceeding, particularly when they refer to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration. These subjects relate to:

1. Character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness or the identity of a witness, or the expected testimony of a party or witness;
2. In a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;
3. The performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected

to be presented.

4. Any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;
5. Information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial; or
6. The fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

Another relevant factor in determining prejudice is the nature of the proceeding involved. Criminal jury trials will be most sensitive to extrajudicial speech. Civil trials may be less sensitive. Non-jury hearings and arbitration proceedings may be even less affected. The rule will still place limitations on prejudicial comments in these cases, but the likelihood of prejudice may be different depending on the type of proceeding.

Finally, extrajudicial statements that might otherwise raise a question under this rule may be permissible when they are made in response to statements made publicly by another party, another party's lawyer, or third persons, where a reasonable lawyer would believe a public response is required in order to avoid prejudice to the lawyer's client. When prejudicial statements have been publicly made by others, responsive statements may have the salutary effect of lessening any resulting adverse impact on the adjudicative proceeding. Such responsive statements should be limited to contain only such information as is necessary to mitigate undue prejudice created by the statements made by others.

Rule 3.8. - Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

- (a) Refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;
- (b) Make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;
- (c) Not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing, except that this does not apply to an accused appearing pro se with the approval of the tribunal. Nor does it forbid the lawful questioning of a suspect who has waived the rights to counsel and silence.
- (d) Make timely disclosure to the defense of all evidence of information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and
- (e) Exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6.
- (f) Not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless:
 - (1) The prosecutor reasonably believes:
 - (i) The information sought is not protected from disclosure by any applicable privilege;
 - (ii) The evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and
 - (iii) There is no other feasible alternative to obtain the information.

CRITICAL INCIDENTS

What is Critical Incident Stress? Police work can be stressful on a regular basis. While continual stress will take its toll, Critical Incident stress is different in that it directly relates to a dramatic event or events in the life of an officer that results in a number of debilitating symptoms.

Often characterized by the following:

1. Sudden and unexpected events
2. Disrupted sense of control
3. Disruption of basic beliefs and assumptions
4. Perception of threat to life
5. Potentially overwhelming
6. Physical/emotional loss

Factors affecting critical incident response:

1. Perceived severity of trauma
 - a. Sense of personal threat
 - b. Incident variables: blood & gore, age of victims, personal connections
2. Nature of recovery environment
3. Personal Variables
 - a. History of trauma & unresolved or multiple traumas
 - b. Religious, philosophical, metaphysical, spiritual beliefs about events
 - c. Assessment of personal performance/options

OFFICER PERCEPTUAL DISTORTIONS DURING SHOOTINGS

Alexis Artwhol, Ph.D

(Percentages reflect research subject experiences and are consistent with the results of other studies.)

84%	Diminished sound
79%	Tunnel vision
71%	Heightened visual clarity
62%	Slow motion time
52%	Memory loss for parts of event
46%	Memory loss for some of your actions
39%	Dissociation
26%	Intrusive distracting thoughts
21%	Memory distortion
17%	Fast motion time
16%	Intensified sounds
7%	Temporary paralysis

CRITICAL INCIDENT STRESS REACTIONS

You have experienced a traumatic event or a critical incident (any event that causes unusually strong emotional reactions that have the potential to interfere with the ability to function normally). Even though the event may be over, you may now be experiencing or may experience later, some strong emotions or physical reactions. It is very common, in fact quite normal, for people to experience emotion aftershocks when they have passed through a horrible event.

Sometimes the emotional aftershocks (or stress reactions) appear immediately after the traumatic event. Sometimes they may appear a few hours or a few days later. And, in some cases, weeks or months may pass before the stress reactions appear.

The signs and symptoms of a stress reaction may last a few days, a few weeks, a few months, or longer, depending on the severity of the traumatic event. The understanding and the support of loved ones usually cause the stress reactions to pass more quickly. Occasionally, the traumatic event is so painful that professional assistance may be necessary. This does not imply craziness or weakness. It simply indicates that the particular event was just too powerful for the person to manage by himself.

Here are some common signs and signals of a stress reaction:

Physical*	Cognitive	Emotional	Behavioral
chills	Confusion	fear	withdrawal
thirst	Nightmares	guilt	antisocial acts
fatigue	Uncertainty	grief	inability to rest
nausea	hyper-vigilance	panic	intensified pacing
fainting	Suspiciousness	denial	erratic movements
twitches	intrusive images	anxiety	change in social activity
vomiting	blaming someone	agitation	change in speech patterns
dizziness	poor problem solving	irritability	loss or increase of appetite
weakness	poor abstract thinking	depression	hyper-alert to environment
chest pain	Poor attention/decisions	intense anger	increased alcohol consumption
headaches	Poor concentration/memory	apprehension	change in usual communications
elevated BP	disorientation of time, place, or person	emotional shock	etc...
rapid heart rate	difficulty identifying	emotional	

	objects or people	outbursts	
Physical*	Cognitive	Emotional	Behavioral
muscle tremors	heightened or lowered alertness	feeling overwhelmed	
shock symptoms	increased or decreased awareness of surroundings	loss of emotional control	
grinding of teeth	etc...	inappropriate emotional response	
visual difficulties		etc...	
profuse sweating			
difficulty breathing			
Etc...			

***Any of these symptoms may indicate the need for medical evaluation. When in doubt, contact a physician.**

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Officer Advisement
Officer Involved Incident

1. My name is _____. I am an investigator for _____.
I will be interviewing you in regard to this investigation. The purpose of this criminal investigation is to determine whether or not anyone committed a crime during the course of events which led up to and included the critical incident.

2. You are not in custody. You are free to leave if you wish. You may stop talking to me at any time and/or speak with your attorney at any time before continuing.

3. You will suffer no negative job sanctions if you choose not to speak with me at this time. You are not compelled in any way to make a statement to me at this time.

4. The interview is being videotaped. It is intended that this videotaped interview will suffice as your report on this investigation.

5. I know that you have been involved in a stressful incident. Do you feel you are capable if participating in an interview at this time?

CRITICAL INCIDENT MANAGEMENT AND RETURN TO DUTY PROTOCOL

Preparation Training: Officer should receive instruction on procedure (discomfort vs. trauma) prior to likelihood of having to confront a critical incident. *Concept of 2nd injury.*

1. Remove from scene/controlled environment/not isolated
Officer notification of spouse, family/notification by policy if incapacitated On-scene support (Peer Support Team, psychologist, personnel)/Confidentiality
Contact from top administrator (Chief or Sheriff)
Replacement of weapon if taken as evidence with like weapon Return of badge if clothing is taken
Police vehicle considerations if vehicle is assigned/issues of officer blood sample – probable cause or policy
Administrative leave pending processing of incident/press releases/telephone screening/officer security
2. Recognition of personal risk
Attorney for officer if requested without negative consequences for officer
Clear distinction between criminal and administrative investigation
Miranda advisement? Garrity advisement
3. Family involvement: spouse/children (immediate support, security, nature of incident, issues of vulnerability, peer reactions, work, school, released press information, extended family responses, etc.)
Prepare for negativity: press, segments of community, family members, etc.
4. Debriefing within 72 hours: mandatory/voluntary, selection of participants
 - spouse, dispatch personnel, other agency personnel, etc. Individual follow-up/Peer Support Team reach-out

Expedite administrative investigation, district attorney, review boards, etc.

 - Closure
5. Consider scheduled court hearings and assigned off-duty work. Evaluated on individual case basis.

RETURN TO DUTY

1. Return to scene – often accompanied by investigators but need experiential perspective, accompanied by selected Peer Support Team member or psychologist. Consider spouse/other if requested by officer.
2. Firing range if shooting incident – shoot loaner gun if actual weapon is still held, actual gun when returned.
3. Psychological fitness for duty evaluation: mental status examination, clinical interview, current stress assessment, specialized instruments if necessary (MMPI-2, IDD, MCMI-III, OSI, etc.).
4. Graded re-entry – program design: light duty (uniform/non-uniform), buddy officer partner (may be selected from anywhere within the department, contacted by officer and/or psychologist), off-duty work during reentry, alteration if needed as program progresses. Important that officer works the assigned shift during reentry. Returned to full duty. Throughout process: mechanism of “safety net”, continual contact with psychologist, additional psychological work if necessary.
5. Follow-up: scheduled appointments subsequent to two, four, and eight weeks of full duty. Family members as necessary. Year of “firsts”, Peer Support Team and departmental reach-out. Peer Support Team peer counselor assigned (selected by officer) for one year.

Source: Adapted from Jack Digiliani, Ed.D., Ph.D.

SIGNATURE PAGE

The foregoing pages comprising the Critical Incident Response Team Protocol is approved by the undersigned effective October 1, 2021. These signatures may be signed individually and provided to the Pueblo County Sheriff's Office by each Agency.



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TENTH JUDICIAL DISTRICT ATTORNEY



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