

L.E.A.D.S.
SALT LAKE COUNTY
LAW ENFORCEMENT
ADMINISTRATORS AND DIRECTORS

**LAW ENFORCEMENT
CRITICAL INCIDENT
INVESTIGATIVE PROTOCOL**

Revised and Accepted by LEADS on
October 5, 2006

PREAMBLE

The Law Enforcement Critical Incident Investigative Protocol has been established to provide uniform procedures and mutually agreed-upon rules. The procedures established in this protocol relate only to an investigation of the conduct of a police officer, or other covered employee of a law enforcement agency as defined in this protocol.

The goal and purpose of the protocol investigation is to determine whether or not the conduct of a law enforcement employee(s) which caused the protocol to be invoked is criminal in nature.

In order to prevent conflicts of interest, the criminal conduct of any other person's involvement in the incident, which caused the protocol to be invoked, will be handled in a separate criminal investigation under the direction of the venue agency. If the employer agency determines that an administrative investigation is warranted, that investigation will be handled by the employer agency. Both of the above-described investigations must be conducted by detectives or investigators **not** assigned to the protocol task force and are the responsibility of the venue and/or employer agencies. This is not intended to prohibit sharing information between investigators, but rather to provide an unbiased and non-conflicted investigation of the law enforcement employee's conduct.

The protocol procedures and rules cannot anticipate every possible circumstance that might occur. Therefore, anytime a protocol investigation is being conducted, the procedures outlined in this protocol may be modified, as long as the head of each agency or their designate agrees to the modification. Unassisted interviews of witnesses or other involved parties by protocol investigators, without prior mutual agreement by the protocol task force tend to undermine the purpose and usefulness of the protocol and shall not occur.

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

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LEADS CRITICAL INCIDENT PROTOCOL

1. DEFINITIONS.

- A. "Law Enforcement Involved Use of Deadly Force Incident": Incidents occurring within Salt Lake County, where a law enforcement agency employee was involved as an actor, or custodial officer and the law enforcement employee used deadly force. (See 1-F for definition.)
- B. "Critical Incident": Incidents occurring within Salt Lake County where a law enforcement employee is involved, which may have criminal liability.
- C. "Law Enforcement Employee": This Protocol applies to defined employees and to certain other people affiliated with law enforcement agencies which are members of this protocol agreement as follows:
 - 1) Full-time, part-time, and hourly sworn officers; whether on or off-duty and acting for a law enforcement or a private purpose at the time of the Incident.
 - 2) Full-time, non-sworn employees on-duty at the time of the Incident.
 - 3) Part-time, non-sworn employees on-duty at the time of the Incident.
 - 4) Reserve law enforcement officers on-duty at the time of the Incident.
 - 5) Temporary law enforcement employees and law enforcement agency volunteers, whether paid or unpaid, on-duty at the time of the Incident. This category includes informants when they are working under direct control and supervision of a peace officer.
- D. "Actor." A law enforcement employee who uses deadly force.
- E. "Subject." The person (injured or not), who caused the law enforcement employee to use deadly force, and who may or may not have criminal culpability related to the incident.
- F. "Use of Deadly Force." Whether a given use of force constitutes deadly force may be determined according to the Model Penal Code definition of deadly force: "deadly force" means force that the actor uses with the purpose of causing or that he knows to create a substantial risk of causing death or serious bodily injury.¹
- G. "Venue Agency." The agency or agencies, within whose geographical jurisdiction the Incident occurs. (See paragraph 3A (4) & (5) for venue determination factors.)
- H. "Employer agency." The agency that the involved law enforcement employee is employed by or affiliated with. (In many cases the venue agency will also be the employer agency.)
- I. "Criminal Investigators." Those investigators assigned by the venue agency (cies), to investigate criminal conduct on the part of the subject.
- J. "Protocol Investigators." Those investigators assigned by the venue agency, employer agency, and District Attorney's Office to investigate the conduct of the law enforcement employee.
- K. "Administrative Investigators." Those investigators assigned by the employer agency to conduct the administrative or internal investigation of the Incident.

¹ The use of instrumentalities other than firearms may constitute the deployment of deadly force. Police cars have been held to be instruments of deadly force. Some lower courts are split on the question of whether police dogs constitute deadly force. For this protocol, if the use of a vehicle, police dog, or other instrumentality results in the death or serious bodily injury of a subject, the use of that force would constitute the invocation of this protocol.

- L. "Member Agencies." The law enforcement agencies in Salt Lake County who are members of this Protocol agreement.

2. INVOCATION OF PROTOCOL.

- A. Automatic and immediate. Upon the use of deadly force by a law enforcement employee (as defined in paragraph 1-A), this protocol is automatically and immediately effective. The venue agency is required to immediately contact the District Attorney's Office and affirmatively invoke the protocol.
 - 1) When the venue agency notifies the District Attorney Investigator, they shall provide the name of their assigned protocol investigator for the venue agency.
- B. Optional. Each member agency, in the capacity of a venue agency or employer agency, may itself invoke this protocol upon the occurrence of any critical incident involving a law enforcement employee, which may have possible criminal liability attached to the law enforcement employee.
 - 1) Member Agencies are encouraged to develop interlocal cooperation agreements between themselves and other member agencies to facilitate a critical incident investigation against a law enforcement employee.
 - 2) Member Agencies may contact the District Attorney to facilitate investigations against law enforcement employees.
 - 3) If a law enforcement employee has deadly force used against them and the officer did not use deadly force against the subject, the venue agency may request the District Attorney's Office or an outside agency to investigate the incident against the subject. This investigation will be conducted as a normal investigation and will not fall under this protocol.
 - 4) The District Attorney has discretion to decline participation in an optional invocation.
 - 5) In lieu of an optional invocation of the protocol, the involved agency may investigate the matter itself.

3. INVESTIGATIVE AGENCIES, FORMATS, AND RESPONSIBILITIES.

- A. In order to recognize and accommodate the various interests and rules of law that are involved in an Incident, investigations may be performed under three separate formats: criminal investigation, protocol investigation and administrative investigation. Administrative investigations are optional to the employer agency.
 - 1) Criminal Investigation of the Subject: The criminal investigation of the subject has investigative priority over the protocol investigation of the law enforcement employee and the administrative investigation. The criminal investigation of the subject is the responsibility of the venue agency.
 - 2) Protocol Investigation of a Law Enforcement Employee: This will be a joint investigation conducted by the venue agency, the employer agency, and the District Attorney's Office. Investigators assigned to the protocol investigation **must never** be the same investigator assigned to the criminal investigation of the subject or the administrative investigation. The participating agencies are co-equal within the investigation; however, the District Attorney or the District Attorney's designate has the ultimate authority to decide irreconcilable issues.

The venue agency will determine if additional investigators are needed to conduct the protocol investigation.

- 3) Administrative Investigation of Law Enforcement Employee: The administrative investigation is conducted by the employer agency and addresses policy and procedural issues of the department. While the criminal investigators and protocol investigators do not direct their investigative attention to administrative concerns, it is recognized that their results are of interest to the employer agency for its internal use and those results are fully available for that purpose.
 - 4) Venue Determination: When an Incident occurs in part, in two or more jurisdictions, each of those jurisdictions is a venue agency.
 - 5) If for any reason, the venue agency cannot be determined, the District Attorney or the District Attorney's designate will determine the venue agency.
- B. If a venue or employer agency lacks sufficient resources, or when it believes it cannot properly investigate an Incident for another reason, it has two options:
- 1) Obtain criminal investigative assistance from other member agencies.
 - 2) Relinquish criminal investigative responsibility to another member agency.
- C. Scene security: Each agency has initial responsibility for securing the crime scene(s) within its jurisdiction. Ultimate scene security is the responsibility of the venue agency.
- D. The venue Criminalistics Unit has the responsibility for documenting the scene(s) and for the collection, preservation and analysis of physical evidence for the criminal investigation of the subject and the protocol investigation of the law enforcement employee. Administrative investigators have access to all collected evidence and tests.
- E. If an employee of a Criminalistics Unit is involved in an Incident as an actor or as a subject, that Criminalistics Unit will be disqualified from assisting in the investigation of the Incident. The venue agency would have the responsibility to arrange for assistance from another law enforcement member laboratory.
- F. Prior to final relinquishment of the scene, the criminal and protocol investigators will provide the administrative investigators an opportunity to assess the need for further evidence processing.
- G. Notifications: Upon identifying an occurrence as an Officer-Involved Use of Deadly Force Incident, the venue agency shall make the following notifications as promptly as possible:
- 1) Intra-agency officers, as required by that agency's procedures.
 - 2) The employer agency, if applicable and if not yet aware.
 - 3) The District Attorney's Office. (Refer to the on-call list for which investigator to notify.)
 - 4) The Medical Examiner's Office or investigator, when a death has occurred.
- H. If a person is transported to a hospital, an officer (preferably from the venue agency), should accompany the person in order to:
- 1) Locate, preserve, safeguard, and maintain the custody chain on physical evidence.
 - 2) Obtain a dying declaration, a spontaneous statement, a contemporaneous statement, or a statement of then-existing or previous mental or physical state.
 - 3) Maintain custody if the person has been arrested.
 - 4) Identify witnesses and medical personnel.

- 5) Be available for contacts with the injured person's family, if appropriate.
- I. If a law enforcement employee still has possession of the weapon used in the Incident, the supervising officer at the scene shall promptly but discreetly (i.e. in private) obtain possession of the weapon. If the protocol investigators determine that the gun belt is necessary to the investigation, the supervising officer will arrange to secure the gun belt at the same time the weapon is taken. Side arms must not be removed from their holster unless circumstances dictate otherwise. Side arms of law enforcement employees should be replaced as quickly as possible if the officer so wishes, unless circumstances dictate otherwise.
- J. In shooting cases, the supervising officer will check the firearms of all officers present at the time of the Incident and ensure that all discharged firearms are identified by owner and serial number. The supervising officer will document the condition of the inspected firearms.
- K. Collected weapons or instruments shall be placed in the venue agency's evidence until all appropriate testing is accomplished.
- L. Transporting and Sequestering Involved Officers:
 - 1) Officers who were present at the time of the Incident, whether actors or witnesses, will be relieved of their duties as promptly as possible and shall, if possible, be individually transported to their office and sequestered.
 - 2) Involved officers shall not discuss their use of deadly force amongst themselves, fellow officers or others, except their legal representatives.
 - 3) Involved officers may give statements regarding public safety issues or the circumstances of the criminal investigation of the subject.
- M. Involved officers may call their spouses or family and notify them of their well-being.

4. CUSTODIAL DEATHS.

- A. A subject, who is physically in police or corrections custody, falls under the protocol, unless it is an attended death. An attended death is when the death of the subject was anticipated and the result of a medical condition while the subject was under the care of a physician.
- B. If the death of an in-custody subject occurs at a correctional facility or a police agency holding area, the venue agency is the agency having jurisdiction in that area. The correctional facility would be the employer agency.
- C. If the death of an in-custody subject occurs outside a correctional facility, the agency having jurisdiction in the area will act as the venue agency. The employer agency would be the agency that had custody of the subject. Using this scenario, the venue and employer agency could be one in the same.
- D. Custodial death scenes:
 - 1) When an Incident occurs in a correctional facility, a holding facility or other location and other inmates may be witnesses; those inmates should be identified and if possible separated, pending interviews by criminal investigators.
- E. If an in-custody death occurs as the result of a lawful execution order by a Utah court, this protocol will not be invoked.

5. INTERVIEWS.

- A. Law enforcement employees have the same rights and privileges as citizens, including the right to consult with legal counsel prior to the interview and the right to have their lawyer present during the interview.
- B. The interviews by protocol investigators of law enforcement employees, witnesses, and subjects shall be conducted with all primary protocol investigators present unless otherwise agreed upon prior to the interviews. This interview does not have to be conducted immediately but may occur at a later time giving the officer a chance to meet with their legal representative.
- C. If and when the protocol interview becomes custodial, the *Miranda* admonition is applicable. However, if the officer has his lawyer present at the interview, the *Miranda* admonition does not have to be given.
- D. Agency policy and case law permit heads of law enforcement agencies to order their officers to cooperate with criminal investigations being performed by other agencies. Failure to comply with such orders may result in insubordination. When applicable, interviewees may be advised of this provision. However, officers will not be compelled by threats of administrative punitive action (or otherwise) to answer protocol team questions which could be self-incriminating.
 - 1) Interviews of involved officers will be conducted separately. Interviews will normally be recorded. Interviewees will be considered as witnesses unless the circumstances dictate otherwise.

6. INTOXICANT TESTING.

- A. Law Enforcement employees have the same rights and privileges as citizens regarding intoxicant testing. When protocol investigators determine that a law enforcement employee's sobriety is relevant to the investigation, they have these options:
 - 1) Obtain a blood and/or urine sample by consent.
 - 2) Obtain a blood and/or urine sample incident to arrest.
 - 3) Obtain a search warrant.
 - 4) If an arrestee refuses to comply with the request for a sample, attempts will be made to obtain the sample in accordance with case law.
- B. Administrative Investigation test results.
 - 1) Intoxicant test results obtained by protocol investigators are available to administrative investigators.
- C. In the event protocol investigators do not obtain blood and/or urine samples for testing, the employer agency may then seek to obtain samples. The protocol investigators have the first opportunity to obtain blood and or urine samples.
- D. Miscellaneous.
 - 1) Blood is best for alcohol testing, while urine is best for drug screening. Samples of both should be obtained for the most complete results.
 - 2) Samples should be collected promptly after the Incident for most meaningful results.
 - 3) A law enforcement employee may volunteer to provide blood and urine for testing even if protocol and administrative investigators haven't obtained samples. Similarly, a person from whom protocol or administrative investigators have

obtained samples may request that another sample be taken for independent testing. Such a request will be honored; however, the person volunteering this sample is responsible for the expense of the test.

7. AUTOPSY.

- A. The venue investigator from the protocol team will attend the autopsy unless otherwise agreed upon. The Medical Examiner performing the autopsy will receive a complete briefing prior to the examination. This briefing will include all relevant information known at that time.
- B. When the Medical Examiner agrees, the protocol investigator shall assume responsibility for documenting and collecting physical evidence.
- C. Although the Medical Examiner has authority to determine who attends an autopsy, it is usually advisable to allow attendance by a recognized professional criminalist retained by representatives of the decedent, if such request has been expressed before the autopsy has begun.

8. DISTRICT ATTORNEY'S OFFICE.

- A. The District Attorney's Office assumes the following role in protocol investigations:
 - 1) Participate co-equally with the venue and employer agencies in the protocol investigation.
 - 2) If requested, the District Attorney Investigator will contact the on-call attorney to assist and advise the protocol investigators on various criminal law issues.
 - 3) Upon completion of the protocol investigation, analyze the facts of the Incident as well as relevant law to determine if violations of criminal laws exist. If so, prosecute as appropriate.
 - 4) The District Attorney's Office will strive to complete its report and findings within 2 weeks of the completion of the protocol investigation. When appropriate, the District Attorney's Office may, at their discretion, give verbal clearance to the employer agency to allow the employee to return to duty prior to a formal written report.
- B. The District Attorney has its own separate investigative authority. When deemed appropriate by the District Attorney, the District Attorney's Office may perform an independent investigation.
- C. If the protocol investigation results in criminal charges against a law enforcement employee, the affiant on the information filed by the District Attorney's Office shall be the District Attorney Investigator unless otherwise agreed upon by the agency administrators of the protocol team.
- D. In the event criminal charges are filed, the protocol investigative team shall be dissolved and any additional follow-up investigation that is needed to prepare the case for trial shall be handled by the District Attorney's Office. Any officer assigned to the protocol team should make themselves available for trial preparation and court purposes.

9. REPORT WRITING.

- A. All reports will be forwarded to the venue investigator for coordination and insertion into the venue agencies reporting format. Protocol investigators will decide which investigator is responsible for writing a particular report. Protocol investigators should not write more than one report on an interview or event. Protocol investigators should coordinate the writing of all reports and sign off on the accuracy of the report. The venue investigator is responsible for the final report. All protocol investigators will coordinate with the venue investigator to write a final report which documents their participation in the investigation.
- B. Prompt completion and distribution of reports is essential. All agencies and investigators will strive for report completion and distribution within 30 days after the Incident.
- C. Administrative Investigation.
 - 1) The employer agency shall control the reports and findings of the administrative investigation.
 - 2) Interview statements, physical evidence, toxicology test results and investigative leads which are obtained by administrative investigators after ordering law enforcement employees to cooperate shall not be revealed to criminal investigators or protocol investigators without the approval of the District Attorney's Office.
 - 3) Protocol investigators will promptly and periodically brief the administrative investigator(s) of the protocol investigation's progress. The administrative investigators will have access to briefings, the scene(s), physical evidence, reports, and interviewees' statements.

10. NEWS MEDIA RELATIONS.

- A. The lead venue agency has the responsibility for making press releases about the Incident and its investigation. The agency public information officer (or the agency designate) should be kept informed about the details of the case in order to keep the news media informed.
- B. If the employer agency is not also the venue agency, the employer agency should limit its comments to the following areas:
 - 1) The employer-employee relationship.
 - 2) Information that has been cleared for release by the protocol task force.
- C. If the protocol task force investigators determine that the release of a specific piece of information would materially jeopardize the investigation, they shall notify those agencies possessing that knowledge of the hazards of releasing it.
- D. When the final report is delivered to the employer agency by the District Attorney's Office, the employer agency is responsible for the decision to release that report subject to their office policy and GRAMA requirements. The District Attorney's Office will not release the report unless required to by law or GRAMA requirements.

11. ACCESS TO REPORTS AND EVIDENCE

- A. Material that is created or collected by, or at the request or direction of the protocol investigators will be made available in a timely manner to those agencies that have an interest in the investigation, including the criminal and administrative investigators.
 - 1) The material will include written reports, access to the physical evidence, photographs, diagrams, and all recordings.
- B. When the District Attorney's Office concludes that the physical evidence collected for the protocol investigation is no longer needed for criminal law purposes, the employer agency and venue agency shall be notified of that decision so it can assume responsibility for preservation or disposal of such evidence as prescribed by law and departmental policy.

END OF PROTOCOL