Officer-Involved Critical Incident Team Protocol

Memorandum of Understanding

9th Judicial District Law Enforcement

1. GENERAL

It is the consensus of the 9th Judicial District law enforcement agencies that a team of highly trained and skilled investigators, made up of personnel from various law enforcement agencies and the Office of the District Attorney within the 9th Judicial District, be formed to investigate, upon request, critical incidents as defined within Section 3(a) of the Policies and Procedures Protocol. Such a team will be able to provide a thorough and impartial investigation of such incidents without causing a serious diminishment on any one department's resources. This team will also add a level of continuity and credibility to the complex nature of such an investigation.

The 9th Judicial District Critical Incident Team (hereinafter "CIT"), as it shall henceforth be known, will be available to any requesting law enforcement agency within the 9th Judicial District which is investigating a critical incident.

2. CRIMINAL INVESTIGATIVE PURPOSE

The purpose of the criminal investigation is to conduct a thorough and impartial investigation of the highest quality so that a determination can be made by the 9th Judicial District Attorney's office as to whether or not a crime or crimes were committed. Criminal investigators may share information with administrative investigation personnel. Absent the limited purposes allowed by law, criminal investigators must ensure that they do not receive any information by any means that is the result of the administrative investigation.

3. EXECUTIVE BOARD

A. The Executive Board shall consist of the Chief Executive Officer (hereinafter referred to as CEO), or the CEO's designee, of each participating law enforcement agency.

B. The Executive Board shall meet at least on a quarterly basis or as needed. At the first quarterly meeting of each year, it shall be the responsibility of the CIT Team Coordinator to provide a comprehensive update of the CIT's activities to the Executive Board.
C. In order for the Executive Board to conduct business, a quorum shall be present. A quorum is defined as at least five (5) members of the Executive Board. In order for any measure to pass, a majority of the quorum shall vote in favor of the measure.

4. PERSONNEL

A. The 9th Judicial District Critical Incident Team shall consist of certified law enforcement personnel who are designated by each of the participating law enforcement agency CEOs.
B. A Team Coordinator (hereinafter Coordinator) and Alternate Team Coordinator (hereinafter Alternate Coordinator) of the team shall be selected by the Executive Board. A rotation schedule for the position of Coordinator and Alternate Coordinator may be created to limit the burden on any one agency.
C. Any member of the team may be removed upon the recommendation of the Coordinator and with the approval of the Executive Board. A member's CEO may remove that member from the team at any time in the sole discretion of said CEO.

5. PROCEDURES

A. The CIT is available to all law enforcement agencies within the 9th Judicial District to investigate, upon request, a critical incident.
B. The CIT will be activated upon the request of the CEO, or the CEO's designee, having the law enforcement and investigative jurisdiction over the incident.
C. The CIT will operate under the direction of the Coordinator working in conjunction with the requesting agency's CEO or the CEO's designee.

6. NOTIFICATION

A. All requests for CIT activation shall be made to the Coordinator or, if s/he is unavailable, to the Alternate Coordinator, who will then serve as the CIT Coordinator for the incident. A list of three alternate CIT members designated to activate the CIT in the event that the Coordinator and the Alternate Coordinator cannot be reached

shall be made available to participating agencies by maintaining a current list of personnel at the Garfield County Communications/Dispatch Center.

B. The Coordinator, working in conjunction with the Lead Investigator, shall assess the details of the incident and decide which personnel and what equipment may be needed for the investigation.
C. The Coordinator will contact the CIT members with response instructions.
D. Based upon the best available information at the time, the Coordinator shall designate a Lead Investigator to command the investigation of the critical incident.

7. EQUIPMENT / TESTS / PERSONNEL / COSTS

A. If possible, all necessary equipment and logistical support shall be supplied by the requesting agency, and/or if additional or specialized equipment is needed, then the cost of obtaining such equipment shall be borne by the requesting agency.
B. All ordinary personnel costs shall be the responsibility of the agency providing the members to the team and shall not be the responsibility of the requesting agency. Extraordinary personnel costs must be approved by the requesting agency prior to being incurred.
C. All investigative team members, regardless of jurisdiction, shall be deemed to be on duty while responding to a call out.

8. ANNUAL UPDATE

The Coordinator shall prepare and present to the CEOs an annual written report describing the activities of the team for the previous year. This annual report shall be presented no later than February 15 of each year.

9. INVESTIGATIVE FORMAT

The investigative format of these types of cases is complex due to the need for concurrent criminal and administrative investigations. Integrating and coordinating the various interests (administrative investigation, peer support teams, shooting review boards, coroner's office, District Attorney, media, citizen review boards, etc.) involved in these incidents is challenging with a high potential for conflict. In order to adhere to the various rules of law specific to the criminal and administrative investigations, the criminal investigation shall have investigative priority over the involved officer's agency administrative investigation.

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9th Judicial District Law Enforcement

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for security reasons.

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Policies and Procedures Protocol

9th Judicial District Law Enforcement

1. CRIMINAL INVESTIGATION

Overview of Investigative Responsibilities

Investigations of critical incidents involving police employees often place 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, the 9th Judicial District Critical Incident Team (hereinafter referred to as CIT) must ensure that the investigation has both the appearance and reality of a thorough, professional, and objective investigation. Agencies should assign their very best personnel to investigate these incidents. The incident itself is often judged by the quality of the investigation.

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 that the involved officer(s) know(s) what to expect. Two important goals of the criminal investigation are to:

a. Maximize the accuracy and thoroughness of the investigation; and
b. Minimize further trauma to the officer and her/his family. It is recognized that each critical incident investigation is unique and that, therefore, some variation in the following procedures may be appropriate.

2. INVOCATION OF PROTOCOL

This protocol shall only be invoked if a critical incident exists as defined by paragraph 3(a) below. In addition, this protocol shall be invoked upon the request of the Chief Executive Officer (hereinafter referred to as the CEO), or the CEO's designee, having the law enforcement and investigative jurisdiction over the incident, and upon the approval of the CIT Coordinator (hereinafter referred to as Coordinator).

3. DEFINITIONS

a. **Critical Incident**: An event occurring in the venue of participating agencies involving two or more people, in which a police agency employee is involved as an actor, victim, or custodial officer, and where a fatal injury or serious bodily injury occurs, or where a substantial risk of death occurs. Such incidents include, but are not limited to:

   i. Intentional and accidental shootings, including police tactical incidents involving SWAT teams;
   ii. Intentional and accidental use of deadly weapons;
   iii. Assaults with a deadly weapon upon police officers and on other police employees who are on duty or are acting for a law enforcement purpose;
   iv. Attempts by police employees to make arrests or to otherwise gain physical control for a law enforcement purpose where fatal injury occurs;
   v. Physical altercations, mutual combat, and domestic violence in which the police employee is acting in a private citizen capacity;
   vi. 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 a toxic substance; however, for all custodial death investigations, the custodial agency shall also be deemed the Venue Agency;
   vii. Any vehicle fatality involving a police officer;
   viii. After, although not necessarily as a proximate cause of, police gunfire directed at a suspect or a suspect vehicle;

ix. Police pursuits wherein the suspect vehicle, which is being pursued by police vehicle(s), collides with another vehicle, a pedestrian, or an object, and causes death or substantial risk of death;

x. Police pursuits wherein the police vehicle collides into another vehicle, a pedestrian, or an object, and causes death or a substantial risk of death; and

xi. Vehicle accidents (non-pursuits) involving police vehicles where death occurs or a substantial risk of death occurs.

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

b. **Fatal Injury**: Death.

c. **Deadly Physical Force**: Force, the intended, natural, and probable consequences of which is to produce death and which does, in fact, produce death.

d. **Serious Bodily Injury**: An injury that poses substantial risk of death.

e. **Venue Agency**: The state, county, or municipal law enforcement agency of the 9th Judicial District within whose geographical jurisdiction the incident occurs.

f. **Employer Agency**: The agency with which the involved police employee is employed.

g. **Criminal Investigators**: Those investigators assigned by the Coordinator to conduct the criminal investigation of the incident.

h. **Administrative Investigators**: Those investigators assigned by the Employer Agency to conduct the administrative investigation of the incident.

i. **Member Agencies**: The law enforcement agencies that are signatories to this policy and procedures protocol.

j. **Less-Lethal Weapons 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 to that person.

k. **Impact or Intermediate Weapons**: Includes, but is not limited to, batons, expandable batons, canines, tasers, pepper balls, and other specialty impact weapon systems.

l. **Police Agency Employee**: A person compensated by a law enforcement agency, or an authorized volunteer of that law enforcement agency, who is authorized to perform acts for the benefit of, and subject to the control of, that agency.

m. **Involved Officer**: A police employee, whether on duty or off duty, who is involved in a critical incident as an actor, victim, or custodial officer. When circumstances warrant, a witness officer may be deemed an involved officer for purposes of this protocol (e.g. shooting where one officer fires her/his firearm and the other officer does not).

4. INVESTIGATIVE AGENCIES, FORMATS, AND RESPONSIBILITIES

a. The investigation is required to follow the rules of law which apply to all criminal proceedings, including constitutional, statutory, and case law regarding the rights which are covered by the 4th, 5th, 6th, and 14th Amendments to the Constitution of the United States of America and any corresponding rights covered by the Constitution of the State of Colorado.

b. The investigation shall be performed in a thorough, fair, complete, and professional manner which is free of conflicts of interest.

c. Venue Determination

   i. Generally, the agency within whose geographical jurisdiction (venue) the incident occurs shall be the Venue Agency. Any incident involving an officer employed by the FBI, the DEA, the BLM, the U.S. Forest Service, or any other law enforcement agency of the United States of America will generally be investigated by the agency within whose geographical jurisdiction the incident occurs. However, all federal agencies may investigate any incident as the Employer Agency.

   ii. When an incident occurs in two or more jurisdictions, the following shall apply:

      1. Where the incident occurs within city/town limits, the local municipal law enforcement agency shall be the Venue Agency;
      2. Where the incident occurs in unincorporated areas of a county, the Sheriff's Office of the particular county in which the incident occurs shall be the Venue Agency.

   iii. 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 Venue Agency(ies) shall be:

      1. The Employer Agency of the involved officer(s) if the involved officer(s) is/are employed by either boundary agency;

2. Both boundary agencies if the involved officer(s) is/are employed by both; or
3. The agency which has the greater interest in the case by virtue of having the predominant police involvement in the incident by virtue of having had the majority of acts leading up to the incident occurring within the jurisdiction.

iv. When death occurs while a suspect/subject is in custody, the Venue Agency is the agency having custody of the subject at the time of death, except that when death occurs at a certified medical facility (outside the original venue) the original agency remains the Venue Agency.

d. Scene(s) Security

i. The Venue Agency shall have the initial responsibility for immediately securing the incident scene(s) within its jurisdiction. The responsibility includes preservation of the integrity of the scene(s) and its/their contents, access control, and the identification and sequestration of witnesses. Responsibility may be changed by the Coordinator or the Lead Investigator.

e. Crime Scene(s)

i. Unless the Director or Assistant Director, or her/his designee, of the Colorado Bureau of Investigation (hereinafter "CBI") determines that the CBI cannot provide this service, the CBI shall be selected for documentation of the scene(s) and for the collection, preservation, and analysis of physical evidence. If the CBI cannot provide this service, then the Coordinator shall designate the agency and personnel to provide this service.

ii. When possible, at least one member of the CIT shall be present, and remain, at the incident scene(s) to work in conjunction with the criminalists.

iii. Prior to the final relinquishment of the scene(s), the CIT Investigators and the criminalists will provide the Administrative Investigators an opportunity to assess the scene(s).

f. Notifications

i. Upon identifying an occurrence as a critical incident, the Venue Agency(ies) shall make the following notifications as promptly as possible:

1. Inter-departmental officers, as required by that agency's procedures. This is to include personal legal representation as required by each Employer Agency's procedures.
2. The Employer Agency(ies), if applicable and if not yet aware.
3. The Coordinator or her/his designee. CIT personnel will be responsible for the following notifications:
    a. The District Attorney, the Assistant District Attorney, or Chief Deputy District Attorney;
    b. The CBI; and
    c. If not already notified, the appropriate Coroner's Office upon confirmation of a fatality. This is a statutorily required notification.

5. INVESTIGATIVE PROCEDURES / LEAD INVESTIGATOR

Upon invocation of this protocol, the Lead Investigator shall be guided by the following:

a. **Investigative Unit Notification and Call-out**
    i. Establish 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.

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

c. **Priority Assignments**
    Some priority assignments will likely preclude some personnel from attending the on-scene briefing and crime scene walk-through.
    i. Make needed assignments prior to responding to the scene
    ii. Assign detectives/lab personnel to the hospital scene
    iii. Assign detectives/lab personnel to process the involved officer for evidence

d. **Protect and Secure Scene(s)**
    Respond to the scene and take control of crime scene(s) if this has not already been done. Consider the following:

i. Should scene(s) be expanded? Are suspect's approaches and escape routes protected? The escape route may contain discarded evidence (clothing, gun, etc.)

ii. Involved officer and witness officer may be crime scenes. If still on scene, consider photographing them, evidence collection, inspection of witness officer's firearms, and documentation of firearm status.

iii. Make arrangements for involved officer to be transported and sequestered, on a voluntary basis, from scene to pre-designated location with an assigned gate keeper.

iv. Evaluate media perimeter. Are crime scene screens needed?

v. Consider multiple crime scenes (e.g. location of body vs. location of assault, suspect her/himself, suspect residence, suspect/victim vehicle, arrest location, etc.)

e. **Briefing**

If a public safety briefing has not been achieved between the involved officer and her/his supervisor, then the Lead Investigator shall ensure that such a briefing is accomplished. The Lead Investigator shall coordinate an on-scene briefing with the Venue Agency's officer or supervisor in charge, ensuring that investigators are provided an opportunity to view the scene and obtain all available information so they can effectively complete their individual assignments.

i. 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.

ii. The Lead Investigator shall assemble necessary personnel for briefing.

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

iii. What was touched or moved (by officers, witnesses, victim, suspect, etc.)?

iv. Did ambulance/fire personnel disturb anything?

v. Was lighting changed?

vi. What was the first officer's path of travel through the scene?

vii. Is there any transient evidence that will be destroyed if we don't seize it immediately?

f. **Witnesses**

Ensure that the following has taken place:

i. Isolate witnesses. This includes both involved officers and witness officers. Do not allow them to talk among themselves.

ii. Remove unauthorized and unnecessary personnel from the scene.

iii. Quickly obtain information from witnesses, including witness officers remaining on scene, in order to more intelligently protect the scene and identify other scenes/evidence.

g. **Crime Scene Walk-Through (Investigative Team)**

i. Determine if the scene allows for a walk-through at this time.

ii. Is a warrant required? Presume a warrant is required.

iii. Does transient physical evidence or a bloody scene preclude a walk-through?

h. **Crime Scene Log**

i. Start a crime scene log if one has not already been started. The crime scene log is applicable to the inner perimeter only.

i. **Assignments**

After completing on-scene briefing and ensuring that all crime scenes are controlled, the following personnel assignments should be made:

i. Process involved officer(s) and/or witness officer(s) through detective/CSI teams if not already accomplished as a priority assignment.

ii. Conduct critical witness interviews based upon briefing information.

iii. Canvass for potential witnesses.

iv. Write applicable search warrants and affidavits.

v. Process crime scene with the applicable investigators and crime scene personnel. Ensure all officers participating in the search and processing of the scene have read a copy of the search warrant and affidavit.

vi. Suspect follow-up or interview/interrogation.

vii. Officer interviews: Generally, detectives assigned to involved officer interviews can complete other assignments prior to doing the involved officer interviews as witness interviews and crime scene familiarity must occur first. When assigning detectives to interview the involved officer(s), consider pre-interview assignments which balance the need for familiarity against the need to conduct expedient interviews.

j. **Suspect/Decedent's Family**

i. 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.

ii. Do not delay contact or notification. Criminal investigators should accompany the coroner's office in any death notification to the decedent's family.

iii. Treat family with care and respect.

iv. Provide information about the officer-involved incident process and any review or oversight that may exist.

v. Whenever possible, ensure advance notification to the family prior to news releases/press conferences.

vi. Consider scene clean-up after criminal investigation is complete.

k. **Manage and Coordinate the Investigation**

i. Continually assess the situation and assign necessary resources.

ii. Ensure timely and effective communication between detective teams assigned to the crime scene, suspect, hospital, witnesses, and the involved officer(s).

iii. Manage the crime scene, preliminary and follow-up investigations, and direct the investigation in accordance with the standards contained in this protocol.

6. INTERVIEWING POLICE EMPLOYEES

a. It is the intent of the CIT to only conduct criminal investigations and not become involved in administrative review of officer incidents. It should be made particularly clear to involved officers that *Garrity* advisements do not apply in the criminal investigation.

b. Interviews should be conducted in a sterile setting, void of interruptions and any audio contamination. Video equipped interview rooms offer the most viable setting for the interview. When video equipment is available, all interviews shall be videotaped and shall have an audio recording backup. When video equipment is not available, interviews must be, at a minimum, audio recorded.

c. Upon request, the agency administrative review team shall be provided with copies of all interview recordings. At the conclusion of the criminal investigation,

or upon the release of the involved officer(s) by the CIT, the administrative review team may then conduct its interview(s).

d. Prior to the investigative interview of the involved officer, the involved officer shall be informed that the interview is a non-custodial investigative interview and that all statements are voluntary. The involved officer shall be entitled to conclude the interview at any time. Should the involved officer end the interview, the interview shall be concluded and the administrative review team may then proceed under advisement of *Garrity*. Any self-incriminating information obtained by the administrative investigation shall not be disclosed to any member of the CIT.
e. If it is not possible to interview the involved officer(s) within a reasonable period of time after the incident, then the involved officer(s) will be allowed to leave with the understanding that s/he/they will be asked to return for an interview as requested by the CIT.
f. The CIT has no responsibility to contact legal representation or mental health providers for the involved officer(s).
g. Because officers frequently remember details of the incident in the days following the incident, the involved officer(s) may be asked for voluntary follow-up interviews to inquire about further details and to address inconsistencies and/or discrepancies, if any.
h. Walk-Through
    i. A walk-through, if one occurs, should occur within a reasonable time after the incident and is dependent upon ensuring there are no cross-contamination issues present.
    ii. The walk-through shall be completely voluntary. Video recording of the walk-through shall also be completely voluntary. The involved officer may consult with the Peer Support Team psychologist and her/his attorney prior to consenting to a walk-through.

        The purposes of a walk-through are as follows:

        1. To provide the involved officer an opportunity to recount the incident (unrehearsed) from her/his perspective while at the crime scene;
        2. To supplement, confirm, and clarify interview information; and
        3. To resolve conflicts, confusion, and inconsistencies, if any there be.

iii. At a minimum, all necessary criminal investigators and crime scene personnel, as well as the District Attorney or his/her designee, and administrative investigators, should be present.

7. INTOXICANT TESTING

a. As soon as practicable, the involved officer(s) shall be offered the opportunity to take a voluntary blood test. If the officer(s) voluntarily submit to the test, the intoxicant test results will be made available to the administrative review team.

b. Intoxicant testing compelled by the employer agency's policy will be conducted by administrative investigators after specifically advising the officer that such testing is separate and apart from the criminal investigation. Intoxicant test results obtained under these circumstances shall not be made available to the CIT.

8. AUTOPSY

a. At least one (1) member of the CIT shall attend the autopsy and shall take possession of any evidence seized at the autopsy.

b. The autopsy pathologist will receive a complete briefing which shall include all information known at that time that may be relevant to the cause and manner of death.

9. DISTRICT ATTORNEY

Attorneys from the Office of the District Attorney have the following roles in critical incident investigations:

a. Assist and advise the CIT on relevant criminal law issues that may arise including, but not limited to, *Miranda*, voluntariness, search and seizure, probable cause to arrest, detentions and releases, elements of crimes, immunity, legal defenses, etc.

b. Upon completion of the criminal investigation, analyze the facts, evidence, and relevant law pertaining to the incident to determine if a crime has been committed by the involved officer and/or other parties to the incident.

10. REPORT WRITING

a. All criminal investigators shall prepare thorough and complete reports documenting their participation in the investigation.
b. The Lead Investigator shall have the ultimate responsibility to ensure report writing and to collect reports from all investigating officers who have participated in the investigation of the incident. This responsibility shall include collecting reports from participating officers from other agencies.
c. All reports shall be reviewed by the Coordinator prior to submission of reports to the District Attorney for review.

11. NEWS AND MEDIA

a. The Venue Agency and/or the Employer Agency shall be responsible for all news media relations.
b. In order to maintain the integrity of the investigation, all media releases shall be reviewed with the Coordinator, the Lead Investigator, the CEO of the Venue Agency and/or Employer Agency, and the Office of the District Attorney prior to dissemination.

12. CUSTODY OF EVIDENCE

The custody and control of physical evidence shall be the responsibility of the Employer Agency of the Lead Investigator unless other arrangements for such custody and control are appropriate.

13. ACCESS TO REPORTS AND EVIDENCE

a. CIT report archives shall be held by the Employer Agency of the Lead Investigator.
b. Upon completion of the investigation and after review by the Office of the District Attorney, materials that are created or collected by, or at the request or direction of, CIT criminal investigators (including CBI) shall be made available to those agencies that have an interest in the investigation, including the administrative investigators.

c. These materials shall include the following:

i. Reports (prepared and collected);
ii. Access to physical evidence (view only);
iii. Photographs and diagrams; and
iv. Video/audio recordings

14. AFTER ACTION REVIEW

At the conclusion of an investigation, there will be an After Action Review (hereinafter referred to as Review) and critique of actions taken. The purpose of this Review will be to ensure that a thorough and complete investigation has taken place. This Review will also serve as a means to evaluate, and make suggestions to improve, the performance of this unique multi-jurisdictional investigative team. All attempts will be made to have the Review prior to submission of documents to the District Attorney's office. This will enable the Coordinator to make additional assignments if deemed necessary by the investigation critique. Attendance by representatives of the following team members is vital to have a meaningful review/critique: Venue Agency, Employer Agency (if different from the Venue Agency), District Attorney's office, coroner's office, and the CBI. The Review will be open to all CIT members and appropriate command staff from involved agencies. They are encouraged to attend to help keep communication open. The Review shall be closed to the media. All media releases shall be in accordance with the provisions of Section 11 of this protocol.

15. CHANGES TO OFFICER-INVOLVED CRITICAL INCIDENT TEAM PROTOCOL POLICY AND PROCEDURE

Any member agency CEO may request a change to these policies and procedures. To facilitate the change, the CEO requesting the change must contact the Coordinator and request that a meeting of the Executive Board be called for the purpose of considering the proposed change(s).

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