

Shasta County Multi-Agency Officer Involved Critical Incident Protocol

301.1 FORWARD

Investigations of critical incidents involving law enforcement agency personnel (hereafter referred to generically as "officers"), are frequently more complex and demanding than other critical incidents which do not involve law enforcement officers. Applicable administrative and criminal statutory and case law is complex. Scientific evidence collection and analysis are frequently required and often at issue long after the incident. Questions may arise about the propriety of a law enforcement agency conducting an investigation in which one of its officers is the subject of an investigation. Public and news media attention are usually intense. The potential social, civil, administrative, and criminal consequences of an officer's actions can be profound and affect many parties. The various competing interests may adversely affect the investigation of such a matter if adequate safeguards are not delineated in advance. When several agencies are involved, differences in policy, procedure, personnel, resources, and interests may potentially conflict with and hamper the investigation process. In consideration of these factors, the guidelines set out in this protocol were developed to serve as a general "model" for individual agencies to aid in development of appropriate policies, directives, and procedures for the investigation of officer involved critical incidents. The goal of these guidelines is to help ensure that such incidents are fully and fairly investigated and that proper dispositions of critical incident investigations are made based upon all the legally available relevant evidence. While this document represents the consensus in concept of member agencies as to how such cases are to be investigated, the guidelines permit individual agencies to make modifications in order to meet individual agency requirements. These are guidelines. They are not statutes, ordinances, policies, or regulations. Furthermore, these guidelines are not intended to increase the civil or criminal liability of member agencies or their officers and they shall not be construed to create any mandatory obligations to, or on behalf of, third parties. Agencies who are signatories to this protocol have agreed to review their related policies and make every effort to modify them to avoid conflict with these guidelines.

301.2 GENERAL POLICY STATEMENT

Investigations of critical incidents involving law enforcement agency personnel, hereafter referred to as officer involved critical incidents, will be performed to develop all available relevant information about the incident for ultimate presentation to the District Attorney for his determination of whether criminal liability exists. This type of investigation shall hereafter be referred to in this protocol as an "incident investigation." Incident investigations shall be performed in a manner which provides for a thorough and professional investigation that avoids conflicts of interest. This protocol is not intended to interfere with an employing agency's policy of providing peer support, family notifications, or other personal needs to an officer involved in a critical incident. The investigation of each critical incident will commence as promptly as possible after its occurrence. It shall be the jurisdictional agency's department head or designee's responsibility to determine whether or not to activate this protocol.

Shasta County Sheriff's Office

Shasta County SD Policy Manual

Shasta County Multi-Agency Officer Involved Critical Incident Protocol

The goals of an incident investigation are to:

1. Determine the existence or nonexistence of a crime; that is, to determine whether the nature and quality of the conduct are of a type prohibited by statutes, the violation of which is punishable by criminal penalties;
2. If a crime has occurred, determine:
 - a. The identity of the person(s) responsible;
 - b. The degree of the crime;
 - c. Any legal or factual defenses to the crime; and
 - d. The existence of any factors which would mitigate or aggravate punishment for the criminal conduct

301.3 DEFINITIONS

1. "Officer involved critical incident," "critical incident," or "incident": Any incident in which an officer is involved and serious injury, death, or the serious likelihood of death, results. Such incidents include, but are not limited to:

- a. Intentional or accidental shootings;
- b. Intentional or accidental use of physical force or any other deadly or dangerous weapon/object;
- c. Death of a person while in law enforcement custody or under law enforcement control. Exception: If an officer is not believed or suspected to be involved in the serious injury or death of a jail inmate (e.g., suicide), the provisions of this protocol will not automatically apply;
- d. Any other incident upon the request of the department head or their designee of the employing agency.

2. "Jurisdictional agency"

The agency or agencies within whose geographic jurisdiction the incident occurs. The jurisdictional agency shall establish the command post for the incident

3. "Employing agency"

The agency which employs the officer involved in the incident. The jurisdictional agency shall establish the command post

4. "Officer" or "officer involved"

Any law enforcement agency personnel whose act, whether intentional or unintentional, may be a contributing or proximate cause of the injury or death of another person

5. "Proximate cause"

A cause which, in a natural and continuous sequence, produces the injury or death, and without which the injury or death would not have occurred

Shasta County Sheriff's Office

Shasta County SD Policy Manual

Shasta County Multi-Agency Officer Involved Critical Incident Protocol

6. "Contributing cause"

A factor that, though not the primary cause, plays a part in producing the injury or death

7. "Investigating agency"

The law enforcement agency that leads the critical incident investigation. The investigating agency is responsible for the coordination of the overall investigation and shall ensure all reports necessary to conduct booking and criminal prosecution are submitted to the District Attorney in a timely manner.

8. "Incident investigators"

Those persons assigned by the jurisdictional or investigating agency to conduct or assist in the critical incident investigation

9. "Electronic Request"

Electronic requests for the attached protocol can be, but is not limited to, department issued electronic devices such as, cell phones, laptops, PDA's and MDC's, etc.

301.4 INVESTIGATIVE RESPONSIBILITY

Personnel trained in officer involved shooting or critical incident investigation techniques will be maintained by those agencies who are signatories to this protocol.

1. The responsibility for investigating officer involved critical incidents shall be retained by the jurisdictional agency, except that:

a. The jurisdictional agency may seek investigative assistance from other law enforcement agencies;

b. The jurisdictional agency may elect to relinquish the investigation authority to another agency; if so, that other agency will thereafter be designated as the investigating agency;

c. In the event that officers from more than one agency are involved in the critical incident, consideration to utilize an uninvolved outside agency may be deemed appropriate by the jurisdictional agency.

d. In implementing the attached protocol the lead agency may elect to utilize the unified command ICS system. This is primarily to be utilized in a critical incident protocol where more than one agency is being investigated.

2. The District Attorney has independent investigatory powers and responsibilities and may conduct a separate investigation of the incident.

301.5 ROLE OF THE DISTRICT ATTORNEY

The District Attorney or his designee has the following roles in an officer involved critical incident investigation:

Assigned Deputy District Attorney(s):

Shasta County Sheriff's Office

Shasta County SD Policy Manual

Shasta County Multi-Agency Officer Involved Critical Incident Protocol

1. Assist and advise the incident investigators on the various legal issues which may arise, including assistance in the preparation of search warrants, if necessary.
2. Monitor the law enforcement investigation, with the assistance of District Attorney investigators if deemed necessary by the assigned Deputy District Attorney(s), to objectively and independently ensure the integrity of the investigation and process, and to obtain first-hand knowledge of the facts and circumstances involved in the incident so that the District Attorney is ultimately able to determine if the officer(s) actions were justified or if potential criminal liability exists.
3. Following completion of the incident investigation, the investigation reports, and evidence collected, determine if criminal liability exists. If so, prosecute as appropriate within the sound discretion of the District Attorney.

Assigned District Attorney Investigator(s):

1. Upon the request of the jurisdictional and/or investigating agency and with the concurrence of the District Attorney or his designee, assist in the incident investigation.
2. When deemed necessary by the District Attorney or his designee, conduct an independent investigation separate from that of the jurisdictional and/or investigating agency.

301.6 NOTIFICATIONS

Upon identifying an incident as being an "officer involved critical incident," the jurisdictional agency shall make the following notifications as promptly as possible:

1. Intra-department personnel as required by that agency's procedures
2. Employing agency
3. District Attorney or his designee
4. Upon confirmation of a fatality, the Sheriff-Coroner's Office

301.7 INTERVIEWS

1. Interviews with officers or other individuals, whether they are directly involved or witnesses in an incident, should be audio and/or video tape recorded.
2. Each officer who is interviewed should be interviewed separately from other witnesses unless circumstances dictate otherwise.
3. With the input of the investigating agency, the employing agency shall determine the location of the officer(s) interview(s).
4. If and when the interview of an officer becomes a custodial interrogation, the provisions of the Fifth Amendment and Miranda v. Arizona line of cases shall be applicable.
5. To ensure the voluntariness of an interview with an officer who was involved in a critical incident, but where the interview has not reached the level of a custodial interrogation, the incident investigator(s) may wish to advise the officer as follows:

Shasta County Sheriff's Office

Shasta County SD Policy Manual

Shasta County Multi-Agency Officer Involved Critical Incident Protocol

- a. The officer is not obligated to answer incriminating questions and answers which he/she provides may be used against him/her in court.
 - b. The officer is not in custody and is free to leave and/or terminate the interview at any time.
 - c. Punitive action will not be taken against the officer if he/she refuses to answer incriminating questions posed by the incident investigators. (Note: Punitive action may result from refusal to answer questions posed by the internal affairs or administrative investigators of the employing agency).
6. Except for interviews or interrogations to which the Fifth Amendment and Miranda line of cases may apply, a request by an officer involved in the critical incident to consult with his/her representative prior to being questioned by the incident investigators will be honored except when the information being sought concerns compelling public safety issues. Due to the timeliness of the information needed to manage the scene of a critical incident, the first supervisor on scene should ask the involved officer public safety questions. If the officer involved refuses to answer these types of questions, he/she should be ordered to do so by a supervisor from his/her employing agency. (If the officer is ordered to answer questions, the response is deemed to have been coerced.) Examples of compelling public safety issues include, but are not limited to:
- a. Crime scene perimeters
 - b. Type of weapon(s) used or possessed
 - c. Number of rounds fired
 - d. Direction and angle of rounds fired
 - e. Number, description, and/or identity of persons involved and their last known location or direction of travel
 - f. Description of vehicle(s) involved and last known location or direction of travel
7. Except as specified by Government Code section 3303, a request by an officer to have a representative present during the interview may be applicable.
- a. The request can be treated as if it were a request by a civilian witness for the same privilege.
 - b. To ensure the integrity of each interview, the officer's representative should be admonished that the officer's recollections and other comments about the incident are not to be discussed or shared with other witnesses.
8. If an officer involved in a critical incident discusses the incident with their representative, the representative has no privilege to refuse to disclose the contents of that discussion unless the representative is a lawyer, physician treating the officer, clergyman, or psychotherapist.
9. A peace officer may not be compelled to submit to a polygraph or voice stress analyzer examination and, should the officer refuse to submit, Government Code section 3307 prohibits several specific uses of that refusal.
10. Administrative interview:

Shasta County Sheriff's Office

Shasta County SD Policy Manual

Shasta County Multi-Agency Officer Involved Critical Incident Protocol

The criminal investigation shall take precedence over, and be separate from, the administrative or internal investigation.

a. Administrative interviews should be conducted separately and independently from the incident investigation and associated interviews. However, the employing agency may elect to monitor the incident investigation and interviews in the interest of avoiding duplication of efforts and/or duplicate interviews.

b. The employing agency should follow their agency's established policy for the administrative investigation.

c. If and when the interview focuses on matters which are likely to result in punitive action against a public safety officer, he/she has the right, upon his/her request, to have a representative (as defined in Government Code section 3303(h)) present during the interview. For other law enforcement agency employees, the rights afforded to the employee by the employing agency as established by that agency or its governing body should be complied with.

11. Government Code section 3300, et seq., also known as the "Public Safety Officer Procedural Bill of Rights Act," may be applicable to some interviews of public safety officers who are questioned in connection with an incident.

a. The Act is not applicable to interviews with public safety officers who are being interviewed by other than their employing agency.

b. The Act is not applicable to interviews with public safety officers (even when being interviewed by their employing agency) when the investigation is concerned solely and directly with alleged criminal activities.

301.8 INTOXICANT TESTING

1. If the incident investigators determine that an officer's state of sobriety is relevant to the incident investigation, they shall proceed as they would with any civilian subject in a similar situation. Specifically, the investigators should obtain a blood sample for alcohol testing and/or a urine sample for drug and/or alcohol testing after obtaining the officer's valid consent, pursuant to a search warrant, probable cause exists to arrest, or incidental to the arrest of the officer for a crime.

2. In the event that appropriate physiological samples are not obtained from an officer as part of the incident investigation, the employing agency may wish to obtain such sample(s) for employment-related purposes. The options are to:

a. Obtain the sample(s) with the officer's valid consent; or

b. Obtain the sample(s) by ordering the officer to provide such sample(s) based upon the employer-employee relationship.

3. Some departments may wish to establish blanket orders regarding intoxicant testing of any officer involved in a critical incident.

Shasta County Sheriff's Office

Shasta County SD Policy Manual

Shasta County Multi-Agency Officer Involved Critical Incident Protocol

4. If the employing agency wishes to seek a physiological fluid sample for administrative purposes after the incident investigators have either been unable to obtain a sample or have decided against obtaining one, the employing agency will be accommodated as much as possible. The employing agency's efforts to obtain a sample should not interfere with the incident investigation.
5. An officer may volunteer to provide a physiological fluid sample for intoxicant testing even if the incident investigators and employing agency have not obtained one. Similarly, the officer from whom a sample has been taken by the incident investigators or the employing agency may wish to have a second sample taken for independent testing.

301.9 NEWS MEDIA RELATIONS/PUBLIC INFORMATION OFFICER

While any agency with knowledge of a critical incident cannot be prohibited from making statements to the news media, these guidelines are established:

1. A representative of the investigating agency, which may also be the jurisdictional agency, is in the best position to comment about the facts of the case and the progress of the investigation.
2. Other agencies may also be contacted by the news media for information about an incident.
3. As a reminder the general public will have access to a variety of department communication . (Review number 4 below).
4. It should be noted that all officers are subject to public information requests when utilizing department issued equipment such as laptops, PDA's, MDC's, cell phones, emails etc.
 - a. The employing agency Fewer problems will arise, especially at the early stages of the investigation, if the employing agency limits its comments to the following areas: (1) The employer-employee relationship (2) Factual material revealed by the employing agency's own internal investigation of the incident (as opposed to information gained from the incident investigators) (3) Information which has been cleared for release by the investigating agency (4) It shall be the employing agency's responsibility to release the name of the involved employee. This can be accomplished by the investigating agency with the approval from the employing agency.
 - b. The District Attorney.
 - c. The Criminalistics Laboratory. Information released will generally be confined to laboratory procedures including scientific facts, principle, and testing. The results or conclusions of forensic analysis will generally not be released without clearance from the investigating agency.
 - d. The Sheriff-Coroner's Office. The Sheriff-Coroner's Office may release information which generally will be limited to the following: (1) The Coroner's role and responsibilities in the investigation (2) Date, time, and location of the autopsy, the forensic pathologist's name, and the agency representatives present (3) Autopsy findings, including the cause, mode, and manner of death, and toxicology test results
3. If incident 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.
4. Interruptions of the assignments being carried out by the incident investigators will be minimized if the investigating agency assigns a particular individual (e.g., a "public information officer") to be the sole contact person with the news media. If this is not feasible, a lead investigator or supervisor should be assigned to media relations.
5. Agencies and individuals who are not well informed and intimately involved with the progress of the investigation should not make statements to the news media.
6. As in all law enforcement investigations, care must be taken to ensure that intentionally misleading, erroneous,

Shasta County Sheriff's Office

Shasta County SD Policy Manual

Shasta County Multi-Agency Officer Involved Critical Incident Protocol

or false statements are not made. 7. The interest of the public's right to know what occurred must be balanced with the need to maintain the integrity of the investigation and the right of a defendant to receive a fair trial.

301.10 ACCESS TO REPORTS AND EVIDENCE

Investigative material (e.g., reports, diagrams, photographs, or tape recordings) prepared, created, or collected by the incident investigators, will be made available in a timely manner to those agencies which have a "need to know" and which are legally authorized to receive the information. Agencies which have a "need to know" may include:

1. Investigating agencies
2. The employer of officers involved in the critical incident
3. The District Attorney
4. The Criminalistics Laboratory
5. The Sheriff-Coroner's Office
6. Other authorized personnel within the chain of command of those agencies which are signatories to this protocol

301.11 PROCESSING OF INVOLVED OFFICER(S)

Each officer involved in the critical incident should be processed in a timely manner according to the investigating and/or employing agency policies and procedures to collect and document forensic evidence necessary for a thorough and complete investigation. An identification technician should be assigned to these and other relevant tasks, including, but not limited to, the following:

1. Arrange for the collection of the involved officer's blood/urine sample. This collection may include DNA, buccal swabs and will be on a voluntary basis absent probable cause.
2. Document, photograph, and examine the involved officer's clothing, duty belt, weapon(s), and other equipment that may have been utilized during the incident. Physical collection of these items should be done on a case by case basis as necessary to complete a thorough investigation.
3. When an officer utilized any type of duty weapon that is relevant to this protocol that duty weapon will be released in compliance with California Department of Justice Law Enforcement Gun Release (LEGR) process. The requirement in Section 12021.3 for "(a)ny person who claims title to any firearm that is in the custody or control of a court or law enforcement agency and who wishes to have the firearm returned to him or her" to submit an approved LEGR, likely does not apply to a law enforcement agency that is seeking the return of an agency-owned firearm because an agency is not a person and therefore, cannot be subject to a firearms eligibility determination. If the officer involved shooting involves a firearm that is owned by an individual officer rather than the employing agency a LEGR is required by law.

Shasta County Sheriff's Office

Shasta County SD Policy Manual

Shasta County Multi-Agency Officer Involved Critical Incident Protocol

4. All crime scenes should be identified as soon as possible. Reasonable effort should be made to secure each crime scene with crime scene tape and security personnel. These crime scenes shall comply with jurisdictional agency policy until such a time when the crime scene is turned over to the investigating agency. The investigating agency shall have primary jurisdiction in the processing of each crime scene. The crime scene staff shall work closely with the lead investigator so as to maintain the integrity of each crime scene.

To summarize the above, if a firearm is used pursuant to this protocol and is department owned it shall be released to the owner upon release by the district attorney's office and the ID unit holding the gun. If the weapon used pursuant to this protocol is a personally owned duty weapon the officer is required to go through the above listed DOJ waiting process (12021.3 PC).