

Utah County Law Enforcement Officer Involved Incident Protocol



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I. DEFINITIONS

A. OFFICER INVOLVED INCIDENT

An incident which occurs in any city, town, or unincorporated area of Utah County and involves any employee of the Utah County Sheriff's Office, Brigham Young University Police, Utah Valley University Police, Utah Highway Patrol, Utah Department of Public Safety, Utah Department of Corrections, or any Police Department or Department of Public Safety of any city or town located in Utah County.

Incident is further defined to include, but not limited to, the following:

1. The use of a dangerous weapon by an officer against a person that causes injury to any person.
2. Any physical altercations, mutual combat, or domestic violence in which the police employee is acting in a private citizen capacity and occurs within the jurisdiction of his or her employer.
3. A fatal injury to any person except the officer, resulting from the use of a motor vehicle by an officer.
4. The death of a person who is in law enforcement custody, but not including deaths that are the result of disease, natural causes, or conditions that have been medically diagnosed prior to the person's death.
5. A fatal injury to a person resulting from the efforts of an officer attempting to prevent a person's escape from custody, make an arrest, or otherwise gain physical control of a person.

B. EMPLOYEE

Unless otherwise indicated the word "employee" as used herein refers to the following employees of those agencies participating in this protocol:

1. Full-time, part-time, and hourly sworn peace officers, whether on- or off- duty and acting for a law enforcement or private purpose at the time of the incident.
2. Full or part-time, non-sworn employees who, at the time of the incident, are on-duty or are acting actually, apparently, or purportedly for a law enforcement purpose.
3. Reserve peace officers who, at the time of the incident, are on-duty or are acting actually, apparently, or purportedly for a law enforcement purpose.
4. Temporary employees and volunteers, paid or unpaid, who, at the time of the incident are on-duty or are acting actually, apparently, or purportedly for a law enforcement purpose.

5. Informants: This Protocol does not intend to create an employer-employee relationship between an informant and any agency participating in this Protocol. For the sole purpose of determining when an Officer Involved Incident has occurred and the manner the incident will be investigated, informants are considered employees when they are working under the immediate direction, control, and supervision of a peace officer.

C. ACTOR

Any person whose act or actions result in an Officer Involved Incident as defined herein.

D. INJURED

Any person who is injured by the act or actions of the Actor which results in an Officer Involved Incident. When used in this protocol, the word injured does not imply the existence or commission of a crime, but is used simply to designate the person or persons injured.

E. PROTOCOL MEMBER AGENCY

Any law enforcement agency, state or local, which function in Utah County and which have committed to participation in this protocol.

F. VENUE AGENCY

The agency or agencies within whose geographical jurisdiction the incident occurs.

G. EMPLOYER AGENCY

The agency by whom the involved police employee is employed or with which he/she is affiliated. In many cases the Venue Agency will also be the Employer Agency.

H. CRIMINAL INVESTIGATORS

Those investigators from assigned protocol task force members, assigned by the County Attorney's Office and the Venue Agency, to conduct the investigation of the incident.

I. ADMINISTRATIVE INVESTIGATORS

Those investigators assigned by the Employer Agency to conduct the administrative investigation of the incident.

J. INCIDENT MANAGER

Taskforce investigator assigned by the County Attorney and the Venue Agency Chief to manage the investigation of the incident.

K. CRIME SCENE SUPERVISOR

Taskforce investigator assigned by the Incident Manger to supervise the crime scene(s).

L. INTERVIEW SUPERVISOR

Taskforce investigator assigned by the Incident Manager to organize and supervise the interviews of witnesses and involved officers.

M. CASE OFFICER

Taskforce investigator assigned by the Incident Manager to organize and supervise the collection of reports, and write a comprehensive Incident Summary report of the incident and investigation.

II. INVOCATION OF PROTOCOL

This protocol is effective immediately upon the occurrence of an Officer Involved Incident.

A. Upon receiving notice of the officer-involved critical incident, the Venue Agency shall, as soon as practical, notify the County Attorney.

B. The chief executive of the Venue Agency and the County Attorney shall:

1. Jointly designate an investigating agency for the officer-involved critical incident; and
2. Designate which agency is the lead investigative agency if the officer-involved critical incident involves multiple investigations.
3. The investigating agency under Subsection (2) may not be the law enforcement agency employing the officer who is alleged to have caused or contributed to the officer-involved critical incident.
4. This section does not preclude the Employer Agency from conducting an internal administrative investigation.

III. INVESTIGATIVE AGENCIES, FORMATS, AND RESPONSIBILITIES

To properly recognize and accommodate the various interests and the various rules of law which may be involved in an incident, investigations may be performed under two separate investigative formats: the criminal investigation and the administrative investigation.

A. CRIMINAL INVESTIGATION

1. Designation of Investigators

- a) A criminal investigation that commences pursuant to the invocation of this protocol has priority over any parallel administrative investigation and will begin immediately following the incident for which this protocol is invoked.

- b) The criminal investigation of an Officer Involved Incident commences with the invocation of this protocol, automatically or at the direction of the department head of the Venue Agency. Upon the invocation of this protocol the department head of the Venue Agency and the County Attorney or his designee will select an Incident Manager. Such selection will be from a list of investigators constituted and maintained by protocol member agencies. The selection of an Incident Manager may be made without respect to the rank or title of other investigators on the list who may also be asked to participate in the investigation.
- c) The department head of the Venue Agency or his/her designee shall inform the Incident Manager of the facts of the Officer Involved Incident who shall then assemble a taskforce of additional investigators of sufficient numbers to thoroughly and properly investigate the incident for which the protocol has been invoked. The selection of additional investigators by the Incident Manager shall also be from the list of specifically designated police officers constituted and maintained by protocol member agencies.
- d) Among those investigators selected by the Incident Manager to constitute the taskforce conducting the criminal investigation there shall be one representative of the Employer Agency. The Incident Manager shall not be from the Employer Agency. One deputy county attorney shall also be designated a member of the taskforce by the Incident Manager as shall an investigator from the County Attorney's Office.

2. Venue Determination

- a) When an incident occurs in part in two or more jurisdictions, each of those jurisdictions is a Venue Agency and the respective department heads shall jointly appoint the taskforce Incident Manager.
- b) When an incident occurs on the boundary of two jurisdictions, or under circumstances that make determination of the Venue Agency difficult or places venue in dispute the Venue Agency shall be:
 - (1) The Employer Agency if the Actor is employed by either boundary agency.
 - (2) Both boundary agencies if Actors are employed by both.
 - (3) The agency which has the greater interest in the case by virtue of having the predominant police involvement in the incident or by virtue of having had the majority of acts leading up to the incident occur within its jurisdiction.
 - (4) The County Attorney shall be the authority to resolve any irreconcilable investigative issues.

- c) For custodial deaths, if the death was caused by conduct which was apparently intentional or accidental the Venue Agency is that agency within whose geographical jurisdiction the act occurred. If there is no apparent intentional or accidental conduct involved in the cause of death, the Venue Agency is that agency having custody of the injured when distress was first discovered.

3. Scene Security

The Venue Agency is responsible for immediately securing the scene of an officer involved incident. This responsibility includes the preservation and integrity of the scene(s) and its contents, access, control, and the identification and sequestration of witnesses. Responsibility for scene security may change as the investigation continues and the Incident Manager assumes responsibility for the criminal investigation. If, in the judgment of the senior representative of the Venue Agency, weather, or other factors make it imperative evidence collection begin prior to the designation of the Incident Manager and constitution of the investigative team, such steps may be taken at the direction of and under the supervision of that representative of the Venue Agency.

The following crime scene procedures and priorities will be observed as fully as circumstances permit:

- a) Control of the scene to prevent further injury or criminal activity.
- b) Emergency life saving measures have first priority.
- c) Injured persons transported to a hospital will be accompanied, in the same vehicle if possible, by a police officer from the Venue Agency who will:
 - (1) Identify, locate, preserve, and take custody of physical evidence which may leave the scene with the injured person.
 - (2) Note and record as accurately as possible any spontaneous or excited utterance or statements which would describe the person's previous mental or physical state or any dying declaration.
 - (3) Maintain custody of the injured person if that person has been arrested.
 - (4) Provide information as may be known which is necessary to the medical treatment of the injured person.
 - (5) Coordinate and communicate as necessary with investigators at the scene.
 - (6) Provide all information acquired to the Crime Scene Supervisor or Incident Manager.
- d) If a firearm or other deadly instrument was used in the incident, procedures at the scene shall be as follows:

- (1) If the area is secure, loose firearms or other deadly instruments shall be left in place and undisturbed until removal is directed by the Crime Scene Supervisor or Incident Manager.
 - (2) If the area is not secure the senior representative of the Venue Agency shall decide whether any loose firearms or deadly instruments can be safely left in place or whether immediate removal is necessary. If it is determined that the item or items must be removed immediately all efforts shall be made to photograph the item in place and establish its location with reference to other fixed points.
 - (3) If any officer still has personal possession of a firearm discharged in the course of an Officer Involved Incident, the senior representative present of the Venue Agency shall take immediate possession of the firearm and holster or case as a unit without removing the firearm from the holster or case. The items shall be immediately secured in a manner consistent with their preservation as items of evidence. The venue representative to whom the firearms are surrendered shall document facts pertinent to the collection of the items, specifically the make and caliber of the firearm, the person from whom it was received, the items' location at the time it was received, the condition of the item and an indication of how it was used in the incident under investigation. The items shall be so maintained until further disposition is ordered by the Crime Scene Supervisor or Incident Manager. Unless necessary for safety, no attempt shall be made to change the condition of the firearm at the time of its surrender. It shall not be unloaded nor cleared of a jam. The firearm may be made safe to handle by lowering the hammer or putting on the safety so long as those actions taken to make the firearm safe are documented fully by the person taking the actions.
- e) As deemed appropriate by the Incident Manager, Crime Scene Supervisor, or Interview Supervisor, any officer who discharged a firearm during the course of an Officer Involved Incident, may be required to surrender his uniform and any outer-wear worn during the time of the incident.
- f) Recording Devices (any device designed to capture audio, video or photographic data or images, including but not limited to body cameras, dash cameras, video cameras, cameras, cell phones, audio recorders, etc.)
- (1) If any involved or witness officer(s) has personal possession of a recording device during the course of an Officer Involved Incident, the on-scene supervisor or senior representative of the Venue Agency, if practical, will take immediate possession of the recording device. The supervisor or senior representative will not review any recordings made on the device unless

necessary for the safety of others (any review of a recording device may change the recording's metadata).

(2) The supervisor or senior representative, if practical, will promptly secure the recording device consistent with the Venue Agency's evidence protocol. At a minimum, he/she shall document the collection of the recording device, including the make and model of the recording device, the person from whom it was received, the time and location it was received, the condition of the device and an indication of how it was used in the incident under investigation.

(3) The supervisor or senior representative, prior to reviewing or downloading the device's contents, will release the device to the Incident Manager or his/her representative. The Incident Manager (or his/her designee) will download or oversee the download of the contents of the recording device and will provide a copy of the downloaded contents to the Venue Agency as soon as practicable. The recording device will be maintained by the Incident Manager until further disposition is ordered by the County Attorney or his/her designee.

g) Preserve other evidence and the identity of all witnesses.

4. Notifications

Upon identification of an occurrence as an Officer Involved Incident, the Venue Agency shall make the following notifications as promptly as possible:

- a) Intra-department officers as required by the agency's procedures.
- b) The Employer Agency, if applicable and if not yet aware.
- c) The County Attorney and the Chief Investigator for the County Attorney's Office.
- d) The Medical Examiner or his Investigator upon confirmation of a fatality consistent with the requirements of Utah Code Section 26 Chapter 4.

5. Appointment of Investigators by Member Agency

- a) Each member agency shall designate at least one but not more than three of its most experienced criminal investigators to be available to participate in the investigation of an Officer Involved Incident. A list of those officers so designated shall be maintained by the Utah County Attorney and be updated semi-annually. A copy of the list shall be provided to each member agency and it is from this list that the department head of the Venue Agency and County Attorney shall designate the Incident Manager and from which the taskforce conducting the criminal investigation of any Officer Involved Incident shall be assembled.

- b) In designating investigators to be listed as available to participate in an Officer Involved Incident investigation, department heads should consider the following qualifications, characteristics, and attributes of those designated:
 - (1) Experience in homicide investigations as well as other crimes against persons.
 - (2) The ability to effectively interview people of various backgrounds including police officers.
 - (3) Good working knowledge of physical evidence collection and preservation techniques and an appreciation of the use and limitations of scientific evidence.
 - (4) Good knowledge of police operational procedures and the criminal justice system.
 - (5) Excellent report writing and communication skills.
 - (6) Good organizational and supervisory skills.
 - (7) Respected professionally by those whom he or she works for being competent, thorough, objective, fair, and honest.
 - (8) Ability to both participate in and direct a complicated investigation.

6. Transporting, Sequestering, and Interviewing of Involved Officers

- a) Officers who were present at the scene at the time of an Officer Involved Incident, whether as Actors or witnesses, will be relieved of their duties at the scene as promptly as possible and shall be sequestered at their own police station unless other suitable and agreeable arrangements are made for them. Officers from the Venue Agency not involved in the Incident shall be assigned to accompany involved officers and remain with them to ensure their privacy, accommodate their needs, and preserve the integrity of each witness officer's report as they may be gathered later.
- b) If circumstances prohibit removal of all witnessing and involved officers from the scene at one time, those officers who can be identified as Actors as defined herein should be relieved first.

- c) Sequestering officers should not allow witnesses or involved officers to discuss the facts of the incident among themselves or with other persons until such time as they are interviewed by taskforce investigators.
- d) While awaiting interviews by taskforce investigators, witnesses and involved officers should be allowed to contact spouses and family members and should be encouraged to relax and carefully reflect upon the events of the incident making notes as may be appropriate and necessary.
- e) Generally involved officers will not be interviewed for at least forty-eight hours after the incident in order to provide the best opportunity for recall (two sleep cycles). The involved officer's interview will be transcribed and serve as the officer's report.

7. Video Evidence

- a) If an officer involved critical incident is captured on video, normally the officer will not review the video prior to the interview to obtain the officer's untainted perspective. The officer may review the video as part of the interview after answering questions posed by the taskforce investigators in order to comment on the perspective as related by the video. Prior to the involved officer reviewing the video, the taskforce investigator will read the following advisory:

- b) **VIDEO ADVISORY**

“You are about to view a camera recording of a use-of-force event. Understand that while this recording depicts visual information from the scene, the human eye and brain are highly likely to perceive some things in stressful situations differently than a camera records them, so this photographic record may not reflect how the involved officer actually perceived the event.

The recording may depict things that the officer did not see or hear. The officer may have seen or heard things that were not recorded by the camera.

Depending on the speed of the camera, some action elements may not have been recorded or may have happened faster than the officer could perceive and absorb them. The camera has captured a 2-dimensional image, which may be different from an officer's 3-dimensional observations. Lighting and angles may also have contributed to different perceptions. And, of course, the camera did not view the scene with the officer's unique experience and training.

Hopefully, this recording will enhance your understanding of the incident. Keep in mind, though, that these video images are only one piece of evidence to be considered in reconstructing and evaluating the totality of the circumstances. Some elements may require further exploration and explanation before the investigation is concluded.”

8. Incidents Witnessed By Prisoners

When an incident occurs in a jail facility or other location where prisoners, inmates, or other arrested individuals may be a witness, those persons should be immediately identified and separated from other witnesses and prisoners until they have been interviewed by taskforce investigators.

9. Reports

Inasmuch as Officer Involved Incidents are of intense interest to the public, expeditious and thorough investigation and resolution of these matters is necessary. Prompt completion and distribution of reports is essential. All involved agencies and investigators will submit reports to the Incident Manager or his/her designee as soon as possible after an Officer Involved Incident. The case officer will assemble all individual reports and write a comprehensive incident summary report and submit this report and case file to the Incident Manager for approval. The Incident Manager will then submit this report and the case file to the Utah County Attorney or his designee. Upon request the County Attorney’s Office will provide copies of the complete case file to the heads of all agencies having officers involved in an incident as Actors or witnesses.

10. Equipment

Each member of this protocol taskforce will provide equipment as requested by the Incident Manager whether or not officers from that department are involved in either the criminal or administrative investigation. Officers from the department providing equipment may retain custody and operation of the equipment if it appears the interests of the investigation will be served.

11. Autopsy

- a) At least one member of the taskforce’s primary investigative team shall be assigned by the Incident Manager to attend the autopsy. Investigators representing taskforce agencies including the administrative investigators may also attend.

- b) The taskforce investigator assigned to attend the autopsy will brief the medical examiner prior to the post mortem examination. This briefing will be as complete as possible.

12. County Attorney's Office

- a) The County Attorney's Office has the following roles in Incident Investigations:
 - (1) Participate co-equally with other members of the taskforce performing the criminal investigation.
 - (2) Assist and advise the taskforce on the various criminal law issues which may arise during the investigation.
 - (3) Upon completion of the criminal investigation, analyze the facts of the incident as well as the relevant law to determine if criminal laws have been broken. If so, prosecute as appropriate or arrange for a special prosecutor.
- b) The County Attorney has his own independent investigative authority. When deemed appropriate the County Attorney may conduct an independent investigation of an Officer Involved Incident separate but simultaneous with any other investigation.

B. ADMINISTRATIVE INVESTIGATION

- 1. This policy recognizes the need of the administrative investigators to acquire information about the Incident for the following non-criminal purposes:
 - a) Internal Affairs and determination of whether or not employees have violated department policy or regulation.
 - b) Agency improvement and determination of whether or not department policies, procedures, programs, equipment, and training are adequate.
 - c) Acquiring sufficient information concerning an Officer Involved Incident to appropriately inform its parent governmental body and be responsive to the public and the news media.
 - d) To adequately address claims for damages and prepare for civil litigation that may be initiated by or against the Employer Agency.

2. While both the criminal and administrative investigations are important and should be aggressively pursued, investigative conflicts between the two formats shall be resolved by allowing the criminal investigation to have priority. It is intended that this prioritization will preclude competition between the two investigative formats for access to witnesses, physical evidence, and the involved parties and will prevent the criminal investigation from being compromised by an untimely exercise of the Employer Agency's control of the scene, evidence, or witnesses.
3. The initiation of an administrative investigation and the extent of that investigation is solely the responsibility of the Employer Agency.
4. Interview statements, physical evidence, toxicology test results, and investigative leads which are obtained by administrative investigators by ordering police employees to cooperate shall not be revealed to criminal investigators without the prior approval of the County Attorney following a determination of need and evaluation of the applicable law.
5. The Employer Agency should immediately assign administrative investigators upon being notified of the Officer Involved Incident. Administrative investigators will be identified to the Incident Manager at the earliest possible opportunity. In addition to gathering information for the Employer Agency, it is anticipated that administrative investigators will act as a liaison between the Incident Manager and the Employer Agency even if no actual investigation is being conducted by the Employer Agency.
6. The Incident Manager will periodically brief the administrative investigators on the progress of the criminal investigation. The administrative investigators will have access to briefings, the incident scene, physical evidence, and witness statements. Unless, for good reason it is determined otherwise, the County Attorney will provide to the Employer Agency his findings of fact and a complete copy of the case file prepared by the taskforce investigators. A copy of the County Attorney's findings of fact will also be provided to the Incident Manager.

C. NEWS MEDIA RELATIONS

1. The interests of the news media must be balanced with the requirements of the investigation and with the rights of involved individuals.
2. While any agency cannot be prohibited from making statements to the news media about an incident, these guidelines are established:

- a) The department head of the Venue Agency or his designee has the responsibility for making press releases about the Incident and its investigation until such time as the matter is referred to the County Attorney.
- b) The Incident Manager will provide the Venue Agency with information from which a press release can be made.
- c) Other participants in the investigation shall refrain from making separate press releases or discussing the investigation with the press.
- d) If the Employer Agency is not also the Venue Agency, fewer problems will arise, especially at the early stages of the investigation, if the Employer Agency limits its comments to information which has been cleared for release by the Venue Agency.