

OFFICER-INVOLVED
CRITICAL INCIDENT
PROTOCOL

Heber City Police Department
Wasatch County Sheriff's Office
Wasatch County Attorney's Office
Utah Attorney General Investigations Bureau

INTRODUCTION

The purpose of the Officer-Involved Critical Incident Protocol is to provide uniform investigative procedures when law enforcement, corrections or special function officers are involved in critical incidents resulting in the injury or death of citizens within Heber City or Wasatch County boundaries.

The protocol will enable participating agencies to train employees to fill roles as protocol or administrative investigators of critical incidents. In addition, it will allow agencies to prepare officers for the psychological and emotional pressures commonly experienced by officers as they are subjected to protocol and administrative investigations associated with critical incidents.

The protocol is not statute, ordinance, or regulation and is not intended to increase the civil or criminal liability of member agencies or their employees. In addition, it should not be construed as creating any mandatory obligations or benefits to, or on behalf of, third parties.

CRITICAL INCIDENT PROTOCOL

I. DEFINITIONS

- A. **Administrative investigators**—Law enforcement officers assigned by the employer agency to conduct the internal affairs investigation by applying policy to the involved officer’s actions.
- B. **Protocol investigators**—Law enforcement officers assigned by the venue agency and county attorney to investigate potential criminal conduct on the part of any individual connected to the incident, including that of involved officers.
- A. **Custodial death**—The death of a subject in the physical custody of a law enforcement or corrections agency.
- C. **Dangerous weapon**—A firearm or object that in the manner of its use or intended use is capable of causing death or serious bodily injury. (U.C.A. Sections 76-10-501; 76-2-408).
- D. **Employer agency**—The agency who employs the involved officer, or accepts the involved officer as a volunteer.
- E. **Involved officer**—A general term used in the Protocol to refer to any officer present at or first-responding to the scene of a critical incident as the circumstances detailed in Section I(G) unfolded. This term is not intended to refer to officers who respond to the critical incident as criminal or administrative investigators or commanders.
- F. **Member agencies**—The law enforcement agencies who have agreed to abide the protocol procedure contained herein, namely the Heber City Police Department, Wasatch County Sheriff’s Office, Wasatch County Attorney’s Office, and the Utah Attorney General’s Office Investigations Bureau.
- G. **Officer-involved critical incident**—Any situation occurring within Heber City or Wasatch County wherein:
 - 1. An officer uses a dangerous weapon resulting in the injury or death of a person other than the officer;
 - 2. An officer is involved in a motor vehicle fatality;
 - 3. A prisoner or other individual dies in custody; and
 - 4. A fatality occurs during an officer’s attempt to make an arrest, or otherwise gain physical control of a person. (U.C.A. Section 76-2-408).

- H. **Officer**—A law enforcement, corrections or special functions officer who is a full-time or part-time employee, or who officially volunteers as an officer for a law enforcement agency. The terms “officer” and “deputy” have synonymous meaning in this protocol. (U.C.A. Section 53-13).
- I. **Serious bodily injury**---Bodily injury that creates or causes serious permanent disfigurement, protracted loss or impairment of the function of any bodily member or organ, or creates a substantial risk of death. (U.C.A. Section 76-1-601(11)).
- J. **Subject**—Any person, other than an involved officer, who may have criminal culpability related to the incident.
- K. **Unattended death**—Occurs when a person dies and has not been seen by a physician within the scope of the physician's professional capacity within 30 days immediately prior to the date of death. This definition does not require an investigation, autopsy, or inquest in any case where death occurred without medical attendance solely because the deceased was under treatment by prayer or spiritual means alone in accordance with the tenets and practices of a well-recognized church or religious denomination. (U.C.A. Section 26-4-2).
- L. **Venue agency**—The agency within whose geographical jurisdiction an officer-involved critical incident occurs and which assigns law enforcement officers to investigate potential crimes committed by the subjects involved in the incident. The Heber City Police Department is the venue agency when officer-involved critical incidents occur within Heber City boundaries, regardless of the employer agency. The Wasatch County Sheriff’s Office is the venue agency for officer-involved critical incidents that occur within Wasatch County geographic area, regardless of the employer agency, with the exception of incidents occurring within Heber City limits.

II. INVOKING THE PROTOCOL

The officer-involved critical incident protocol is automatically and immediately effective when any of the situations enumerated in Section I(G) occur. However, the chief executive of the venue agency will, upon learning of the officer-involved critical incident, contact the County Attorney as soon as practicable and together acknowledge the protocol has been invoked.

III. PROTOCOL & ADMINISTRATIVE INVESTIGATIONS

Two types of investigations are usually conducted in an officer-involved critical incident:

A. Protocol Investigation

1. Objective. The purpose of the protocol investigation is to determine whether any person involved in the incident violated state or federal law.

2. Scope. The protocol investigation focuses on the potential criminal conduct of any subject or officer involved in the incident.
3. Determining the Investigating Agency. Generally, if an officer-involved critical incident resulting in death or serious injury occurs, the Utah Attorney General's Office will conduct the protocol investigation. However, if the chief executive of the venue agency and the county attorney decide to designate another agency or multi-agency task force to investigate the incident, they may do so without violating protocol.
4. Determining the Investigative Agency When Injury or Death Occurs in a Secure Facility. The protocol for determining the investigative agency inside the Wasatch County Jail or Heber City Police Department holding area is detailed below in Section IV.
5. Scene Security. The agency/ies within whose geographic jurisdiction the incident, or portions of the incident, occur have responsibility for securing and maintaining the integrity of the crime scene(s) in their respective areas.
6. Priority of Investigation. Criminal investigations, of which the protocol is part, typically take priority over non-criminal investigations. Any challenges or purported exceptions will be resolved by the joint decision of the chief executive of the venue agency and the county attorney.
7. Avoiding Investigative Conflicts with the Employer Agency. An agency employing an involved officer will not place any of its employees on the protocol investigative team. In addition, an investigator assigned to one team (i.e. protocol or administrative) may not serve as a member of any other investigative team in that incident.
8. Medical Officers. If a person involved in the incident is transported to a medical facility to receive treatment, an officer, preferably from the protocol investigative team, will be present to:
 - a. Locate, preserve, safeguard, and maintain the chain of custody for evidentiary purposes;
 - b. Record any spontaneous or contemporaneous statements, dying declarations, or statements of then-existing or previous mental or physical states;
 - c. Maintain custody, if the person has been arrested;
 - d. Identify witnesses and medical personnel;
 - e. Assist the injured person's family, if appropriate.

9. Evidence. Protocol investigators have responsibility for collecting, preserving analyzing and storing the physical evidence. Any costs for doing so will be borne by the venue agency.

Prior to final relinquishment of the scene, administrative investigators will have an opportunity to assess the evidence and the need for further evidence processing. Administrative investigators will be given access to all test and analytical results.

After all criminal cases related to the officer-involved critical incident are adjudicated and resolved and all appeals are extinguished, the County Attorney will provide a letter to the agency sponsoring the protocol investigation team releasing evidence and authorizing the disposal of evidence according to state statute and agency policy.

10. Law Enforcement Weapons Fired During the Incident. Officers should expect that all weapons fired during the incident will be taken for evidentiary inspection by protocol investigators. However, the employer agency will, if their policy allows, provide a replacement duty weapon as soon as practicable. The protocol team leader will, in a prompt and discreet manner, ensure:

- a. The firearms of all officers present at the time of the incident are thoroughly inspected;
- b. Identify the owner, user and serial number of all firearms inspected;
- c. The condition of each inspected firearm(s) is documented;
- d. Take into evidence any weapon fired during the incident; and
- e. Ensure all weapons discharged during the incident are placed in the agency's evidence storage facility until the County Attorney provides a letter releasing it.

11. Transporting Involved Officers. All involved officers will be relieved of their on-scene duties as promptly as possible and will, if practicable, be transported separately to their department/office to receive general instruction as to the processes of the protocol and administrative investigations. Involved officers will not discuss the incident with fellow officers or others during transportation, except their spouses, attorneys, or therapists or counselors. The agencies participating in this protocol encourage involved officers to call their spouses and/or family and notify them of their well-being.

12. Transporting Arrestees. Unless impracticable, the agency conducting the protocol investigation will transport arrestees to secure facilities. If the agency conducting the protocol investigation is not on-scene at the time of transport, the incident commander will make arrangements for arrestees to be transported. Ordinarily, agencies with involved officers will not transport arrestees after a critical incident.

13. Protocol Does Not Supersede or Negate Law. Notwithstanding any other provision in this document, the protocol investigation team maintains authority to conduct a full and thorough investigation as it deems necessary under the law.

B. Administrative Investigation

1. Objective & Scope. The administrative investigation is conducted by the employer agency and focuses on whether the involved officer(s) complied with department policy and procedures.
2. Administrative Leave. Depending on the policy of the employer agency, officers involved in critical incidents may be placed on administrative leave pending the completion of the various investigations; such a decision and its accompanying particulars will be made by the chief executive of the employer agency.
3. Use & Effect of Garrity Admonitions. The chief executive of the employer agency may, in his/her discretion, authorize the use of Garrity admonitions. Garrity admonitions require an officer to answer all questions honestly and completely or face disciplinary action. When Garrity is given, no self-incriminating statements can be used to criminally prosecute the officer. Criminal investigators, including those who serve on the protocol team, may share information with the administrative investigators, but administrative investigators must not share Garrity-protected information with anyone but their immediate supervisor.
4. Administrative Investigation May Take Lower Priority. In many cases, it may be most practical for the administrative team to complete their investigation last in time because the legal determination that an officer violated criminal statute likely translates into an additional policy violation.

IV. CUSTODIAL DEATHS

- A. Custodial Deaths Within Heber City. If a custodial death occurs in the holding area of the Heber City Police Department, during transport or while a subject is otherwise in law enforcement or corrections custody within Heber City boundaries, the Chief of Police and County Attorney will designate an agency or multi-agency task force to conduct the protocol investigation. If the investigation involves multiple agencies, the Chief of Police and County Attorney will designate an agency as the lead investigative agency.
- B. Custodial Deaths Within Wasatch County. If a custodial death occurs in the Wasatch County Jail, during transport or while a subject is otherwise in law enforcement or corrections custody within Wasatch County boundaries, except those occurring within Heber City, the Sheriff and County Attorney will designate an agency or multi-agency task force to conduct the protocol investigation. If the investigation involves

multiple agencies, the Sheriff and County Attorney will designate an agency as the lead investigative agency.

- C. Custodial Death Investigations Generally. When an incident occurs in a correctional or holding facility other incarcerated individuals may be potential witnesses. Prisoners who may be potential witnesses to the incident will be separated from other prisoners until the protocol investigators are able to conduct interviews. However, the booking or bailing processes must not be delayed or postponed solely to allow protocol investigators the opportunity to conduct interviews of those incarcerated.

V. INTERVIEWS

- A. Constitutional Rights. Involved officers maintain all Constitutional rights during a criminal investigation, including the right to have the assistance of counsel and the right against compelled self-incrimination.
- B. Miranda Rights. Involved officers maintain all Miranda rights in a criminal investigation, including the right to remain silent and the right to talk to an attorney and to have the attorney present during questioning.
- C. Advisement of Miranda Rights and Admonitions. Protocol investigators shall clearly state at the outset of their interview with an involved officer that they are conducting an investigation of the criminal aspects of the incident. Protocol investigators will also state they are not part of the administrative investigative team. To safeguard Constitutional rights, protocol investigators will inform an involved-officer being interviewed of Miranda rights and admonitions consistent with the law and their training.

If the involved-officer has an attorney present at the interview, protocol investigators are not required to provide Miranda advisements.

- D. Requiring Employees to Answer Questions While Protecting Constitutional Rights. Involved-officers are expected and required to answer protocol investigators' questions and provide information requested by criminal investigators, except when doing so violates the involved-officer's Constitutional rights. Involved-officers will ensure their statements contain a complete and accurate reflection of their recollection of the incidents in question.
- E. Interviews to be Individualized and Recorded. Interviews of involved-officers will be conducted separately and audio or audio/video recorded.

VI. INTOXICANT TESTING

- A. Methods of Obtaining Blood/Urine Results for the Protocol Investigation. Involved-officers maintain all Constitutional rights related to intoxicant testing in a criminal investigation. If protocol investigators determine evidence of the officer's

impairment may be relevant to the investigation, they may obtain the results using consent, search warrant, or any other legal means. Protocol investigators will be given the first opportunity to obtain blood/urine tests before the administrative or other investigative teams.

- B. Methods of Obtaining Blood/Urine Results for the Administrative Investigation. All involved-officers in a critical incident will provide blood and urine samples for the administrative investigation team. Failure to do so will result in disciplinary action, possibly including termination. For purposes of the administrative investigation, any questions or disputes as to the application of the protocol definition of “involved-officer” will be resolved by the chief executive of the employer agency.
- C. Rules Governing Sharing of Test Results. Intoxicant test results (i.e. blood or urine) obtained by protocol investigators may be shared with the administrative investigative team. However, test results obtained by the administrative investigation team will not be shared with protocol investigators or prosecutors. The administrative team will not share such results with the protocol team because compelling an employee to produce evidence that is used to criminally prosecute him/her violates the employee’s Constitutional right against self-incrimination.
- D. Timing of Test Samples. Test samples will be collected as soon as possible after the critical incident in order to capture, as near as possible, the status and/or level of intoxicants existing at the time the critical incident occurred.
- E. Tests the Involved-Officer May Request. An involved-officer who desires to have a professional or facility of his/her own choosing perform a test for impairment or intoxication may do so after the protocol team and administrative team have had their opportunities to obtain samples. Officers who request their own testing will be responsible for the costs of their tests.

VII. AUTOPSIES & EVIDENCE

At least one protocol investigator will attend each autopsy of any individual killed during a critical incident. The protocol investigator present at the autopsy will document, take custody of, analyze and properly store any photographs and physical evidence obtained during the autopsy.

VIII. COUNTY ATTORNEY’S OFFICE

- A. The County Attorney's Office will assist with the critical incident investigation by:
 - 1. Researching questions of law and advising protocol investigators with any legal issues in the protocol investigation;
 - 2. Upon completion of the protocol investigation, screen the case for possible criminal charges.

3. Using prosecutorial rules and discretion to determine whether or how to proceed with the case.
- B. In the event criminal charges are filed, the protocol investigative team will assist in any follow-up investigation that is needed to prepare the case for trial. Any officer assigned to the protocol team will make themselves available for trial preparation and court hearings.
- C. The County Attorney has his own independent investigative authority. When deemed appropriate, the County Attorney may conduct an independent investigation separate, but simultaneous to any other investigation.

IX. POLICE REPORTS

- A. Main Narrative. The commander of the protocol investigation team will serve as the responsible or lead officer for report purposes and ensure the main narrative is completed.
- B. Supplemental Reports. Each member of the protocol team will complete supplementary reports detailing his/her involvement, observations and action in the investigation.
- C. Public Dissemination of Reports. Unless otherwise agreed upon by the chief executive of the venue agency, protocol investigation team and County Attorney's Office, the agency designated to conduct the protocol investigation will be responsible for accepting and responding to public information or GRAMA requests regarding the protocol investigation and associated documents and recordings.
- D. Sharing Information Obtained by the Administrative Investigation Team. Information (i.e. interview statements, physical evidence, toxicology test results and investigative leads) obtained by the administrative investigation shall not be shared with the protocol investigation team if the information was obtained using Garrity admonitions or other method which compelled the involved officer to speak/act or face disciplinary action by the employer agency.
- E. Sharing Information Obtained by the Protocol Investigation Team. Protocol investigators will periodically brief the administrative team regarding the status of the protocol team's investigation. When possible, administrative investigators will have the ability to view the physical evidence collected by protocol investigators.

X. NEWS MEDIA RELATIONS

- A. The Protocol Team Typically Disseminates Information to the Public. Unless otherwise agreed upon by the chief executives of the venue agency, protocol investigation team and County Attorney's Office, the agency designated to conduct

the protocol investigation will be responsible for accepting and responding to public information or GRAMA requests regarding the protocol investigation.

- B. The Employer Agency Will Typically Limit Public Statements. Unless otherwise agreed upon by the chief executives of the venue agency, protocol investigation team and County Attorney's Office, the employer agency will limit public statements to the status of the employer-employee relationship (i.e. whether the involved officer(s) are on administrative leave, returned to full-duty) and information that has been cleared for release by the agency designated to conduct the protocol investigation and the County Attorney.

- C. Protecting Information that May Jeopardize the Protocol Investigation. If the protocol investigation team is concerned the release of specific information may materially jeopardize its investigation or safety of any person, the protocol team will notify those agencies possessing knowledge of the information to not release it. Agencies requested by the protocol team to not release specific information that may materially jeopardize the protocol investigation will not release the data.

END OF PROTOCOL