

## **Davis County Officer-Involved Critical Incident Protocol**

### **A. DEFINITIONS**

1. **Administrative Investigators:** Investigators assigned by the employer agency to conduct the administrative investigation.
2. **Criminal Investigators:** Investigators from protocol members assigned by the Unified Command to conduct the investigation of the incident.
3. **Critical Incident Investigative Protocol:** An agreement entered into with agencies in Davis County that provides uniform procedures and mutually agreed-upon guidelines for the investigation of Officer Involved Critical Incidents.
4. **Davis County Investigative Bureau Chief:** Individual, or designee, delegated by the Davis County Attorney's Office (DCAO) to oversee Officer Involved Critical Incident investigations.
5. **Employer Agency:** The agency that the involved law enforcement employee is employed by or affiliated with. (The employer and venue agency may be one in the same.)
6. **Law Enforcement Employee:** This protocol applies to defined employees and to certain other people affiliated with law enforcement agencies, which are members of this protocol agreement as follows:
  - a) Full-time, part time, and hourly sworn officers; whether on or off-duty and acting for a law enforcement or a private purpose at the time of the incident.
  - b) Full-time, non-sworn employees on-duty at the time of the incident.
  - c) Part-time, non-sworn employees on-duty at the time of the incident.
  - d) Reserve law enforcement employees and law enforcement agency volunteers, whether paid or unpaid, on-duty at the time of the incident. This category includes informants when they are working under direct control and supervision of a peace officer.
7. **Law Enforcement Officers Use of Deadly Force:** As described in Utah Code 76-2-404.
8. **Lead Investigative Agency:** The employing agency of the lead investigator that works in conjunction with the Davis County Investigative Bureau Chief. In the event DCAO is conflicted out of the protocol investigation, this agency will be the official keeper of the record post protocol invocation.

9. **Officer Involved Critical Incident:** An incident involving any employee of a law enforcement agency occurring in Davis County including but not limited to the following:
  - a) Any intentional or accidental shooting directed at a person, whether or not a fatality results.
  - b) Any intentional or accidental use of any other weapon or force against another person, whether or not a fatality results.
  - c) Any physical altercations, mutual combat, or domestic violence in which the police employee is acting in the capacity of a private citizen and occurs within the jurisdiction of his or her employer.
  - d) Any fatal injury, whether intentionally or accidentally caused, which results from the use of a motor vehicle by an employee while on-duty or off-duty in a government vehicle.
  - e) Any fatality of any person who is in police custody, excluding deaths that are the result of disease, natural causes, or conditions which have been diagnosed prior to death.
  - f) Any fatality that results from the efforts of an employee attempting to affect an arrest or otherwise gain physical control of another.
10. **Operations Section Chief:** An Agent from the Davis County Attorney's Office, assigned to work with the Lead Investigator to coordinate the criminal investigation, including the assembly and assignment of Protocol Investigators.
11. **Protocol Investigators:** Investigators from member agencies who have experience and/or training in critical investigations.
12. **Protocol Records:** Any record regarding the investigation of a Critical Incident which was created after protocol had been enacted and by any member of the protocol team or at the request of a protocol team member.
13. **Scene Commander:** A well trained senior investigator who is responsible for overall scene security. This includes required search warrants, crime scene logs and access to the scene.
14. **Unified Command:** The department head or designee of the venue agency, employer agency, and the Davis County Investigative Bureau Chief working in partnership to provide leadership and direction for the incident.
15. **Venue Agency:** The agency or agencies, within whose geographical jurisdiction the incident occurs.

## **B. INVOCATION OF PROTOCOL**

1. **Automatic and Immediate.** Upon the use of deadly force by a law enforcement employee, the Critical Incident Investigative Protocol is automatically enacted. The venue agency is required to immediately contact the Davis County Investigative Bureau Chief and affirmatively invoke the protocol.
2. **Optional.** Each member agency in the capacity of a venue agency or employer agency, may itself invoke the protocol upon occurrence of any critical incident involving a law enforcement employee, which may have possible criminal liability attached to the law enforcement employee. The County Attorney may decline to participate in optional invocations.

### **C. INVESTIGATIVE AGENCIES, FORMATS, AND RESPONSIBILITIES**

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

#### **2. Criminal Investigation**

##### a) Designation of Investigators

- 1) The criminal investigation that commences pursuant to the invocation of this protocol has priority over any parallel administrative investigation.
- 2) Upon invocation of this protocol, members of the Unified Command will select an Operations Section Chief and Lead Investigator to manage the criminal investigation.
- 3) The Operations Section Chief will be an Agent from the DCAO unless one is unavailable. In the event an Agent is unavailable, a selection from a list of prior Lead Investigators will be made by the Unified Command to establish an Operations Section Chief.
- 4) The Lead Investigator will be from a non-involved Agency and may be made without respect to the rank or title of the other investigators participating in the investigation.
- 5) The Operations Section Chief and Lead Investigator will be responsible for coordination of the criminal investigation including the assembly and assignment of Protocol Investigators.
- 6) The Davis County Investigative Bureau Chief, or designee, shall have authority to request sufficient investigative assistance from any law enforcement agency in Davis County. Upon request, member agencies should provide, if available, investigators with experience and/or training in critical investigations to serve as Protocol Investigators.

b) Venue Determination

- 1) When an incident occurs in part in two or more jurisdictions, each of those jurisdictions is a venue agency.
- 2) When an incident occurs on the boundary of two jurisdictions, or under circumstances that make determination of the Venue Agency difficult or in dispute the County Attorney shall be the authority to resolve jurisdictional issues.
- 3) If an in-custody death occurs, the Venue Agency is that agency within whose geographical jurisdiction the act occurred. If the death appears to be from disease, natural causes, or conditions that have been medically diagnosed prior to the person's death and there is no apparent intentional or accidental conduct involved in the cause of death as determined by the geographical jurisdictional agency, the Venue Agency becomes that agency having custody of the deceased person when the distress was first discovered.

c) Scene Security

- 1) The Venue Agency has the initial responsibility for immediately securing the scene of an Officer Involved Critical Incident. Once established, the Unified Command may change responsibility for scene security as necessary and assign a Protocol Investigator as Scene Command.
- 2) An inner perimeter should be established as soon as possible and only those persons with a bona fide investigative or medical service responsibility shall enter this area.
- 3) The following crime scene practices will be adhered to:
  - a. Emergency life-saving measures have first priority.
  - b. Control the scene to prevent further injury or criminal activity.
  - c. Once the scene is secure, Protocol Investigators shall identify, locate, preserve, and maintain chain of custody of physical evidence.
  - d. Ensure that no evidentiary items are removed from the scene or disturbed without the approval of the Operations Section Chief.
  - e. Loose weapons should be left in place, not altered, and guarded until the Operations Section Chief directs removal.

- f. If exigent circumstances exist that make removing loose weapons from the scene necessary for public safety all efforts will be made to either photograph the weapon(s) in place and/or establish their location with reference to other fixed points.
  - g. Weapons discharged by an Officer in an officer involved critical incident that are still in their possession shall be treated as evidence. The officer's weapon(s) should only be transferred to another person when it can be done without compromising officer safety, and the integrity of the weapon, as evidence, can be preserved. Unless necessary for safety, no attempt shall be made to change the condition of the weapon(s).
  - h. It is recommended that the involved officers be photographed as soon as practical to document their appearance at the time of the critical incident.
  - i. Additional evidence, witness interviews, and other investigative requirements will be conducted in accordance with standard investigative practices and protocols.
  - j. Once the protocol has been invoked, the Davis County Investigative Bureau Chief, Operations Section Chief, or Lead Investigator, when on scene, may direct that all running dash and body cameras shut off. This is done to prevent hours of video with no evidentiary value that will later have to be fully reviewed by Protocol Investigators.
- d) Transporting and Sequestering of Involved Officers
- 1) Officers who were present at the scene at the time of an Officer Involved Critical Incident, will be relieved of their duties at the scene as soon as possible and removed to a location as directed by Unified Command. 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 officer's statement.
  - 2) Involved officers should not discuss the facts of the incident with any other involved party.
- e) Involved Officer Interviews
- 1) Involved officers should not be interviewed by protocol investigators until after two or three consecutive sleep cycles.
  - 2) At the request of the involved officer the interview may be held earlier.

- 3) Employees have the same rights and privileges as citizens including the right to legal counsel prior to the interview and the right to have their lawyer present during the interview.
  - 4) Interviews of the involved Officer(s) should be conducted outside the presence of the Employer Agency to avoid confusion of a compelled interview. If an involved Officer wishes to have a support person, who is from the Employer Agency, that support person will define their role as such.
  - 5) Public safety statements can be compelled without an attorney to determine if an immediate safety concern exists. The statement should be limited to information such as injuries, suspects, direction of travel, estimated number of rounds fired, and the direction they were fired, and any other essential information. Only one assigned officer should get a public safety statement from the officer(s) involved in the incident.
  - 6) Any corresponding administrative investigation shall be conducted by the Employer Agency.
- f) Intoxicant Testing
- 1) Employees have the same rights and privileges as citizens regarding intoxicant testing.
  - 2) If investigators determine that the employee's sobriety is relevant to the investigation, they may obtain a sample through consent or a search warrant.
  - 3) The Employer Agency may require the employee to submit to intoxicant testing in accordance with their specific City or Department policy. This should be conducted as part of the Administrative Investigation.
  - 4) The employee can voluntarily request to submit to testing.
- g) Briefing and Reports
- 1) The Davis County Investigative Bureau Chief, or designee, shall arrange a briefing with involved agencies and protocol investigators within 3 business days of the Officer Involved Critical Incident to ensure progress in the investigation.
  - 2) All Protocol Investigators will submit reports in accordance with deadlines established by the Davis County Investigative Bureau Chief, or designee. Reports should be focused on the objective documentation of facts and circumstances and should not include personal feelings or opinions of individual investigators.

- 3) The Officer Involved Critical Incident should be screened with the DCAO as soon as practical.

h) Evidence

- 1) Unified Command shall request a crime scene investigation unit to act as part of the protocol team. Designation of this unit may depend on specialized skills, specialized equipment, location of the incident, and known conflicts of interest.
- 2) The designated crime scene investigation unit will be responsible for documenting, collecting, and processing evidence from the incident. This unit will also be responsible for storing any evidence until such a time as it is determined to be appropriate to transfer the evidence to the Lead Investigative Agency for long-term storage.
- 3) If the matter is concluded with the filing of criminal charges, all items of evidence shall be maintained by the Lead Investigative Agency and held in accordance with applicable State laws regarding retention and disposal of evidence.
- 4) If no criminal charges are filed, the evidence shall be released to the Employer Agency and maintained by it in accordance with its procedures for disposing of evidence.
  - a. If the Officer Involved Critical Incident included officers from more than one Employer Agency, the decision on what to do with the evidence will be made by the involved agencies.
- 5) If the DCAO issues a letter notifying the Employer Agency of its intent to decline charges, and upon completion of testing from the State lab, then weapons can be released to the involved officer(s).

**3. Administrative Investigation**

- a) The initiation of an administrative investigation and the extent of that investigation is solely the responsibility of the Employer Agency.
- b) If the Employer Agency assigns Administrative Investigators, they should identify themselves to the Operations Section Chief as soon as possible.
- c) In addition to gathering the information for the Employer Agency, Administrative Investigators should act as a liaison between the Operations Section Chief and the Employer Agency.
- d) Compelled interview statements, physical evidence, toxicology test results, and investigative leads that are obtained by Administrative Investigators shall not

be revealed to Criminal Investigators without the prior approval of the DCAO following a determination of need and evaluation of the applicable law.

- e) The Operations Section Chief will periodically brief the Administrative Investigators on the progress of the criminal investigations. They will have access to briefings, the incident scene, physical evidence, witness statements, and reports.
- f) The County Attorney will provide the Employer Agency with the findings of fact as soon as possible.

#### **D. MEDIA RELATIONS, RELEASE/RETENTION OF RECORDS**

1. The interests of the news media must be balanced with the requirements of the investigations and with the rights of the involved individuals.
2. Agencies with no jurisdictional or employment interests in the Officer Involved Critical Incident should not speak to the media.
3. The Department head or designee of the Venue Agency should be the single point of media information until the matter is referred to the DCAO. Prior to any information being shared with the media, the Venue Agency shall consult with the DCAO.
  - a) The Operations Section Chief will provide the Venue Agency with sufficient information to issue a press release.
  - b) Other participants in the investigation should refrain from making separate press releases or discussing the investigation with the media press without coordinating with the Operations Section Chief and/or Unified Command.
4. Release of Records
  - a) Any agency head with jurisdictional or employment interests in the Officer Involved Critical Incident who is interested in releasing a record, proactively or in response to a GRAMA request, should coordinate with DCAO prior to release.
  - b) All GRAMA requests for pre – protocol records created regarding incidents that led up to the Critical Incident Investigative Protocol being enacted shall be evaluated and released by each individual agency according to their own analysis of the record(s) and pursuant to GRAMA provisions.
  - c) All GRAMA requests for Protocol Records associated with and created as a part of the protocol investigation will be referred to the DCAO for review and action. DCAO will create a protocol investigation case number and records shall be created under that case number and DCAO will be the keeper of the Critical Incident Investigative Protocol records.



- 1) The DCAO shall contact each agency with record of the incident and request applicable records.
- 2) Any agency receiving a request from the DCAO will complete their own review of the requested record(s) and complete any necessary redaction of private or protected information.
- 3) Each agency that receives a request from the DCAO will diligently strive to meet stated deadlines.

5. Retention of Records

- a) Davis County Investigative Bureau Chief shall ensure that complete copies of the investigation, along with any GRAMA information released by the DCAO are compiled for retention.
- b) The Lead Investigating Agency, DCAO, the Venue Agency, and any agency with involved officers will receive a copy of this investigative file upon completion.