

WASHINGTON ASSOCIATION OF SHERIFFS & POLICE CHIEFS

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Serving the Law Enforcement Community and the Citizens of Washington

MODEL POLICY REGARDING OFFICER INVOLVED CRITICAL INCIDENT INVESTIGATIONS ADOPTED VIA RESOLUTION 2011-03



I. PURPOSE

This policy is intended to provide chief law enforcement executives with guidance on how to structure criminal investigations into officer involved critical incidents that are transparent and fair, and instill the public's confidence.

Maintaining the public's confidence in the investigation processes of officer-involved critical incidents is important for the long-term relationships of an agency and its community. The goal of this model policy is to assist in that effort.

II. GENERAL—THE INVESTIGATION

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

The criminal investigation has investigative priority over the administrative investigation and should begin immediately after an incident has occurred.

This model policy will address the criminal investigation only, and should be used to establish which entity or persons shall conduct the criminal investigation.

A. Civil /Administrative Review

The civil or administrative review should be conducted in accordance with department policies, any governing labor contracts and case law (such as *Garrity* and *Weingarten*).

B. Criminal Investigation

The goal of the criminal investigation is to objectively investigate and develop all available relevant information about the incident. This information shall be used in two ways:

1. To determine presence or absence of criminal conduct on the part of those involved in the incident, specifically:
 - a. To determine whether the nature and the quality of the conduct involved is prohibited by statutes which provide for criminal penalties upon conviction;
 - b. If criminal conduct does exist, determine the identity of the person(s) responsible for that conduct; and
 - c. If criminal conduct does exist, determine the degree of crime(s), the existence of any factual or legal defenses to that crime, and the

presence or absence of any factors, which could mitigate or aggravate punishment for that crime.

2. To provide factual information to the employing agency management for its internal use. While the criminal investigators do not direct their investigative attention to administration concerns, it is recognized that the criminal investigation's results are of interest to agency management for its internal use, and those results are fully available for that purpose unless otherwise prohibited by law.

Any criminal investigation shall follow the rules of law which apply to all criminal proceedings, including, for example, constitutional, statutory and case law regarding rights which are covered by the U.S. Constitution's 4th, 5th, 6th and 14th Amendments.

The overarching goal is to ensure that the investigation is performed in a thorough, complete, professional and fair manner free from conflicts of interest. It should be conducted in a transparent fashion that garners the public's confidence and includes an element of independent oversight as part of the criminal investigation process

III. DEFINITIONS

“Officer-involved critical incidents”: Any incident that the chief law enforcement officer believes to be of enough significance so as to trigger the provisions of this policy.

While each agency is permitted to independently articulate which incidents will meet the definition of “officer-involved critical incidents” and be governed by the officer-involved critical incident model policy, each agency's policy must at a minimum include officer-involved shootings.

IV. PROCEDURAL ELEMENTS

Although it is beyond the scope of this policy to address the specifics of scene response protocols, the following is a list of concepts that should be considered in any policy regarding response to officer-involved critical incidents or agreement with other agencies or entities regarding response to critical incidents. The way in which these are carried out and by whom may depend on the policy adopted regarding an agency's structure of its criminal investigation.

- Dispatching/Self-dispatching
- Crime scene protection
- Scene procedures (chain of evidence, statements, custody of arrested persons, witness identification, information to medical personnel)
- Scene access restrictions and logs
- Written reports
- Security and booking costs regarding suspects
- Evidence collection and storage
- Interviewing of law enforcement employees

- Obtaining sample(s) and Intoxicant testing
- Report writing
- Officer access to attorney
- Officer firearm seizure, replacement
- Application if Officer was on duty/off duty
- Timing of compelled statement from officer
- Officer administrative leave placement
- Post-incident mental health counseling
- Post-incident screening for duty (not same as fit for duty)
- Notification of officer's family (if injured or deceased)
- Media communication
- Public disclosure requests
- Communication with Prosecutors office

V. STRUCTURE OF THE CRIMINAL INVESTIGATION

In an effort to promote transparency and public confidence, agencies should utilize an investigative model that comports with the guidelines set forth below. The guidelines provide for some use of an independent entity as an element of the criminal investigative process, regardless of which model is used.

1. An Agency may be part of a regional team and that team must conduct the investigation.
2. An Agency may have an outside agency conduct the investigation.
3. An Agency may conduct their own investigation, but must be part of a regional team and permit that regional team to observe the agency's investigation and conduct a review.

The Chief Executive Officer of an agency shall retain the authority to determine which of the three investigative models his or her agency shall use.

Policies and Inter-local Agreements regarding such investigations should give consideration to the following where applicable:

- Team structure
 - Governing structure of investigative team (board of directors etc)
- Team membership
 - How members of team are appointed, removed, qualifications required to serve
 - Discretionary inclusion of a liaison from the agency employing the officer that is the subject of the investigation and the role of the liaison.
- Activation
 - What events/definition of OICI
 - Whether automatic invocation
 - Who/which agency may request and whether individual may invoke
 - When not required
 - How activated (e.g. call to dispatch center/agency point of contact)

- Individual responsibilities (e.g. commander, investigative supervisor, technician, liaison)
- Authority of team members over the investigation
- Jurisdictional matters if incident occurs in more than one jurisdiction
- Command structure of the investigation
- Availability of agency personnel from each participating or involved agency
- Cross-training (Core training for members of the team, advanced training)
- Liability/indemnification
- Fiscal responsibilities including participant wages
- Information and document sharing (and ensuring compliance with state and federal law)
- Use of space/equipment
- Protocols regarding consolidation and retention of reports and documentation
- Articulation of goals/purpose of ILA
- Mechanism for ensuring ILA and policies, protocols are current
- Debriefings of team members and communication
- Other potential uses of teams (non OICI)

VI. Relationship to Collective Bargaining Agreements

It is acknowledged that elements of this model policy may be subject to collective bargaining, and as such, implementation may take place over time for some agencies. (see RCW 41.56.030 et.seq.)