



SONOMA COUNTY LAW ENFORCEMENT CHIEFS' ASSOCIATION

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SUBJECT: LAW ENFORCEMENT EMPLOYEE-INVOLVED CRITICAL INCIDENT
PROTOCOL - *(FORMERLY TITLED OFFICER INVOLVED CRITICAL
INCIDENT PROTOCOL)*

PURPOSE: The purpose of this Protocol is to set forth procedures and guidelines used by Sonoma County law enforcement agencies in the criminal investigation of specifically defined incidents involving law enforcement employees. While this Protocol represents the understanding and agreement among Member Agencies about how Law Enforcement Employee-Involved Critical Incidents are to be investigated, this Protocol is neither a statute, ordinance nor regulation. Members expect that its provisions will be followed when Protocol incidents occur but it is anticipated that agencies may make minor modifications, which will not affect the Protocol's basic principles, to meet agency requirements. It is the intention of SCLECA membership that best practices have been incorporated into this protocol, including those gleaned from the guidelines of the International Association of Chiefs of Police (IACP) Police Psychological Services Section in 2013. All Sonoma County law enforcement agencies are encouraged to carefully review the guidelines ratified by the IACP, share these guidelines with all their respective personnel and consider all recommended procedures prior to, during and after a law enforcement employee-involved critical incident.

I. DEFINITIONS

A. Actor:

1. A person whose action is actually or conceivably a proximate cause of death, or serious bodily injury to another person or themselves; or
2. A person who intends an action to be the cause of serious bodily injury to a second party but the second party is actually injured or killed by another person.
3. An actor may be a law enforcement employee or may be a private citizen.

B. Administrative Investigation: The investigation conducted by the employer agency arising from a specific incident(s) that determines whether or not an employee has violated employer agency rules, regulations or conditions of employment.

C. Criminal Investigation: The investigation conducted by personnel from member agencies which identifies facts that demonstrate whether or not violations of criminal law occurred in a specific incident.

D. Employer Agency: The law enforcement agency from which the involved law enforcement employee is employed or affiliated. An employer agency may also be a venue agency in a specific incident.

E. Fatal Injury: Death, or injury which is so severe that death is a likely result.

F. Injured Person: Any person who sustains death or serious bodily injury as a result of an intentional or unintentional act of an actor in which force is used.

G. Law Enforcement Employee:

1. Any sworn peace officer, whether on or off-duty, and whether or not acting within or outside the scope of employment.
2. Any law enforcement civilian employee; on-duty, or off-duty who is acting within the scope of employment at the time of a specific incident.
3. Any on-duty reserve peace officer; or any off-duty reserve peace officer who is acting within the scope of employment at the time of a specific incident.
4. Any temporary law enforcement employee or any volunteer, whether paid or unpaid, who is on-duty or who is acting within the scope of employment at the time of a specific incident.

H. Law Enforcement Employee-Involved Critical Incident: A specific incident occurring in Sonoma County involving one or more persons, in which a law enforcement employee is involved as an actor or injured person; when a fatal

injury occurs. Examples of such specific incidents may include the following:

1. Intentional and unintentional shootings.
2. Use of any dangerous or deadly weapons (e.g., firearms, knives, clubs, etc.).
3. Assaults upon sworn peace officers; assaults upon other law enforcement employees who are on duty or acting within the scope of employment.
4. Attempts by law enforcement employees, within the scope of employment, to make arrests or to otherwise gain physical control of a person.
5. Acts of physical violence in which a law enforcement employee is acting as a private citizen.
6. A law enforcement employee suicide.
7. Fatal injury while a person is in law enforcement custody which includes suicide and/or ingestion of toxic substances, or any unexplained death, but excludes the death of a person who dies as the result of a diagnosed disease or physical condition for which the person was receiving physician's treatment prior to death and a physician has agreed to sign the death certificate.
 - a. Fatal injury, while in the custodial facilities of the Sonoma County Sheriff's Office, will be investigated by the Sheriff's Office Violent Crimes Unit. The Sheriff's Office Violent Crimes Supervisor shall contact the on-call Sonoma County District Attorney's Investigator and advise them of the in custody fatal injury. The D.A. Investigator will determine if the District Attorney's Office should assist with the investigation. Depending upon the circumstances, the Sheriff's Office may request that another Sheriff's Office be the lead agency or assist in the investigation. However, an independent pathologist/Coroner's Office shall be requested to conduct the Coroner's investigation in any fatal injury occurring within the custodial facilities of the Sonoma County Sheriff's Office.
 - (1) The District Attorney's Office will review any investigation wherein they responded or assisted.
 - b. Fatal injury, while in custody at the Juvenile Justice Center shall be investigated by the Santa Rosa Police Department. Fatal injury, while in custody at the Sonoma County Juvenile Probation Camp shall be investigated by the Sonoma County Sheriff's Office.
8. Fatal injury to a person who is a passenger of an on-duty law enforcement employee (e.g., ride-along, emergency transport, etc.).

9. Vehicular collisions with fatal injury including those involving a law enforcement pursuit, except the following:
 - a. Collisions involving off-duty, civilian law enforcement employees who are not at the time of the collision acting for an actual or apparent law enforcement purpose.
 - b. Single vehicle collisions, not involving a law-enforcement pursuit, in which the injury is sustained by a law enforcement employee who was the driver and sole occupant of a vehicle which was not involved in a collision with any other person or occupied vehicle.
10. This protocol may be invoked at the discretion of the Chief of Police, the Sheriff, or Chief Probation Officer of the member agency for other employee involved incidents, which result in a significant use of force or a significant injury.

I. Lead Agency

The investigative agency charged with overall responsibility for supervising, coordinating and conducting the criminal investigation of a Law Enforcement Employee-Involved Critical Incident. The Petaluma Police Department, Santa Rosa Police Department, or the Sonoma County Sheriff's Office can be a lead agency. When the proximate cause of death or injury is a vehicle collision, the Venue or Lead Agency may, depending on the circumstances and complexity of the investigation, seek the assistance of the California Highway Patrol. Also, the CHP is not precluded from being the lead agency in such cases. (See I. H. 9.) If extraordinary circumstances exist, the District Attorney's Office is not precluded from being the lead agency.

As a matter of routine, the employer agency will not directly participate in the criminal investigation. However, if no other agency is available to assume the lead agency role, the employer agency, with the consent of the venue agency, may elect to be the lead agency. Additionally, if the member agencies are unable to provide sufficient staffing for the criminal investigation team, the employer agency can provide investigators to participate as members of the investigation team. Also, when deemed necessary and appropriate, investigators from member agencies who are experienced and trained, may be invited to join the Lead Agency investigation team, whether or not the investigator is employed by the Lead Agency. (See section III, 4 d.) Any fatal or severe injury collision involving on-duty CHP employees occurring within any jurisdiction will be investigated by the CHP Golden Gate Division Multi-disciplinary Accident Investigation Team (MAIT) in conjunction with the venue agency

J. Member Agency

Any Sonoma County law enforcement agency which is a signatory to this Protocol.

K. Proximate Cause

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

L. Venue Agency

The law enforcement agency, or agencies, within whose primary geographical jurisdiction a specific incident occurs.

II. INVOKING PROTOCOL PROVISIONS

A. Mandatory Invoking

When a Law Enforcement Employee-Involved Critical Incident occurs, the criminal investigative provisions of this Protocol shall be immediately invoked by member agencies to ensure that the employer agency, or the venue agency if the necessary investigative resources are not available, does not lead or have overall responsibility for the criminal investigation.

B. Participation of Member Agencies

1. Member agencies shall participate and cooperate in Protocol provisions relevant to mandatory invoking. Should a member agency be unable to fulfill its responsibility in the mandatory invoking process due to lack of necessary personnel resources, or other articulable reason, such information shall be immediately relayed to the member agency requesting assistance.
2. In the event that the criminal investigative provisions of this Protocol are invoked, but necessary resources from member agencies are not sufficient to provide a lead agency to conduct the criminal investigation, or where an issue arises as to which agency should be the lead agency, the department heads of the employer agency and venue agency should consult with the Sonoma County District Attorney to discuss how to best proceed under the given circumstances. A request for investigative support may then be made to other appropriate local, state, or federal criminal investigative agencies.

C. Notification of Agencies

1. When a Law Enforcement Employee-Involved Critical Incident occurs and the criminal investigative provisions of the Protocol are invoked, the venue agency notifies the following agencies and/or persons as promptly as possible:
 - a. Intra-departmental staff as required by that agency's internal procedures.
 - b. The employer agency, if not the venue agency.
 - c. The requested lead agency.

III. INVESTIGATIVE PROVISIONS AND RESPONSIBILITIES

A. Criminal Investigation

1. **Intent**

The purpose of the criminal investigation is to establish the presence or absence of criminal liability on the part of those persons involved in the incident. The criminal investigation has investigative priority over an administrative investigation and begins immediately after the Law Enforcement Employee-Involved Critical Incident occurred. The investigation follows the rules of law which apply to criminal proceedings and focuses upon objectively identifying and documenting all relevant information about the Law Enforcement Employee-Involved Critical Incident.

2. **Participants**

The criminal investigation is conducted by supervisors, criminal investigators and evidence technicians from member agencies in accordance with section #I, sub-section I, above.

- a. A Deputy District Attorney is assigned to provide legal support to the criminal investigator.
- b. A District Attorney Investigator is assigned to assist the deputy district attorney and provide liaison with the Office of the District Attorney.
- c. The employer agency should assign staff personnel to liaison with the lead agency. The role of the liaison is to facilitate the investigation. The assigned liaison(s) shall not be involved in the questioning of witnesses, evidence gathering, or any aspect of the criminal investigation. The employer agency liaison responsibility can include coordinating the flow of information between agencies and facilitating access to records information, personnel and facilities.

3. **Venue Agency**

The employer agency makes a determination at the time of a Law Enforcement Employee-Involved Critical Incident as to which member agency will be requested to be the lead agency regardless of venue.

- a. The request for a member agency to be the lead agency, and the acceptance by that member agency to be the lead agency, is made by command staff, or an identified designee, of the respective member agencies.
- b. Within the provisions of section #I, sub-section I, above, the venue agency may also be the lead agency.

- c. When a Law Enforcement Employee-Involved Critical Incident occurs in part in two or more jurisdictions, on the boundary of two jurisdictions or at a location where the boundary is not readily ascertainable or is in dispute; the venue agency is the member agency which has the predominant law enforcement involvement in the incident and/or the majority of acts related to the fatality occur in its jurisdiction.
- d. For criminal incidents occurring on state property not otherwise under the primary jurisdiction of a state law enforcement agency, i.e., Sonoma State University, State Parks, etc., the CHP is the venue agency, e.g. the State building at 50 'D' Street, Santa Rosa; DMV offices in Santa Rosa and Petaluma, etc. The CHP may request investigative assistance from other law enforcement agencies. For criminal incidents occurring on Sonoma State University, Sonoma State University Police Services is the venue agency. For criminal incidents occurring on the property of the Santa Rosa Community College District, the Sonoma County Junior College District Police Department is the venue agency.
- e. Law Enforcement Memorandum of Understandings between two agencies that transfer venue authority from one to the other shall be honored.
- f. For incidents involving vehicular collisions occurring in areas not within the primary jurisdiction of the CHP, the CHP may be requested to provide investigative assistance to the lead agency.

4. **Lead Agency**

Pursuant to its responsibility to supervise, conduct and coordinate the criminal investigation, the lead agency does the following:

- a. Contacts the on-call District Attorney Investigator to advise them of the fatal injury investigation and/or request assistance from the District Attorney's Office.
- b. Upon confirmation of a death, notifies the Coroner's Office and other member agencies as necessary.
 - (1) If the employee agency is the Sonoma County Sheriff's Office, the Sonoma County Coroner's office will notify and request an independent pathologist/Coroner's Office to conduct the Coroner's investigation.
- c. Assigns a supervisor to manage the overall criminal investigation and has a supervisor respond to the field incident within two hours of notification. The supervisor is of the rank

of a sergeant or above, has supervised a sworn investigative unit, and has attended the following training programs:

- (1) Officer Involved Shootings Investigation
- (2) Homicide Investigation
- (3) Internal Affairs Investigations

- d. Assigns a minimum of two criminal investigators to investigate the case and has them respond to the field incident within two hours of notification. Additionally, all lead agency criminal investigators shall have a minimum of five years sworn experience and be, or have been, a specifically designated investigator. A lead case investigator is designated who shall have attended the following training programs:

- (1) Officer Involved Shooting Investigations
- (2) Interview and Interrogation Techniques
- (3) Homicide Investigations

Traffic collision investigators are exempt from the requirement (3) above but shall have Advanced Accident Investigation at a minimum.

- e. Obtains the assistance of sworn criminal investigators from other member agencies as needed excluding employer agency staff whenever possible. All member agency investigators assigned to assist the lead agency have a minimum of five years sworn experience and are, or have been, specifically designated detectives. These investigators work with and under the direction of the lead agency supervisor during the course of the criminal investigation.
- f. Assigns a trained evidence technician or crime scene investigator to collect, preserve, process, and document evidence. The technician/investigator is or has been employed as an evidence technician/crime scene investigator and has successfully completed a POST-certified crime scene investigation training program.
- g. Is responsible for documentation of the scene and for the collection, preservation and analysis of physical evidence. The lead agency may further request the assistance of experienced evidence collection personnel from other member agencies and/or the California Department of Justice when deemed necessary.
- (1) Lead agency investigators will give advance notice to the employer agency when the crime scene is expected to be released from criminal investigative processing. Administrative investigators may conduct independent

crime scene processing activities once criminal investigators have completed their tasks.

- (2) Evidentiary items are maintained by the lead agency until such time as otherwise directed by the Office of the District Attorney, court order, statute, or mutual agreement between the lead and venue agency. These items are made available for appropriate review in a timely manner to those member agencies with an identified interest in the investigation. The lead agency disposes of evidentiary items in accordance with law and shall notify other involved member agencies prior to final disposition of evidence or other property.
- h. Is responsible for ensuring that all criminal investigators write full, complete and objective reports documenting their investigative activities. The lead agency also has the responsibility to collect relevant reports from other member agencies, maintain all documentation in accordance with statutory guidelines and submit all relevant documentation and information to the Office of the District Attorney upon completion of the lead agency investigation. The lead agency should make every reasonable effort to complete their investigation within 90 days. The primary objective shall be to conduct a thorough and complete criminal investigation. Accordingly, depending on the unique circumstances involved, some investigations may require more than 90 days to complete. Subsequent supplemental information will be submitted upon completion and approval.
- i. Is responsible, unless otherwise agreed upon by the lead and employer agencies, for providing news media releases of information directly relevant to the criminal investigation for a period of a minimum of 72 hours following occurrence of the incident. Public statements regarding criminal investigative information shall only be made by the lead agency until such time as otherwise agreed upon by involved member agencies. The lead agency does not comment upon the administrative or employer-employee issues that are the responsibility of the employer agency.

Refer to Section IV of this Protocol for further guidelines.
- j. Is responsible for conducting a full briefing for District Attorney staff, employer agency staff and other relevant member agency staff having a “right to know.” The briefing is conducted at a time when the criminal investigation is not yet submitted to the Office of the District Attorney for full review, but is at a stage of completion where involved member agencies provide critical analysis to ensure all investigative concerns have been satisfactorily addressed.

5. **Crime Scene Procedures and Security**

Emergency life saving measures have first priority in any incident and are attended to immediately by providing first aid and summoning medical support personnel when safe to do so. Supervisors and investigators need be sensitive to the possibility that involved employee(s) may have been exposed to bodily fluids during life saving measures and/or sometime during the incident. Every effort should be made to photograph employees in what they were wearing at the time of the incident. However, no employee should be kept from having bodily fluids cleaned off of them or from removing contaminated clothing to reduce the possibility of exposure to communicable diseases if a camera is not immediately available. Additionally, any employee(s) exposed to bodily fluid will not be kept from seeking medical attention as part of their agency's blood exposure protocol.

- a. When an injured person is transported to a hospital, an uninvolved law enforcement officer should accompany the person in order to:
 - (1) Locate, preserve, safeguard, and maintain the chain of physical evidence.
 - (2) Obtain information as permitted by law, including dying declarations.
 - (3) Dependent on medical condition, maintain custody if the person has been arrested.
 - (4) Provide information to medical personnel about the incident as relevant to treatment, and obtain information from medical personnel relevant to the investigation.
 - (5) Identify relevant people, including witnesses and medical personnel.
 - (6) Be available for contacts with the injured person's family, if appropriate.
- b. Each involved law enforcement agency is responsible for securing and protecting crime scenes. The venue agency assumes responsibility that includes preservation of the integrity of the scene(s) and its contents, access, control, and the identification and sequestration of witnesses. The venue agency maintains these responsibilities unless and/or until it is relieved by the lead agency.
 - (1) A secure perimeter is established ensuring that personal safety is protected and evidence is appropriately preserved.

- (2) Access to the crime scene is strictly limited to those law enforcement and other authorized officials who have a right or recognized lawful need to be there for a life saving or investigative purpose.
 - (3) A written log is established as quickly as possible to identify persons entering/exiting the scene, their purpose for entry, and the times of entry/exit.
 - (4) Evidentiary items shall not be removed from the scene or manipulated without the approval of the criminal investigators or unless necessary for safety reasons or preservation of evidence.
- c. If a weapon or instrument was used in the incident, the on-scene supervisor ensures that the weapon is protected and/or collected as follows:
- (1) If the scene is secure, loose weapons or instruments are left in place until collected and processed by investigators.
 - (2) If the scene is not secure, the on-scene supervisor directs whether or not a weapon or instrument is left in place. If the weapon or instrument is moved for protection, in-place photographs are taken before movement, if possible, and the initial location of the item is marked.
 - (3) If an involved officer has personal possession of a firearm discharged in the incident, the on-scene supervisor (uninvolved in the firearm's discharge) shall assign an uninvolved officer to guard the involved officer. The guarding officer shall have the responsibility of providing security for the involved officer. The guard shall make certain that the involved officer's weapon, gear, and person remain undisturbed for the purpose of evidence collection or photographically documented by a member of the criminal investigation team, which may include processing for trace evidence, i.e., swabs, particulate matter, etc. Should the involved officer's person, uniform or gear contain bodily fluids or any other bio hazard substance, the on-scene supervisor shall have the contaminated objects removed from the officer immediately and collected and preserved as evidence. Involved officers' weapons are to remain holstered (or if already upholstered, secured as found) and not to be handled by non-investigating members unless issues of officer safety exist. The above procedures may be adjusted if exigent circumstances exist (i.e., safety,

weather, inability to secure scene, etc.). The firearm, ammunition and, if applicable, duty belt will be secured by a criminal investigation team member, adhering to chain of custody procedures. Secondary or back-up firearms in the possession of an involved officer will also be taken and secured as detailed above. When the firearm is removed from the involved officer, a supervisor from the employer agency shall consider providing a like firearm to the involved officer.

(4) Allow for the option to release non-critical equipment, personal property (safety equipment, wallets, keys, identification, etc.) after being photographed.

(5) The on-scene supervisor shall make a full account of all firearms that were present when the incident occurred. The on-scene supervisor shall confirm that all firearms and personally possessed magazines that are believed to be uninvolved (not fired) are fully loaded. If any apparently uninvolved officer is in possession of a weapon(s) or magazines that are not fully loaded, the on-scene supervisor shall place a guard on this officer, in accordance with the manner stated in paragraph (3), above. All firearms that were present at the time of the occurrence shall be examined by a member of the criminal investigative team to determine if they have been fired. All firearms that were discharged shall be identified and collected. If a back-up weapon clearly has not been fired, or played any role in the incident, then the firearm may be photographically documented and released. If the supervisor is an actor or injured person, the responsibility for security of weapons or instruments then rests with an uninvolved supervisor or senior uninvolved officer.

d. Any other physical evidence at the scene which is at risk of contamination, destruction, or removal is observed, recorded and protected for collection. At risk evidence requiring immediate and special care includes gunshot residues on involved persons, blood stains, footprints, fingerprints, and volatile substance, etc.

6. **Interviewing Non-Law Enforcement Witnesses**

Sequestered witnesses, excluding witnesses who are taken into custody or lawful detention, shall not be unnecessarily deprived of any freedom of movement. All reasonable efforts should be made to gain and retain their patience and cooperation.

7. **Interviewing Law Enforcement Employees**

Law enforcement employees are protected by the same constitutional provisions as are all citizens. As Law Enforcement Employee-Involved Critical Incident Protocol investigations are criminal investigations, criminal case law provisions (Miranda, et al) are followed whenever lawfully required.

- a. Law enforcement employees are treated as witnesses or victims unless factual circumstances dictate they be treated otherwise.
- b. Law enforcement employees may consult with a representative prior to interview and have the representative present during the interview.
 - (1) The contents of private conversations between the representative and the law enforcement employee may not be privileged absent statutory authority, i.e., doctor, attorney, psychotherapist, etc.
 - (2) The representative is allowed to privately consult about the facts of the incident with only one law enforcement employee at a time.
 - (3) The lead agency investigator(s) may wish to conduct a walk-through of the crime scene with the actor(s). When deciding whether or not to conduct a walk-through, the lead agency investigator(s) should consider the emotional state of the actor(s), the possible contamination of the crime scene and the timeliness of the walk-through. The actor(s) shall not be compelled to participate in the walk-through.
 - (4) An Employee-Involved Critical Incident is one of the most stressful and time-consuming incidents an officer may encounter. The emotional and physiological effects of an event of this magnitude will often be taxing on all involved parties. Care should be taken to weigh the need to obtain an immediate statement with the need to maintain the involved officers' well-being. While it is always a good idea to obtain a statement immediately following the incident, there may be times when allowing one or all of the involved officers to obtain sleep and sustenance prior to the interview is warranted.

If circumstances dictate that interviews of the involved officers be conducted at a later time, that decision should be a collaborative one between the involved officer, his/her counsel and the Lead Agency investigators. "Reasonable preparation" with the

involved officer's counsel shall be permitted and each case should be evaluated on a case-by-case basis with all parties equally informed as to the necessity and gravity of this action, prior to the final decision being made. Officers may be allowed up to a 48-hour sleep cycle prior to interviewing to ensure the most accurate statement can be obtained. Length of time between the incident and the interview may vary based upon the circumstances. Officers who are allowed to provide interview information at a later time based on the event circumstances or conditions used to invoke this decision, should be advised not to discuss the circumstances of the case with anyone or subject themselves to sources of information that would alter their understanding or perception of the incident.

- (5) During the interview of the involved officer(s), investigators may elect to use a pre-designated questionnaire as part of their approach to obtain basic information before beginning direct questions about the specific actions of the officer(s). The questionnaire shall be consistent with all Member Agencies.
- c. California Government Code Section 3300 et seq (Public Safety Officers Procedural Bill of Rights) does not apply to:
- (1) A law enforcement employee who is not a peace officer; or
 - (2) A law enforcement employee being interviewed by someone other than their employer; or
 - (3) A law enforcement employee being interviewed for a criminal investigation that is solely and directly concerned with alleged criminal activities.
- d. The criminal investigators are not accompanied by staff from the employer agency during interviews with employer agency employees.
- e. To ensure proof of voluntary statements in a non-custodial interview, the criminal investigators should advise the interviewee that:
- (1) The interviewee is not in custody and is free to leave at any time.
 - (2) The interviewee is not obligated to answer any questions asked by the investigators.
 - (i) In the event the interviewee elects to refuse to provide a voluntary statement, all questioning shall cease. However, if there is a public safety

emergency, further questions may be compelled of the interviewee.

- f. Law enforcement employees present at the scene when the incident occurs, whether as actors or witnesses, are relieved of their duties as soon as is safe and practical. First priority for relief is for an actor(s), who is then driven to the police station or other secure location by a supervisor or designated uninvolved law enforcement officer. Other involved employees drive or are transported to their own station or other agreed upon secure location. Sworn personnel not involved in the incident are assigned to accompany the involved employees.
- g. Evidence collection needs regarding involved employees are accomplished prior to the employee engaging in any activity that may destroy evidence.
- h. An uninvolved sequestering officer remains with the involved employees until relieved by a supervisor. The sequestering officer ensures the involved employees are appropriately situated, and the integrity of each employee's later statements to investigators is not tainted by group or outside discussion. The sequestering officer is not present during confidential (privileged) conversations between the employee and any designated representative(s). The sequestering officer has an affirmative obligation to report information relevant to the criminal investigation to the lead agency.
- i. Viewing of video and audible recording: Officers shall be allowed to view any video or audio recordings captured by them prior to being interviewed. Care should be given not to allow the involved officer(s) to view any video or hear any audio recordings captured on any device other than their own prior to the interview by the Lead Agency investigators. However, if requested, the involved officer's legal counsel may be allowed to view such recordings prior to the initial interview. After the initial interview with the involved officer, and with the concurrence of the officer's legal counsel, the officer may view or hear any collected recordings, prior to any follow up interview.
 - (1) The following admonition should be provided to Involved Law Enforcement Employees prior to viewing any audio/visual recordings:
 - i. In this case there is audio/video evidence that you will have an opportunity to view after you have given your initial statement. Video evidence has limitations and may depict the events differently than you recall, and may not depict all of the

events as seen or heard by you. Video has a limited field of view and may not capture events normally seen by the human eye. The “frame rate” of video may limit the camera’s ability to capture movements normally seen by the human eye. Lighting as seen on the video may be different than what is seen by the human eye. Videos are a two-dimensional medium and may not capture depth, distance or positional orientation as well as the human eye. Remember, the video evidence is intended to assist your memory and ensure that your initial statement explains your state of mind at the time of the incident.

- ii. You should not feel in any way compelled or obligated to explain any difference in what you remember and acted upon from what viewing the additional evidence provides you. If listening to audio recordings or viewing video recordings provides additional clarity to what you remember that is fine; if it doesn’t, that’s fine too.

- j. All interviews are conducted separately and are audio recorded.

8. **Intoxicant Testing**

- a. The rules of criminal law apply to intoxicant testing in a Law Enforcement Employee-Involved Critical Incident investigation. As standard procedure, all actors are requested to voluntarily submit to a blood test to determine if intoxicants are present.
- b. The request for a voluntary blood sample shall be made by the investigator from the lead agency during the collection of evidence from the officer.
- c. If an actor elects not to voluntarily submit to intoxicant testing and when investigators determine that an actor’s state of potential impairment is relevant to the investigation, the following options are available when lawfully permissible:
 - (1) Obtain the test sample incidental to valid arrest; or,
 - (2) Obtain a search warrant.

9. **Autopsy**

- a. Prior to any post-mortem examination, the autopsy pathologist receives a briefing on all relevant case information from investigators representing the lead agency.
- b. At least one investigator from the lead agency and one from the Office of the District Attorney attend the autopsy.

10. **Office of the District Attorney**

- a. The Office of the District Attorney has the following responsibilities in the investigative process:
- (1) Participate with the lead agency in conducting the investigation.
 - (2) Provide advice and direction to the investigators on relevant criminal law issues.
 - (3) Upon receipt of the investigation from the Lead Agency, analyze the facts of the incident in light of relevant statutes to determine whether or not violations of criminal law are believed to have occurred. The Office of the District Attorney will make every reasonable effort to prepare a summary report within ninety (90) days of receiving the completed investigation with the recognition that additional investigation and/or receipt of autopsy findings may result in a delay of the summary report beyond the ninety day goal. The Lead Agency shall be given the opportunity to review the District Attorney's summary prior to its dissemination.
 - (4) As deemed appropriate, prosecute those persons believed to have violated criminal law.
 - (5) Provide the Deputy District Attorney's summary of the incident and recommendation to the Foreperson on the Sonoma County Grand Jury.
 - (6) Upon request, present investigative information to the Sonoma County Grand Jury for their consideration and review.
- b. The Office of the District Attorney has investigative authority independent of that of other member agencies. When deemed appropriate by the District Attorney, the Office of the District Attorney may perform an independent investigation separate from the lead agency.

11. **Report Writing and Dissemination of Reports**

- a. Law enforcement employees who witnessed or were involved in the occurrence (or who have specific information related to the occurrence) shall not write a report in most instances. Instead these individuals shall be interviewed by a member(s) of the criminal investigative team. Law enforcement employees who are involved in conducting the criminal investigation shall prepare a report that fully documents their investigation. Law enforcement employees who are not a part of the criminal investigation team, but who assist in the

furtherance of the investigation (i.e., scene security, transportation of witnesses, etc.) shall document their involvement in a report. All original reports shall be forwarded to the lead agency's supervising investigator for review and approval. Once approved, the reports shall be retained by the lead agency as part of the cumulative investigative report. A copy of any approved report may be retained by the employing agency of the report writer, if desired. The immediate supervisor of the criminal investigation is authorized to request a written report from any law enforcement employee, including management, if it is deemed to be in the best interest of the criminal investigation.

- b. Documentation of any Body Worn Camera (BWC) footage, video footage, surveillance footage etc.. should be written in summary form. Information such as camera view, lighting, video quality and the existence of such evidence should be documented, however Investigators should use caution in interpreting video as it may leave out other information not captured in a two-dimensional video. The video evidence should be presented and interpreted based on the information available and interpreted by the audience it is intended for.
- c. It is the responsibility of each involved agency to direct the necessary writing of reports by their employees. Reports should be written and distributed to the lead agency within 72 hours of actions taken or investigated.
- d. The lead agency has the ultimate responsibility to ensure that reports are collected from other agencies.
- e. Upon completion of the lead agency investigation, the Lead Agency shall provide copies of the entire case to the District Attorney's Office, and the Employer Agency. Once the District Attorney has completed their review and issued a finding, the District Attorney will provide a complete copy to the Sonoma County Civil Grand Jury. In the event that additional case work is performed after submission of the case to the above parties, it shall be the responsibility of the Lead Agency to provide subsequent reports or investigation documentation to the above entities.

B. ADMINISTRATIVE INVESTIGATION

1. Intent

An administrative investigation is an investigation conducted by the employer agency for the purposes of:

- a. Determining whether or not an employee violated rules, regulations or conditions of employment of the employer agency.

- b. Determining the adequacy of employer agency policies, procedures, training, equipment, personnel and supervision. Nothing in this Protocol prohibits the employer agency from compelling a statement during the course of an administrative investigation. Prior to taking a compelled statement, every effort shall be made to consult with the District Attorney to ensure the criminal investigation is not compromised.

2. **Responsibility**

Whether or not an administrative investigation is conducted is the concern and responsibility solely of the employer agency.

- a. The criminal investigation conducted by the lead agency is always given investigative priority over an administrative investigation. It is intended that this prioritization will minimize conflict between the two investigations and it will prevent the criminal investigation from being compromised by an untimely exercise of employer agency administrative action.

3. **Disclosure**

Interview statements, physical evidence, toxicology test results and investigative leads which are obtained by administrative investigators when ordering law enforcement employees to cooperate shall not be revealed to criminal investigators unless clear legal authority exists and then only when directed by the District Attorney. Results of the administrative investigation may or may not be privileged from disclosure to others, depending upon applicable law.

4. **Investigator**

The employer agency may assign an administrative investigator to conduct independent administrative investigative activities.

- a. An administrative investigator has access privilege to briefings, crime scenes, physical evidence and interviewees' statements in the criminal investigation. The administrative investigator does not accompany the criminal investigator during interviews.

5. **Intoxicant Testing**

- a. Intoxicant test results obtained in the criminal investigation are available for use in an administrative investigation.
- b. In the event the criminal investigation does not obtain samples for intoxicant testing or the employer agency wishes its own independent samples, the employer agency may seek samples following the criminal investigator's intoxicant testing actions by:
 - (1) Obtaining valid consent from the employee; or,

- (2) When lawfully permissible, ordering the employee to provide samples based upon an employment relationship.

IV. RELEASE OF INFORMATION TO THE NEWS MEDIA

A. General Information

1. The community's interest to know what occurred in a Law Enforcement Employee-Involved Critical Incident must be balanced with investigative responsibilities and the rights of involved individuals. In all cases, the information released to the public and manner in which it is released by member agencies is in accordance with legal mandates.
 - a. Member agencies ensure that intentionally misleading, erroneous, or false statements are not made.
 - b. Only those individuals with appropriate knowledge and member agency approval should make public statements regarding an incident.
 - c. Member agencies communicate directly with each other to ensure information releases and community statements do not jeopardize the integrity of the criminal investigation.

B. Lead Agency

1. Unless otherwise agreed upon by the lead and employer agencies, the lead agency is responsible for providing news media releases of information directly relevant to the criminal investigation.
2. Release of criminal investigative information, including public statements about the investigation, is only done under the guidance and/or approval of the lead agency until such time as otherwise agreed upon by involved member agencies.
3. The lead agency does not comment upon the employer-employee issues that are the responsibility of the employer agency.

C. Employer Agency

1. The employer agency is responsible for providing news media release of information directly relevant to the employer-employee relationship, including the status of any administrative investigation.
2. The employer agency may prepare the initial press release involving the incident. The press release will be confined to the following areas:
 - a. The initial statement about what occurred.
 - b. An employee of the employer agency was involved.
 - c. The Sonoma County Law Enforcement Employee-Involved Critical Incident Protocol has been invoked.
 - d. The identification of the lead and participating agencies.

- e. The employment status of the involved employee(s).
 - 3. The employer agency should coordinate the release of any employer-employee information so that it does not conflict with criminal investigative concerns.
 - 4. The employer agency may make statements or issue press releases regarding the criminal investigation when approved by the lead agency as long as it does not conflict with a criminal investigation or concern.
- D. Office of the District Attorney
- 1. The Office of the District Attorney is responsible for providing news media release of information directly relevant to the District Attorney's statutory authority. News media releases regarding investigative findings and any subsequent prosecution based upon the criminal investigation are the responsibility of the Office of the District Attorney.
- E. SB 1421/AB 748

It is the responsibility of the employer agency to release body worn camera footage and audio files directly related to the critical incident, or use of force resulting in great bodily injury, as required by Assembly Bill 748. The lead investigative agency will be responsible for redacting and releasing all investigative reports generated as part of the investigation and shall be released under the guidelines established in Senate Bill 1421.

V. REPORTING IN-CUSTODY DEATH

Pursuant to Government Code Section 12525, each law enforcement agency in which a person dies while in their custody, shall report, in writing to the Attorney General, within 10 days after the death, all facts concerning the death. Deaths occurring in the Sonoma County Jail shall be reported to the Attorney General by the Sonoma County Detention Division per policy entitled "Emergencies – Inmate Death."

INVOLVED EMPLOYEE* INTERVIEWS

Prior to the interview, employees involved in critical incidents should be sequestered with an uninvolved officer or employee. The sequestering employee should not be present during the interview.

The interview with the involved employee is voluntary on his/her part during the criminal investigation. Usually, the interview with the involved employee is done after interviews with material witnesses and witness officers.

Involved employees enjoy the same Fifth Amendment constitutional right as anyone and can only be compelled to give a statement by his/her employing agency. Compelled statements cannot be used in the criminal prosecution of an involved peace officer, Lybarger vs City of Los Angeles, 40 C.3d 822.

Standard questions for employee involved critical incidents:

I. Introductions: give time, date, case number and location.

A. Introduce the parties to the interview. Have them state their names for recognition purposes:

1. Investigating officer(s) states name, rank and agency
2. Interviewee states name, rank, agency, assignment
3. Have any legal representatives present introduce themselves
4. If others are present in the interview room they should introduce themselves as well

B. State that this is a criminal investigation and the employee is being interviewed as a victim or witness. (If the employee is to be interviewed as a suspect, investigators shall consult with the supervisor in charge of the investigation prior to proceeding with an interview.)

* Although some of the language in this questionnaire pertains exclusively to peace officers, it can be used when conducting an interview with any employee involved in a critical incident. Investigators should be careful to omit sections that are not applicable to the interviewee. The questionnaire is only intended to be used as a guideline when conducting interviews. Investigators may have to adapt their questions to the specific circumstances of the critical event being investigated.

1. Clarify with the interviewee that the statement sought is voluntary and advise them of the following:
 - a. The interviewee is free to leave at any time.
 - b. The interviewee is not obligated to answer any question asked by the investigators.
 - (1) In the event the interviewee elects to refuse to provide a voluntary statement, all questioning shall cease. However, if there is a public safety emergency, further questions may be compelled of the interviewee.
2. If the employee provided a blood sample per the guidelines of the critical incident protocol, establish that the employee's blood draw was voluntary.
3. Establish that the employee is prepared to provide a statement at this time.
 - a. Ask if he/she has had ample time to gather their thoughts and otherwise prepare for the interview.
 - b. Anything that would hinder giving a statement at this time.
- C. Establish that there is no close relationship or friendship between the interviewing investigator and the involved employee. This eliminates any accusations of bias.
- D. Status
 1. Are you sick or injured?
 2. Did you receive any injuries as a result of the incident? Describe.
 3. At the time of the incident, were you suffering from any medical condition or taking any medication that may have impaired your abilities as a law enforcement officer?
 - a. If yes, explain the nature of the medication or medical condition, how much medication was taken and time of last dose.
 4. When did you last sleep?
 - a. How long?
 5. When did you last eat? Describe.
 6. Have you consumed any alcoholic beverages in the last 24 hours?
 - a. How much?

- b. Time started?
- c. Time stopped?
- d. At the time of the incident, did you feel the effects of the drinks? Describe.

II. Background Data

A. General experience:

- 1. How long in agency?
- 2. How long in law enforcement total?
 - a. Prior agencies
 - b. Time with prior agencies
 - c. Prior training firearms, SWAT, etcetera
 - d. Prior training as it relates to your duties (C.I.T., Tactical communications, drug recognition expert, etc.)
 - e. Prior special assignments, co-lateral duties

B. Present assignment:

- 1. Nature of duties
- 2. Work hours/shift
- 3. Time started work
- 4. Call sign
- 5. Uniform or non-uniform assignment?
- 6. How long in assignment?
- 7. Vehicle used/assigned, mechanical defects?
- 8. In uniform? Describe
- 9. Equipment – describe all equipment and any defects
 - a. Equipment carried on duty belt including description and caliber of firearm
 - b. Backup gun(s) - include how many, what caliber, location carried
 - c. Other firearms (rifle, shotgun)
 - d. Body worn camera
 - e. Audio recorder
 - f. Electronic Control Device (Tazer)

- g. Less-lethal
- h. Any other equipment deployed during shift

III. Statement

- A. The nature of this investigation concerns a significant incident you were recently involved in. It occurred in the general area of (describe):
 - 1. Please describe the event in as much detail as you can. Include the time of the event, names of witnesses and names of officers as best you can recall. Include all the information you can remember relative to the circumstances.
 - 2. Allow the employee to provide an uninterrupted narrative of the event.
- B. Follow up with necessary questions and make sure the following have been discussed:
 - 1. Position of employee
 - 2. Position of other officers and witnesses
 - 3. Position of vehicles and/or related equipment
 - 4. Location of possible evidence
 - 5. Equipment used/carried during event
 - a. Include firearm used
 - b. Other equipment such as ECD, less lethal, impact weapons, etc.
 - 6. Lighting conditions and distances
 - 7. Establish at what point during the incident the officer un-holstered his/her firearm.
 - 8. Establish and clarify if necessary all tactics employed by the involved employee, including verbal commands and use of force.
- C. Explore all information available to employee:
 - 1. Information from dispatch
 - 2. Direct observation
 - 3. Information from other officers or employees

4. Prior knowledge of individual(s) involved and/or location of event
5. Any specific training, knowledge or experience regarding type of crime employee was responding to (e.g. robbery – commonly armed during commission; drugs – those associated w/illegal drugs often carry weapons)

D. Determine the presence or absence of the employee's state of mind:

1. Scared or otherwise frightened
2. Need to protect self
3. Need to protect others
4. Need to prevent escape and/or future danger

E. If the employee opted to do a walk-through of the scene, explore any observations the employee made relevant to the event and to the scene not already discussed in the interview.

F. Video and Audio Recordings:

1. Was the incident recorded by the employee's body worn camera or other recording device?
 - a. Ask employee: "Have you reviewed the recording prior to this interview?"
2. Ask employee: "Do you wish to view any video recordings related to this event now?"
 - a. If yes, allow employee opportunity to view video at this time.
3. Obtain employee's comment regarding the video
 - a. Attempt to clarify any additional information employee provides

G. Follow-up questions to expand on or clarify details of incident

H. Anything employee wants to add

I. Anything attorney wants to ask or add

IV. Conclusion of interview - State time

V. After interview:

- A. Copy, label and book recording of interview into evidence
- B. Transcribe employee's statement for final report