INFORMATION MEMO

Planning for Critical Incident Responses

Find information and guidance for Minnesota law enforcement agencies on planning for and managing critical incidents such as officer-involved shootings and police actions resulting in death or serious injury. Also, access a link to a model policy.

RELEVANT LINKS:

I. Planning for critical incidents

In a critical incident, more so than any other police action, every decision made by officers and supervisors will likely receive close scrutiny during the criminal investigation, in the media, and in the civil litigation that may follow. Having a plan in place for thoughtfully and effectively navigating these circumstances is crucial.

This memo should be read with LMCIT’s model Critical Incident Response Policy, and provides Minnesota law enforcement agencies with background information and guidance to assist with planning for and managing critical incidents (“CIs”). It is prepared with officer-involved shootings (“OISs”) in mind as the primary example, but some or most of the guidance might also be applicable to other situations such as in-custody deaths, as well as officer-involved crashes and other force incidents that result in death or serious injury. The framework outlined here will aid agencies in managing situations where:

- A law enforcement officer has used force or taken other actions.
- The officer’s actions resulted in death or serious injury to another.
- A review of the officer’s conduct for compliance with criminal laws is likely to occur regardless of whether there is a citizen complaint.
- It is foreseeable that the event will result in at least some degree of media interest or public scrutiny toward the agency and officer.
- The circumstances will warrant due consideration for the emotional health and well-being of the officers involved.

This memo is not intended to aid your agency in conducting investigations into these events, but rather in navigating the multiple challenges that arise for an agency that employs officers who have been involved in a critical incident. A thoughtful and methodical approach to incident management is called for because of the many issues that must be addressed in the aftermath, including but not limited to:
RELEVANT LINKS:

- A review of the officer’s conduct for compliance with criminal laws, such as those governing the authorized use of force and deadly force.
- A criminal review or investigation of any other outstanding criminal issues—for example, the crime that brought the suspect and officer together at the time force was used.
- An “internal,” or administrative review of the officer’s conduct to determine whether it was in compliance with agency policy.
- Assuring appropriate communications and responses to public and media inquiries.
- Providing support for employees who are emotionally impacted by the incident.
- Responsibly anticipating any civil litigation that will arise from the incident.
- Responsibly managing the human resources components of the response to the incident.

II. Before the event

While the odds of any individual officer becoming involved in a shooting remain relatively low, the available statistics indicate that OISs continue to occur in Minnesota at a relatively steady rate. As with other low-frequency events, such as floods and tornadoes, there is much you cannot know in advance. However, there are some common features and resource needs that you can anticipate and prepare for.

A. Prepare for unusual dynamics

In the day-to-day existence of a healthy law enforcement agency, officers and their leaders function collegially and as a team to provide for the safety and security of their community. It naturally follows that when an officer experiences a significantly disruptive event, either at work or elsewhere, agency leadership will want to be supportive, and officers will likely expect to receive support from those in leadership positions.

The occurrence of a CI, however, can place an agency and its leaders in a situation with potentially conflicting obligations. On one hand, the agency has an obvious interest in supporting officers who have done their duties in difficult circumstances, so they are later able to return to work in a healthy and engaged way. On the other hand, law enforcement and prosecutors have an obligation to ensure that a thorough, unbiased, and objective review of the incident is conducted. This means that, while it is appropriate for police agencies to be “supportive” of their employees following a CI, they must also guard against the appearance of favoritism, or failing to thoroughly evaluate the officers’ actions.
The following measures are suggested for having supportive processes while guarding against the appearance of bias or favoritism:

- Develop a policy or plan for incident management that anticipates and addresses officers needs while providing for an objective review process.
- Provide or facilitate access to resources that will aid officers in maintaining their emotional health in the aftermath of an incident.
- Strive to ensure that agency and municipal leaders take a thoughtful, reasoned, and predictable approach to human resources issues, such as administrative leave and limited duty assignments.
- Provide training to officers, so they know what to expect and what resources will be available to them following an incident.

B. Resources

As with other forms of contingency planning, there is considerable value in thinking in advance about the challenges that may arise and the resources you can call on to help meet them when planning how your agency will respond to a critical incident.

1. Investigative resources

As noted above, there may be a need for up to three different kinds of fact-finding investigations in the aftermath of a CI: (1) a review of the officer’s conduct for compliance with criminal laws; (2) a criminal investigation of other non-police conduct; and (3) an “internal” or administrative review of the incident.

Agencies often outsource the criminal investigations to assure that they are independent, and to tap into the expertise of typically larger agencies with experience looking into such matters. It will be helpful to consider ahead of time who your agency will call for an investigation should the need arise.

2. Post-Incident Counseling

Critical incidents can, but do not necessarily, result in emotional trauma for the personnel involved. Involvement in such an incident does not by itself create grounds for evaluating an officer’s fitness for duty. However, the agency and involved employees both have an interest in making sure that those impacted receive individual counseling after involvement in a CI. Questions to be considered in developing your plan or policy include: (1) Should meeting with a psychologist after an incident be mandatory or optional? (2) If counseling will be provided at municipal expense, will the provider be a generalist or one that specializes in working with officers in CI situations? (3) Which provider will your agency use?

See Section V-C, Psychological Services.
3. Legal resources

A host of legal issues can arise following an incident, including questions about what information can or must be released under the Minnesota Government Data Practices Act, labor and employment issues pertaining to the status of officers on leave, and proactively addressing the risks of any foreseeable tort claims arising from the incident. You may want to consider speaking with your city attorney or legal advisor when developing your plan, so he or she has an opportunity to consider the various kinds of inquiries that might be forthcoming.

4. Communications resources

Following a CI, you may field questions from local and national news outlets, monitor and respond to social media, and otherwise confront a variety of challenging communications scenarios. An able and seasoned public information officer may be invaluable in such circumstances. Absent that resource internally, you may find value in seeking expert communications guidance from an outside professional.

III. Priorities in the immediate aftermath

Although the circumstances that could give rise to a critical incident are highly varied, it is still possible to identify basic priorities that will be common to most situations. The guidance and steps below are intended to supplement regular agency practices, not replace them. Accordingly, this document and the model policy both list the priorities that should be addressed following a critical incident, but do not provide detailed instructions for accomplishing them.

A. Immediate priorities

Common priorities in the immediate aftermath of an incident include:

- Summoning emergency medical care for and providing first aid to any individuals with serious injuries or medical conditions.
- Summoning appropriate resources to the scene.
- Protecting the public against any risks posed by ongoing hazards or dangerous people at large.
- Obtaining and broadcasting information to aid in the apprehension of any dangerous suspects.
- Notifying command staff and agency leaders of the incident.

Because each situation will be different, the model policy includes a statement that officers will need to use their professional judgment to decide which issues are the most pressing. This language helps assure that courts view these decisions as discretionary and, thus, immune from liability.
B. Establishing on-scene command and control

There should be an understanding or plan in place for who will be initially in charge of your agency’s personnel and resources at the scene of the incident. If the incident occurs in a location over which another agency has primary jurisdiction, then officers from your agency will likely be expected to relinquish control of the scene once that agency has sufficient resources on hand. If the incident happens in your jurisdiction, however, you will likely be expected to continue managing the scene until an outside agency arrives to conduct the investigation.

The model policy includes options for using a basic incident command system for managing the scene, and for immediately identifying who is in charge. Ensuring that someone is in charge promotes a structured, organized approach to managing the incident, rather than allowing officers to independently identify and address priorities. The model policy includes a mechanism for identifying a non-supervisor as the incident commander, which may be appropriate in smaller agencies. This incident command mechanism might not be necessary if your agency is of sufficient size and staffing to know that a supervisor who was not involved in the incident will be available afterward to take charge of the scene. In selecting an appropriate officer to serve as the incident commander, note that officers who were at the scene and witnessed the incident when it occurred, although “uninvolved” in a legal sense, may nonetheless have been exposed to significant stress that could impair their abilities to perform. An officer who neither participated in nor witnessed the incident may be a more suitable choice to serve as incident commander.

IV. Incident management activities

Regardless of whether the fact-finding investigation(s) will be outsourced to a different agency, immediate steps may still be necessary to protect public safety, preserve the integrity of the investigatory process, and prevent the loss or destruction of evidence. These steps are outlined below.

A. Relieving involved officers from further involvement

The model policy calls for the incident commander or on-scene supervisor to promptly identify any involved officers and then, to the extent possible, relieve them from further duties at the scene.
The term “involved officer” has a special meaning under the policy. It is defined as those officers who used force or took other actions that resulted in death or serious injury to another. Principle Seven of the Peace Officer Standards and Training (POST) Board model policy on Professional Conduct of Peace Officers states that officers are required to avoid taking action where a conflict of interest exists unless required by law or policy. Following an incident, the focus of law enforcement efforts will transition over time from immediate life and safety issues to protecting the scene and safeguarding evidence. Involved officers may need to take immediate steps following a CI to aid the injured and to protect public safety as envisioned above. But involved officers should be relieved of further responsibilities as soon as possible to avoid a conflict of interest situation.

“Uninvolved” officers, on the other hand, are those who have not taken actions that will be subject to criminal review, and thus do not have a direct stake in the outcome of the investigation. Accordingly, from a legal perspective, these officers may be assigned to such tasks as are necessary, including identifying witnesses and safeguarding evidence. However, officers who have been first-hand witnesses to a critical event may, like those who were involved, experience an emotional response that impairs performance. It is not safe to automatically assume that uninvolved officers will be capable of assisting with further law enforcement efforts at the scene, and they may in fact require special assistance and the assignment of a care officer.

Supervisors and investigators arriving at the scene later will want to obtain a preliminary understanding as to what occurred, and will need to know which officers were involved and which were not. Because involved officers face criminal review, the Fifth Amendment protects them against compelled self-incrimination. They cannot be required to give statements that could be used against them in criminal proceedings, and may exercise the right to remain silent. In addition, involved officers may lack the ability to immediately provide accurate information due to the stress of the incident itself. As a result, it may be more productive for supervisors and investigators to seek preliminary information from other sources.
B. Consider taking public safety statements

As noted above, the initial priorities following an incident are focused on life and safety. Supervisors, investigators, and perhaps even other officers arriving on the scene immediately after a critical incident will need some amount of information to determine whether there are still persons present who need medical attention, whether there are suspects who remain at large and how to identify and find them, and whether there are any ongoing risks to the community. If there are uninvolved officers who have this information, they may be called upon to provide it without any concerns as to their Fifth Amendment rights. Likewise, information from digital recording systems could in theory supply the requisite information.

When it is necessary to request information from involved officers, many agencies use some variation of a public safety questionnaire, with questions designed to elicit information about ongoing risks and threats, and to avoid topics that would lead an officer to invoke the right to union representation, counsel, or the right to remain silent. The questions are usually limited to topics that must be considered immediately for safety reasons.

There is no requirement to seek such statements in all cases. Rather, they are best thought of as an option for situations where involved officers might be either the sole or most reliable source of the required information. Examples of appropriate questions to be asked during a public safety statement include:

- Are there any other individuals who are injured and, if so, where are they?
- Are there any ongoing threats to public safety or suspects at large?
- As to suspects at large, what crimes did they commit, are they dangerous, did they leave on foot or in a vehicle, and in what direction?
- Please indicate the direction of flight and likely impact area of any rounds that were fired.

There is evidence suggesting that officers’ memories as to locations, distances, and where they went during critical incidents may be impaired because of attentional focus on the threat, to the exclusion of other information. Those conducting or reviewing public safety statements should be mindful of these possible limitations.
C. Identify witnesses and the evidence they possess

Officers at the scene should take immediate steps to identify any witnesses present. If witnesses wish to leave, officers should use appropriate methods to seek their identification and contact information, but should not violate the rights of such individuals to go about their affairs without police interference. It may also be beneficial and appropriate to ask the witnesses if they made any cellphone or other recordings of the event, and if they will provide the recordings to law enforcement. Depending on the circumstances, it may be appropriate to take immediate action to secure and store those recordings.

Whether officers at the scene should immediately attempt to interview witnesses is a determination that must be made on a case-by-case basis. Immediate interviews may be less than optimal for a number of reasons. First, like the officers involved in the event, witnesses may be traumatized by their exposure to the incident and will require some period of time for recovery before being able to give a cogent account. Next, the interviewer may not yet have a sufficient understanding of the incident to conduct an informed interview. Finally, when officers from the involved agency take statements instead of independent investigators, it may open the agency up to allegations of a biased investigation. On the other hand, waiting to conduct interviews involves risks that the witnesses’ memories will become contaminated by information from others or received over social media. While these factors will generally weigh in favor of deferring witness interviews until a later time, there may be sound reasons for attempting to conduct interviews immediately.

D. Preserve the integrity of the scene

The scene of the incident will likely be thoroughly examined and documented as part of the investigation, and its integrity must be preserved until that time. Accordingly, one or more perimeters should be established, and a log of personnel entering and exiting the perimeters should be maintained.

See Section V-C, Psychological Services.
E. Evidence preservation

Ideally, the tasks of collecting and preserving physical evidence would be left to the outside investigating agency to eliminate any basis for claiming bias in the investigation. However, weather and other circumstances can result in evidence being degraded or permanently lost and destroyed, meaning that officers from your agency may need to take on an active role in safeguarding it. The emphasis should usually be on preserving evidence rather than actually collecting it to avoid potential contamination. Consider both the conditions at the scene and the estimated arrival time of any evidence team when determining whether immediate action is warranted. Any actions taken should be well documented.

F. Protect digital evidence from being overwritten

Some policies relating to body-worn and in-car cameras may make provision for special handling of electronic evidence following a critical incident. Regardless of how this evidence will eventually be handled, immediate steps may be necessary to preserve it: some digital evidence systems may begin overwriting the recording of the incident if left in the “record mode” for too long afterward. Agencies may wish to provide specific instructions based on their own technologies and business practices.

G. Notify and coordinate with the investigating agency

If the incident occurred in your jurisdiction, you will need to request assistance from the outside agency that you wish to conduct the investigation, and find out what immediate steps that agency wants you to take. Decisions will need to be made about who will secure the scene, protect the evidence, and interview the witnesses. You should seek to arrive at a clear understanding as to the scope of the other agency’s investigation. For example, will the outside agency examine only the conduct of officers who used force, or will it also review other potential crimes committed by non-police personnel before, during, or after the incident? Finally, you should find out when the investigating agency can be expected to arrive at the scene, which will inform your decisions regarding appropriate measures in the meantime. If the incident occurred in a place outside of your agency’s territorial jurisdiction, then these issues will be handled by or should be coordinated with the agency having jurisdiction.
H. Preserve the evidentiary value of officers’ weapons

The firearms and other devices that officers used during a critical incident should be regarded as constituting or likely to yield relevant evidence, and care should be taken to preserve both the evidentiary value and the chain of custody. Apart from state of the weapon itself, it may also host DNA and other biologic or forensic evidence.

As to firearms, the chain of custody should be kept as short as practicable, and depending on the circumstances it may be appropriate for the officer to keep his or her firearm holstered pending the arrival of an investigator or agent. If it is necessary to secure the firearm sooner, take appropriate steps such as the use of gloves and an appropriate container, and ensure the chain of custody is intact and well documented.

It appears to be a standard practice across the law enforcement industry to immediately replace any handgun taken from an officer with one that functions identically, unless there are circumstances that warrant disarming the officer following the incident. The firearm is replaced to preserve the officer’s ability to protect his or her own safety, and to avoid any implicit message of mistrust that could result from requiring the officer to remain unarmed. The firearm should be replaced with one that functions identically to avoid errors that could arise from a mismatch between “muscle memory” and the replacement device.

I. Assign a liaison to work with the investigating agency

An officer/investigator should be assigned to liaise with the outside agency conducting the investigation. The liaison can help connect the investigating agency with access to records, evidence, and personnel, and can facilitate any requests or communications between the agency and investigators.

J. Assign a “care officer” to each involved officer

Officers involved in a critical incident may experience some or many of the same reactions as others do when victimized by a violent crime. In addition, they may be required to remain at work for an extended period so evidence can be collected from them. The duty of the “care officer” is to meet the reasonable needs of the involved officer following an incident, and this role may begin immediately afterward and continue until no longer needed. Care officers should be instructed that there is no legal privilege for any communications with the involved officer.
The duties of the care officer are not fixed and certain, and may vary depending on the circumstances. The care officer should be encouraged to seek guidance and clarification from agency leadership if in doubt as to the appropriate scope of duties.

1. Immediate aftermath

In the immediate aftermath, tasks that may be carried out by the care officer include, but are not limited to the following:

- Providing the officer with transportation away from the scene to the police station or law enforcement center, or another appropriate location. The officer being transported should not be placed in the back seat of a police vehicle or in any other prisoner transport area, both for the well-being of the officer and to avoid a misperception that the officer has been taken into custody. If the officer is transported to a hospital or medical facility, the care officer should accompany and remain with the involved officer until properly relieved.
- Addressing the involved officer’s basic physical needs, such as access to a restroom and to medications, food, and hydration.
- Ensuring that the officer has an appropriate place to wait following the incident, being mindful that some officers may prefer a private setting while others might find isolation to be distressing. Officers should not be directed to wait in places where criminal suspects are detained, or in places that are used for the administration of discipline.
- Assisting the officer with immediate communication needs, such as contacting family members, spiritual advisors, legal counsel, and union representatives.
- Picking up or delivering replacement clothing if the officer’s own garments will be collected as evidence.
- Meeting reasonable needs for transportation.
- Assisting the officer in dealing with interruptions to his or her abilities to meet scheduled parenting, familial, or other obligations.

2. Administrative leave

During any period of administrative leave, a care officer’s tasks may include the following:

- Maintaining contact with the officer to help him or her stay abreast of developments within the agency.
- If appropriate, conveying any messages on behalf of the department’s leadership.
K. Ensure the preservation of other evidence

Even though another agency may be in charge of the investigation, your agency will still need to take an active role in helping to assure the preservation of important evidence. This can include digital evidence from in-car camera systems and body-worn cameras, recorded radio traffic and telephone calls, the clothing and equipment of involved officers, and the clothing and effects of others who were involved in the incident, including those who have been hospitalized.

L. Post-incident chemical testing

As a matter of course, investigators conducting the criminal review may ask involved officers to voluntarily provide blood samples for chemical testing. To maintain the voluntary nature of this testing, the model policy specifies that the employing agency will not penalize officers for refusing to provide samples as part of the criminal investigation. It also allows members of the employing agency to assist officers in providing voluntary samples, such as by supplying transportation to a hospital or clinic, or witnessing the collection of the sample. Providing this assistance might be particularly appropriate in circumstances where investigators are still hours away from the scene and request help in obtaining the samples.

Chemical testing for employment purposes, however, is another matter. Minnesota law prohibits employment-based drug and alcohol testing except when conducted pursuant to the employer’s written policy, and allows such testing only upon reasonable suspicion that the employee is under the influence, is using or possessing drugs or alcohol in violation of the employer’s work rules, sustained a personal injury or caused another employee to be injured, or caused an accident at work involving the operation of machinery or equipment. An officer’s involvement in a critical incident, by itself, does not give rise to reasonable suspicion authorizing a drug or alcohol test.

V. Post-incident administrative issues

It is routine to place officers on administrative leave for some period of time following a critical incident, and to provide officers with psychological services to assist them in dealing with the incident. In addition, state law requires that the agency report firearm discharges to the commissioner of Public Safety.

See LMC information memo, Drug and Alcohol Testing Toolkit for the City Workplace.

Minn. Stat. § 181.951.
A. Administrative leave

The International Association of Chiefs of Police (IACP) model policy on officer-involved shootings lists placement on “mandatory leave” as a routine step. A study published in 2008 found that the majority of agencies surveyed had a policy of automatically placing officers on leave following an OIS to allow officers to “unwind” from the incidents, to obtain counseling, and to allow for a thorough investigation without interfering with the officers’ duties.

“Paid administrative leave” is not the same as a disciplinary suspension for doing something wrong. For the employee, it is a continuation of pay, grade, and benefits without the necessity of reporting to work. Courts recognize that leaves of this nature are not considered a disciplinary action. Administrative leave should only be assigned when doing so does not violate any governing labor agreement, and it may be appropriate to consult with your city’s labor counsel in developing your policy. The model policy includes three options for establishing an administrative leave policy for critical incidents.

Factors that may legitimately be considered in determining an appropriate period of leave include the timing of any investigatory interviews, the timing of any scheduled counseling appointments for the involved officer(s), the apparent wellness of the officer following the incident, and the apparent public reaction to the incident. As to this last consideration, Principle Three of the POST Board Model Policy on Professional Conduct of Peace Officers recognizes that “[l]aw enforcement effectiveness requires public trust and confidence.” If the public’s reaction to initial information about an incident is one of substantial mistrust, then it may be difficult for involved officers to function effectively in their regular assignments until the matter has been fully investigated and adjudicated. Extended administrative leave may be appropriate from the agency’s perspective. Cities are encouraged to consult their city attorney or labor counsel for advice in determining an appropriate approach to administrative leave assignments.

B. Ongoing limited duty/public contact

Following a CI, circumstances may render it imprudent to assign involved officers to regular patrol duties or to other work involving visible interaction with the public. Public mistrust or animus may make it difficult and even dangerous for officers to serve in their normal capacities. In those situations, employing agencies should work with their city attorney or labor counsel to consider special or modified assignments on a case-by-case basis, or consider continuing the officers on administrative leave.
C. Psychological services

The IACP Psychological Services Section recommends that involved officers meet with an appropriately qualified and experienced mental health professional within one week of the incident. The primary purpose of the meeting is to educate the officers about what is normal during and after an incident, with the goal of reducing the officer’s worry and negative self-assessment. The guidelines recommend that agencies make these meetings mandatory so officers do not opt out to avoid the “stigma” of visiting with a mental health professional. Uninvolved officers and other agency personnel might also benefit from these services following an incident. The model policy contains language for mandatory counseling, and envisions that both involved officers and others impacted by the event (such as first-hand witness officers) may be directed to participate.

The model policy differentiates between education and counseling meetings with mental health professionals after an incident, and evaluations to assess and report on an officer’s mental fitness to resume work. Involvement in a shooting or critical incident, by itself, generally will not establish grounds for requiring officers to undergo a psychological fitness-for-duty evaluation (“FFDE”). Rather, such examinations may be conducted only when objective, legitimate, and non-discriminatory reasons arise for doubting an employee’s “capacity to perform his or her duties” or raise questions as to whether an officer is “psychologically fit for the rigors of active police work.” Officers are trained and legally authorized to use deadly force in certain circumstances, and carrying out those duties is not by itself evidence of unfitness. Decisions about requiring officers to undergo FFDEs must be made on a case-by-case basis, and should be made in conjunction with your city attorney or labor counsel.

D. Critical incident stress debriefing

The model policy recognizes that group or peer-to-peer counseling may be beneficial for some, but takes the position that officers who face the prospect of criminal or civil liability should not participate in these processes.
Critical incident stress debriefing (“CISD”) is generally a structured group process, led by a trained peer or facilitator, to assist personnel in mitigating the effects of a critical incident. It may also be offered as one-on-one peer counseling. Minnesota law establishes privacy protections for the information that officers disclose during these sessions. However, the legal protections are limited. State law provides that information obtained during peer counseling cannot be used as evidence in disciplinary and occupational licensing matters, but the law is silent with respect to using it in civil and criminal proceedings. State law classifies public safety peer counseling data as private, but private data may be lawfully disclosed pursuant to a court order. Because of the limited nature of these protections, it would be legally imprudent for involved officers to make any statements during debriefing or peer counseling that could be even remotely construed as misgivings about their actions. Moreover, it may be quite difficult for persons who witnessed the event to keep their memory of the incident separate from what they learned later in a group debriefing session.

Involved officers should be directed away from participating in group debriefings or peer-to-peer counseling, and channeled toward obtaining individual services from a licensed psychologist or licensed social worker. The law provides stronger protections for communications between clients and the psychologists and licensed social workers from whom they obtain counseling or treatment.

E. Firearms discharge report

Minnesota law requires the submission of a report to the commissioner of Public Safety whenever a peace officer discharges a firearm in the line of duty for purposes other than training or killing an animal that is sick, injured, or dangerous. The head of the officer’s department must file the report within 30 days of the incident. The model policy contains language reflecting this requirement.

VI. Investigative issues

This section discusses some of the unique issues that arise in the course of investigations into critical incidents.
A. Commitment to respecting constitutional rights

Officers who face the possibility of their statements being used against them in a criminal proceeding have, like any other individual, a constitutional right to remain silent and not speak about the matter. It follows that officers may condition their willingness to speak to criminal investigators—or to write reports that could be used against them in court—on being able to speak to an attorney first. While employers can compel officers to give statements for administrative purposes, a compelled statement cannot be used against the officer in a criminal proceeding, and taking one could potentially compromise the criminal investigation. The model policy contains language reflecting the agency’s commitment to respecting officers’ constitutional rights.

B. Written reports

Current Minnesota Bureau of Criminal Apprehension (BCA) policy for deadly force investigations holds that officers who will be interviewed will not be asked to write a report; the officer’s interview is designated as constituting his or her written documentation of the event. The model policy provides two different options, both with built-in flexibility, for written reporting requirements following a critical incident.

C. Timing of statements from involved officers

Because officers cannot be compelled to give statements that could be used against them in a criminal prosecution, officers facing such questioning retain, in reality, a large degree of control over when they will speak to investigators. When an officer declines to be interviewed as part of the criminal review, the agency may of course proceed with its internal investigation and compel a statement under Garrity. But the statement cannot be used in any criminal prosecution of the officer who gave it, and the mere existence of a compelled statement becomes a hurdle for prosecutors to clear if they determine that criminal charges may be appropriate. A decision to compel a statement should be made only after careful consideration and consultation with investigators, legal counsel, and the prosecutors who will be reviewing the case.
There are varying opinions as to the best time to interview an officer to maximize the accuracy of his or her statement. Some suggest that interviews should be conducted without delay to capture the officer’s existing state of knowledge and emotional response to the event, and to avoid opportunities for additional information to contaminate the officer’s memory. Some researchers acknowledge conflicting considerations: intense stress from an incident may negatively impact memory, but delays in interviewing can also result in memory impairment. The IACP Psychological Services Section recommends officers be provided “some recovery time” before being asked to give a full statement, and cites research indicating that “[a]n officer’s memory will often benefit from at least one sleep cycle prior to being interviewed, leading to more coherent and accurate statements.” The Force Science Institute has advocated allowing officers at least 48 hours after an incident before scheduling interviews as a “rule of thumb,” to allow officers two sleep cycles. There is no indication this debate about the best time to conduct interviews will be settled soon.

In the end, because officers facing criminal review have the right to remain silent, the timing of the interview is largely a matter to be worked out between the involved officer, his or her attorney, and the agency conducting the criminal investigation. When an officer refuses to give a statement during the criminal investigation, the recourse for the investigating agency is to complete its inquiry without the benefit of whatever information the officer might have provided. The employing agency is then left with the option of compelling a statement for use in its internal investigation, or taking disciplinary action against the officer who refuses a direct order to provide a statement to internal investigators.

When it comes to fashioning an appropriate policy, it bears observing that reasonable, well-intentioned officers who are familiar with the research could conclude that some amount of recovery time will improve their ability to give an accurate account of what happened. Because officers have a constitutional right to insist on this recovery period before speaking, it makes little sense for the agency to have a policy implying that officers are being uncooperative by declining to be interviewed earlier. The model policy includes language reflecting the rights of officers to defer interviewing for purposes of rest and recovery.

**D. Officer interviews: review and use of digital evidence**

At present, there is neither an empirical basis nor a consensus best practice to guide decisions about whether officers should be permitted to review video footage and audio recordings of incidents they were involved in before providing a statement to investigators. There are, however, arguments for and against, and these are considered in turn.
1. **Arguments for prior review**

The Police Executive Research Forum (PERF) recommends that officers be allowed to review video footage of an event before giving a statement. PERF asserts that allowing officers to view the recordings will help them remember the events more clearly, which will in turn result in more accurate statements. Other researchers, while stopping short of the same recommendation, note that negative downstream effects can occur when officers do not watch the video first, i.e., officers may be accused of lying when their accounts do not match up perfectly with the video footage, even though such factors as stress and being focused on the threat might fully account for the inaccuracies.

2. **Arguments against prior review**

A video recording device is likely to take in far more information than the human brain can perceive and process at any given time. As a result, when an officer reviews a recording, he or she will likely be introduced for the first time to information that was neither perceived nor considered as the incident unfolded. Next, because the brain works to fit information into a cohesive narrative, it may be natural for officers to meld the newly acquired information together with their memory of the event to arrive at an account of what happened. Once this new information has been taken in, it will quite possibly become a permanent feature of the officer’s memory, and difficult for the officer to differentiate it from his or her “original” memory of the event. It is also theorized that reviewing video may skew the efforts that officers make when giving a statement: they may focus more on working to remember what is visible on screen, and less on trying to recall all of the details, some of which may not have been captured on camera.

3. **Hybrid approach to prior review**

The model policy recommends a hybrid approach of: (1) not allowing officers to view video before the interview session; (2) allowing officers to review the video and other digital evidence during the course of the interview, and then asking questions or allowing opportunities to clarify any issues that surface as a result; and (3) starting the interview process with a recognition that there will likely be some differences between the officer’s memory and the digital evidence. Providing this recognition is recommended to address officers’ fears over uninformed games of “gotcha” being played later by cataloging the various differences between human memory and digital recordings. The recommended policy language allows agencies to depart from this process when circumstances might dictate a different approach.

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*Critical Incident Response*, LMC Model Policy.
E. Meeting officers’ needs during the investigation

It is normal for officers to be anxious and have heightened concerns about what may happen in a case as they await adjudication. While it is likely not appropriate to provide officers with any “insider information” about legal developments, it is appropriate and helpful to ensure that officers are kept up to date as to the scheduling of key events, such as grand jury proceedings and the like. Agency leaders may elect to communicate this information directly, through the assigned care officer, or through the officer’s counsel as may be appropriate under the circumstances.

VII. Agency administrative review

Although there is usually no need to start an administrative review of the incident right away, making sure that one gets completed is important for legal reasons. By conducting a close review, the agency shows its commitment to detecting and addressing officer misconduct and the use of excessive force, and does not, by its failure to thoroughly investigate shootings and other critical incidents, tacitly approve of such behaviors. The criminal investigation will likely bring forward the vast majority of evidence that must be considered in the administrative review process, so in most cases it will make sense to await the results of the criminal inquiries.

If either the results of the criminal investigation or other information arises providing grounds for believing that an officer engaged in misconduct during the incident—and that disciplinary action may be warranted—then the matter should be handled as any other disciplinary issue. Any investigation must be conducted consistently with the Peace Officer Discipline Procedures Act, Minnesota Statutes, section 626.89, and any applicable provisions of the collective bargaining agreement. The flowchart in Appendix A illustrates the typical procedural steps and decision points.

There may be atypical cases that weigh in favor of completing the administrative review before the criminal process has reached its conclusion, such as where the agency believes it cannot await the criminal outcome before making a personnel decision. In such cases, however, the agency must exercise considerable caution to guard against tainting the criminal process by conducting Garrity interviews. Agencies are encouraged to consult with their legal counsel, investigators, and assigned prosecutors in evaluating such circumstances and charting an appropriate course of action.
VIII. Benefits for families and survivors of officers killed in the line of duty

There are a number of potential sources of benefits for survivors of officers killed in the line of duty. The following is not warranted to be an all-inclusive list, nor is any representation offered that benefits will actually be available from the sources listed.

- Death benefits paid through the Public Safety Officers’ Benefits Program, administered by the United States Department of Justice, Office of Justice Programs.
- Statutory death benefits paid under Minnesota law.
- Continued health insurance coverage for the deceased officer’s spouse and dependents under Minnesota law, provided by the employer pursuant to state law.
- Educational benefits for children of officers killed in the line of duty, administered by the Minnesota Office of Higher Education.
- Workers’ compensation benefits.
- Pension benefits through the Public Employees Retirement Association.
- Death benefits to survivors of officers killed in the line of duty from the Minnesota Police and Peace Officers Association (MPPOA).
- Legal assistance in seeking benefits available to members of the MPPOA Legal Defense Fund.
- Benefits through the Minnesota 100 Club.
- Concerns of Police Survivors (C.O.P.S) is an organization that serves the families of fallen officers, and maintains state-by-state lists of survivor benefits and resources.