

3.1.40 INVESTIGATOR INVOLVED CRITICAL INCIDENT

3-1-40.01 PURPOSE

The purpose of this policy is to establish the process for the investigation of an incident in which a person sustains serious bodily injury or death as the result of a Division Investigator's actions in the official performance of his or her duties; or the intent by the Investigator and their actions was to cause death or bodily injury to a person.

- (1) The intent of this policy is to ensure that such incidents be investigated in a fair and impartial manner.
- (2) Nothing in this policy is intended to increase, modify or in any way affect the current legal standards, nor shall any deviation from this policy be considered a breach of any legal standard.

3-1-40.02 DEFINITIONS

Officer Involved Critical Incident (OICI) means an incident involving the death or serious bodily injury of a Division Investigator or other person(s) as a result of the Investigator(s) performing their official duties.

Jurisdiction means the location of the critical incident.

Investigator means; a person employed by the Utah Insurance Fraud Division as a POST certified law enforcement officer.

3-1-40.03 INITIAL ON-SCENE INVESTIGATOR RESPONSIBILITIES

Investigators involved or immediately arriving at the scene of an OICI shall take measures that are reasonably possible and appropriate to protect their safety, the safety of others, and preserve evidence essential to the investigation, including:

- (1) Ensure no continued threat exist to other personnel or public safety;
- (2) Identify wounded or injured officers, investigators, suspects, and victims and request appropriate medical response;
- (3) Identify, secure, and separate suspects;
- (4) Relay information on fleeing suspects to communications center or responding units and establish containment;
- (5) Identify, secure, separate, and contain potential witnesses;
- (6) Ensure supervisor notification and response;
- (7) Coordinate responding resources as appropriate;
- (8) Identify and secure any involved weapons;
 - (a) Investigator's handguns should be secured in the holster if possible.
 - (b) Other weapons should be secured in place if possible.
 - (c) Weapons should remain in the existing condition unless exigent circumstances dictate otherwise.
- (9) Identify and protect potential evidence and the overall crime scene;

- (10) Maintain control and command of scene until properly relieved; and
- (11) Start a written or verbally recorded record of personnel involved in the incident.

3-1-40.04 ON SCENE SUPERVISOR RESPONSIBILITIES

Upon arrival at the scene of an officer-involved critical incident, the first uninvolved supervisor shall:

- (1) Take all necessary steps to provide emergency medical attention for all apparently injured individuals;
- (2) If an officer has been wounded or injured, do the following:
 - (a) Assign an investigator to remain with the injured investigator and accompany them at all times during the incident;
 - (b) Ensure the in-person notification of the involved investigator's family;
 - (c) Assign personnel from the Division to remain with the family to facilitate their immediate needs and act as a liaison for the Division to the family;
 - (d) Ensure the investigator's weapons and duty gear are collected and secured;
 - (e) Take care to preserve the integrity of any physical evidence present on the investigator's, equipment, or clothing (e.g., blood, fingerprints) until local investigators or Crime Scene Personnel can properly retrieve it.
- (3) If a suspect or other person has been injured, assign an officer to remain with the injured individual and accompany the suspect to a medical treatment facility.
- (4) Complete documentation should be made of all statements made by bystanders, suspects and Involved Division Personnel;
- (5) Make proper immediate notifications to the following:
 - (a) Division Director;
 - (b) State Bureau of Investigation; and
 - (c) Public Information Officer.
- (6) Attempt to obtain a brief overview of the situation from an involved investigator(s);
 - (a) This should only include a general representation of events involved in the incident to address public safety concerns and to identify the scope of the incident and scene.
- (7) If necessary, ask local law enforcement to immediately provide public safety information necessary to secure the scene and pursue suspects;
 - (a) Public safety information shall be limited to such things as outstanding suspect information, number, and direction of shots fired (if a shooting incident), parameters of the incident scene, identity of known witnesses, and similar information.
- (8) Do not attempt to order any investigator to provide more than public safety information;
- (9) Provide all available information to the Director and local law enforcement including the Communications Center with sensitive information communicated over secure networks, if feasible;
- (10) Take command of and secure the incident scene with additional personnel until properly relieved;
- (11) As soon as practical, remove involved investigator(s) from the scene to a secure location;
 - (a) Each involved investigator shall be given an administrative order not to discuss the incident until asked to do so in conjunction with the OICI investigation.
 - (b) In the event the involved investigator's handgun needs to be held as evidence the handgun shall be secured in the weapon's holster until a replacement can be provided. When applicable, other weapons, including Conducted Energy

Devices will be maintained in the existing condition until secured by a member of the OICI investigation team.

- (12) Ensure that all initial on-scene responsibilities have been addressed and coordinate the arrival of additional resources;
- (13) Establish a staging area for media in conjunction with local law enforcement.
- (14) Ensure that all requests for interviews and information are coordinated through the PIO; and
- (15) Start a written record of personnel involved in the incident / investigation and their assignments and department affiliations.

3-1-04.5 DIVISION DIRECTOR RESPONSIBILITIES

Upon notification the Division Director shall be responsible for coordinating all aspects of the OICI with the local or state law enforcement entity performing the investigation. The Director is charged with the oversight of the Division's on-scene investigators and supervisors. The Division Director shall respond to the scene and upon arriving shall:

- (1) Receive a full briefing from the on-scene supervisor to include:
 - (a) Scope of the incident;
 - (b) Involved investigators, officers, suspects, witnesses;
 - (c) Public safety threats or concerns;
 - (d) Completed Notifications;
 - (e) Assignments of personnel; and
 - (f) Current status of investigation
- (2) Assume incident command of the OICI and begin to coordinate additional personnel and resources;
- (3) Coordinate with appropriate outside agencies to facilitate the investigation of the OICI ;
 - (a) This shall be done in a manner consistent with the requirements of Utah Code 76-2-408 and this policy as well any existing locally established protocols, or other agreements governing the investigation of an OICI.
- (4) Ensure the priority of in-person notification of the involved officer's family;
- (5) Assign Division Personnel to assist the family and to facilitate their immediate needs and act as a liaison for the Department to the family if it has not already been done.
- (6) Facilitate additional notifications as needed to include:
 - (a) Appropriate chain of command up to the Commissioner of Insurance;
 - (b) State Bureau of Investigation;
 - (c) Prosecuting Attorney / OICI team;
 - (d) Public Information Officer;
 - (e) Department legal counsel and risk management as appropriate; and
 - (f) Coordinate with the PIO concerning all outside inquiries regarding the OICI.

3-1-40.6 INVOLVED INVESTIGATORS ACCOMIDATIONS

Once involved investigator(s) have been moved to a secure location, each investigator will be admonished that the incident shall not be discussed except with authorized personnel or representatives. The following shall be considered for the involved investigator:

- (1) Any request for legal representation will be accommodated.
- (2) Discussions with licensed attorneys will be considered privileged as attorney client communications.
- (3) Discussions with other representatives (e.g. professional association / peer

support) will be privileged only as to the discussion of non-criminal information.

(4) A psychotherapist shall be provided by the Division to each involved investigator, upon request.

(a) Interviews with a licensed psychotherapist will be considered privileged and will not be disclosed except to the extent that the investigator is or is not fit for return to duty.

(5) A peer investigator will be assigned to each involved investigator to provide support and assistance as necessary and appropriate. The peer officer will maintain this responsibility until relieved by the section commander.

(a) Although the Division will honor the sensitivity of communications with peer officers, there is no legal privilege to such. Peer officers should not discuss facts of any incident with an involved or witness investigator.

(6) All reasonable accommodations should be made to meet the officer's physical and emotional needs.

(7) Each involved investigator shall be given reasonable paid administrative leave following an officer-involved critical incident and it shall be the responsibility of the immediate supervisor to make schedule adjustments to accommodate such leave.

3-1-40.7 INVESTIGATION OF OICI

All Officer Involved Critical Incidents shall be investigated with the utmost thoroughness, professionalism and impartiality to determine if the involved officer's actions conform to applicable State Statute and Division policy.

3-1-40.8 TYPES OF INVESTIGATIONS

Officer-involved critical incidents may involve several separate investigations. These investigations may include:

(1) A criminal investigation of the events leading up to the officer involved critical incident will be conducted in accordance with local OICI protocols.

(a) This investigation should be relinquished to the outside agency with the approval of the Fraud Director, Commissioner of Insurance and Commissioner of the Department of Public Safety, or his designee.

(2) A criminal investigation of the involved investigator(s) actions in the critical incident conducted by an outside agency in accordance with local OICI protocols.

(a) The Division may be involved in this investigation as provided by applicable agreements, local OICI protocols and state law provided the Division is not the lead agency.

(3) A civil investigation to determine potential liability may be conducted by the Division at the direction of the Fraud Director and the Commissioner of Insurance.

(4) An administrative investigation will be conducted by the Division to determine if there were any violations of Division policy.

(a) the make-up of the investigative team should include a firearms instructor, Deputy Director, and a law enforcement administrator from outside the division.

3-1-40-9 SBI INVESTIGATION OF AN OICI

Once notified of an officer involved critical incident, it shall be the responsibility of the State Bureau of Investigation to assign appropriate investigative personnel to participate in the investigation of the officer involved critical incident as directed by the Division.

(1) Investigators will be assigned to work with OICI investigation team under the direction

of the lead agency or task force conducting the investigation.

(2) Additional investigators may be assigned to handle separate investigations of any related crimes not being investigated by the lead agency of task force as part of the OICI.

(d) All related Division reports, except those related to the administrative investigation, will be forwarded to the investigations bureau supervisor assigned to the OICI investigation.

(3) All personnel who enter the designated incident scene of an officer-involved critical incident, who are not being interviewed in the OICI, will complete a report documenting their involvement.

3-1-40.10 OICI CRIMINAL INVESTIGATION

The Division and its personnel shall cooperate fully with investigators assigned by prosecuting attorney's office to facilitate an independent criminal investigation into the circumstances of any officer-involved critical incident involving serious injury or death.

(1) Once public safety issues have been addressed (scene security, outstanding suspects, victims etc.), interviews of involved officer(s) will be conducted by investigators assigned to the officer-involved critical incident investigation. The following shall be considered for the involved investigator:

(a). Supervisors or the Director should not participate directly in any voluntary interview of involved officers.

(2). OICI interviews of involved investigator(s) should occur as determined by the needs of the investigator and is voluntary. This time frame may be flexible with consideration of the physical and emotional needs of the involved investigator.

(3) If requested, any involved investigator will be afforded the opportunity to consult with an attorney of his/her choosing prior to speaking with criminal investigators.

(4) Any voluntary statement provided by the investigator(s) will be made available for inclusion in the administrative or other related investigations.

(5) Absent consent from the involved investigator or as required by law, no administratively coerced statement(s) will be provided to any criminal investigators.

(6) In the event that suspects remain at large or subject to prosecution for related offenses, the Division shall retain the authority to require involved investigators to provide sufficient information for related criminal reports to facilitate the apprehension and prosecution of those individuals.

(7) It is generally recommended that reports documenting the actions of investigators considered actors in the OICI be completed by assigned investigators in conjunction with interviews of the investigators. The purpose of these reports will be to facilitate the OICI criminal investigation.

(a) Involved officer audio / video recording:

(i). The Division will provide the original audio / video recordings to the OICI team. Copies are prohibited.

(9) Prior to providing any statements /interviews in conjunction with an OICI incident the involved investigator will generally not be provided an opportunity to review any audio / video recordings without authorization of the OICI team and prosecuting attorney having jurisdiction.

3-1-40.11 ADMINISTRATIVE INVESTIGATION

In addition to all other investigations associated with an officer-involved critical incident, the Division will conduct an internal administrative investigation to determine conformance with all Division's policy. This investigation will be conducted under the supervision of the Director and will be considered as part of the Investigator's "Confidential" personnel file.

(1) Any investigator involved in an OICI may be administratively compelled to provide a

blood sample for alcohol/drug screening. Absent consent from the investigator, such compelled samples and the results of any such testing shall not be disclosed to any criminal investigative agency.

(2) If any officer has voluntarily elected to provide a statement to criminal investigators, the assigned administrative investigator should review that statement before proceeding with any further interview of that involved officer.

(3) If a further interview of the officer is deemed necessary to determine policy compliance, care should be taken to limit the inquiry to new areas with minimal, if any, duplication of questions addressed in the voluntary statement. The involved investigator shall be provided with a copy of his/her prior statement before proceeding with any subsequent interview(s).

(4) In the event that an involved investigator has elected to not provide criminal investigators with a voluntary statement, the assigned administrative investigator shall conduct an administrative interview to determine all relevant information.

(a) Although this interview should not be unreasonably delayed, care should be taken to ensure that the involved division personnel's physical and psychological needs have been addressed before commencing the interview.

(5) Administrative interview(s) should be recorded by the investigator (the involved personnel may also record the interview).

(6) The investigator shall be informed that the interview will be for administrative purposes only and that any statements cannot be used criminally (Garrity Admonishment).

(a) The administrative interview shall be considered part of the officer's confidential personnel file.

(7) The assigned supervisor shall compile all relevant information and reports necessary for the Division to determine compliance with applicable policies.

(8) The completed administrative investigation shall be submitted to the Officer Involved Critical Incident Review Board, which will restrict its findings as to whether there was compliance with the Division's Use of Force Policy.

(a) Any other indications of a potential violation of any policy shall be determined in accordance with standard disciplinary procedures.

(9) Nothing in this section shall be used to deprive an involved investigator of the right to consult with legal counsel prior to completing any such criminal report.

3-1-40.12 RELATED CRIMINAL INVESTIGATIONS

The Department of Public Safety may retain the responsibility for the investigation of criminal incidents leading up to or otherwise related to the OIGI.

(1) The purposes of these investigations will be to ensure the successful prosecution of suspects for crimes not directly involved in the OIGI incident.

(2) The State Investigations Bureau will be responsible for conducting criminal investigations that do not fall under the authority of the OIGI team.

3-1-40.13 CIVIL LIABILITY INVESTIGATION

An employee of the Division may be assigned to work exclusively under the direction of the legal counsel for the Division to assist in the preparation of materials deemed necessary in anticipation of potential civil litigation.

(1) All materials generated in this capacity shall be considered attorney work product and may not be used for any other purpose. The civil liability investigation is not intended to interfere with any other investigational aspect of the OIGI investigation, and does not fall under any other prevue.

3-1-40.14 MEDIA

All media requests for information concerning an OIGI event shall be coordinated through the Division's Director. No information regarding the details of such investigation will be released without consultation with the prosecuting attorney responsible for the investigation.

(1) A single press release may be prepared with input and concurrence from the Director, and representatives of the agencies responsible for each phase of the investigation. The release will be prepared and distributed by the PIO.

(2) It will be the policy of the Department to release the identities of involved officers when and if it is deemed appropriate by the Director and OIGI team leader or as required by law.

(i) Notification to the involved investigator(s) shall be made prior to release of this information.

(3) Moreover, no involved investigator shall be subjected to contact from the media and no involved investigator shall make any comments to the press unless authorized by the Commissioner of Insurance.

(4) All media requests and releases of information will be consistent with Department polices regarding media relations.

3-1-40.15 POST CRITICAL INCIDENT STRESS DEBRIEFING

All personnel involved, responding to or investigating an OICI shall be given the opportunity to attend a post critical incident stress debrief. The critical incident debrief will be conducted by a certified team or stress debriefing coordinator.

3-1-40.16 OTHER CONSIDERATIONS

(1) A review of all officer Involved Critical Incidents will be conducted in accordance with the Divisions Use of Force Review policy.

(2) Line of Duty Death: If an investigator is killed as a result of an Officer Involved Critical Incident the Director will ensure that all requirements are completed as outlined in the Division's Line of Duty Death policy.