

Yolo County Protocol for Response to Officer Involved Critical Incidents



Participating Agencies

California Highway Patrol – Woodland

Davis Police Department

UC Davis Police Department

West Sacramento Police Department

Winters Police Department

Woodland Police Department

Yolo County District Attorney's Office

Yolo County Probation Department

Yolo County Sheriff's Office

A. PURPOSE AND SCOPE

The purpose of this protocol is to establish uniform procedures for the investigation of Officer-Involved Critical Incidents.

This protocol recognizes the need for timely independent review of Officer-Involved Critical Incidents and considers available investigative resources while maintaining a best-practice approach of having an independent, outside agency investigate the incident.

While this protocol is generally recommended for use by all Yolo County law enforcement agencies, and other local, federal or state law enforcement agencies operating in Yolo County, each individual agency retains the discretion to adopt, reject, or modify any portion of this protocol in accordance with existing rules and regulations of that agency.

Additionally, this protocol can be used for the investigation of any incident involving the death of, or great bodily injury to a law enforcement officer or when a law enforcement officer is being investigated for committing a crime.

Finally, the provisions of this protocol shall be considered only as guidelines. It is recognized that police work is not always predictable and circumstances may arise which warrant departure from this protocol. This protocol is solely for the purpose of guidance. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable by law by any party in any matter, civil or criminal, nor do they place any limitations on otherwise lawful investigative or litigative prerogatives of any signatory agency.

B. DEFINITIONS

1. Officer-Involved Critical Incident (OICI):
 - An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
 - An incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury.
 - Any incident resulting in death or great bodily injury which a Primary Agency or Jurisdictional Agency deems to be critical in nature, including but not limited to: vehicle pursuits and collisions; where a person was in police custody; and physical altercations with a police employee.
2. Great Bodily Injury: For the purpose of this protocol, great bodily injury includes any gunshot wound or any injury that, upon initial assessment, is likely to lead to death, paralysis, or other permanent change to a person's physical capability.
3. Jurisdictional Agency: The law enforcement agency with primary jurisdiction over the physical location of an incident. If an incident spans multiple jurisdictional areas, the Jurisdictional Agency will be determined as the location where the actual OICI took place or as otherwise agreed to by the Involved Agencies.
4. Primary Agency: The employing agency(ies) of the officer(s) involved in the actual OICI force application and/or the agency(ies) employing the officer(s) that suffered great bodily injury or death as the result of an OICI.

5. **Involved Agency:** Any agency involved in the OICI, whether or not its officers were directly involved in activities that precipitated a death or great bodily injury.
6. **Uninvolved Agency:** A law enforcement agency that had no involvement in the OICI and has the capacity to conduct an independent investigation related to an OICI.
7. **Investigating Agency:** the Uninvolved Agency that conducts a criminal investigation of the involved officer's actions. The Investigating Agency is responsible for preparing investigative reports and submitting them to the District Attorney for review.

C. TYPES OF INVESTIGATIONS

OICIs generally involve multiple, separate and often overlapping investigations. They typically include:

- A criminal investigation of the suspect's actions.
- A criminal investigation of the involved officer's actions.
- An administrative investigation to determine policy compliance by involved officers.
- A civil investigation to determine potential liability.

D. CONTROL OF INVESTIGATIONS

1. Criminal Investigation of Suspect Actions

The investigation of any possible criminal conduct by the suspect is generally investigated by the Jurisdictional Agency, absent some other agreement to the contrary. The Jurisdictional Agency is responsible for working with the District Attorney's Office for the charging of any involved suspect(s).

2. Criminal Investigation of Officer Actions

The control of the criminal investigation into the involved officer's conduct during the incident will be determined by the Jurisdictional Agency's protocol. As a general rule, when the Primary Agency and the Jurisdictional Agency are the same, the Jurisdictional Agency is encouraged to relinquish criminal investigative control of their employee's actions to an Uninvolved Agency for an independent investigation.

The OICI Protocol is activated by the head of the Primary Agency, or their designee, contacting the Chief Investigator of the Yolo County District Attorney's Office, or their designee, to request an independent criminal investigation of their employee. The two will determine which Uninvolved Agency should be contacted. The head of the Uninvolved Agency, or their designee, should be contacted directly to determine whether they can accommodate the request. If not, another Uninvolved Agency should be contacted until an agency agrees to conduct the investigation. The Uninvolved Agency that agrees to conduct the investigation becomes the Investigating Agency.

3. Administrative and Civil Investigation

Regardless of where the incident occurs, the administrative and civil investigation of each involved officer is controlled by their respective employing agency.

E. PROTOCOL

1. Agencies are expected to work cooperatively to carry out this agreement.
2. The Jurisdictional Agency is responsible for maintaining the crime scene and any perimeters unless relieved by another agency.
3. Although not ideal, crime scene investigators and other resources from the Primary Agency can be used to assist the Investigating Agency.
4. The coroner shall be promptly notified of any confirmed death. Agencies are expected to work cooperatively to assist the coroner in their duties.
5. Other State and federal resources can be used to support and/or conduct independent investigations of OICIs.
6. Officer Interrogations
 - a. Agencies will honor the legal rights of involved officers pursuant to California Government Code 3300-3313 (Public Safety Officers Procedural Bill of Rights) and any other applicable State and/or federal law.
 - b. Interrogations shall be coordinated by the Primary Agency(ies) and be in compliance with any applicable Memorandum of Understanding affecting the officer's employment.
 - c. It is recognized that there are times when officer(s) legal counsel will advise against making a voluntary statement. Any compelled statements will be obtained exclusively by the Primary Agency for use in any administrative investigation and shall not be shared with an Investigating Agency.
7. Review and Use of Video/Audio Recordings
 - a. Critical incidents, or portions/aspects of critical incidents, may be captured on a variety of video/audio recording devices including, but not limited to: in-car cameras, body-worn cameras, surveillance cameras, traffic cameras, cell-phone cameras, media cameras and/or other similar devices. Furthermore, recordings may come from a variety of sources including those that are agency controlled; or they may come from private devices that are made available to the public and/or law enforcement.
 - b. Each agency should adopt policies/procedures regarding the ability of their employees to review recordings prior to providing a voluntary statement. Recognizing that agencies may have different policies/procedures regarding their employees reviewing recordings prior to providing initial voluntary statements, it is the responsibility of the Investigating Agency to be aware of any applicable policies/procedures prior to conducting interviews of employees that are under investigation. Officers may review recordings consistent with their employing agency policies.
 - c. It is acknowledged and understood that recordings taken during critical incidents do not necessarily reflect the full extent of the nature of the event, or the experience, analysis, training, threat assessment, or state of mind of the individual officers(s) in a given incident. Moreover, recordings, especially video, have limitations and may depict events differently than as honestly recalled by the involved officer(s). Specifically, it is

understood that recording devices may capture information that may not have been heard or observed by the involved officers, and that officers may see and hear things not captured by recording devices.

- d. In such cases where the involved officer(s) will be permitted to view a video recording of the incident prior to providing an initial voluntary statement, they shall be provided the following admonishment:

“Although you’ve had an opportunity to review video/audio recordings prior to providing this voluntary statement, it is important to understand that recordings have 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 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, 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.”

- e. In such cases where the involved officer(s) will be permitted to view a recording of the incident only after they provide an initial voluntary statement, they shall be provided the following admonishment:

“In this case, there is video/audio evidence that you will have an opportunity to view after you have given your initial statement. Even though there may be video/audio evidence, it often 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 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, video/audio evidence is intended to assist your memory and ensure that your initial statement explains your state of mind at the time of the incident.”

8. Investigative Reports

- a. The Primary Agency shall cooperate fully with the Investigating Agency by providing copies of all criminal investigative reports and evidence including, but not limited to, car and body-worn camera footage, involved uniforms and police equipment, and crime scene video and photos.
- b. The Primary Agency will not furnish any confidential administrative reports, civil reports containing attorney work-product, or compelled statements to the Investigating Agency.
- c. Upon conclusion of the investigation, the Investigating Agency will provide a full investigative report to the Primary Agency. The Primary Agency may use the criminal investigative report pursuant to their individual policies relating to administrative investigations.

F. CORONER'S OFFICE

Information obtained from the incident investigators or from the Involved Agencies will not be released by the Coroner's Office without prior clearance from those agencies.

Release of information from the coroner will generally be limited to the following:

- Autopsy findings, including the condition of the deceased, the cause of death, and toxicology test results (after the involved agencies have received this information).
- The general role of the Coroner's Office in the investigation of any death.

The Coroner's Office will not release any information to the media when there is pending criminal prosecution.

G. DISTRICT ATTORNEY'S OFFICE

1. During an OICI Investigation the District Attorney's Office will:
 - Assist and advise criminal investigators regarding the various legal issues that may arise, including but not limited to search and seizure, taking of statements, identification procedures, arrests, elements of crimes, immunity, and voluntariness.
 - Monitor the criminal investigations.
 - Provide investigative process and procedure consultation.
 - Ultimately determine if criminal charges will be filed.
2. The District Attorney reserves the right to conduct a criminal investigation of the involved officer(s) actions. The District Attorney will notify the Primary Agency if an independent investigation is being conducted, except if such notification would compromise the integrity of the independent investigation. A District Attorney Investigator assigned to participate as an incident investigator assisting or teamed with the Investigating Agency will not be a member or participant of an independent District Attorney investigation unless the Primary Agency is notified of such a dual role.
3. If the District Attorney's Office is a Primary Agency due to a District Attorney Investigator or District Attorney becoming directly involved in an OICI, the role of the District Attorney should be carried out by requesting the assistance of the Attorney General. If the Attorney General declines to participate, a designated Investigating Agency should be sought. The designated Investigating Agency should seek assistance and consultation from another District Attorney's Office.
4. All reasonable efforts should be made for the Officer-Involved Critical Incident investigation to be completed and all reports submitted to the Office of the District Attorney within 120 days of the incident, if possible, and absent unusual circumstances.
5. At the conclusion of the investigation, the District Attorney's Office will review and analyze all the evidence to determine whether or not the involved officer(s) will be charged with any crimes.
 - a. The crime charging standards are the same for civilians and peace officers. The District Attorney's policy regarding crime charging requires the following:

- The prosecutor, based on a complete investigation and a thorough consideration of all pertinent facts readily available, is satisfied that the evidence proves that the accused is guilty of the crime to be charged;
 - There is legally sufficient, admissible evidence of a corpus delicti;
 - There is legally sufficient, admissible evidence of the accused's identity as the perpetrator of the crime charged; and
 - The prosecutor has considered the probability of conviction by an objective fact finder and has determined that the admissible evidence is of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact finder after hearing all the evidence available to the prosecutor at the time of charging and after considering the most plausible and reasonably foreseeable defenses."
- b. If no charges are filed, the District Attorney will issue a succinct closing report summarizing the results of the investigation and analysis of the evidence.
 - c. Within the scope of this protocol, it is not the purpose of the District Attorney's review, investigation or report to determine if any law enforcement agency employee violated department policy or procedure, or committed any act that would be subject to civil sanctions.
 - d. The District Attorney's Office will make every effort to issue a closing report containing its findings and conclusion within 90 days from receipt of the completed investigative package. This report shall be sent to the primary police agency(ies), the decedent's family (if applicable) and then released to the public.
 - e. Prior to any public dissemination, the District Attorney will advise any Involved Agency of the intent to file any criminal charges.

H. NEWS MEDIA / PUBLIC RECORDS ACT REQUESTS

1. The Investigating Agency will give timely notice to each Primary Agency prior to the release of any information from the OICI investigation file to anyone other than involved law enforcement agencies. Each agency will then have the opportunity to raise appropriate objections and, if necessary, litigate for the protection of privileged information.
2. Although all Involved Agencies may have a responsibility to respond to Public Records Act (PRA) requests, the signatory agencies agree that the Primary Agency will retain a complete case file and respond to PRA requests, if allowable.
3. A Primary Agency will determine if and when they will release the name of the officer(s) involved. If the District Attorney determines that criminal charges will be filed against an involved officer(s), those names will be available through public record.
4. A representative of the Primary Agency is in the best position to comment about the facts of the case and the progress of the investigation. When multiple agencies are involved or have knowledge of an OICI, the following information release guidelines should be followed:

- a. The Primary Agency will assign a person to manage the release of information and to minimize interruptions to incident investigators. All requests for information should be routed to the assigned person.
 - b. Agencies and individuals that are not well informed and intimately involved with the investigation's progress and results should not make statements to the press. As in all other instances, care must be taken to ensure that intentionally misleading, erroneous or false statements are not made.
 - c. The interest of the public's right to know what occurred must be balanced with sensibility and requirements of the investigation and with the right of the accused to receive a fair trial. Agencies may release information that is required to be released under California law. The District Attorney's Office will be notified before information is released if it may tend to compromise the criminal investigation of an involved officer(s).
5. Other agencies may also be contacted by the news media for information about the incident, including:
- a. The Jurisdictional Agency: If the Jurisdictional Agency is different than the Primary Agency, the Jurisdictional Agency should refer the media to the Primary Agency media point of contact. They can confirm the location and time of the incident, but should defer all other questions to the Primary Agency's point of contact.
 - b. The District Attorney: The District Attorney will not disseminate any of the following information while the matter is undergoing criminal investigation and while the district attorney review process remains ongoing:
 - That an uncharged individual is "under investigation."
 - An Involved Officer's statement, confession or refusal to give a statement.
 - The subject of any gag order.
 - The prior criminal history of any involved party, unless it is part of the criminal pleading or crime under investigation.
 - The result of any examinations.
 - The pendency of a search warrant.
 - Any statement that has a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.
 - c. In cases where a criminal complaint is filed, the judicial record, such as a probable cause declaration, or preliminary hearing is open to the public. Additionally, the District Attorney may disseminate the following:
 - Name of defendant.
 - Area of residence.
 - Occupation.
 - Physical description.
 - Age.
 - Sex.
 - Time, date and location of arrest.
 - Factual circumstances of the crime.

- Amount of bail.
 - Location held.
 - All charges including warrants.
 - Parole or probation holds.
 - Schedule and explanation of the judicial process.
 - Penalty range.
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ADOPTION

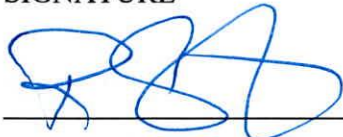
The participating department heads have executed this Agreement on the respective dates indicated below.

 5-13-2020

SIGNATURE DATE

Darren Pytel Davis PD

CHIEF AGENCY

 05/13/2020

SIGNATURE DATE

Robert Strange West Sacramento PD

Interim CHIEF AGENCY

 5/13/20

SIGNATURE DATE

John Miller Winters PD

CHIEF AGENCY

 5/5/2020

SIGNATURE DATE

Derrek Kaff Woodland PD


CHIEF AGENCY

 5/12/20

SIGNATURE DATE

Tom Lopez Yolo Co. Sheriff's Office

SHERIFF AGENCY

 5/13/20

SIGNATURE DATE

Jeff Reisig Yolo Co. DA's Office

DISTRICT ATTORNEY AGENCY

 5-12-20

SIGNATURE DATE

Danin Fruchtenicht Yolo Co. Probation

CHIEF AGENCY

 5-18-2020

SIGNATURE DATE

Joseph Farrow UC Davis PD

CHIEF AGENCY

 5/15/2020

SIGNATURE DATE

Ivan Tien CHP (Woodland)

Captain AGENCY