

State of Oregon
5th Judicial District

Officer Involved Critical Incident
Agreement and Protocol

Revised: July 25, 2022



Clackamas County District Attorney's Office, Clackamas County Medical Examiner's Office, Oregon State Police, Clackamas County Sheriff's Office, Milwaukie Police Department, Gladstone Police Department, Molalla Police Department, Sandy Police Department, Canby Police Department, Lake Oswego Police Department, West Linn Police Department, Tualatin Police Department and Oregon City Police Department

STATEMENT FROM CLACKAMAS COUNTY LAW ENFORCEMENT LEADERS

We, the undersigned prosecutorial, law enforcement and investigative agencies of Oregon's 5th Judicial District, are committed to ensuring the fair and thorough investigation of critical incidents involving peace officers occurring in our jurisdictions.

We acknowledge the impact created to the public and to law enforcement officers resulting from deaths occurring from police action taken in the line of duty. Every precaution must be taken that an officer's actions are performed at the highest level and in conformance with their training and the laws of this state.

The investigation of officer involved critical incidents are frequently more complex and demanding than similar incidents involving the general public. This protocol is designed to ensure a fair and thorough investigation when critical incidents occur and one or more law enforcement officers are involved.

Further, it is our consensus that qualified investigators from the Interagency Major Crimes Team, along with investigators and prosecutors of the Clackamas County District Attorney's Office and Clackamas County Medical Examiner's Office are best suited to conduct these investigations. This protocol is intended to help ensure that the investigation of any of these incidents will not over burden any one agency's resources.

We are committed to providing our communities with the integrity, professionalism and quality investigations these critical incidents warrant.

George Burke, Chief of Police, City of Lake Oswego

Peter Mahuna, Chief of Police, City of West Linn

Greg Pickering, Chief of Police, City of Tualatin

Luke Strait, Chief of Police, City of Milwaukie

John Schmerber, Chief of Police, City of Gladstone

Ernie Roberts, Chief of Police, City of Sandy

Cathy Phelps, Chief Deputy, Clackamas County Medical Examiner's Office

John Wentworth, District Attorney, Clackamas County

Angela Brandenburg, Sheriff, Clackamas County

Jorge Tro, Chief of Police, City of Canby

Chris Long, Chief of Police, City of Molalla

James Band, Chief of Police, City of Oregon City

Andy McCool, Captain, Oregon State Police, NW Region

I. INTRODUCTION

An Officer Involved Critical Incident that leads to serious physical injury or death can be a traumatic and sensitive event for all parties involved.

The safety of those involved in the incident, the security and preservation of the scene and the appropriate notifications to responsible parties is the responsibility of the Involved Agency. The investigation of the incident is to be conducted by the Clackamas County Major Crimes Team with a lead detective employed by an Independent Agency, and support from the Involved Agency as it has the best knowledge of its agency personnel, policies and procedures.

The determination of the cause and manner of death of any party will be the responsibility of the Office of the Clackamas County Medical Examiner as well as the Office of the State Medical Examiner.

The submission of the completed investigation to the District Attorney will be the responsibility of the Independent Investigating Agency. Presentation of the case to a grand jury is the responsibility of the District Attorney who will also prepare and release a post incident report for public review. In instances where a prosecution occurs the release of any post incident report will not occur until the incident is adjudicated.

II. DEFINITIONS

For the purposes of this protocol, the following definitions are offered:

Officer

A law enforcement officer as defined under ORS 131.915, which includes sworn members of the Oregon State Police, Deputy Sheriffs, Municipal Police Officers, District Attorneys' Investigators who are certified law enforcement officers, Humane Society Special Agents, Rail Road Police Officers, Tribal Police Officers or others as defined in the Oregon Revised Statutes. Clackamas County Parole and Probation Officers as defined in ORS 181A.355 are also included.

Officer Involved Critical Incident

An Officer Involved Critical Incident is any incident in which a sworn law enforcement officer, either on or off duty, is directly involved in an incident where a death or serious physical injury occurs, including:

- a. Any discharge of a firearm by an officer which causes death or injury to another person.
- b. The discharge of a firearm by an officer where another person was the target of a firearm discharge whether they were struck or not.
- c. The intentional use of any other deadly or dangerous weapon by an officer that causes death or an injury that is likely to produce the death of another.

- d. An intentional act on the part of an officer that causes the death, or injury likely to cause the death, of another.
- e. Any non-jail death that occurs while a person is in the custody of an officer or under officer's control
- f. Vehicular collisions resulting in death or serious physical injury where death is likely when a police vehicle was used in an attempt to stop or apprehend the suspect or where a death or injury occurred to a person who was the occupant of a police car (e.g., ride along, transport).
- g. Vehicular collisions resulting in death or serious physical injury that occur during pursuit even if the collision did not result from contact with a police vehicle.
- h. Notwithstanding the lack of death or serious physical injury, any deliberate discharge of a firearm at another person or any discharge that results in the wounding of another person.

Involved Agency

The agency with which the involved police officer is employed or affiliated.

Involved Officer

A law enforcement officer, or parole and probation officer, either on or off duty, who is involved in a critical incident as an actor or victim and utilizes force or takes action as described above where death or serious physical occurs.

Witness Officer

A law enforcement officer, either on or off duty, who does not take action or use force, but rather witnesses an Involved Officer take action or use force that results in death or serious physical injury.

Venue Agency

One or more law enforcement agencies having geographical jurisdiction in which the critical incident occurs.

Independent Agency

The law enforcement agency selected from the Interagency Major Crimes Team tasked with leading the Critical Incident investigation.

Interagency Major Crimes Team

A consortium of municipal, county, and state law enforcement detectives and investigators who work within Clackamas County and are members of the Major Crimes Team Agreement.

Member Agency

A law enforcement agency that is a signer of this protocol agreement.

Major Crimes Team Coordinator

An employee of the District Attorney's Office or their designee who coordinates the response of the Interagency Major Crimes Team to a callout.

III. GENERAL PROTOCOL STATEMENT

Investigations into Officer Involved Critical Incidents will be conducted to develop all available relevant information about the incident, and in a manner that provides a thorough and credible investigation free from conflicts of interest or bias.

The goals of the investigation are:

- a. To determine the identity of all persons involved, including officers or deputies and members of the public.
- b. To determine the existence or absence of conduct that would constitute a criminal act on the part of any of the persons involved.
- c. Identify any legal or factual defense to a crime, or the existence of any factors that may either mitigate or aggravate punishment for criminal conduct.

At the conclusion of the criminal proceedings, an after-incident report will be prepared by the Clackamas County District Attorney's Office and made available to all involved and the public.

IV. INVESTIGATIVE RESPONSIBILITY

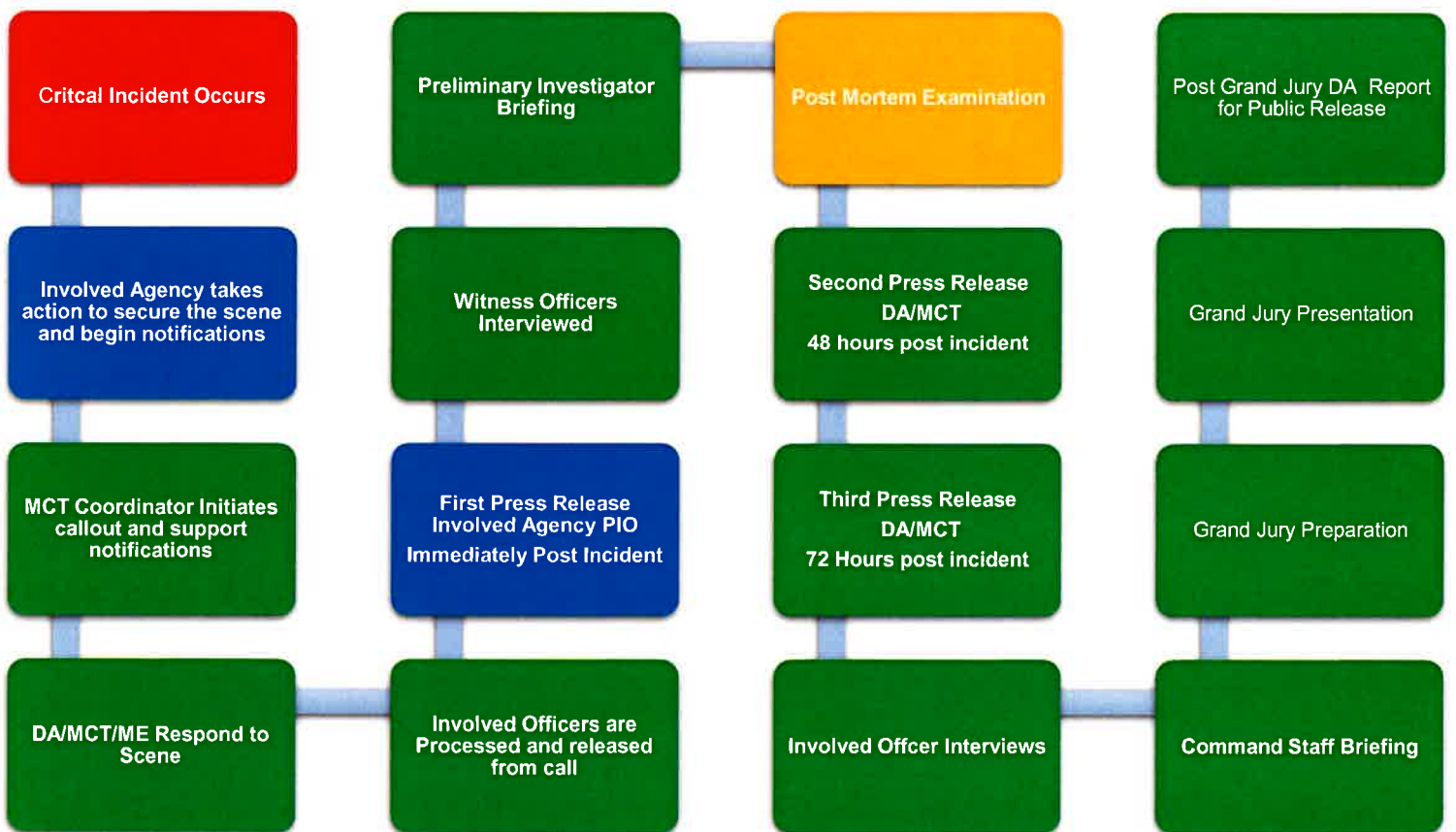
The responsibility for conducting the Officer Involved Critical Incident Investigation rests with the selected Independent Agency in cooperation with the District Attorney's Office and the County and State Medical Examiner's Office.

It is the responsibility of the Involved Agency and the Venue Agency to preserve life, safety and evidence at the scene to the greatest extent possible. The Involved and/or Venue Agency should safeguard any evidence and make all relevant notifications (see below). Safeguarding of evidence shall include the weapons, equipment, vehicles and recording devices of Involved and Witness Officers. Additionally, it shall include any weapons associated with any involved member of the public, particularly the subject upon whom force was used.

- a. Involved and Witness Officers at the scene will make all reasonable efforts to preserve and secure the scene in the condition that it was found pending the arrival of investigators from the Interagency Major Crimes Team and the Clackamas County Medical Examiner's Investigator.
- b. As soon as is safe and practicable, Involved and Witness Officers will notify dispatch and law enforcement of any injuries to any parties and will render aid and summon medical assistance.
- c. As soon as is safe and practicable, Involved and Witness Officers will notify dispatch and law enforcement of any threat to the community such as a suspect at large

- d. Involved and Witness Officers will provide a public safety statement in keeping with their agency's public safety statement policy.
- e. The Involved Agency and/or Venue Agency shall provide a temporary incident commander to be a liaison to the Major Crimes Team Coordinator for the purposes of crime scene and incident management.
- f. The Major Crimes Team Coordinator and the assigned senior deputy district attorney will designate a Lead Investigator from an Independent Agency to conduct the Critical Incident investigation and may request assistance from other agencies as needed.
- g. The Involved Agency will designate a liaison who is familiar with the Involved Agency's policies and procedures and can furnish training records, assist with coordination of interviews, track physical evidence and share information with the Lead Detective from an Independent Agency.
- h. The resources for crime scene and evidence processing rest with the Crime Scene Investigations (CSI) Unit of the Clackamas County Sheriff's Office with the assistance of the Oregon City Police Department. The services of the Oregon State Police Forensic Services Division should not be used for an Officer Involved Critical Incident unless specific expertise such as shooting reconstruction or blood splatter analysis are required due to resource scarcity. Processing the crime scene(s) and the involved parties is the responsibility of the CCSO CSI Unit if they are available.
- i. In incidents involving a vehicular collision, the interagency Criminal Reconstruction and Forensic Technicians (CRAFT) team will provide crash reconstruction for the incident.

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V. NOTIFICATIONS

- a. Upon receipt of a radio call of an Officer Involved Critical Incident the following notifications should occur by the Involved Agency:
 - i. Notification of agency command staff
 - ii. Notification of CCDA MCT Coordinator
 - iii. Notification of Peer Support Unit and Union Representative, and Chaplain
 - iv. Notification to Involved Agency detective supervisor.
- b. Upon receipt of notification by the Involved Agency the CCDA's Office will make the following notifications:
 - i. Notification by Major Crimes Team Coordinator to Chief Deputy or 1st Assistant Deputy DA
 - ii. Chief or 1st Assistant will assign the DDA or DDAs to the case
 - iii. MCT Coordinator will notify the on-call Victim Advocate Supervisor
 - iv. MCT Coordinator will contact the on-duty Medico-legal Death Investigator from the Clackamas County ME's Office in the event of a fatality.
 - v. MCT Coordinator will initiate an MCT Callout request to all member agencies via CELL/TEXT/DISPATCH to investigation supervisors requesting a response.
 - vi. MCT Coordinator will contact the Clackamas County Sheriff's Office to arrange a CSI response to the scene.
 - vii. MCT Coordinator will select the Lead Investigator from an independent agency of the MCT. It is recommended that MCT members know as soon as possible the next agency to take lead prior to an incident.
 - viii. Involved Agency will appoint a liaison detective to facilitate providing evidence in the possession of the Involved Agency to the Investigating Agencies.

VI. ROLE OF THE DISTRICT ATTORNEY'S OFFICE

- a. Participate in the management of the Critical Incident along with the assigned command from the Involved Agency, the Major Crimes Team Coordinator and Lead Detective.
- b. Assist and advise the Lead Independent Investigator on various legal issues that may arise such as search and seizure, Miranda, arrest, elements of crimes, defenses, immunity and voluntariness.
- c. Coordination with legal counsel for Involved Officers.
- d. Assist in the writing and review of search or arrest warrants.
- e. Review of all investigative materials prior to presentation to the grand jury.
- f. Presentation of investigation to the grand jury. NOTE: The district attorney retains the discretion to submit an officer involved shooting to either the elected district attorney of another Oregon county, or the Oregon Department of Justice for review and consideration.
- g. Authoring and releasing all press releases related to the investigation of the Critical Incident following the initial press release.
- h. Authoring and releasing the post Critical Incident review report for publication.

VII. INVESTIGATIVE STANDARDS

- a. The processing of the scene and Involved Officers will take place as soon as possible and will be conducted by the Clackamas County Sheriff's Office Crime Scene Investigations Unit with assistance from evidence technicians from the Major Crimes Team as needed. In the event the CSI unit is not available, assistance can be requested from the Oregon State Police Forensic Services Division or the Portland Office of the FBI's Evidence Response Team.
- b. Involved Officers who are injured should be transported to an area hospital along with another officer to provide support and collect any evidence as needed.
- c. Involved Officers who are uninjured should be transported from the scene as soon as is practicable. They should be taken to their home agency office if possible. This allows them to have ready access to personal effects, peer support, contact with a labor representative and attorney. It is at this location that they will be processed. In instances where they may have biohazardous substances on their person they can be processed at a nearby location to the crime scene such as a fire station or a mobile command post.
- d. All involved and witness officers are prohibited from direct or indirect communication with each other or the public regarding the facts and details of this Critical Incident. The purpose of this order is to protect the integrity of the investigation. The decision of when to lift this prohibition will be coordinated by the involved agency's command staff and the Clackamas County District Attorney's Office.

Staff served with this communication prohibition may still communicate with any of the following regarding the case:

- Case Investigators, in an official capacity
 - Major Crimes Team investigators, in an official capacity
 - Union Representative
 - Union attorney
 - Spouse
 - Clergy
 - Doctor
 - Psychologist/Psychotherapist
 - Any other person recognized by a court with jurisdiction in the State of Oregon as having a protected relationship entitling them to privileged communications.
- e. After an officer involved Critical Incident, digital evidence may only be viewed by personnel authorized by the head of the involved agency and MCT coordinator.¹

¹ The Clackamas County Sheriff's Office policy provides, "Deputies have access to view recordings from their own BWC for any law enforcement related purpose and also view other BWC recordings when their image appears in that recording prior to writing their report, prior to testifying in a proceeding, or prior to providing a formal statement." All parties understand the Sheriff's Office intends to follow this policy, and their adherence will not be

- f. Involved Officer Interviews:
 - i. It is the expectation that Involved Officers will be interviewed as soon as is practicable. In instances where an officer is injured those interviews may not happen immediately due to medical treatment. However, we expect that officers will be interviewed no more than 5 days after the incident.
 - ii. Involved officers shall not be interviewed administratively until after grand jury review of the critical incident.
 - iii. Interviews of Involved Officers will be conducted by the lead detective from an Independent Agency.
 - iv. Any statement obtained from an Involved Officer at this stage of the investigation shall be voluntary. Involved Officers will not be compelled to interview, or read their “Garrity” rights.
 - v. Interviews of officers should occur at a location that is agreeable to the Involved Officer(s) and their legal representative. In most cases this will be the Involved Officer’s duty station or in some instances may be their attorney’s office or the Involved Officer’s home.
 - vi. Interviews of Involved Officers will be audio recorded.
 - vii. Interviews of Involved Officers must be non-scripted. Involved Officers should be interviewed the same as any other individual with attention to questions about training and experience. Involved Officers have a right to tell the events in their own words and interviews should be trauma informed.
- g. Interviews of Witness Officers can be conducted by any member of the Major Crimes Team as designated by the lead detective from an Independent Agency or MCT coordinator.
- h. Officers who respond to investigate the Officer Involved Critical Incident are not Witness Officers and shall write a report detailing their actions and observations as soon as possible.
- i. Involved Officers and their legal representatives shall be notified by the liaison detective from the Involved Agency when their personal information will be released to the media in any press release. Release of involved officer information shall be limited to name, rank, agency, and years of service.
- j. Briefings related to the investigation and incident will occur at the Independent Agency’s location of choosing. The Involved agency is welcome to attend all briefings to both ask questions and provide information.

VIII. The integrity of the investigation is paramount to all other considerations. In the event the Head of the Involved Agency determines a significant public interest exists for releasing digital footage or images in its possession, the Involved Agency Head may do so, after consultation with the District Attorney and Heads of the Investigating Agencies, so long as the release does not compromise the investigation.

used as a basis to preclude the involved officer(s) from being interviewed by an investigating agency about the critical incident.

IX. COMMUNICATION BETWEEN INDEPENDENT AGENCY, DISTRICT ATTORNEY AND INVOLVED AGENCY DURING INVESTIGATION

Regular communication between the Office of the District Attorney, the Independent Agency, the victim advocate and the Involved Agency is paramount. Regular meetings during the investigative phase should include the participation of all the above listed persons.

X. PUBLIC INFORMATION

- a. An initial notification to the press in the form of a brief press release shall be the responsibility of the Involved Agency PIO and will be referred to as the initial release. That release and on-scene media interviews will be limited to the following information:
 1. That an Officer Involved Critical Incident has occurred
 2. What agency or agencies are involved
 3. The location of the incident
 4. Whether there is a threat to the public
 5. Whether there were fatalities
 6. Whether injured parties were or are being medically treated
 7. Locations the public should avoid
 8. That the Officer Involved Critical Incident Agreement and Protocol is being followed
 9. A staging area for media.
 10. That a second release will be forthcoming in 48-72 hours.
 11. That release will come from the District Attorney's Office.
- b. A second release will be the responsibility of the District Attorney's Office PIO, should generally occur 48-72 hours of the incident and include:
 - i. Suspects/Decedents will be identified by name, age, race and last known city of residence. The Medical Examiner should first be consulted to ensure proper notification to next of kin has occurred.
 - ii. Involved Officers will be identified with their rank, agency, and years of service unless a specific, identifiable threat necessitates withholding this information for the time being. A general description of the events that transpired (e.g., traffic stop, suicidal subject, call for service, domestic dispute, etc.).
 - iii. Whether the suspect was armed and, if so, what with.
 - iv. Whether less than lethal options were used and if so what kind.
 - v. Whether de-escalation techniques were attempted
 - vi. Whether aid was rendered to any injured party.
- c. A third release will be the responsibility of the District Attorney's Office PIO, should generally occur more than 72 hours after the incident, and include:
 - i. The name(s) of the Involved Officer(s) will be released unless a specific, identifiable threat necessitates withholding this information for the time being.
- d. Photographs of the officers and suspect will not be released.
- e. Evidentiary photographs, such as crime scene or weapon photos can only be released with the agreement of the DA, the lead detective from the Independent Agency and the head of the Involved Agency.

- f. A fourth release will be issued following the presentation of the case and the findings of the grand jury.

XI. Liability:

Notwithstanding any other provision in this agreement, each inter-agency member shall be responsible, to the extent permitted by the Oregon Tort Claims Act (ORS 30.260.30.300) only for those acts, omissions or negligence of its own officers, employees, policy employees or agents. For purposes of this agreement and the activities hereunder, no person shall be deemed to be an agent of any inter-agency member other than their employer agency.

XII. DURATION

- A. This interagency agreement is in effect for an agency upon signature.
- B. This interagency agreement terminates upon the conclusion of John Wentworth's tenure as Clackamas County District Attorney.
- C. With regard to the Clackamas County Sheriff's Office, this interagency agreement terminates upon the conclusion of Angela Brandenburg's tenure as Clackamas County District Sheriff.
- D. Other police agencies may opt out of this agreement with a 30 day written notice to the District Attorney.

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Signatories



Jorge Tro, Chief of Police, City of Canby



James Band, Chief of Police, City of Oregon City



John D. Wentworth, District Attorney,
Clackamas County



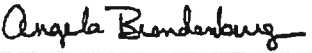
Andy McCool, Captain, Oregon State Police, NW
Region



Cathy Phelps, Chief Deputy, Clackamas County
Medical Examiner's Office



Ernie Roberts, Chief of Police, City of Sandy



Angela Brandenburg, Sheriff, Clackamas County



Greg Pickering, Chief of Police, City of Tualatin



John Schmerber, Chief of Police, City of
Gladstone



Peter Mahuna, Chief of Police, City of West Linn



George Burke, Chief of Police, City of Lake
Oswego



Luke Strait, Chief of Police, City of Milwaukie



Chris Long, Chief of Police, City of Molalla