



# **18<sup>th</sup> Judicial District Critical Response Team**

# PROTOCOL

*The Critical Response Protocol is the product of the cooperative efforts of the members of the 18<sup>th</sup> Judicial District Critical Response Team and is the result of the team's experience and training.*

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# **FORWARD**

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This protocol was designed and implemented to assist the law enforcement agencies of the 18<sup>th</sup> Judicial District. Investigations of officer-involved fatal or near fatal incidents present a unique set of circumstances, which make them more complex than routine investigations. It is the intention of this protocol to make these difficult investigations less traumatic for all member agencies. The pooling of resources involved with this protocol will hopefully make manpower intensive situations less draining for each individual agency. The talent and experience of all those involved will serve to make a complete and thorough investigation in the least amount of time, to the benefit of all members.

This protocol should be considered a guideline. Where investigative techniques are described, they are intended to be used as an aid, to add consistency to our investigations. It is not the intent of the members of this protocol to mandate any action that would be contrary to any policy or procedure of any member agency.

When activated, the Critical Response Team (CRT) will respond, investigate, and present the facts, in the most expeditious manner possible. It is trusted this unit will be viewed by both the member agencies and the public as a highly professional, unbiased, fact finding team, working together to resolve difficult situations.

## **PART ONE:**

### **1-1. GENERAL**

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- A. It is the consensus of the Eighteenth Judicial District law enforcement agencies that a team of investigators, made up of personnel from the participating law enforcement agencies, the District Attorney's Office and the Coroner's Offices within the Eighteenth Judicial District, be formed to assist in the investigation of incidents where any peace officer within said district uses, or may have used, or is the subject of the use of deadly physical force; or where there is a substantial risk of death.
- B. The goal is to conduct a complete and thorough investigation to determine if a violation of criminal statutes for the State of Colorado was committed by the police agency employee during the incident.
- C. Such a team will be able to provide for thorough and impartial investigation of such incidents without causing a serious drain on any one department's resources.
- D. The Eighteenth Judicial District Critical Response Team (CRT), hereafter referred to as "The Team", will be available to any participating agency investigating incidents where any peace officer within said district uses, or is the subject of the use of deadly physical force; or where there is a substantial risk of death.

## **1-2. PERSONNEL**

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- A. The Team shall consist of peace officers and ancillary personnel designated by the Chief Executive Officer (CEO) of each participating agency within the Eighteenth Judicial District.

## **1-3. PROCEDURES**

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- A. The Team is available to all participating law enforcement agencies within the Eighteenth Judicial District.
- B. The Team will be activated only upon the request of the CEO, or the CEO's designee, having the investigative jurisdiction over the incident.
- C. The Team will investigate and present fact-finding reports to the requesting jurisdiction and the District Attorney's Office. This will be the sole responsibility of The Team unless otherwise directed by the requesting agency CEO or the CEO's designee.
- D. All existing procedures, regarding notification of the District Attorney's Office following a law enforcement officer's use of deadly physical force, shall apply and be followed precisely, as well as the notification of the appropriate Coroner's Office.

## **1-4. TEAM NOTIFICATION & TEAM MEMBER RESPONSE**

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- A. Requests for The Team's assistance shall be made by the CEO or the designee from the agency having jurisdiction over the investigation as soon as possible, but no later than two (2) hours after the actual time of the incident.
- B. All requests for assistance shall be made to the team coordinator, or if unavailable, the alternate team coordinator, who will then serve as The Team coordinator for the incident.
- C. The coordinator will assess the details of the incident and decide what personnel and equipment shall be needed for the investigation.
- D. Each agency employing CRT investigators maintains their own internal call-out procedures, on-call schedules, and agency staffing needs and requirements. Consequently, mustering a full staff of CRT investigators from the respective agencies can pose complications when the use of the Team is invoked. In an effort to maximize call-out effectiveness, the coordinator will cause a notification to go out to ALL members of the CRT, regardless of their duty status within their own employing department. Each notified CRT investigator will then need to assess, in conjunction with their departmental requirements and supervisor's directive, whether or not they will be able to muster with the Team for that incident.

- E. When the CRT is requested to respond to an incident, the team coordinator will call 303-663-7717, press \*, enter ID (7717), and the password (7717). The coordinator will follow the phone line menu to set a greeting to record the basic details of the call-out, as well as the location where the CRT members should gather for their initial briefing.

When CRT members receive the notification, they will each be responsible for calling the response number (303-663-7717), and leaving a message as to whether or not they are responding. The coordinator can then check the received messages to determine which personnel will be responding.

## **1-5. DEFINITIONS**

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A. “Officer-Involved Fatal Incidents and non fatal Incidents”

An event occurring in the venue of participating agencies involving two or more people, in which a police agency employee is involved as an actor, victim or custodial officer, where a fatal injury or an injury where a substantial risk of death occurs. Such “Incidents” include but are not limited to the following:

1. Intentional and accidental shootings, including police tactical incidents involving specialized response teams.
2. Intentional and accidental use of any other dangerous or deadly weapon.
3. Assaults resulting in death or a substantial risk of death upon police officers, assaults on other police employees who are on duty or are acting for a law enforcement purpose.
4. Attempts by police employees to make arrests or to otherwise gain physical control for a law enforcement purpose.
5. Any fatal injury occurring in police custody.
6. Any fatal injury to a person who is a passenger of a police officer (such as ride-alongs, emergency transports, etc.).
7. Vehicular collisions:
  - a. including any vehicle fatality which occurs during police pursuits wherein the suspect vehicle collides with another vehicle, a pedestrian, or an object, and causes death or substantial risk of death.

B. “Police Employee”

This protocol applies to employees and to certain other people affiliated with the law enforcement agencies which are members of this protocol agreement, as follows:

1. Full-time and part-time members, whether on-duty or off-duty, engaged in a police function (i.e. part time job) who become involved in a crime in progress and acting for law enforcement or a private purpose at the time of the incident.
  2. Volunteer police officers or deputy sheriffs who are on-duty or who are acting on behalf of a law enforcement agency at the time of the incident.
  3. Temporary employees and volunteers whether paid or unpaid, who are on-duty in a law enforcement capacity for a member agency.
- C. “Proximate Cause”  
A cause that, in a natural and continuous sequence, produces a fatal injury or an injury that constitutes a substantial risk of death, without which cause the injury would not have occurred. Reasonable foreseeability of the fatal injury is not a factor relevant to this definition.
- D. “Fatal Injury”  
Death
- E. “Deadly Physical Force”  
Deadly physical force means force, the intended, natural, and probable consequences of which is to produce death, and which does in fact, produce death.
- F. “Serious Bodily Injury”  
An injury that poses substantial risk of death.
- G. “Venue Agency”  
Any law enforcement agency or special district employing law enforcement personnel within the geographical jurisdiction of the Eighteenth Judicial District.
- H. “Employer Agency”  
The agency that employs the involved police employee.
- I. “Criminal Investigators”  
Those investigators assigned by the Venue Agency (cies), the Employer Agency (cies), the Colorado State Patrol (when applicable) and the District Attorney’s Office to conduct the criminal investigation of the incident.
- J. “Administrative Investigators”  
Those investigators assigned by the Employer Agency to conduct the Administrative Investigation of the incident.
- K. “Member Agencies”  
The law enforcement agencies that are members of this agreement.

## PART TWO:

### **2-1. INVESTIGATIVE AGENCIES, FORMATS AND RESPONSIBILITIES:**

- A. To properly recognize and accommodate the various interests and the various rules of law which may be involved in any incident, investigations of these matters must be performed under two separate investigative formats: (1) the Criminal Investigation; and the (2) Administrative Investigation.
- B. The Criminal Investigation:
  - 1. The criminal investigation has priority over the administrative investigation and it begins immediately after an incident has occurred.
  - 2. It is performed by the team made up of criminal investigators from other Venue Agencies, the Employer Agency (where appropriate), the Colorado State Patrol (when applicable), and the District Attorney's Office formed into a Task Force for each incident. The lead investigator will be assigned from an agency other than the Employer Agency by the team coordinator. An Employer Agency investigator may assist in all other functions.
    - a. Any irreconcilable investigative issues that occur during an investigation shall be decided by the team coordinator and lead investigator.
  - 3. If it is determined that the police employee violated criminal law then the lead investigator for the CRT will be responsible for presenting a criminal filing to the District Attorney's office. However, in the event that it is determined that any subject other than the police employee committed a criminal violation, then the Venue Agency / Employee Agency will be responsible for preparing and filing any criminal charges with the District Attorney's office. The investigative materials, reports, and evidence collected during the CRT investigation will be turned over to the criminal investigators from the Venue / Employing agency so that they may prepare the necessary criminal filings.
  - 4. The investigation is required to follow the rules of law which apply to all criminal proceedings including constitutional, statutory and case law requirements.
  - 5. The investigation is performed in a manner that is indicative of a thorough, fair, complete and professional investigation, which is free of conflicts of interest.



6. Venue Determination:

a. When an incident occurs in two or more jurisdictions, each of those is a Venue Agency.

b. When an incident occurs on the boundary of two jurisdictions, or at a location where the relevant boundary is not readily ascertainable or is in dispute the Venue Agency (ies) shall be:

1. The Employer Agency if the Actor is employed by either boundary agency.

2. Both boundary agencies if both employ involved officers.

3. The agency which has the greater interest in the case by virtue of having the predominate police involvement in the incident or by virtue of having had the majority of acts leading up to the fatality occurring within its jurisdiction.

7. Vehicle collision Incidents:

a. Accidental collision fatalities shall be investigated by the CRT criminal investigators, joined by accident investigation specialists from the Colorado State Patrol or from another member agency. The accident investigation specialists have primary responsibility for documentation, collection and preservation of physical evidence. On-scene collaboration with the crime laboratory personnel is encouraged.

b. If the fatality results from a collision that was not accidental, OR if the vehicle movement was merely incidental to a fatality which was caused by non-vehicular means, the accident investigation specialists may be used by the CRT for that phase of the investigation, but their role will be limited to investigation of physical movement of the vehicle(s) and to collision reconstruction.

8. Scene security:

Each agency has initial responsibility for immediately securing crime scene(s) within its jurisdiction. This responsibility includes preservation of the integrity of the scene(s) and its/their contents, access control, and the identification and sequestration of witnesses. Responsibility may be changed by mutual agreement as the investigation progresses.

9. The documentation of the scene(s), forensic analysis, and evidence collection associated with the CRT response will typically be performed by forensic laboratory personnel employed by an entity other than the venue agency.

Pending arrival of laboratory personnel, crime scene security will be handled by responding officers. In the event an employee of a laboratory is involved in an incident, that laboratory will not take the primary role in the investigation of the incident. The Venue or Employer Agency(ies) may be requested by the laboratory to furnish officers to assist with evidence and scene documentation, collection, and preservation. Officers so involved will work under the direction of the criminalists. Laboratory opinions and analysis will be obtained from a laboratory designated by the CRT, usually the Colorado Bureau of Investigation. Prior to final relinquishment of the scene, the CRT investigators and the criminalists (and Colorado State Patrol investigators when applicable) will provide the Administrative Investigators an opportunity to assess the need for further evidence processing.

## **2-2. INTERVIEWING POLICE EMPLOYEES:**

- A. It is the intent of the CRT to only conduct criminal investigations and not become involved in administrative review of officer-involved fatalities. It should be made particularly clear to involved officers that “Garrity” advisements do not apply.
- B. Interviews should be conducted in a sterile setting, void of interruptions or any audio contamination. Video equipped interview / interrogation rooms offer the most viable setting for the interview. Interviews should be video taped with an audiotape back up whenever possible. Interviews of incident participants and primary witnesses must be audio taped (minimally).
- C. The administrative review team will be provided with copies of all tapes of interviews. At the conclusion of the criminal interview, the administrative team can conduct their own separate (private) interview.
- D. The involved officer is to be informed that the interview is non-custodial and that all his statements are voluntary. Should there be evidence that there was any criminal intent on the officer's part, either before the interview or during the interview, the officer will be advised under Miranda. Should the officer invoke, the interview will conclude and the administrative review team can proceed under advisement of Garrity. Any incriminating information obtained by the administrative review shall not be disclosed to any member of the Critical Response Team.
- E. Research has shown that these types of incidents can be extremely stressful for police employees and can result in inaccurate information being obtained during the interview of the involved officer if this interview is conducted too soon after the event has occurred. The Team coordinator will work with all parties involved to determine when will be the best time to interview the involved officer(s) with the understanding this may not occur for one or more days after the incident, depending on the circumstances.

### **2-3. INTOXICANT TESTING**

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- A. Criminal Investigation - If any involved officer(s) will not consent to a blood test, and sobriety evaluation is pertinent to the investigation of a crime under the C.R.S., the officer may be compelled to submit to a test under those provisions established by law.
- B. Administrative Investigation - The administrative or command personnel employing the involved officer(s) will be given the opportunity to compel the officer(s) to submit to intoxicant testing under their respective departmental guidelines. If results are obtained under the administrative employment relationship, the results will not be made available to the CRT investigators.

### **2-4. THE DISTRICT ATTORNEY'S OFFICE:**

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- A. Attorneys from the District Attorney's Office have the following roles in incident investigations:
  - 1. Assist and advise the CRT on various criminal law issues which may arise, such as Miranda, voluntariness, search and seizure, probable cause to arrest, detentions and releases, elements of crimes, immunity, legal defenses.
  - 2. Upon completion of the Criminal Investigation, to analyze the facts of the incident as well as the relevant law to determine if criminal laws were broken. If so, prosecute as necessary.

### **2-5. REPORT WRITING:**

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- A. All criminal investigators will write reports documenting their participation in the investigation. Each agency employing CRT member investigators may use their own established report writing system and format.
- B. The lead investigator has the ultimate responsibility for report writing and for collecting reports from other agencies. All reports shall be reviewed by the team director, or his designee and a team member from the District Attorney's Office before submission to the District Attorney for review.
- C. Prompt completion and distribution of reports is essential.

## **2-6. EQUIPMENT / TESTS / PERSONNEL COSTS**

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- A. All necessary equipment shall be supplied by the requesting agency. If additional or specialized equipment is needed, the cost of obtaining such equipment shall be the responsibility of the requesting agency, upon the approval of the agency CEO. This does not prohibit any individual team member from bringing along any piece of equipment he/she deems necessary, providing the requesting agency has no objection.
- B. Any specialized tests that may need to be done will be the responsibility of the requesting agency.
- C. All normal personnel costs shall be the responsibility of the agency providing the members to the team, not the requesting agency.
- D. All Team members, while responding to a call out, regardless of jurisdiction, shall be deemed to be on duty and responding to a call of mutual aid.

## **2-7. FORENSIC LABORATORY PERSONNEL**

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- A. In general, the scene or scenes associated with the CRT incident will typically be processed by the CRT forensic laboratory personnel from an agency other than the employing / requesting agency (ies).
- B. Notwithstanding this general protocol, based upon the nature and location of the incident, as well as the availability of laboratory personnel, the team coordinator may utilize laboratory personnel from the employing / requesting agency when appropriate. This decision is to be made by the team coordinator, in consultation with the requesting agency administration, on a case-by-case basis. When laboratory personnel from the employing / requesting agency are utilized to process the scene(s), a separate CRT criminal investigator will work in conjunction with the laboratory personnel to preserve the integrity of the process.
- C. Unless impractical or otherwise directed by the requesting agency CEO, after the collection of evidence by the CRT members, the requesting agency will immediately become responsible for the care, control, custody, and processing of the sealed evidence. Once the evidence is collected and sealed, the requesting agency will become responsible for all of the future handling, testing, transport, storage and care of the collected evidence.

## **2-8. AUTOPSY:**

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- A. At least one member of the Task Force's investigative team will attend the autopsy, as well as a lab representative who will collect any evidence.
- B. The autopsy pathologist will receive a complete briefing prior to the post mortem examination. This briefing, which includes all information known at that time which may be relevant to the cause, manner of death shall be provided.

## **2-9. NEWS AND MEDIA:**

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- A. The venue and/or the employer agency will be responsible for all news media relations.
- B. To maintain the integrity of the investigation, all media releases should be reviewed with the team coordinator, the lead investigator, and the C.E.O. of the venue and/or employer agency.
- C. Coroner's Office - Release of information will follow the policy and procedure of the appropriate Coroner's Office, as well as applicable statutes in the C.R.S.

## **2-10. ACCESS TO REPORTS AND EVIDENCE:**

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- A. Material which is created or collected by, or at the request or direction of, CRT criminal investigators (including the criminalistic laboratory) will be made available in a timely manner to those agencies, which have an interest in the investigation, including the Administrative Investigators.
- B. The material will include:
  - 1. Reports, written and collected
  - 2. Access to physical evidence
  - 3. Photograph, diagrams, and video tapes
  - 4. Audio tape recordings.
- C. When the CRT /or District Attorney's Office concludes that the physical evidence collected by the criminal investigators is no longer needed for criminal law purposes, the Employer Agency / requesting agency shall be notified of that decision so it can proceed with the preservation or disposition of the collected evidence consistent with their own guidelines and future needs.

- D. CRT archives will be held by the District Attorney's office. Those archives will only consist of the imaged (scanned) documents associated with the investigation. All of the original documents, as well as the totality of the physical evidence, audio tracks, photographs, and all other physical material, will be turned over to, and maintained by, the Employer / requesting agency (see item C above).

#### **2-11. DEBRIEFING:**

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At the conclusion of an investigation, there will be a debriefing and critique of actions taken. The purpose of this debriefing will be to ensure a thorough and complete investigation has taken place. This meeting will also serve as a way to evaluate, and make suggestions to improve the performance of this unique multi-jurisdictional investigative team. All attempts will be made to have the debriefing prior to submission of documents to the District Attorney's Office.

This will enable the Critical Response Team's Director to make additional assignments, if deemed necessary by the critique. It is important to have at least members from the District Attorney's Office, the Venue Agency, the Employee Agency (if different from the Venue Agency), the Coroner's Office, and the involved crime lab in attendance. The debriefing will be open to all members and they are encouraged to attend to help keep communications open. The debriefing will be closed to the media, all media releases will be in accordance with Section 2-9 of this protocol.

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