

OFFICER - INVOLVED
CRITICAL INCIDENT PROTOCOL

**WEBER COUNTY ATTORNEY'S OFFICE.
WEBER COUNTY SHERIFF'S OFFICE.
OGDEN CITY POLICE DEPT.
RIVERDALE POLICE DEPT.
WEBER STATE UNIVIERSITY POLICE
NORTH OGDEN POLLICE DEPT.
SOUTH OGDEN POLICE DEPT.
ROY POLICE DEPT.
PLEASANT VIEW POLICE DEPT.
HARRISVILLE POLICE DEPT.**

**COUNTY ATTORNEY CHRIS ALLRED
SHERIFF TERRY THOMPSON
CHIEF MIKE ASHMENT
CHIEF DAVE HANSEN
CHIEF DANE LABLANC
CHIEF KEVIN WARREN
CHIEF DARIN PARKE
CHIEF CARL MERINO
CHIEF RYAN HADLEY
CHIEF MAX JACKSON**

FORWARD

Investigations of officer-involved critical incidents involving police employees often place extraordinary demands upon the individuals and agencies involved. In addition to the knowledge, skill and resources required to investigate civilian homicide cases, officer-involved critical incidents present unique combinations of complexities.

These cases tend to attract considerable interest from segments of the public and from the news media. The public's right to know what occurred may require balancing with investigative necessity, rights of privacy or rights to a fair trial. Doubts may be expressed by some about the propriety of police agencies conducting investigations of fatalities which involved their own officers as actors or victims.

The individuals and agencies involved in such officer-involved critical incidents, as well as those involved in the subsequent investigations, must realize that each incident has potential social, civil, administrative and criminal consequences. Incident investigators and agency managers must understand the legal rights, obligations and authority of the agencies and individuals involved. They must specifically recognize and reconcile police officers' constitutional rights against their rights and obligations resulting from the employer agency relationship.

Confusion and even conflict can occur among individuals and agencies based upon their different interests, duties, perspectives, authority, training and resources. Unless resolved in advance, questions such as who conducts the investigation, what type of investigation should be performed and who can be present when an involved officer is interviewed, can delay and compromise investigations.

Because these demands and complications exist, this Protocol was developed by the Weber County Law Enforcement Administrators and Directors to serve as the model or guideline for the investigation of officer-involved critical incidents in Weber County. The goal of the Protocol is to help assure that such cases are thoroughly and fairly investigated.

While this Protocol represents the understanding and agreement among member agencies about how such cases are to be investigated, it is anticipated that individual agencies will make minor modifications, not affecting interdepartmental provisions, to meet agency requirements.

1. **DEFINITIONS** (1)

A. **“Actor”** (2)

1. A person whose act is a “proximate cause” of an injury/fatality to another person; or (3)
2. A person who intends that his act be a “proximate cause” of serious bodily injury or death to another person. (4)

B. **“Administrative Investigators”** (5)

Those investigators assigned by the employer agency to conduct the administrative investigation of the officer-involved critical incident. (6)

C. **“Criminal Investigators”** (7)

Those investigators who, under this Protocol, are assigned as part of the investigating agency to complete the criminal investigation of the officer-involved critical incident. (8)

D. **“Dangerous Weapon”** (9)

A firearm or an object that in the manner of its use or intended use is capable of causing death or serious bodily injury. (10)

E. **“Deceased Subject”** (11)

A person who is injured as a result of the act of the actor, whether or not intentionally. When used in this Protocol, this word is used simply to designate a person who is physically injured and subsequently dies. (12)

H. **“Employer Agency”** (13)

The agency by whom the involved police employee is employed or with which he/she is affiliated. (In many cases the venue agency will also be the employer agency.) (14)

I. “Fatal Injury” (15)

Death, or injury which is so severe that death is likely to result. (16)

J. “Investigating Agency” (17)

A law enforcement agency, the Weber County Attorney’s office, or an interagency task force composed of officers from multiple law enforcement agencies that are assigned to conduct the criminal investigation. The investigating agency may not be the law enforcement agency employing the officer who is alleged to have caused or contributed to the officer-involved critical incident. (18)

K. “Member Agencies” (19)

The law enforcement agencies in Weber County which are members of this Protocol Agreement. (20)

L. “Officer-Involved Critical Incident/Incidents” (21)

Incidents occurring in Weber County involving two or more people, in which a police employee is involved as an actor, victim, or custodial officer, where a fatal injury, custodial death, or injury caused by a dangerous weapon occurs. Such incidents include but are not limited to the following: (22)

1. Intentional and accidental shootings, including police tactical incidents involving specialized response teams. (23)
2. Intentional and accidental use of impact weapons or any other dangerous or deadly weapons. (24)
3. Assaults upon police officers; assaults on other police employees who are on duty or are acting for a law enforcement purpose. (25)
4. A fatal injury to a person resulting from the efforts of a police employee attempting to prevent a person’s escape from custody, make an arrest, or otherwise gain physical control of a person. (26)
5. Physical altercations, mutual combat, and domestic violence in which the police employee is acting in a private citizen capacity. (27)
6. Any fatal injury of any person while in police custody, but excluding

fatal injuries which occur while a person is under a physician's treatment for a disease or other natural condition which has been diagnosed prior to death and which does not involve custodial trauma, custodial suicide or custodial ingestion of a toxic substance. (28)

7. Any fatal injury to a person who is a passenger of a police employee in a police or other designated vehicle (such as ride-alongs, emergency transports, etc.). (29)
8. Vehicular collision, and specifically; (30)
 - a. Including any vehicle fatality which occurs: (31)
 - 1) after, although not necessarily as a direct or proximate result of, police gunfire directed at the suspect or the suspect vehicle; (32)
 - 2) in connection with use of vehicle(s) by police as an "enforcement intervention" technique intended to apprehend a suspect. ("Enforcement intervention" includes vehicle ramming, roadblocks, and forcing a vehicle to alter its course by cutting in front of it or by contact.) (33)
 - b. Excluding any vehicle fatality which involves: (34)
 - 1) off-duty, non-sworn police employees who are not at the time of the incident acting for an actual, apparent or purported law enforcement purpose; (35)
 - 2) solo vehicular collisions in which the only injury is suffered by a police employee who was the driver and sole occupant of a vehicle which was not involved in a collision with any other occupied vehicle; (36)
 - 3) police pursuits wherein the suspect vehicle being pursued by police vehicle(s) collides with another vehicle, a pedestrian or an object, where that collision did not result from collision contact between the suspect vehicle and a police vehicle or from "enforcement intervention." (37)

M. "Police Employee" (38)

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: (39)

1. Full-time, part-time, and hourly sworn and certified law enforcement officers, whether on-duty or off-duty, and whether acting for a law enforcement or a private purpose at the time of the officer involved-critical incident; (40)
2. Full-time, un-sworn employees who are on-duty at the time of the officer-involved critical incident, or who are acting actually, apparently or purportedly for a law enforcement purpose at the time of the officer-involved critical incident; (41)
3. Part-time, un-sworn employees who are on-duty at the time of the officer-involved critical, or who are acting actually, apparently or purportedly for a law enforcement purpose at the time of the officer-involved critical incident; (42)
4. Reserve police officers who are on-duty at the time of the officer-involved critical incident, or who are acting actually, apparently or purportedly for a law enforcement purpose at the time of the officer-involved critical incident; (43)
5. Temporary employees and volunteers whether paid or unpaid, who are on-duty or who are acting actually, apparently or purportedly for a law enforcement purpose at the time of the officer involved critical incident. This category includes Informants when they are working under the direct control and supervision of a police officer. (44)

N. “Proximate Cause” (45)

A cause which, in a natural and continuous sequence, produces the injury, without which cause the injury would not have occurred. Reasonable foreseeability of the injury is not a factor relevant to this definition. (46)

O. “Venue Agency” (47)

The agency, or agencies, within whose geographical jurisdiction the officer-involved critical incident occurs. (48)

2. **INVOCATION OF THIS PROTOCOL** (49)

A. Automatic and Immediate: (50)

Upon the occurrence of an officer-involved critical incident, this Protocol becomes automatically and immediately effective. (51)

B. Optional: (52)

1. Each member agency of this Protocol Agreement, when in the capacity of a venue agency or employer agency, may itself invoke this Protocol upon the occurrence of any sensitive event involving a police employee which may have possible criminal liability attached. Upon this unilateral invocation, the matter will be investigated under the provisions of this Protocol. (53)

a. Examples: (54)

1) a fatality/injury which is not covered by this Protocol; (55)

2) any other sensitive event involving a police employee where criminal conduct is a possibility and investigation is deemed appropriate. (56)

b. The Weber County Attorney has discretion to decline participation in optional invocations. (57)

2. This Protocol does not preclude the law enforcement agency employing an officer alleged to have caused or contributed to the officer-involved critical incident from conducting an internal administrative investigation. (58)

3. **INVESTIGATIVE AGENCIES, FORMATS AND RESPONSIBILITIES** (60)

To properly recognize and accommodate the various interests and the various rules of law which may be involved in any officer-involved critical incident, investigations of these matters must be performed under two separate investigative formats: (1) the criminal investigation; and the (2) administrative investigation. (61)

A. The Criminal Investigation (62)

1. The criminal investigation has investigative priority over the administrative investigation and it begins immediately after an officer-involved critical incident has occurred. (63)

2. Upon receiving notice of an officer-involved critical incident, the law enforcement agency having jurisdiction where the incident occurred

shall, as soon as practical, notify the Weber County Attorney. The chief executive of the law enforcement agency and the Weber County Attorney shall jointly designate an investigative agency for the officer-involved critical incident. The assigned investigating agency will function under the direction of the Chief Investigator of the Weber County Attorney's Office. The Chief Investigator has the authority to decide upon appropriate investigative procedures or other issues. (64)

3. Selection of the primary criminal investigator(s) to be part of the investigation agency is of great importance. Generally, the best available investigator(s) should receive the assignment. The following qualifications are important and will be considered. (65)
 - a. Experience in homicide investigations. Investigative experience in other crimes against persons is helpful. (66)
 - b. Ability to effectively interview people of various backgrounds. (67)
 - c. Good working knowledge of physical evidence collection and preservation techniques, and an appreciation of the abilities and limitations of scientific evidence. (68)
 - d. Good knowledge of police operational procedures and the criminal justice system. (69)
 - e. Excellent report writing and communication skills. (70)
 - f. Good organizational and supervisory skills. (71)
 - g. Respected professionally by those with whom he/she works for being competent, thorough, objective, fair, and honest. (72)
4. The goal of the criminal investigation is to develop all available relevant information about the Incident. This information will be used in two ways: (73)
 - a. First, to determine presence or absence of criminal liability on the part of all those involved in the Incident. Specifically: (74)
 - 1) To determine whether the nature and the quality of the conduct involved is prohibited by statutes which

provide for criminal penalties upon conviction; and (75)

- 2) If criminal conduct is found, determine the identity of the person(s) responsible for that conduct; and (76)
- 3) If criminal conduct is found, determine the degree of the crime(s); the existence of any factual or legal defenses to that crime; and to determine the presence or absence of any factors which would mitigate or aggravate punishment for that crime. (77)

- b. Second, to provide factual information to the employer agency's management for its internal use in an administrative investigation. (78)

(While the criminal investigators do not direct their investigative attention to administrative concerns, it is recognized that the criminal investigations results are of proper interest to employer agency management for its internal use and those results are fully available for that purpose.) (79)

5. The investigation shall follow the rules of law which apply to all criminal proceedings including constitutional, statutory and case law regarding rights which are covered by the United States Constitution's 4th, 5th, 6th and 14th Amendments together with the protections afforded by the Constitution of the State of Utah. (80)
6. The investigation shall be performed in a thorough, fair, complete and professional manner; free of conflicts of interest. (81)
7. Venue Determination: (82)
 - a. When an officer-involved critical incident occurs in part in two or more jurisdictions, each of those jurisdictions is a venue agency. (83)
 - b. When an officer-involved critical 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(cies) shall be: (84)
 - 1) the employer agency if the actor is employed by either boundary agency; (85)

- 2) both boundary agencies if actors are employed by both; (86)
 - 3) the agency which has the greater interest in the case by virtue of having the predominant police involvement in the officer-involved critical incident or by virtue of having had the majority of acts leading up to the fatality occur within its jurisdiction. (87)
 - c. For custodial deaths, the agency having custody of the person at the time his/her distress was first discovered is a venue agency. Also a venue agency is the one within whose jurisdiction any fatal injury was inflicted. (88)
 - 1) If the death was caused by conduct which was apparently criminal, the venue agency is one within whose geographical jurisdiction the act occurred. If it appears that no criminal conduct was involved in the cause of death, the venue agency is the one having custody of the victim when distress was first discovered. (89)
 - d. If an on-duty police officer (sworn) is involved as the actor in an officer-involved critical incident which occurs within the jurisdiction of another member agency, and if that officer was acting in the performance of his/her duty at the time of the officer-involved critical incident, the venue agency may elect to relinquish its role in the criminal investigation to the other member agencies. (90)
8. Scene Security: (91)

Each agency has initial responsibility for immediately securing crime scene(s) within its territorial 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. (92)
9. Responsibility for physical evidence collection, preservation and analysis shall be as follows: (93)
 - a. The Crime Scene Investigative Unit has the responsibility for documentation of the scene(s) and for the collection,

preservation and analysis of physical evidence, and/or transmission of collected evidence to the State Crime Lab. (94)

b. If an employee of the Crime Scene Investigative Unit is involved in an officer-involved critical incident as an actor or as a victim, the Crime Scene Investigative Unit shall be disqualified from participation in the investigation of the officer-involved critical incident. These alternatives are available: (95)

1) The venue or employer Agency(cies) may be requested by the Crime Scene Unit to furnish officers to assist with evidence and scene documentation, collection and preservation. Officers so involved will work under the direction of the criminalists of the Crime Scene Investigative Unit. (96)

2) Prior to final relinquishment of the scene, the investigating agency and the Crime Scene Investigative Unit will provide the administrative investigators an opportunity to assess the need for further evidence collection and processing. (97)

10. Notifications (98)

Upon identifying an occurrence as an officer-involved critical incident, the venue agency(cies) shall make the following notifications as promptly as possible to: (99)

a. Weber County Attorney's Office. (100)

b. Intra-departmental officers, as required by that agency's procedures. (101)

c. The employer agency, if applicable and if not yet aware. (102)

d. The Crime Scene Investigative Unit. (103)

e. The Medical Examiner's Office, upon confirmation of a fatality. This is a required notification. (Body removal can be delayed as necessary for evidence processing.) (104)

11. Scene Procedures (105)

- a. Emergency life saving measures have the first priority. (106)
- b. If a person is transported to a hospital with fatal injuries, an officer should accompany that injured person in the same vehicle in order to: (107)
 - 1) Locate, preserve, safeguard and maintain the chain of physical evidence. (108)
 - 2) Obtain a dying declaration, a spontaneous statement, a contemporaneous statement, a statement of then-existing or previous mental or physical state, if at all possible. (109)
 - 3) Maintain custody of the person if he/she has been arrested. (110)
 - 4) Provide information to medical personnel about the officer-involved critical incident as relevant to treatment, and obtain information from medical personnel relevant to the investigation. (111)
 - 5) Identify relevant people, including witnesses and medical personnel. (112)
 - 6) Be available for contacts with the victim's family, if appropriate. (113)
- c. The scene(s) must be secured immediately with a perimeter established a sufficient distance away to safeguard evidence. In some circumstances an inner and an outer perimeter are appropriate. (114)
 - 1) Access to the scene(s) must be limited to only those officials who must enter for an investigative purpose. (115)
 - 2) A written log will be established as quickly as possible to identify all persons entering the scene(s), the time of their entry and exit, and the reason for entry. (116)
 - 3) When not needed for life savings efforts, entry by fire and ambulance personnel should be restricted to the absolute minimum necessary to perform the needed

duties. (117)

- 4) No items shall be moved inside the scene(s) or removed from a scene without approval of the investigating agency and the Crime Scene Investigative Unit unless absolutely necessary for public or officer safety or for preservation of evidence. If removal without approval is necessary, the removal must be witnessed and logged. The log shall state the identity of the person removing the described object, the reason for removal, a witness to the removal, and the time of removal. The item should be photographed prior to removal. (118)

d. If any type of weapon or instrument was involved in the officer-involved critical incident, the supervisor at the scene will promptly see to the security and/or collection of such items, as follows: (119)

- 1) If the area is secure, loose weapons or instruments shall be left in place and undisturbed. (120)
- 2) If the area is not secure, the supervising officer at the scene shall decide whether the items can be safely left in place or whether prompt removal is necessary. If such items must be moved or removed for protection, they should be photographed in place prior to removal if possible. (121)
- 3) If an involved officer still has personal possession of a weapon he/she used in the officer-involved critical incident, a member of the investigating agency shall collect and take possession of the weapon as soon as reasonably practicable. Collection of the weapon shall be done in a discrete and professional manner (i.e., in private, out of view of the public and other officers if possible). Sidearms must not be removed from their holsters; obtain the entire gunbelt if necessary to avoid removing the weapon from its holster. Sidearms should be replaced as quickly as possible if the officer so wishes, unless reason dictates otherwise. (122)
- 4) In shooting cases, the supervising officer will check the firearms of all officers who were present at the

time of the officer-involved critical incident to ensure that all discharged firearms are identified and collected, and to specifically document those weapons which were not fired. (123)

- 5) The investigating agent collecting any weapon or instrument will make note of its readily visible general description and condition, the appearance and the location of any trace evidence adhering, to the extent these observations can be made without removing a firearm from its holster or otherwise compromising physical evidence. The location where the weapon or instrument was first observed by the investigating agent, and the identity of the person or location room which the weapon or instrument was received shall also be recorded. (124)
 - a) In firearms cases, the investigating agency will also (see paragraph 124) make note of whether the firearm is cocked, has its safety "on" or "off", has its hammer back, any apparent jamming of either fired or unfired ammunition; the location and position of the weapon's magazine (e.g. fully or partially inserted, completely separate from the firearm, missing, etc.), to the extent possible without removal of the weapon from its holster (see paragraphs 119 thru 129). (125)
 - 1) If the mechanism of a firearm is obviously jammed, no attempt shall be made to unload the weapon or clear the jam. (126)
 - 2) If the firearm is cocked (or if a semi-automatic pistol cannot be determined to be cocked or not), the safety may be put "on" by the supervising officer, who must make note of that fact. If the firearm's hammer is back, it may be lowered but note must be made of that fact. (127)
 - b) Any officer receiving a weapon or instrument from another person or obtaining it otherwise

shall note its serial number if readily visible without removing the weapon from its holster or otherwise compromising physical evidence (see paragraph 119 thru 121 and shall otherwise maintain the chain of evidence. (128)

- c) Otherwise, weapons and instruments will not be disturbed in any way. They shall not be handled by anyone other than the investigating agent and that person shall handle them minimally to preserve the exact state of the weapon or instrument when received. (129)
- 6) The collected weapons or instruments shall be transferred to the Crime Scene Investigative Unit upon their arrival, along with the information required under paragraphs 119 thru 129. (130)
- 7) Twelve rounds of the same type(s) of ammunition fired will be collected by the criminal investigators from each shooting officer (or from the department armorer, if the officer has insufficient similar rounds remaining). (131)
- 8) Firearms which do not need to be retained in evidence, as determined by the criminal investigators, will be returned to a designated representative of the employer agency promptly after the Criminalistics/Forensics Laboratory has inspected and tested them. The Laboratory appreciates that prompt return of officers' handguns is important and will return them as soon as possible. (132)
- e. Any other physical evidence at the scene which is in danger of being contaminated, destroyed or removed must be promptly and effectively observed, recorded and then protected for subsequent collection. Evidence adhering to live participants (such as blood stains), footprints and fingerprints, volatile substances, various types of trace evidence, and firearms discharge evidence, are examples. (133)
- f. Transporting and Sequestering of Involved Officers: (134)

- 1) Officers who were present at the scene at the time of the officer-involved critical incident, whether actors or witnesses, will be relieved of their duties at the scene as promptly as possible and shall be sent to their own police station unless other suitable and agreeable arrangements are made for them. Officer(s) not involved in the officer-involved critical incident shall be assigned to accompany these officers, either in a group or individually. Actors should be driven to the station by an uninvolved officer. (135)
- 2) If circumstances prohibit removal of all witnessing and involved officers from the scene at once, those officers who were actors should be relieved first. (136)
- 3) An uninvolved officer shall remain with the involved officers, either in a group or individually, until they can be interviewed. The sequestering officers are present to ensure the officers have privacy, that their needs are accommodated, and to ensure the integrity of each officer's later statements to investigators. They should not be present during confidential (privileged) conversations (see paragraph # 157). (137)
- 4) Involved officers are not to discuss the case among themselves, with sequestering officers, or with others except their representatives. (138)
- 5) While awaiting interviews, involved officers are encouraged to relax and to carefully reflect upon what occurred. They may wish to make notes for their future use, especially for later interviews. (139)

g. Custodial Death Scenes: (140)

When an officer-involved critical incident occurs in a jail facility or other location where inmates may have witnessed any relevant part of the incident, these inmates should be identified and separated if possible pending interviews by criminal investigators. (141)

12. Interviewing Police Employees (142)

- a. Investigating officers should understand that answers given

as part of an administrative investigation interview may be excludable against a police employee as not complying with the constraints of the Garrity decision if criminal responsibility is associated with the police employee's conduct. (143)

- 1) The police employee must be advised in an interview what his statement is being used for, administrative or criminal. (144)
- 2) Interviewing officer should not be from the employer agency. In addition, members of the employer agency should not be present during the interview. (145)
- 3) The interview must be expressly non-custodial, and the officer should be advised that he or she is free to leave, or Miranda warnings must be given. (146)
- 4) If and when the interview becomes a custodial interrogation, the Miranda cases are applicable. (147)
- 5) To insure proof of voluntariness in a non-custodial interview, the criminal investigation interviewers may wish to advise certain interviewees of the following: (148)
 - a. The interviewee is not in custody and is free to leave at any time. (149)
 - b. The interviewee is not obligated to answer any questions asked by the investigators and no punitive action will be taken against the interviewee if he/she refuses to be interviewed. (150)
- 6) Officers will not be compelled by threats of administrative punitive action (or otherwise) to answer questions of criminal investigation interviewers which would be self-incriminating. (151)
- 7) Interviews will be conducted separately for each officer. (152)
- 8) Interviews will normally be fully recorded. (153)

- 9) The interviewees will be considered as witnesses unless the circumstances dictate otherwise. (154)
- 10) Police employees have the same rights and privileges regarding criminal investigation interviews that any other citizen would have, including the right to consult with a representative prior to an interview and the right to have the representative present during the interview. (155)
 - a. The representative should be allowed to consult about the facts of the incident privately with only one police employee at a time. (156)
 - b. If the representative is not a doctor, lawyer, psychotherapist or priest, or an agent of such professional, the contents of private conversations between the representative and his/her police employee "client" are not privileged. (157)
13. If a grant of immunity is desired by interviewing officers, the Weber County Attorney or his representative must be contacted for assistance. (158)
14. Intoxicant Testing (159)
 - a. Criminal Investigation (160)

Police employees have the same rights and privileges that any civilian would have regarding intoxicant testing. When criminal investigators determine that a police employee's state of sobriety is relevant to the investigation, they have these options: (161)

 1. Obtain the blood and/or urine sample by valid consent. (162)
 2. Obtain the blood and/or urine sample incidental to valid arrest. (163)
 3. Obtain a search warrant. (164)
 4. If an arrestee refuses to comply with the request for a

sample, attempts will be made to obtain the sample in accordance with case law. (165)

b. Administrative Investigation (166)

1. Intoxicant test results obtained by criminal investigators are available to the administrative investigators. (167)
2. In the event the criminal investigators do not obtain samples for intoxicant testing, the employer agency may then seek to obtain samples. However, the criminal investigators have the first opportunity. (168)
 - a) Authority for the employer agency to obtain samples includes (1) valid consent, and (2) ordering the employee to provide the samples based on the employment relationship. (169)
 - b) Some departments have blanket orders regarding employee intoxicant testing while other departments make decisions on a case-by-case basis. (170)
3. Blood is the best fluid for alcohol testing, while urine is best for drug screening. Optimally, samples of both should be obtained for the most complete results (171)
4. Samples should be collected promptly after the officer-involved critical incident for most meaningful results. (172)
5. A police employee may volunteer to provide sample(s) for intoxicant testing even if criminal investigators and administrative investigators haven't obtained samples. Similarly, a person from whom criminal or administrative investigators have obtained samples may request that another sample be taken for independent testing. The taking of this sample and subsequent testing will not be at the expense of the investigating agency or the employer agency. Such a request will be promptly honored. (173)

15. Autopsy (174)

- a. At least one member of the investigating agency will attend the autopsy, as will a member from the Crime Scene Investigative Unit. Investigators representing other agencies may also attend. (175)
 - b. The autopsy pathologist will receive a complete briefing prior to the post mortem examination. This briefing, which includes all information known to that time which may be relevant to the cause, manner and means of death shall be attended by at least one member of the investigating agency, and a member of the Crime Scene Investigative Unit. (176)
16. The Weber County Attorney's Office (177)
- a. The Weber County Attorney's Office has the following roles in officer-involved critical incident investigations: (178)
 - 1) The County Attorney's Chief Investigator will participate as the lead investigator of the investigating agency performing the criminal investigation. (179)
 - 2) An attorney will assist and advise the investigating agency 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, and legal defenses. (180)
 - 3) Upon completion of the criminal investigation, analyze the facts of the officer-involved critical incident as well as the relevant law to determine if criminal laws were broken. If so, prosecute as appropriate. (181)
 - b. The Weber County Attorney has its own separate investigative authority. When deemed appropriate by the Weber County Attorney (or his designated alternate in his absence), the Weber County Attorney's Office may perform an independent investigation separate from the criminal investigation. (182)
17. Report Writing: (183)
- a. All criminal investigators will write reports documenting their

participation in the investigation. (184)

- b. The criminal investigators within the investigating agency will allocate and divide among themselves the responsibility for documenting interviews and observations. (185)
- c. The lead venue agency has the ultimate responsibility for report writing and for collecting reports from other agencies. (186)
- d. Prompt completion and distribution of reports is essential. All involved agencies and investigators will strive for report completion and distribution within thirty (30) days after the officer-involved critical incident. (187)

B. Administrative Investigation (188)

- 1. In addition to its concern about possible law violations by civilians and its own employees who are involved in an officer involved critical incident (which concerns are addressed by the criminal investigation), the employer agency also has need for information about the officer-involved critical incident for the following non-criminal purposes: (189)
 - a. Internal Affairs: (190)

Determination of whether or not its employees violated departmental regulations. (191)
 - b. Agency Involvement: (192)

Determination of the adequacy of its policies, procedures, programs, training, equipment, personnel programs and supervision. (193)
 - c. Government and Community Relations: (194)

Informing itself of the officer-involved critical incident's details so it may adequately inform its parent governmental body, and so it may be responsive to comments about the officer-involved critical incident from the public and the media. (195)
 - d. Claims and Litigation: (196)

Preparing for administrative claims and/or civil litigation that may be initiated by or against the agency. (197)

2. The employer agency may use an administrative investigation and/or a more specific “civil litigation investigation” format to investigate these concerns as it considers appropriate. While both the criminal investigation and the administrative investigation are important and should be aggressively pursued, investigative conflicts between the two formats shall be resolved by allowing the criminal investigation to have investigative priority. It is intended that this prioritization will preclude competition between the two formats for access to witnesses, physical evidence, and the involved parties, and that it will prevent the criminal investigation from being compromised by an untimely exercise of the employer agency’s administrative rights. (198)
3. The initiation of administrative investigations and the extent of those investigations is, of course, solely the responsibility of the employer agency. (199)
4. Interview statements, physical evidence, toxicology test results and investigative leads which are obtained by administrative investigators by ordering police employees to cooperate shall not be revealed to criminal investigators without approval of the Weber County Attorney’s Office. Other results of the administrative investigation may or may not be privileged from disclosure to others, including the investigating agency, depending upon applicable law. (200)
5. The employer agency should immediately assign at least one administrative investigator upon being notified of the officer-involved critical incident. This officer can function as a liaison between the employer and the investigating agency, can gather information for the investigating agency, and can be the investigating agency’s contact for personnel matters, even if no actual investigation is then warranted by the administrative investigator. (If the employer agency has a policy it should be made consistent with this Protocol). (201)
6. The investigating agency will promptly and periodically brief the administrative investigator(s) of the criminal investigation’s progress. The administrative investigators will have access to briefings, the scene(s), physical evidence, and interviewees’ statements. (202)

7. Administrative investigators are not bound by some of the investigative restrictions that apply to criminal investigators (see paragraph #198) (203)

4. **NEWS MEDIA RELATIONS** (204)

- A. The public's right to know what occurred must be balanced with the requirements of the investigation and with the rights of involved individuals. (205)
- B. As in all other cases, care must be taken to ensure that intentionally misleading, erroneous or false statements are not made. (206)
- C. Agencies and individuals who are not well informed and not intimately involved with the investigation's results and progress should not make statements to the press. (207)
- D. While an agency cannot be prohibited from making statements to the news media about an officer-involved critical incident, these guidelines are established: (208)
 1. The lead venue agency has the responsibility for making press releases about the officer involved critical incident and its investigation for the first 48 hours. (209)
 - a. Officers in close contact with the investigating agency are in the best position to comment about the facts of the case and the progress of the investigation. (210)
 2. The Employer Agency. (211)

If the employer agency is not also the venue agency, fewer problems will arise, especially at the early stages of the investigation, if the employer agency limits its comments to the following areas: (212)

 - a. The employer-employee relationship; (213)
 - b. Factual material revealed by the employer agency's own administrative investigation of the officer-involved critical incident; (214)
 - c. Information which has been cleared for release by the investigating agency. (215)

3. The Criminalistics/Forensic Laboratory (216)

Information released will usually be confined to general laboratory procedures, scientific facts and principles, and testing procedures. Specific results of searching, testing and analysis will generally not be released without clearance from a criminal investigator from the investigating agency. (217)

4. The Medical Examiner's Office (218)

Release of information will generally be limited to the following: (219)

- a. Autopsy findings, including the condition of the deceased, the cause of death, and toxicology test results, after the involved agencies have received this information; (220)
- b. The identity of those present at the autopsy, including the identity and affiliation of the pathologist(s); (221)
- c. The general nature of further medical testing or medical investigation to be done; (222)
- d. Information obtained by medical examiner investigators directly from medical sources, the deceased's family members, or witnesses. Information obtained from the investigating agency or from the involved agencies will not be released by the Medical Examiner's Office without prior clearance from those agencies; (223)
- e. The role of the Medical Examiner's Office in the investigation of death, in general terms. (224)

E. If criminal investigators determine that the release of a specific piece of information would materially jeopardize the investigation, they shall notify those agencies possessing that knowledge of the hazards of releasing it. (225)

F. Interruptions to the investigators will be minimized if the agencies assign particular individuals to be the sole designated contacts with the news media. (226)

5. **ACCESS TO REPORTS AND EVIDENCE** (227)

A. Material (as defined in paragraphs # 229-233) which is created or

collected by, or at the request or direction of, criminal investigators (including the Crime Scene Unit) will be made available in a timely manner to those agencies which have an interest in the investigation, including the administrative investigators. (228)

- B. The material will include: (229)
 - 1. Reports, written and collected. (230)
 - 2. Access to physical evidence. (231)
 - 3. Photograph, diagrams and video tapes. (232)
 - 4. Audio digital/tape recordings. (233)
- C. When the investigating agency and/or Weber County Attorney's Office concludes that the physical evidence collected by the Criminal Investigators is no longer needed for criminal law purposes, the employer agency shall be notified of that decision so it can assume responsibility for preservation of such evidence if it desires. (234)