

**MARICOPA COUNTY ATTORNEY'S OFFICE
CRITICAL INCIDENT RESPONSE PROTOCOL**



INTRODUCTION

The Maricopa County Attorney's Office (MCAO) believes in collaborative partnerships with First Responders¹ in the investigation and management of critical incidents occurring in Maricopa County. We have a shared legal responsibility to ensure compliance with state laws in our jurisdiction. Nothing in the MCAO critical incident response protocol should be construed to diminish an investigative agency's authority and responsibility to conduct a complete and objective investigation in accordance with all applicable laws. It is the duty and obligation of the County Attorney to ensure that justice is achieved and that the due process rights of the accused and the rights of victims are protected. By responding to the scene, the independent prosecutorial component helps establish and preserve the public's trust and reliance in our criminal justice system.

PROTOCOL

A critical incident is one in which a First Responder is directly involved in a shooting or in-custody death. Investigative agencies may also activate the protocol for a driving incident or where there is serious physical injury and the agency determines a First Responder may have violated State law. Critical incidents require complete, objective and thorough investigations. The use of a formal written Protocol promotes consistency and objectivity in the investigation and management of critical incidents.

SEPARATION OF CRIMINAL AND ADMINISTRATIVE INVESTIGATIONS

An investigating agency has the responsibility to address several important issues. These include: (1) whether any criminal laws have been violated; (2) whether departmental policies have been followed; (3) whether appropriate tactics were utilized under the circumstances; and (4) whether training needs to be revised. To address these issues the investigating agency may simultaneously choose to conduct a criminal as well as a separate administrative investigation. Because state laws and rules of procedure can impact the admissibility of evidence collected during these investigations, it is critically important that the two different inquiries be properly and independently conducted.

The primary duty of the County Attorney is to analyze the criminal investigation, review the evidence and determine whether any violation of state law occurred. Evidence discovered during the criminal investigation must be collected in an independent manner, separate from the administrative inquiry. Because agencies are authorized by law to compel their employees to give statements in administrative investigations, these statements are not considered voluntary for purposes of a criminal investigation. Involuntary statements are not admissible in future criminal proceedings. Therefore, it is very important from the outset of an investigation to clearly distinguish the processes of a criminal investigation from any administrative inquiry. A criminal investigation has priority over administrative or internal investigations. Therefore, the criminal investigation must take priority in all critical incident investigations. If an administrative

¹ The term First Responder refers to a police officer, detective, trooper, sheriff, deputy, detention/corrections officer, federal agent, firefighter, fire investigator, fire inspector, emergency medical technician or paramedic.

investigation commences at the same time a criminal investigation is ongoing, the two investigations must always remain partitioned and bifurcated.

ACTIVATION OF THE PROTOCOL

The MCAO has the resources and personnel to be on call to respond to the scene of all critical incidents. The investigating agency should refer to the MCAO Public Safety Liaison on call list when making notifications. It is the responsibility of the responding prosecutor to ensure that an investigative agency conducts an objective and bias free investigation. An early response to the scene is critical to protecting the integrity of the investigation and maintaining public confidence in an independent investigative process.

All investigative personnel and responding prosecutors must have the necessary training and qualifications appropriate for the critical incident investigation. All responding investigators and prosecutors should conduct a conflict of interest review during the initial briefing. A conflict of interest is any relationship between the case agent/prosecutor and the involved employees that would call into question the thoroughness, objectivity and credibility of an independent investigation. Any member of the team having a conflict of interest should recuse themselves prior to proceeding with the investigation.

In circumstances where jurisdictions do not have the resources or capabilities to conduct their own investigations, the protocol should specify the investigative agency that will respond to the scene and assume responsibilities for the critical incident investigation. Prosecutors should respond to the scene of a critical incident in a timely manner from the time they receive a call from an investigative agency. The prosecutor that responds to or participates in the investigation of a critical incident shall play no part in the criminal prosecution of any civilian for any acts that arise from the same facts as the critical incident.

INCIDENTS TO BE INVESTIGATED

This protocol should be followed for any First Responder that is directly involved in a shooting, or an in-custody death. The protocol is applicable in the following circumstances:

- 1) A State, County, Municipal and/or Federal law enforcement officer discharges a firearm while interacting with any person;
- 2) An individual sustains serious physical injury and the investigative agency determines a First Responder may have violated State law.

** For critical incidents involving a federal task force or federal agent, there MAY be times where the primary local jurisdiction conducts a parallel criminal investigation under applicable State law and the MCAO critical incident protocol.

If the subject who sustained an injury survives the encounter with the First Responder, the responding prosecutor may call in a second prosecutor to assist in the investigation and/or prosecution of that subject for any criminal conduct committed against the involved First Responder. By bifurcating the simultaneous criminal investigations, the on-scene prosecutor

avoids the appearance of a conflict of interest and avoids tainting the integrity of the critical incident investigation.

THE SCENE

The investigative agency is responsible for securing the incident location(s), collecting all physical evidence, photographing and/or diagramming the scene, and interviewing witnesses. The prosecutor is present to observe the on-scene investigation and ensure this protocol is followed in preparation for the pending review of the incident by the prosecutor's office. If the on-scene prosecutor determines that additional investigative resources are necessary, the prosecutor will coordinate with the investigating agency.

BRIEFING

When practical, responding investigators and prosecutors should participate in an initial briefing of the incident. Material information to be covered may include all relevant information known to First Responders, including but not limited to:

- 1) The names and present whereabouts of the First Responders involved in the incident;
- 2) The names, addresses and present whereabouts of all civilian witnesses to the incident;
- 3) The public safety statements of the peace officers as provided to First Responders;
- 4) The physical evidence discovered;
- 5) A summary of witness statements and the status of the investigation;
- 6) Identification of the case agent;
- 7) The medical condition of all injured parties;
- 8) Existence of any video and/or audio recording of the incident.

The agency in charge of the criminal investigation should ensure that only necessary personnel are present at the briefing. A conflict of interest review should take place at every briefing. Briefings should be conducted by qualified personnel prior to the commencement of the actual investigation.

INVESTIGATION

The responsibilities of the on-scene prosecutor shall include the following:

- 1) Observe and monitor the investigative agency's criminal investigation;
- 2) Assist the assigned case agent in addressing legal issues as they relate to the criminal investigation, keeping in mind that legal advice must come from the agency's legal advisor;
- 3) Assist the case agent with the identification of relevant evidence and the interview of witnesses;
- 4) Maintain the integrity of the criminal investigation by keeping a simultaneous administrative investigation, if any, bifurcated and partitioned off;

- 5) Report back to the County Attorney in a timely manner concerning the initial findings of the criminal investigation.

The case agent will ensure that the prosecutor has access to the scene of the investigation. The case agent and prosecutor will conduct a walk-through of the scene after the briefing and before any interviews are conducted. All evidence shall be preserved and remain in the secure custody of the agency conducting the investigation.

INTERVIEWS OF WITNESSES

The investigative agency should make every attempt to locate, identify and interview all potential witnesses to an incident as soon as possible. The interviews should take place as soon as practical. When appropriate, the interviews may take place at the scene to aid a witness in recalling and explaining the exact location of the parties and the events that took place.

The prosecutor may be present, observe and consult with the investigative agency in interviews of any witness. During the pendency of the investigation and prior to the interview, all witnesses or potential witnesses should be kept under observation and separated to maintain the integrity of their individual statements. All witnesses or potential witnesses should be interviewed separately to maintain the integrity of their statements. All interviews should be electronically recorded. Any circumstances preventing these best practices should be fully documented in a written report.

INTERVIEWS OF INVOLVED FIRST RESPONDERS

The prosecutor may observe and consult with the assigned case agent during the scene walk-through with the involved First Responder personnel. The interview must be voluntary. The case agent should electronically record and/or document the voluntariness waiver as well as the interview. The interview is non-custodial in nature; therefore, *Miranda* Rights are not required to be read to an involved First Responder. However, a complete and thorough explanation of the nature of the interview and the consent of the First Responder should be digitally recorded and/or memorialized in the final police report. The involved First Responder may have their defense attorney present. However, no other personnel should participate in the walk-through without the permission or direction of the case agent.

The advent of the use of surveillance cameras, in car dash cameras, aerial cameras and body worn cameras can and does result in the capture and preservation of images which may be relevant to the investigation. An involved employee may desire to review images before they make a formal statement. However, it may be in the involved employee's best interest, as well as the interest of the integrity of the investigation, that an involved employee NOT view video evidence before making a statement. Therefore, it is the opinion of MCAO that involved employees should be discouraged from viewing preserved images before they give an initial statement.

All decisions to grant a voluntary interview should be made in person between the case agent, an involved First Responder and, when applicable, the involved employee's legal counsel. If an involved First Responder chooses not to make a voluntary statement, the prosecutor and a representative of the investigating agency should consult and review the available investigative options.

MEDICAL EVIDENCE, EVIDENCE COLLECTION, WEAPON EXCHANGE & EXIGENT CIRCUMSTANCES

All relevant physical evidence will be documented, photographed, and impounded. Relevant evidence may include, but is not limited to, firearms, magazines, duty belts, tasers, handcuffs, batons, knives and other police gear including uniforms, boots and other clothing. Body worn camera, dash camera, taser camera, aircraft camera, surveillance and/or cell phone camera recording(s) related to the critical incident should be impounded as evidence. Investigating agencies should be prepared to replace any seized items in a timely manner. When an individual has sustained serious physical injury or death by a First Responder, the investigative agency should contact treating medical personnel and make efforts to preserve physical evidence such as the angle of bullet entry, lacerations, contusions, clothing and/or the presence and effect of any drugs or alcohol.

RELEASE OF MATERIALS

MCAO welcomes the opportunity to work collaboratively in improving and enhancing transparency and accountability as it relates to critical incidents. By working together, we can accomplish the important and shared goal of disseminating relevant information and facilitating accurate critical incident information while adhering to the principles that protect the due process rights of the accused, the victim(s) and the integrity of the criminal trial process. We appreciate the opportunity to share concerns and to consult on a case by case basis. However, MCAO respects that when and what items are released to the public are at the discretion of the investigating agency.

INVESTIGATIVE REPORTS

It is the intent of the critical incident response protocol to complete the investigation and facilitate a timely review of the critical incident as quickly as possible, consistent with the primary goal of conducting a complete, thorough and objective review of the evidence.

The investigating agency should submit all reports to the prosecutor as soon as possible. If the investigation has not been completed within 30 days of the incident, the status of the investigation and estimated date of completion should be communicated to the MCAO Public Safety Liaison Team. Verbal updates should be provided to MCAO as new developments arise regardless of whether all written reports are completed. This procedure will permit MCAO to review what has been completed and to proceed simultaneously with any additional follow up investigation. An investigative agency does not have to delay the submittal of an otherwise completed investigation to MCAO based solely on the absence of a finalized Medical Examiner's Report. MCAO is aware that autopsy and toxicology reports may delay an investigation's timely completion. It is strongly encouraged that investigative agencies submit an otherwise completed report to MCAO for review when and if the only information still outstanding is an autopsy report.

FINAL ACTION

At the conclusion of the investigation, the final reports will be submitted to a Critical Incident Review Committee to analyze the facts and evidence and determine whether a First Responder has acted in conformity with applicable state and/or federal law. If the determination is made that there

is a violation of state and/or federal law, the Committee will determine whether a reasonable likelihood of conviction exists to permit the filing of criminal charges. A recommendation will be made to the County Attorney for a final decision. Once a final decision is made, MCAO will provide written notice of the decision to the Chief of Police/Agency Head, Case Agent, Involved Employee(s), and anyone who has invoked their victim rights under state law and any other individual as set forth by state and federal law.