

Northern Utah Critical Incident Investigative Team Protocol Memorandum of Understanding

This agreement is made this _____ day of August 2020, and is executed by and among the following agencies:

- 1) Box Elder County Sheriff's Office
- 2) Cache County Sheriff's Office
- 3) Rich County Sheriff's Office
- 4) Brigham City Police Department
- 5) Tremonton/Garland Police Department
- 6) Perry City Police Department
- 7) Willard City Police Department
- 8) Mantua Police Department
- 9) USU Department of Public Safety
- 10) Logan City Police Department
- 11) North Park Police Department
- 12) Smithfield City Police Department
- 13) Box Elder County Attorney's Office
- 14) Cache County Attorney's Office
- 15) Rich County Attorney's Office

Whereas, the parties listed above previously agreed to follow the terms contained in the Northern Utah Critical Incident Investigative Team (NUCIIT) Protocol dated 1/7/2016, a copy of which is attached hereto as Exhibit A and incorporated herein; and,

Whereas, there have been revisions to the Utah State Code necessitating an update to the protocols called for in the 1/7/2016 NUCIIT Protocols, a copy of which is attached hereto as Exhibit B and incorporated herein; and,

Whereas, it is the parties' intent to update and agree to the amended terms of the NUCIIT Protocol so as to comport with Utah State Law.

NOW THEREFORE the parties agree to follow and implement the amended protocols contained in the NUCIIT Protocol dated August 13, 2020.

This agreement is not intended to create any additional liability to the parties not currently provided for by law. This agreement does not create a separate entity.

IN WITNESS WHEREOF, the undersigned agree to follow the purposes and conditions set forth in this Memorandum of Understanding.

Box Elder Sheriff's Office

Cache County Sheriff's Office

Rich County Sheriff's Office

Brigham City Police Department

Tremonton/Garland City Police Department

Perry City Police Department

Willard City Police Department

Mantua Police Department

USU Department of Public Safety

Logan City Police Department

North Park Police Department

Smithfield City Police Department

Box Elder County Attorney

Cache County Attorney's Office

Rich County Attorney

I. DEFINITIONS

- A. Critical Incident Investigative Protocol:** An agreement entered into with agencies in Box Elder, Cache, and Rich County that provides uniform procedures and mutually agreed-upon guidelines for the investigation of Officer Involved Critical Incidents.
- B. Dangerous Weapon:** A firearm or an object that in the manner of its use or intended use is capable of causing death or serious bodily injury to a person.
- C. Deadly Force:** A force that creates or is likely to create, or that the person using the force intends to create, a substantial likelihood of death or serious bodily injury to a person.
- D. In Custody:** means in the legal custody of a state prison, county jail, or other correctional facility, including custody that results from:
 - 1. A detention to secure attendance as a witness in criminal case;
 - 2. An arrest for or charging with a crime and committing for trial;
 - 3. Committing for contempt, upon civil process, or by other authority of law;
 - 4. Sentencing to imprisonment on conviction of a crime.
- E. Serious Bodily injury:** As defined in Utah Code 76-1-601.
- F. Officer Involved Critical Incident:** An incident occurring in Box Elder County, Cache County and/or Rich County involving a law enforcement employee of a law enforcement agency located in Box Elder County, Cache County, and/or Rich County including but not limited to the following:
 - 1. An officer's use of deadly force.
 - 2. An officer's use of a dangerous weapon against a person that causes injury to any person.
 - 3. Death or serious bodily injury to any person other than the officer, resulting from an officers:
 - a. Use of a motor vehicle while the officer is on duty.
 - b. Use of a government vehicle while the officer is off duty.
 - 4. The death of a person who is in custody, but excluding death that is the result of disease, natural causes, or conditions that have been medically diagnosed prior to the person's death.

5. The death of or serious bodily injury to a person not in custody, other than an officer, resulting from an officer's attempt to prevent a person's escape from custody, to make an arrest, or otherwise to gain physical control of a person.
6. Any intentional or accidental shooting directed at a person, whether or not a fatality injury results.
7. Any intentional or accidental use of any other weapon or force against another person, whether or not a fatality results.
8. Any physical altercations, mutual combat, or domestic violence in which the law enforcement employee is acting in the capacity of a private citizen and occurs within the jurisdiction of his or her employer.

G. Law Enforcement Employee: This protocol applies to defined employees and to certain other people affiliated with law enforcement agencies, which are members of this protocol agreement as follows:

1. Full-time, part-time, and hourly sworn officers; whether on or off duty and acting for a law enforcement or a private purpose at the time of the incident.
2. Full-time, non-sworn employees on duty at the time of the incident.
3. Part-time, non-sworn employees on duty at the time of the incident.
4. Reserve law enforcement employees and law enforcement agency volunteers, whether paid or unpaid, on duty at the time of the incident. This category includes informants when they are working under direct control and supervision of a peace officer.

H. Venue Agency: The agency or agencies, within whose geographical jurisdiction the incident occurs.

I. Employer Agency: The agency that the involved law enforcement employee is employed by or affiliated with. (The employer and venue agency may be one in the same.)

J. Criminal Investigators: Investigators from protocol member agencies assigned by the Unified Command to conduct the investigation of the incident.

K. Administrative Investigators: Investigators assigned by the employer agency to conduct the administrative investigation.

L. Unified Command: The department head or designee of the venue agency, employer agency, the County Attorney of jurisdiction, and the Operations Section Chief working in partnership to provide leadership and direction for the incident.

M. Operations Section Chief: The operations section chief is designated as the full time investigator employed by the Cache County Attorney's Office. If the full time investigator is not available, the operations section chief will be selected from available protocol investigators by the unified command. The operations section chief will assist in the designation of the lead investigator and will be responsible for the first-line management of the criminal investigation.

II. INVOCATION OF PROTOCOL

A. Automatic and immediate. The Northern Utah Critical Incident Investigative Team Protocol is automatically enacted when the following critical incidents occur:

1. Upon the use of deadly force by a law enforcement employee.
2. Upon a law enforcement employees use of a dangerous weapon that causes injury to any person.
3. Upon the death or serious bodily injury to any person other than the law enforcement officer, resulting from an officers use of a motor vehicle while the officer is on duty or use of a government vehicle while the officer is off duty
4. Upon the death of a person who is in custody, but excluding a death that is the result of disease, natural causes, or conditions that have been medically diagnosed prior to the person's death.
5. Upon the death of or serious injury to a person not in custody, other than a law enforcement officer, resulting from an officer's attempt to prevent a person's escape from custody, to make an arrest, or otherwise to gain physical control of the person.

When the above critical incidents occur, the venue agency is required to immediately contact the County Attorney's Office in which the venue agency is located and affirmatively invoke the protocol.

B. Optional. Each member agency in the capacity of a venue agency or employer agency, may itself invoke the protocol upon occurrence of any critical incident involving a law enforcement employee, which may have possible criminal liability attached to the law enforcement employee. The County Attorney of jurisdiction may decline to participate in optional invocations.

III. INVESTIGATIVE AGENCIES, FORMATS, AND RESPONSIBILITIES

To properly recognize and accommodate the various interests and the various rules of law which may be involved in an incident, investigations of these matters may be performed under two separate investigative formats: the criminal investigation and the administrative employer agency.

A. Criminal Investigation

1. Designation of Investigators

- a. The criminal investigation that commences pursuant to the invocation of this protocol has priority over any parallel administrative investigation.
- b. Upon invocation of this protocol, members of the Unified Command and the Operations Section Chief will select a Lead Investigator to manage the criminal investigation.
- c. The Operations Section Chief will be the full-time investigator from the Cache County Attorney's Office, unless one is unavailable. In the event the full-time investigator is unavailable the Operations Section Chief will be selected from available protocol investigators by the Unified Command.
- d. The Lead Investigator will be from a non-involved Agency and may be made without respect to the rank or title of the other investigators participating in the investigation. The Lead Investigator's Agency will be the official keeper of the record.
- e. The Operations Section Chief and Lead Investigator will be responsible for the first-line management of the criminal investigation including the assembly and assignment of Protocol Investigators.
- f. Upon request, member agencies should provide, if available, investigators with experience and/or training in critical investigations.

2. Venue Determination

- a. When an incident occurs in part in two or more jurisdictions, each of those jurisdictions is a venue agency.
- b. When an incident occurs on the boundary of two jurisdictions, or under circumstances that make determination of the Venue Agency difficult or in dispute, the County Attorney of jurisdiction shall be the authority to resolve jurisdictional issues.

- c. If an in-custody death occurs, the Venue Agency is that agency within whose geographical jurisdiction the act occurred. If the death appears to be from disease, natural causes, or conditions that have been medically diagnosed prior to the person's death and there is no apparent intentional or accidental conduct involved in the cause of death as determined by the geographical jurisdictional agency, the Venue Agency becomes that agency having custody of the deceased person when the distress was first discovered.

3. Scene Security

- a. The Venue Agency has the initial responsibility for immediately securing the scene of an officer-involved critical incident. Once established, the Unified Command may change responsibility for scene security as necessary and assign a Protocol Investigator as Scene Command.
- b. An inner perimeter should be established as soon as possible and only those persons with a bona fide investigative or medical service responsibility shall enter this area.
- c. The following crime scene practices will be adhered to:
 1. Emergency life-saving measures have first priority.
 2. Control the scene to prevent further injury or criminal activity.
 3. Identify, locate, preserve, and maintain chain of custody of physical evidence.
 4. Ensure that no evidentiary items are removed from the scene or disturbed without the approval of the Operations Section Chief.
 5. Loose weapons should be left in place, not altered, and guarded until the Operations Section Chief directs removal.
 6. If exigent circumstances exist that make removing loose weapons from the scene necessary for public safety all efforts will be made to either photograph the weapon(s) in place and/or establish their location with reference to other fixed points.
 7. Weapons discharged by a law enforcement employee in an officer involved critical incident that are still in their possession shall be treated as evidence. The law enforcement employee's weapon(s) should only be

transferred to another person when it can be done without compromising officer safety, and the integrity of the weapon as evidence can be preserved. Unless necessary for safety, no attempt shall be made to change the condition of the weapon(s).

8. It is recommended that the involved law enforcement employees be photographed as soon as practical to document their appearance at the time of the critical incident.
9. Additional evidence, witness interviews, and other investigative requirements will be conducted in accordance with standard investigative practices and protocols.

4. Notifications

The Venue Agency shall make the following notifications as soon as possible:

- a. Intra-department officers as required by the agency's procedures.
- b. The Employer Agency, if applicable and if not yet aware.
- c. The County Attorney of jurisdiction or his designee.
- d. The Medical Examiner upon confirmation of a fatality consistent with the requirements of Utah Code Section 26 Chapter 4.

5. Transporting and Sequestering of Involved Law Enforcement Employees

- a. Law enforcement employees who were present at the scene at the time of an Officer Involved Critical Incident will be relieved of their duties at the scene as soon as possible and removed to a location as directed by Unified Command. Officers from the Venue Agency not involved in the incident shall be assigned to accompany the involved law enforcement employee(s) and remain with them to ensure their privacy, accommodate their needs, and preserve the integrity of each officer's statement.
- b. Involved law enforcement employees should not discuss the facts of the incident with any other involved party.

6. Involved Law Enforcement Employee Interviews

- a. Involved law enforcement employees should be interviewed between 24 and 48 hours following the incident. At the request of the involved law enforcement employee the interview may be held

earlier. Employees have the same rights and privileges as citizens, including the right to legal counsel prior to the interview and the right to have their lawyer present during the interview.

- b. Involved law enforcement employee's interviews should be conducted outside the presence of the employing agency to avoid confusion of a compelled interview. If the involved law enforcement employee wishes to have a support person who is from the employer agency that support person will define their role as such.
- c. Public safety statements can be compelled without an attorney to determine if an immediate safety concern exists. The statement should be limited to information such as injuries, suspects, direction of travel, estimated number of rounds fired, and the direction they were fired, and any other essential information. Only one assigned officer should get a public safety statement from the law enforcement employee involved in the incident.
- d. Any corresponding administrative investigation shall be conducted by the employer agency.

7. Intoxicant Testing

- a. Law enforcement employees have the same rights and privileges as citizens regarding intoxicant testing.
- b. If investigators determine that the law enforcement employee's sobriety is relevant to the investigation they may obtain a sample through consent or a search warrant.
- c. The Employer Agency may require the law enforcement employee to submit to intoxicant testing in accordance with their specific City or Department policy. This should be conducted as part of the Administrative Investigation.
- d. The law enforcement employee can voluntarily request to submit to testing.

8. Briefing and Reports

A briefing with involved agencies will be held within 10 business days with the County Attorney's office. Reports will be submitted in a reasonable time thereafter.

9. Evidence

- a. If the matter is concluded with the filing of criminal charges, all items of evidence shall be maintained by the ~~Venue~~ Lead Investigator's Agency and held in accordance with its procedures for disposing of evidence.
- b. If no criminal charges are filed, the evidence shall be released to the Employer Agency and maintained by it in accordance with its procedures for disposing of evidence.

B. Administrative Investigation

1. The initiation of an administrative investigation and the extent of that investigation is solely the responsibility of the Employer Agency.
2. If the Employer Agency assigns administrative investigators they should identify themselves to the Operations Section Chief as soon as possible.
3. In addition to gathering the information for the Employer Agency, administrative investigators should act as a liaison between the Operations Section Chief and the Employer Agency.
4. Compelled interview statements, physical evidence, toxicology test results, and investigative leads that are obtained by administrative investigators shall not be revealed to criminal investigators without the prior approval of the County Attorney following a determination of need and evaluation of the applicable law.
5. The Operations Section Chief will periodically brief the administrative investigators on the progress of the criminal investigations. They will have access to briefing, the incident scene, physical evidence, and witness statements and reports.
6. The County Attorney will provide the Employer Agency with the findings of fact as soon as possible.

IV. MEDIA RELATIONS

- A. The interests of the news media must be balanced with the requirements of the investigations and with the rights of the involved individuals.
- B. Any agency may make statements to the media about an incident, but the following guidelines are recommended:
 1. The Department head or designee of the Venue Agency should be the single point of media information until the matter is referred to the County Attorney. Prior to any information being shared with the media, the Venue Agency shall consult with the County Attorney.

2. The Operations Section Chief will provide the Venue Agency with sufficient information to issue a press release.
3. Other participants in the investigation should refrain from making separate press releases or discussing the investigation with the press without coordinating with the Unified Command.