

Approved
4-14-08
PDS

Harney County Officer's Use of Deadly Force Investigation Guidelines

CONTENTS	PAGE
Definitions	2
Objectives	3
Procedures	4
District Attorney	8
Reporting, Training and Outreach	9
ATTACHMENTS	
A. Duties of the Initial Responding Officer	11
B. Responding Supervisor's Checklist	12
C. Criminal Investigation Notification	14
D. Harney County Major Crime Team Agreement	15

I. DEFINITIONS

1. Administrative Investigator

Investigator assigned by the employer agency to conduct the civil investigation of the incident.

2. Criminal Investigator(s)

Those investigators assigned by the venue agency(ies), the employer agency(ies), or the district attorney's office to conduct the criminal investigation of the incident.

3. Employer Agency

The agency by which the involved police/public safety employee is employed. (In many cases the venue agency will also be the employer agency.)

4. Injured/Deceased

A person who is injured or killed by the actor(s).

5. Internal Investigator

Investigator assigned by the employer agency to conduct the personnel investigation of the incident.

6. Involved Officer(s)

- A. A law enforcement officer who uses or attempts to use deadly physical force on another person; and
- B. A law enforcement officer whose act is a "proximate cause" of a serious physical injury or death to another person; or
- C. A person who intends that an act to be a "proximate cause" of serious bodily injury or death to another person who is seriously injured or killed by another.
- D. A law enforcement officer whose official conduct was not a cause in fact of the death of

a person, but whose official involvement in an incident in which the use of deadly physical force by a police officer resulted in the death or serious physical injury of a person.

7. Lead Investigator

The investigator assigned pursuant to the Major Crime Response Team protocol to head and direct the investigation.

8. MCRT

Harney County Major Crime Response Team.

9. Proximate Cause

A cause which, in a chronological and continuous sequence, produces a serious or fatal injury.

10. Serious Physical Injury

“Serious physical injury” means physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ.

11. Weapon

When the term “weapon” is used throughout this investigative guideline, it generally refers to a firearm. However, it is understood that in some situations instruments other than firearms may cause death or serious physical injury. This may include, but is not limited to, vehicles, Tasers, batons or Asps, etc.

II OBJECTIVES

1. The Criminal Investigation

The District Attorney has ultimate authority for the prosecution of criminal cases, and specific shared responsibility with the Medical Examiner in death investigations.

A. Investigative Team Composition and Objective:

The criminal investigation has investigative priority over an administrative or personnel investigation and should begin immediately after an incident has occurred. The goal is to develop all available relevant information about the incident. This information will be used in two ways:

- 1) To determine the presence or absence of criminal liability on the part of all those involved in the incident. Specifically, to determine whether the conduct involved is prohibited or authorized by criminal statutes.
- 2) If criminal conduct does exist:
 - a) Determine the identify of the person(s) responsible for that conduct;
 - b) Determine the degree of the crime(s);
 - c) Determine the existence of any factual or legal defense to the crime; and
 - d) Determine the presence or absence of any factors which would mitigate or aggravate punishment for that crime.

B. To provide factual information to the employer agency for its internal use.¹

C. The investigative team will be comprised of criminal investigators in Harney County MCRT and such other investigators as they may deem appropriate.

III. PROCEDURES

1. Incident Scene Procedures:

A. The initial responding officer has several important duties to perform upon arrival at the scene. See "Duties of Initial Responding Officer", Attachment A.

¹While the criminal investigators do not direct their investigative attention to administrative or internal concerns, it is recognized that the criminal investigation results are available for that purpose.

- B. The initial responding supervisor, or any subsequent supervisor who assumes responsibility of the scene, shall ensure that the duties are completed. See “Responding Supervisor Checklist”, Attachment B.
2. The lead Investigator, as set forth in MCRT protocol, is ultimately accountable to ensure the following procedures are completed:

When the use of force by an officer results in death or serious physical injury, the following provisions apply:

- A. Upon the arrival of additional officers sufficient to manage the scene, each Involved Officer shall be relieved of their duties and the duties shall be reassigned to uninvolved personnel.
- B. As authorized by the Lead Investigator, and at the direction of the Involved Officer’s supervisor, the Supervisor of the Involved Officer shall, as soon as possible, assign an officer to act as a companion to the Involved Officer. The assigned Officer shall be reminded that any communication between the Involved Officer and the Assigned Officer is not deemed confidential.
- C. If practical, obtain an initial statement from Involved Officers covering only that information necessary for public safety and scene management. This statement may include, but need not be limited to, information necessary for public safety necessary to protect persons and property, possible witnesses, participants, location of weapons or other hazards, incident location(s), etc. The initial statement is intended to provide a framework for the investigation and ensure the preservation of evidence. The following statements should preface any questions:
 - 1. “I am going to ask you some questions concerning public safety and scene management.”
 - 2. “You are not required to answer my questions.”
- D. As soon as practicable, each Involved Officer shall leave the scene and be offered an opportunity for a medical examination. If the officer is not in need of medical treatment, the officer shall be taken to a private location. The Supervisor shall see that the officer’s

union representative is notified.

The Supervisor shall inquire of the Involved Officer if he/she wishes an attorney, family member, or another person be notified of the incident.

- E. As soon as practicable, the weapon(s) and any ammunition of any officer who fired their weapon or who was in the immediate vicinity where weapons were fired, shall be seized by investigators and replaced with a substitute weapon, if appropriate.
 - F. As soon as practical, and after making every effort to obtain alternative personal clothing, the Involved Officer's clothing of potential evidentiary value shall be collected by investigators. Prior to the collection of the Involved Officer's duty weapon and clothing the Lead Investigator shall direct that photographs of the Involved Officer be taken. This should be done in a discrete way and in a private setting.
 - G. The Lead Investigator shall see that the Involved Officer is requested to provide blood and urine as soon as possible. This should be done in a discrete way and in a private setting.
 - H. The Lead Investigator shall direct the Involved Officer's Supervisor to direct the Involved Officer to not discuss the incident with any individual, including other Involved Officers, or to review any media coverage of the incident. Nothing about this direction should preclude the Involved Officer from being able to engage in privileged communications, such as discussions with representing attorney, union representatives, spouse, clergy or medical or mental health professionals.
3. The scene(s) must be secured immediately with a perimeter of sufficient distance to safeguard evidence. In some circumstances, an inner and an outer perimeter may be appropriate.
- A. Access to the scene(s), except as otherwise provided by this agreement, shall be limited to only those officials who must enter for criminal investigative purpose
 - B. A Crime Scene 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.
 - C. Except as necessary for scene investigation, upon completion of medical and fire suppression duties, medical and fire personnel shall be excluded from the scene.

- D. Unless exigent circumstances exist, no items shall be moved inside the scene(s), or removed from a scene, without approval of the Lead Investigator unless absolutely necessary for public or officer safety or the preservation of evidence. If removal without approval is necessary, the removal must be logged. The log shall state the identity of the person removing the described object, the reason for removal, and the time of removal. The item should be photographed in its original location, and if possible, diagramed prior to removal.
 - E. Involved Officers or participant witnesses shall be separated as soon as practical after the incident and should refrain from discussing the incident prior to interviews.
- 4. Physical evidence at the scene should be video and still photographed, diagramed, recorded, protected, and collected per MCRT protocol.
 - 5. Interview of Involved Officer:
 - A. As used in this section “interview” refers to formal interview of the involved Officer by assigned investigative personnel that occurs a reasonable time after the incident and after the officer has had an opportunity to consult with counsel if so desired.
 - B. The interview of the Involved Officer(s) who used deadly force resulting in death or serious physical injury, shall occur after a reasonable period of time to prepare for the interview and taking into account the emotional and physical state of the officer(s). The interview shall occur no sooner than 24 hours after the incident, unless this waiting period is waived by the officer or unless directed otherwise by the District Attorney.
 - C. The waiting period does not include an initial on-scene conversation with the officer as set forth in Paragraph III, 2, C above.
 - D. Once it has been determined that no evidence will be contaminated or destroyed, the Involved Officer(s) will be provided an opportunity for a “walk through” of the scene with a representative of their choosing.
 - 6. For at least 72 hours immediately following an incident in which the use of deadly physical force by a police officer resulted in death of a person or serious physical injury, a law enforcement

agency may not return an Involved Officer to duties that might place the officer in a situation in which the officer has to use deadly force.

7. Officer(s) involved in the use of deadly force resulting in death or serious physical injury shall immediately be placed on administrative leave until such time as sufficient information exists to determine the justification in the use of deadly physical force and that the officer(s) have had an opportunity to meet with a mental health professional with an outcome that no issues would preclude the officer(s) from performing the duties of a police officer.
8. In the six months following a use of deadly physical force incident that results in death, the Agency shall offer each Involved Officer a minimum of two opportunities to meet with a mental health professional. The officer shall be required to attend at least one session with a mental health professional.
 - A. At agency expense, the Involved Officer(s) shall be scheduled for an appointment with a mental health professional for a counseling session with a follow-up session scheduled at date determined by the mental health professional.
 - B. The sessions are not to be considered fitness for duty evaluations, and are to be considered privileged between the officer and the mental health professional.

IV. District Attorney:

1. When an incident of the use of deadly physical force by an officer, and resulting in the death or serious physical injury, the agency shall, as soon as practicable, notify the District Attorney or the Deputy District Attorney.
2. When a use of deadly physical force by an officer occurs, and death or serious physical injury results, the District Attorney and/or the Deputy District Attorney will consult with the agency regarding the investigation to ensure that the investigation is done in accord with the elements of this plan .
3. The District Attorney has the sole statutory and constitutional duty to make a decision on whether to present a matter to a Grand Jury.
 - A. Preliminary Hearings will not be used as a method of reviewing an officer's use of deadly

force.

- B. After a review of the information and evidence developed from the investigation, and after consulting with the investigating agency, the District Attorney shall make the decision on whether to present the case to a Grand Jury.
- C. If the District Attorney decides to present a case to the Grand Jury, the District Attorney shall promptly notify the Agency, the Involved Officer(s), the Involved Officer's representative and, when appropriate, the public.

V. Reporting, training and outreach:

- 1. Public outreach and education shall include the following:
 - A. A copy of this plan, and each agency's use of force policy, shall be posted on the Agency's website or available on the Harney County website and readily available to the public.
 - B. The Harney County Sheriff's Office shall have personnel assigned to respond to public inquiries about this plan and the Sheriff's Office use of force policy.
 - C. Each agency subject to this agreement shall have a designated individual responsible for responding to questions about that agency's use of force police.
 - D. Once adopted, this plan shall be readily available to the public and each agency subject to this plan, shall provide copies of the plan to members of the public or the press upon request.
- 2. Each law enforcement agency within Harney County shall provide a copy of this plan to every officer, incorporate the plan into agency policy documents and provide regular training to officers on the implementation and contents of the plan.
- 3. Upon the conclusion of an investigation into the use of deadly force resulting in death or serious physical injury, and following the decision of the District Attorney as set forth in Paragraph IV, 3, above, the Agency shall complete the Attorney General's report regarding the use of force and submit the report to the Attorney General.

4. The Department of Public Safety Standards and Training required 24 hours over a 3-year period of training from either the “firearms” or “use of force” subject areas. Each agency’s annual training must include education on the agency’s use of force police, the MCRT protocol, and this plan. Each agency shall have a written policy and system to monitor that these standards are met.