HONOLULU POLICE DEPARTMENT
POLICY
LAW ENFORCEMENT OPERATIONS

March 23, 2015  Policy Number 4.49

OFFICER CRITICAL INCIDENT PROTOCOL

POLICY

Critical incidents involving HPD police officers are automatically and immediately investigated as outlined in this directive.

PROCEDURE

I. DEFINITIONS

A. Critical Incident Involving HPD Police Officer(s): An event occurring in Hawaii involving two or more people in which an officer, whether on duty or off duty, acting under the color of his or her official authority, is involved as an actor or custodial officer, when a fatal or serious bodily injury occurs. Such incidents include, but are not limited to, the following:

1. Intentional and accidental shootings, including police tactical incidents involving special response teams;

2. Intentional and accidental use of any other dangerous or deadly weapons, including less-lethal firearms;

3. Attempts by police officers to make arrests or to otherwise gain physical control for a law enforcement purpose;

4. Any fatal or serious bodily injury to a person in police custody or to a person who is a passenger of a police officer, such as ride-along, emergency transports, etc.; and

5. Any fatal or serious bodily injury to a person who may be involved in a police vehicle pursuit or collision.

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Security procedures and information redacted pursuant to HRS Section 92F-13(3).
B. Police Officers: Employees who are commissioned police officers, helicopter pilots, or volunteers who are commissioned reserve police officers of the department.

C. Public Safety Statement: A statement provided by the actor officer to the scene supervisor immediately after a critical incident has occurred. The purpose of the statement is to provide information to ensure the safety of the public, locate and apprehend suspects, identify and preserve the crime scene, and locate witnesses.

D. Actor: A person whose act is a proximate cause of a fatal or serious bodily injury to another person or who intends that this act be a proximate cause of fatal or serious bodily injury to another person who is actually killed or injured by a third party.

E. Victim: The person who is killed or injured by the actor's actions, intentionally or not. In the context of this policy, this word does not imply the existence of criminality.

F. Proximate Cause: Something that, in a natural and continuous sequence, produces the fatal or serious bodily injury, without which the injury would not have occurred. The reasonable, foreseeable nature of the injury is not relevant to this definition, which shall be used only to determine whether this protocol applies or not.

G. Bodily Injury: Physical pain, illness, or any impairment of physical condition.

H. Fatal Injury: Bodily injury that causes death.

I. Serious Bodily Injury: Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

J. Scene Supervisor: The highest-ranking officer at the scene.
II. INVESTIGATIVE AGENCY, FORMAT, AND RESPONSIBILITIES

To properly accommodate the interests and rules of law that may be involved in any incident, investigations are performed under two separate formats: criminal investigation and administrative review. The criminal investigation has priority over the administrative review and begins immediately after an incident has been stabilized.

A. Criminal Investigation

1. The Criminal Investigation Division (CID) is primarily responsible for pursuing criminal charges that arise from the incident. The Professional Standards Office's (PSO) Criminal Investigation Section personnel shall respond and accompany the CID investigators or any other agency that is responsible for investigating that type of incident. The PSO shall initiate a criminal case if facts are found that warrant investigating the officer as a suspect.

2. The goal is to develop all available, relevant information about the incident. This information shall be used in two ways:

   a. To determine the presence or absence of criminal liability on the part of all those involved in the incident, or

   b. To provide factual information to the employer agency's management for its internal use.

3. Vehicular collision fatalities shall be investigated by the Vehicular Homicide Section, Traffic Division, investigators and coordinated by the PSO. The PSO shall initiate a criminal case if facts are found that warrant investigating the officer as a suspect.

4. Procedures at the Scene

   a. Emergency lifesaving measures have the first priority.
b. Critical Incidents Where an Officer-Involved Shooting Occurs

The scene supervisor shall immediately obtain a public safety statement from the actor officer(s) utilizing the Public Safety Statement, HPD-252B form (refer to the attachment). The scene supervisor shall:

(1) Not deviate from the specified questions and shall read the warning to the actor officer(s);

(2) Write down the answers provided;

(3) Ensure that the public safety statement obtained is broadcast immediately via radio, as appropriate; and

(4) Provide the written responses to the Homicide Detail, CID, upon their arrival at the scene.

Every sergeant, detective, and lieutenant shall carry a Public Safety Statement, HPD-252B form, when on duty.

c. If a person is transported to a hospital, an uninvolved officer should accompany that injured person in the same vehicle in order to:

(1) Locate, preserve, safeguard, and maintain the chain of custody regarding physical evidence;

(2) Obtain a dying declaration, a spontaneous statement, a contemporaneous statement, and/or a statement of then-existing or previous mental or physical state. (See Hawaii Rules of Evidence, Rule 804.);

(3) Maintain custody if the person has been arrested;
(4) Provide information to medical personnel about the incident relevant to treatment. Obtain information from medical personnel relevant to the investigation; and

(5) Identify relevant people, including witnesses and medical personnel.

d. The scene(s) must be secured immediately with a perimeter established at a sufficient distance away to safeguard evidence. In some circumstances, an inner and an outer perimeter are appropriate.

(1) Access to the scene(s) shall be limited to only those officials who must enter for an investigative purpose.

(2) A written log shall be established as quickly as possible to identify all persons entering the scene(s), the times of their entry and exit, and the reason for their entry.

e. If any type of weapon or instrument was involved in the critical incident, the supervisor at the scene shall promptly see to the security and/or collection of such items.
(4) If the supervising officer at the scene was an actor or victim in the incident, the responsibility for the security and/or collection of weapons and instruments shall rest with an uninvolved supervisor or the next-in-line, uninvolved officer at the scene.

Officers who were present at the scene at the time of the critical incident, whether actors or witnesses, shall be relieved of their duties at the scene as promptly as possible.

(1) Actor officers shall immediately provide a public safety statement to the scene supervisor to establish the following:

(a) Type of force used;

(b) Direction and approximate number of shots fired by the involved officer(s) and/or suspect(s);

(c) Location of injured person(s);
(d) Description of outstanding suspect(s) and his or her direction of flight, time elapsed since the suspect was last seen, and any suspect weapon(s);

(e) Description and location of any known victims or witnesses;

(f) Description and location of any known evidence; and

(g) Any other information necessary to ensure officer and public safety and to assist in the apprehension of outstanding suspect(s).

(2) The actor officer is not entitled to union or legal representation when making this statement. The scene supervisor shall limit his or her inquiry to the above items and avoid any other questions regarding why the actor officer used deadly force.

(3) This statement shall not be delayed while waiting for union or legal representation.

(4) After providing the public safety statement discussed in section II A 4 b above, the actor officer shall have the right to consult with a State of Hawaii Organization of Police Officers (SHOPO) representative and/or legal counsel. This consultation shall not cause a delay in giving the facts discussed in section II A 4 b.

Peer Support Unit personnel and sequestering officers shall not be present during confidential or privileged conversations.
(5) With the permission of the scene supervisor:

(a) A SHOPO representative or legal counsel shall be allowed to enter and remain in the area of the crime scene in order to assist the involved police officer(s) and criminal investigators;

(b) An uninvolved police officer or a member of the Peer Support Unit may ensure that the involved officer(s) have privacy and that their needs are accommodated; and

(c) If the SHOPO representative or legal counsel is allowed to enter and remain in the area of the crime scene, the prosecuting attorney or his designee shall also be allowed to enter and remain in the area of the crime scene as independent observers.

(6) An assessment of evidence collection regarding the involved officer shall be made and evidence shall be collected prior to any person engaging in any activity that may destroy evidence.

(7) Police officers not involved in the critical incident shall be assigned to accompany the involved officers.

g. The supervising police officer at the scene shall notify the Communications Division.
h. The Communications Division shall follow the notification procedures outlined in Policy 8.01, DEPARTMENTAL NOTIFICATION PROCEDURE; and Policy 4.29, CRIME SCENE: INVESTIGATIVE RESPONSIBILITIES AND PROCEDURES. Upon request, they will also notify a SHOPO representative (the Oahu Chapter Chair; or if unavailable, the Vice Chair; or if unavailable, the designated district union representative). The SHOPO representative(s), whether on duty or off duty, shall not be required to leave the area merely because of their union status.

i. Interviewing Police Officers

Assigned investigators, the police officer's legal representative (if any) and the Prosecuting Attorney or designee may view any interview. No more than two investigators and the police officer's representative(s), if any, shall be present during any interview.

(1) The officers being interviewed will be considered witnesses or victims unless the circumstances dictate otherwise.

(2) Police officers have the same rights and privileges in criminal interviews as any other citizen.

(3) The officer shall be permitted to consult with legal counsel prior to the interview.

(a) The legal counsel shall be allowed to consult privately with only one officer at a time about the facts of the incident.

(b) The contents of private conversations between the officer and the representative are not privileged unless the representative is a doctor, lawyer, psychotherapist, priest, or trained peer counselor.

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Security procedures and information redacted pursuant to HRS Section 92F-13(3).
j. Report Writing

All criminal investigators shall write reports documenting their participation in the investigation. The prompt collection and distribution of the reports are essential.

B. Administrative Investigation

An administrative review shall be conducted, and a report of the findings shall be submitted to the Administrative Review Board (ARB). If directed, the PSO shall conduct a detailed, administrative investigation and submit its findings to the Chief of Police via the ARB.

1. The administrative investigators will have access to any briefing, scene(s), physical evidence, and statements by persons interviewed. SHOPO collective bargaining agreement (CBA) provisions shall be followed (see Articles 12 and 48). If there is any conflict between this policy and the SHOPO CBA, the latter shall prevail.

2. Administrative investigators are not bound by the same investigative restrictions that apply to criminal investigators.

3. Interview statements, physical evidence, toxicology test results, and investigative leads that are obtained by administrative investigators by ordering police employees to cooperate shall not be revealed to criminal investigators. Other results of the administrative investigation may or may not be privileged from disclosure depending upon applicable law.

C. Administrative Leave

The actor officer shall be relieved from field duty, and other officers may be relieved from field duty. An actor officer may request and shall be granted an administrative leave for relief from duty of up to three working days.

1. An officer placed on administrative leave shall not be construed to have acted improperly.
2. The actor officer shall be given the opportunity to use the employee assistance and counseling services provided by the department prior to returning to his or her original assignment.

D. Return to Duty

An officer discharging a firearm shall be referred to the police psychologist for evaluation. The officer shall not be returned to full duty until debriefed by the police psychologist.

1. When the use of a firearm results in, or is likely to result in, a human death or serious bodily injury, the actor officer(s) shall be debriefed and evaluated for return to duty by the police psychologist within 24 hours of the incident.

2. With the exception of less-lethal weapons and department-approved training and practice, an officer who discharges a firearm that does not result in human death or injury shall be debriefed by the police psychologist within 48 hours of the incident.

LOUIS M. KEALOHA
Chief of Police

Attachment
Post on bulletin board for one week

Policy first issued
January 30, 2004

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Security procedures and information redacted pursuant to HRS Section 92F-13(3).
Public Safety Statement, HPD-252B (Card)
4-1/4" X 5-1/2"

HONOLULU POLICE DEPARTMENT
Officer-Involved Shooting
Public Safety Statement

DIRECTIONS FOR THE SCENE SUPERVISOR

This is a compelled statement. The supervisor compelling this statement shall:

- Read the specified warning and questions.
- Write down the answers provided.
- Disseminate public safety information immediately via radio, as appropriate.
- Provide this statement to the Homicide Detail upon their arrival at the scene.

The police supervisor receiving this information is required to submit a written report to the Homicide Detail. The statement shall include this completed Public Safety Statement.

Officer ____________________, in accordance with the collective bargaining agreement, Article 12, Subsection C, 1, (3), you are required to provide sufficient verbal information at the scene in order to establish sufficient probable cause or information needed to initiate an investigation and/or preserve the crime scene. As such, I am requiring you to answer the following questions.

1. From where and in what direction did you fire rounds?
2. In what direction did the suspect(s) fire rounds?
3. If you know of anyone injured, what is his or her location?
4. Are any suspects outstanding? YES □ NO □ If YES, what are their descriptions?

SUPERVISORS:
If there are no outstanding suspect(s), proceed directly to question 5. Otherwise, proceed to ask questions a - d below:

a) What was their direction of flight?
b) How long have they been gone?
c) Were they armed with weapons?
d) Are there any other known safety risks about the outstanding suspect(s)?

5. Does any evidence need to be recovered or protected?
Where is it located?

Officer ____________________, in order to prevent the contamination of your Public Safety Statement and prior to the arrival of the assigned investigators, I advise you not to discuss this incident with anyone. This includes your supervisors and/or command staff with the exception of your legal representation.

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