

HONOLULU POLICE DEPARTMENT

POLICY LAW ENFORCEMENT OPERATIONS

July 29, 2019

Policy Number 4.49

OFFICER CRITICAL INCIDENT PROTOCOL

POLICY

Critical incidents involving police officers are investigated to determine the presence or absence of criminal liability on the part of those involved in the critical incident.

PROCEDURE

I. DEFINITIONS

- A. Actor Officer: Any officer who discharges a firearm toward a subject and/or whose act is a proximate cause of a fatal or serious bodily injury to another person. Also, any officer 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.
- B. Critical Incident Involving Honolulu Police Department Police Officer(s): An event occurring in Hawaii in which an officer, whether on or off duty, acting under the color of his or her official authority:
1. Discharges a firearm at any subject(s);
 2. Becomes involved as an actor or custodial officer when a fatal or serious bodily injury occurs; or
 3. Sustains serious bodily injury or death.
- C. Fatal Injury: Bodily injury that causes death.
- D. Firearm: A weapon, for which the operating force is an explosive, including (but not limited to) pistols, revolvers, rifles, shotguns, automatic firearms, etc. This firearm definition excludes a weapon that discharges less-lethal or noxious gas projectiles.

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- E. Police Officers: Employees who are commissioned police officers, helicopter pilots, or volunteers who are commissioned reserve police officers of the department.
- F. Proximate Cause: Something that, in a natural or continuous sequence, produces 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. Public Safety Statement: A statement provided by the actor officer to the scene supervisor immediately after a critical incident has occurred. The Critical Incident Public Safety Statement, HPD-252B form, shall be used (refer to the attachment).
- H. Scene Supervisor: The first uninvolved, on-scene supervisor (sergeant or above).
- 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. Subject: The person who is killed or injured by the actor officer's intentional or unintentional actions.
- K. Witness Officer: Any officer who is in the immediate area at the time of the critical incident and considered a witness.

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II. EXAMPLES OF CRITICAL INCIDENTS

- Examples of critical incidents include the following:
- A. Intentional and accidental firearm discharges toward a subject, including police tactical incidents involving special response teams;
 - B. Intentional and accidental use of any other dangerous or deadly weapons, including less-lethal weapons, resulting in fatal or serious bodily injury;

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- C. Attempts by police officers to make arrests or to otherwise gain physical control for a law enforcement purpose which results in fatal or serious bodily injury;
- D. Any fatal or serious bodily injury to a person in police custody or who is a passenger of a police officer, such as ride-alongs, emergency transports, etc.; and
- E. Any fatal or serious bodily injury to a person who may be involved in a police vehicle pursuit or collision.

III. 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 against the subject that arise from the incident.
- 2. The Traffic Division's Vehicular Homicide Section (VHS) shall investigate vehicular collisions resulting in a fatality or serious bodily injury that arise from the incident.
- 3. The Professional Standards Office's (PSO) Criminal Investigation Section personnel shall respond to the scene and accompany the CID and/or VHS investigators or any other agency that is responsible for investigating the incident. The PSO shall initiate a criminal case if facts are found that warrant investigating any officer as a suspect.

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4. Procedures at the Scene

a. Medical Treatment

Emergency lifesaving measures have the first priority and shall be administered as soon as practicable.

If a victim/suspect is transported to a hospital, an uninvolved officer should accompany that injured victim/suspect 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 victim/suspect has been arrested;
- (4) Provide information to medical personnel about the incident relevant to the treatment. Obtain information from medical personnel relevant to the investigation; and
- (5) Identify relevant people, including witnesses and medical personnel.

b. Scene Preservation

The scene(s) must be secured immediately with a perimeter established at a sufficient distance away to safeguard evidence. In some circumstances, inner and outer perimeters may be 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 and exiting the scene(s), the times of their entry and exit, and the reason for their entry.

c. Recovery of Evidence

If any type of weapon or instrument was involved in the critical incident, the scene supervisor shall promptly see to the security and/or collection of such items.

- (1) If the scene is secure, loose weapons or instruments shall be left in place and undisturbed. These items shall not be moved or removed prior to the arrival of the lead investigative unit.
- (2) If the scene is not secure, the scene supervisor shall determine whether the items can be safely left in place or whether their prompt removal is necessary. If items must be moved or removed for protection, they shall be photographed in place. The move or removal shall be documented, to include the identity of the person(s) moving or removing each item, original position of each item, and time(s) of removal.
- (3) If an actor officer still has personal possession of a weapon used in the incident, the scene supervisor shall promptly, but discreetly (i.e., in private and out of the view of the public and other officers), obtain possession of the weapon. He or she shall also obtain the entire gun belt; side arms should not be removed from their holsters.

When the Scientific Investigation Section (SIS) is present at the scene, their personnel shall recover the weapon, magazine, and ammunition and the officer's gun belt, if directed by the lead investigator.

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(4) The scene supervisor shall promptly recover and secure the body-worn cameras (BWC) from the actor and witness officers, and ensure that all recordings of the incident are uploaded as soon as practicable and marked "Restricted."

PSO investigators may recover the BWC(s) from the scene supervisor to conduct immediate reviews of the recording(s).

d. Sequestering Officer(s)

Actor and witness officers shall be relieved of their duties at the scene as promptly as possible.

- (1) Actor officers shall be relieved first and should be sequestered in the immediate area of the scene to prevent the appearance of collusion.
- (2) Witness officers should also be sequestered at the scene.
- (3) Police officers not involved in the critical incident shall be assigned to accompany the sequestered officers.

e. Public Safety Statement

- (1) When a critical incident occurs, the scene supervisor shall:
 - (a) Immediately obtain a public safety statement utilizing the Critical Incident Public Safety Statement, HPD-252B form;
 - (b) Read the warning to the actor officer(s) without deviating from the specified questions;
 - (c) Immediately broadcast via radio that the public safety statement was obtained;

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- (d) Document the answers provided in a police report; and
 - (e) Provide the Public Safety Statement responses to the CID and/or PSO investigators upon their arrival at the scene.
- (2) The actor officer is not entitled to union or legal representation when making this statement. The statement shall not be delayed while waiting for union or legal representation.
 - (3) After providing the Public Safety Statement, 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 providing the public safety statement.
 - (4) Peer Support Unit personnel and sequestered officers shall not be present during confidential or privileged conversations.

f. Personnel at the Scene

- (1) With the permission of the lead investigator:
 - (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 actor officer(s) and criminal investigators;
 - (b) An uninvolved police officer or a member of the Peer Support Unit may ensure that the actor officer(s) has privacy and that their needs are accommodated; and

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- (c) The police psychologist or designee shall be allowed to enter and remain in the area of the crime scene to provide support to the involved personnel.
- (2) An assessment of evidence collection regarding the actor officer shall be made. Evidence shall be collected prior to any person engaging in any activity that may destroy evidence.
- (3) The Peer Support Unit, CID, or other uninvolved, on-duty officers shall transport the actor officer(s), if applicable.

[g. Notifications

- (1) The scene supervisor shall respond to the scene and immediately notify his or her watch commander and the Communications Division of the incident.
- (2) The watch commander shall also respond to the scene and ensure that his or her element commander, the CID, the PSO, the Peer Support Unit, and the police psychologist have been notified of the incident. The watch commander may request that the Communications Division assist with the notifications.
- (3) 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.

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Upon request, the Communications Division shall also notify a SHOPO representative (the Honolulu Chapter Chair; or if unavailable, the Vice Chair; or if unavailable, the designated district union representative). The SHOPO representative(s), whether on or off duty, shall not be required to leave the area merely because of their union status.

[h. Interviewing Officers

Assigned investigators and the actor officer's legal representative, if any, may be present at any interview.

To further assist in the investigation, actor and/or witness officers may be asked to participate in an 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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i. Reports

- (1) An actor officer shall be provided a reasonable amount of time, not to exceed four hours, to consult with their counsel of choice or a union representative before submitting a written report.
- (2) Witness officer(s) and the scene supervisor shall submit written reports to document their involvement in the investigation.
- (3) Unless otherwise authorized by the lead investigator, officers shall submit completed reports by the end of their work shift. Exceptions may include (but are not limited to) injury or extreme fatigue.
- (4) All criminal investigators shall write reports documenting their participation in the investigation. The prompt collection and distribution of the reports are essential.

B. Administrative Review

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 actor officer involved in a critical incident shall be referred to the police psychologist for evaluation by the element commander. The officer shall not be returned to full duty until debriefed by the police psychologist.


1. An actor officer involved in a critical incident that results in human death shall be debriefed and evaluated for return to duty by the police psychologist within 48 hours of the incident.
2. An actor officer involved in an incident that does not result in human death shall be debriefed by the police psychologist within 72 hours of the incident.
3. In all cases, the actor officer's element commander or designee shall be responsible for confirming that the actor officer has been debriefed by the police psychologist.

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4. If an officer's duty pistol was recovered during the investigation, the officer's element commander or designee shall ensure that the officer has been issued a replacement pistol. The element commander shall ensure that the officer has qualified with the pistol before returning to full duty.

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ARTHUR J. LOGAN
Chief of Police

Attachment

Post on bulletin`
board for one week

Policy first issued
January 30, 2004