



Approved:
Chief Marcia Harnden

Subject:

290. Law Enforcement Employee-Involved Critical Incidents

Effective:
October 10, 2017

Revised:
October 19, 2021

CALEA Standards: 11.3.4

Page:
1

290.1: PURPOSE AND SCOPE

The purpose of this policy is to establish policy and procedures for the investigation of incidents in which a person suffers serious physical injury or dies as the result of contact with an Albany Police Department employee. At the direction of the Chief of Police, incidents of types not specifically mentioned under this policy may be investigated pursuant to the procedures described herein.

290.2: POLICY

It is the policy of the Albany Police Department to ensure that critical incidents involving law enforcement employees are investigated thoroughly and in the most impartial and efficient manner. This policy takes into account the [Linn County Deadly Physical Force Plan](#) and [Benton County Deadly Physical Force Plan](#).

290.3: DEFINITIONS

Involved Employee – A law enforcement employee whose official conduct, or official order to use deadly physical force, was a cause in fact of the death of a person. As used in this paragraph, “order to use deadly physical force” means an order issued to another officer to use deadly physical force in a specific incident or an order or directive establishing rules of engagement for the use of deadly physical force for a specific incident, or;

A law enforcement employee involved in an event other than an intentional use of deadly force, which resulted in the serious physical injury or death of another person as a result of on-duty conduct by the employee.

Law Enforcement Employee – Any sworn police officer or civilian employee who is acting within the scope of employment at the time of a specific incident; or, any temporary law enforcement employee or any volunteer, whether paid or unpaid, who is on-duty or who is acting within the scope of employment at the time of a specific incident.

Criminal Investigation – The investigation which identifies facts that demonstrate whether or not violations of criminal law occurred in a specific event.

Administrative Investigation – The investigation conducted by the employer agency arising from a specific incident(s) that determines whether or not an employee has violated employer agency rules, regulations or conditions of employment.

Employer Agency – The law enforcement agency from which the involved law enforcement employee is employed or affiliated.

Fatal Injury – Death or injury which is so severe that death is a likely result.

Serious Physical Injury - 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. ([ORS 161.015\(8\)](#))

Injured Person – Any person who sustains death or serious physical injury as a result of an intentional or unintentional act of an involved employee in which force is used.

Law Enforcement Employee Involved Critical Incident - A specific incident involving one or more persons, in which a law enforcement employee is involved as an actor or injured person; when a fatal injury occurs. Examples of such specific incidents may include the following:

- 1) Intentional and unintentional shootings.
- 2) Use of any dangerous or deadly weapons (e.g., firearms, knives, clubs, etc.).
- 3) Assaults upon sworn peace officers; assaults upon other law enforcement employees who are on duty or acting within the scope of employment.
- 4) Attempts by law enforcement employees, within the scope of employment, to make arrests or to otherwise gain physical control of a person.
- 5) Acts of physical violence in which a law enforcement employee is acting as a private citizen.
- 6) A law enforcement employee suicide.
- 7) Fatal injury while a person is in law enforcement custody which includes suicide and/or ingestion of toxic substances.
- 8) Fatal injury to a person who is a passenger of an on-duty law enforcement employee (e.g., ride-along, emergency transport, etc.).
- 9) Vehicular collisions involving on-duty law enforcement employees with fatal or serious physical injury, including those involving a law enforcement pursuit.

Proximate Cause - A cause which, in a natural and continuous sequence, produces death or fatal injury, without which cause the death or fatal injury would not have occurred.

290.4: CONTROL OF INVESTIGATIONS

- a. **Criminal Investigation of Employee Actions** – The control of the criminal investigation into the involved employee’s conduct during the incident will be determined by Albany Police Department Command Staff and the District Attorney overseeing the Criminal Investigation. The criminal investigation will include at least one investigator from another law enforcement agency ([ORS 181A.790\(5\)](#)).
- b. **Criminal Investigation of Injured Person Actions** – The agency controlling the investigation of any possible criminal conduct by the injured person will be decided upon by the Chief of Police, the District Attorney, and the supervisor of the outside investigation team.

If the decision is made that the Albany Police Department will investigate the injured person’s criminal conduct, it shall be the responsibility of the Detective Unit supervisor to assign appropriate investigative personnel to handle the investigation of related crimes. Department investigators may be assigned to work with investigators from the outside agency investigative team and may be assigned to separately handle the investigation of any related crimes not being investigated by the outside agency investigative team.

All related department reports, except administrative and/or privileged reports, will be forwarded to the Detective Unit supervisor for approval. Privileged reports shall be maintained exclusively by members who are authorized such access. Administrative reports will be forwarded to the appropriate Division Captain.

If crimes have been committed in multiple jurisdictions, the agency controlling the criminal investigation of the injured person’s actions should be decided upon between the Chief of Police, the agency(ies) having jurisdiction over where the crime(s) occurred, and the agency in control of the criminal investigation of employee actions, and the District Attorney.

- c. **Administrative Investigation** – In addition to the Criminal Investigation, the Department will conduct an Administrative Investigation to determine compliance with Department written directives. This investigation will be conducted under the supervision of the Administrative Lieutenant and will be considered a confidential personnel file.
- d. **Civil Investigation** - A member of this department may be assigned to work exclusively under the direction of the legal counsel for the Department to assist in the preparation of materials deemed necessary in anticipation of potential civil litigation.

All materials generated in this capacity shall be considered attorney work product and may not be used for any other purpose. The civil liability response is not intended to interfere with any other investigation but shall be given reasonable access to all other investigations.

290.5: SCENE RESPONSE

The following procedures outline responsibilities for Albany Police employees when responding to the scene of a critical incident:

290.5.1: RESPONDING OFFICER RESPONSIBILITIES

Upon arrival at the scene of a critical incident, the first uninvolved Albany Police officer will be the officer-in-charge of the scene and will assume the responsibilities of a supervisor until properly relieved. This officer should, as appropriate:

- a. Secure the scene and identify and eliminate hazards for persons on scene;
- b. Take reasonable steps to obtain emergency medical aid for injured persons;
- c. Request additional resources as necessary;
- d. Coordinate a perimeter and/or pursuit of suspects as necessary;
- e. Check for other injured persons and evacuate as needed;
- f. Brief responding supervisor on arrival.

290.5.2: SUPERVISOR RESPONSIBILITIES

Upon arrival at the scene, the first uninvolved Albany Police supervisor should ensure completion of the duties as outlined above, plus:

- a. Obtain a brief overview of the situation from any uninvolved employee;
- b. The responding supervisor should administratively order any employee to immediately provide public safety information necessary to secure the scene, identify injured parties, and pursue suspects.
 - 1) Public safety information shall be limited to such things as outstanding suspect information, number and direction of shots fired, perimeter of the incident scene, identity of known or potential witnesses, and identity of injured parties.
- c. Provide available information to the Watch Supervisor and Communications Center. If feasible, this communication should be made over a secure network.
- d. Take command of the scene and coordinate scene security until properly relieved by another supervisor or designated personnel.
- e. As soon as practical, coordinate the transport of involved employees (separately, if feasible), to a suitable location pending the commencement of the investigation.
 - 1) Each involved APD officer should be given an administrative order not to discuss the incident with other involved officers or APD members pending further direction from a supervisor.

- 2) When an involved officer's weapon is taken or left at the scene for reasons other than officer safety (e.g., evidence), the supervisor shall ensure that the officer is provided with a comparable replacement weapon as soon as practical. If the officer is left unarmed, they shall be accompanied by another officer.

290.5.3: WATCH SUPERVISOR RESPONSIBILITIES

Upon learning of a law enforcement employee-involved critical incident, the Watch Supervisor shall be responsible for the following:

- a. Coordinating all aspects of the incident until he/she is relieved by the Chief of Police or a Division Captain.
- b. Ensuring that the following persons are notified as soon as practical:
 - 1) Chief of Police
 - 2) Operations Division Captain
 - 3) Outside agency investigators (if appropriate)
 - 4) District Attorney
 - 5) Administrative Lieutenant
 - 6) Civil Liability Response Team
 - 7) Psychological/Peer Support
 - 8) Chaplain
 - 9) Medical Examiner (if necessary)
 - 10) Involved employee's union representative
 - 11) Public Information Officer

290.5.4: INVOLVED EMPLOYEES

- a. The following shall be considered for any involved employee:
 - 1) Any request for legal representation will be accommodated.
 - A. Discussion with licensed attorneys will be considered as privileged.
 - B. Discussion with union representatives will be privileged only as to the discussion of non-criminal information.

- 2) At least two visits with a mental health professional shall be provided by the Department to each involved employee ([ORS 181.A790\(3\)](#)).
 - A. Involved employee must attend at least one session, and this session does not substitute for any fitness for duty examination which may be required. Sessions must occur within six (6) months of the critical incident.
 - B. If requested, an interview with a mental health professional may take place before a formal investigative interview or report, but employees shall not be permitted to meet as a group with a mental health professional prior to formal interviews or reports.
- 3) Communications with peer counselors are confidential (except for threats of suicide or admissions of criminal conduct) and may not be disclosed to any person participating in the peer counseling support session ([ORS 181A.835](#)). For the communications to be confidential, the peer counselor must:
 - A. Have been designated by the Department or Employee Assistance Program to act as a peer counselor.
 - B. Have received training in counseling and in providing emotional and moral support to public safety personnel or emergency services personnel who have been involved in emotionally traumatic events by reason of their employment ([ORS 181.860](#)).
 - C. Specify their interaction is a Peer Support Counseling Session ([ORS 181A.835](#)).
- 4) Care should be taken to preserve the integrity of any physical evidence present on the involved employee's equipment or clothing, such as blood or fingerprints, until investigators or lab personnel can properly retrieve it.
 - A. If an employee's clothing, footwear or equipment are significantly damaged, the Department will replace such items as soon as practical.
- 5) Each involved employee shall be given reasonable paid critical incident leave following a critical incident. An employee who uses deadly force that results in the death of a person shall not be returned to a duty assignment that might place them in a situation in which they have to use deadly force until at least 72 hours immediately following the incident ([ORS 181A.790\(4\)](#)). It shall be the responsibility of the Watch Supervisor to make schedule adjustments to accommodate such leave.
- 6) Employees involved in a critical incident that causes them to experience unusually strong emotional (and sometimes physical) reactions that interfere with their ability to function either at the scene or later will be assessed by the Watch Supervisor and may be placed on paid critical incident leave. Critical incident leave is in the interest of the employee and the department.

- 7) Any employee that is impacted by a critical incident, whether directly involved or not, can utilize critical incident leave at the discretion of the Command Staff.

290.5.5 CRITICAL INCIDENT LEAVE

- a. Employees placed on critical incident leave shall be notified in writing. Separate notifications shall be made when the leave begins and when the officer is authorized to return to duty.
- b. In the event of extended critical incident leave due to a pending non-criminal investigation, officers may be assigned to temporary administrative duty status.
 - 1) Temporary administrative duties will be assigned by the Division Captain and notification will be made in writing.
 - 2) Temporary administrative duty status will only be assigned to employees who are mentally and physically capable of returning to work.
 - 3) Temporary administrative duty status is in the best interest of the employee and the Department.

290.6: CRIMINAL INVESTIGATION

- a. The District Attorney's Office is responsible for oversight of the criminal investigation into the circumstances of any employee-involved critical incident.
- b. When circumstances dictate, investigative personnel from this department may be assigned to partner with investigators from outside agencies or the District Attorney's Office to avoid duplicating efforts in related criminal investigations.

290.6.1: EMPLOYEE STATEMENTS

Once public safety issues have been addressed, criminal investigators should be given the opportunity to obtain a voluntary statement from involved employees and to complete their interviews. The following shall be considered for the involved employee(s):

- a. Albany Police Department supervisors and investigators assigned to the Administrative Investigation should not participate directly in any voluntary interview of Albany Police employees. This will not prohibit such personnel from monitoring interviews or providing the criminal investigators with topics for inquiry.
- b. If requested, any involved employee will be afforded the opportunity to consult individually with a representative of his/her choosing or an attorney prior to speaking with criminal investigators.

However, in order to maintain the integrity of each involved employee's statement, involved employees shall not consult or meet with a representative or an attorney collectively or in groups prior to being interviewed.

- c. If any involved employee is unable to provide a voluntary statement when interviewed by criminal investigators, consideration should be given to allowing a reasonable period for the employee to schedule an alternate time for the interview. Interviews of involved employees shall not occur prior to 48 hours from the time of the incident without a waiver from the involved employee.
- d. Any voluntary statement provided by an involved employee during the Criminal Investigation will be made available for inclusion in any related investigation, including the Administrative Investigation. However, no administratively coerced statement will be provided to any criminal investigators unless the employee consents or upon presentation of a valid court order.

290.6.2: REPORTS BY INVOLVED EMPLOYEES

- a. In the event that suspects remain outstanding or subject to prosecution for related offenses, this department shall retain the authority to require involved employees to provide sufficient information for related criminal reports to facilitate the apprehension and prosecution of those individuals.
- b. It is generally recommended that such reports be completed by assigned investigators based on interviews of the involved officer(s).
- c. Nothing in this section shall preclude an involved employee's right to speak with legal counsel prior to completing a report.
- d. Reports related to the prosecution of criminal suspects should be processed normally but should also be included for reference in the critical incident investigation.

290.6.3: WITNESS IDENTIFICATION AND INTERVIEWS

Reasonable steps should be taken to prioritize the identification of witnesses present at the scene and in the immediate area. Consideration should be given to the following:

- a. A recorded statement should be obtained from any persons who state they did not witness the incident but who were present at the time it occurred.
- b. Any potential witness who is unable or unwilling to remain at the scene for a formal interview should not be detained without independent reasonable suspicion or probable cause. Attempts should be made to identify the individual prior to their departure from the scene.

- c. Witnesses who are willing to be interviewed should be asked to meet at a location where investigators are able to obtain a recorded statement. Such witnesses may be transported by a member of this department if they are willing.
 - 1. An initial statement should be taken from witnesses at the scene, even if they are willing to meet investigators for a more formal interview at a later time.
 - 2. In cases where a witness is a minor, parents or guardians should be contacted for permission prior to transport.
- d. Prompt contact should be made with the suspect's family and associates to obtain any available and untainted background information about the suspect's activities and state of mind prior to the incident.

290.6.4: AUDIO AND VIDEO RECORDINGS

- a. Any employee involved in a critical incident shall be permitted to review available Mobile Audio/Video (MAV), body-worn video, or other video or audio recordings prior to providing a recorded statement or completing reports.
- b. Upon request, non-law enforcement witnesses who are able to verify their presence and their ability to contemporaneously perceive events at the scene of an incident may also be permitted to review available MAV, body-worn camera video, or other video or audio recordings with the approval of assigned investigators or the supervisor overseeing the criminal investigation.
- c. Any MAV, body-worn and other known video or audio recordings of an incident should not be publicly released during an ongoing investigation without consultation with the District Attorney or City Attorney, as appropriate.

290.7: ADMINISTRATIVE INVESTIGATION

In addition to the Criminal Investigation, the Department will conduct an Administrative Investigation to determine compliance with Department written directives. This investigation will be conducted under the supervision of the Administrative Lieutenant and will be considered a confidential personnel file.

290.7.1: ADMINISTRATIVE INVESTIGATION PROCEDURE

- a. Any employee involved in a critical incident may be requested or administratively compelled to provide a blood sample for alcohol/drug screening. Absent consent from the employee, such compelled samples and the results of any such testing shall not be disclosed to any criminal investigative agency. ([Refer to Collective Bargaining Agreement Article 11](#))

- b. If an employee has voluntarily elected to provide a statement to criminal investigators, the assigned administrative investigator should review that statement before proceeding with any further interview of that involved employee. ([Refer to Collective Bargaining Agreement Article 9](#))
1. If a further interview of the employee is deemed necessary to determine policy compliance, care should be taken to limit the inquiry to new areas with minimal, if any, duplication of questions addressed in the voluntary statement. The involved employee shall be provided with a copy of his/ her prior statement before proceeding with any subsequent interviews.
- c. In the event that an involved employee has elected not to provide criminal investigators with a voluntary statement, the assigned administrative investigator shall conduct an administrative interview to determine all relevant information.
1. Although this interview should not be unreasonably delayed, care should be taken to ensure that the employee's physical and psychological needs have been addressed before commencing the interview.
 2. If requested, the employee shall have the opportunity to select an uninvolved representative to be present during the interview. However, in order to maintain the integrity of each individual employee's statement, involved employees shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.
 3. Administrative interviews shall be recorded by the investigator. The employee may also record the interview.
 4. The employee shall be informed of the nature of the investigation. The employee should be advised of their rights under *Garrity vs. New Jersey* and subsequently ordered to provide full and truthful answers to all questions. The employee shall be informed that the interview will be for administrative purposes only and that the statement cannot be used criminally.
 5. The administrative investigator shall compile all relevant information and reports necessary for the Department to determine compliance with applicable policies.
 6. Regardless of whether the use of force is an issue in the case, the completed administrative investigation shall be submitted to the Use of Force Review Board, which will restrict its findings as to whether there was compliance with the [Use of Force: Policy 0240](#).
- d. Any other indications of potential policy violations shall be determined in accordance with standard disciplinary procedures.

290.8: CIVIL LIABILITY RESPONSE

- a. A member of this department may be assigned to work exclusively under the direction of the legal counsel for the Department to assist in the preparation of materials deemed necessary in anticipation of potential civil litigation.
- b. All materials generated in this capacity shall be considered attorney work product and may not be used for any other purpose. The civil liability response is not intended to interfere with any other investigation but shall be given reasonable access to all other investigations.

290.9: DEBRIEFING

Following a law enforcement employee-involved critical incident, the Albany Police Department should conduct both a critical incident/stress debriefing and a tactical debriefing.

290.9.1: CRITICAL INCIDENT STRESS DEBRIEFING

As soon as practical, the TRUST Administrator should coordinate a Critical Incident Stress debriefing, which shall only be attended by those employees directly involved in the critical incident, which may include support personnel (e.g., dispatchers who worked the incident). Notes and recorded statements should not be taken during this debriefing. Family members or other support personnel may attend upon the agreement of all employees involved in the incident. This debriefing shall be confidential and closed to the public and all other members of the Department, including supervisor and Internal Affairs personnel.

This debriefing is not part of any investigative process. Care should be taken not to release or repeat any communication made during a debriefing unless otherwise authorized by policy, law, or valid court order.

290.9.2: TACTICAL DEBRIEFING

A tactical debriefing should take place after a critical incident to identify any training or areas of policy that need improvement. The Chief of Police should identify the appropriate participants. This debriefing should not be conducted until all involved members have provided recorded or formal statements to criminal and/or administrative investigators. Recommendations from the Tactical Debriefing should be forwarded to the appropriate training coordinators (e.g., Survival Skills Coordinator, Firearms Training Coordinator) for evaluation and incorporation into training, where appropriate.

290.10: MEDIA RELATIONS

- a. No employee shall make any comment to the media unless they are authorized by the Chief of Police or a Division Captain.
- b. All media releases regarding critical incidents shall be prepared with input and concurrence from the supervisor and department representative responsible for each phase of the investigation.

Media contact should be coordinated through one person designated by the Chief of Police or a Division Captain. All media inquiries should be forwarded to that person.

- c. Department members receiving inquiries regarding officer-involved shootings or deaths occurring in other jurisdictions shall refrain from public comment and will direct those inquiries to the agency having jurisdiction and primary responsibility for the investigation.

290.11: REPORTING

If the death of an individual resulted from an officer's use of deadly force and occurred in the Albany Police Department jurisdiction, the Operations Division Captain will ensure that the Records and Systems Supervisor is provided with enough information to meet Department of Justice reporting requirements ([ORS 181A.790](#)).