A. Policy

1. Purpose

Investigations of fatal incidents involving police employees often place extraordinary demands upon the individuals and the agency involved. These cases tend to attract considerable interest from segments of the public and from the news media. The public’s right to know what occurred must be balanced against investigative necessity, rights of privacy, and rights to a fair trial.

The individuals and agency involved in such fatal incidents, as well as those involved in the subsequent investigations, must realize that each incident has potential social, civil, administrative, and criminal consequences. Incident investigators and supervisors must understand the legal rights, obligations and authority of the agency and individuals involved. They must specifically recognize and reconcile police agents’ constitutional rights with the rights and obligations resulting from the employer/agency relationship.

Confusion and even conflict can occur among individuals and the agency based upon their different interests, duties, perspectives, authority, training, and resources. Unless resolved in advance, questions such as who conducts the investigation, what type of investigation should be performed, and who can be present when an involved agent is interviewed, can delay and compromise investigations.

Because these demands and complications exist, this protocol was developed to serve as a procedural guideline for the investigation of agent-involved fatal incidents. The goal of the protocol is to help assure that such cases are thoroughly and fairly investigated.

2. Definitions

a. Agent-Involved Fatal Incidents - Incidents occurring in Lakewood involving two or more people, in which a police agency employee is involved as an actor, victim, or custodial agent, where a “fatal injury” occurs. Such “incidents” include but are not limited to the following:

(1) Intentional and accidental shootings, including police tactical incidents involving specialized response teams.

(2) Intentional and accidental use of any deadly weapons.

(3) Assaults upon police agents; assaults on other police employees who are on duty or are acting for a law enforcement purpose.

(4) Attempts by police employees to make arrests or to otherwise gain physical control for a law enforcement purpose.

(5) Any fatal injury in police custody, but excluding fatal injuries of prisoners which occur while the inmate is under physician’s
treatment for a disease or other natural condition which does not involve custodial trauma, custodial suicide, or custodial ingestion of toxic substance.

(6) Any fatal injury to a person who is a passenger of a police agent (such as ride-alongs, emergency transports, etc.)

b. Police Employee - This protocol applies to employees and to certain other people affiliated with the law enforcement agency as follows:

(1) Sworn agents, whether on-duty or off-duty, and acting for a law enforcement purpose at the time of the incident.

(2) Full time nonsworn employees, whether on-duty or off-duty, and acting for a law enforcement purpose at the time of the incident.

(3) Part-time nonsworn employees: same as above.

(4) Temporary employees and volunteers whether paid or unpaid, who are on-duty or who are acting actually, apparently, or purportedly for a law enforcement purpose at the time of the incident. This category includes informants when they are working under the direct control and supervision of a police agent.

c. Fatal Injury - Death or injury which is so severe that death is likely to result.

d. Criminal Investigators - Those investigators assigned to conduct the criminal investigation of the incident.

e. Administrative Investigators - Those investigators assigned to conduct the administrative investigation of the incident.

B. Procedure

1. The Criminal Investigation

a. The Jefferson County Critical Incident Team has investigative priority over the administrative investigation and it begins immediately after an incident has occurred.

b. It is performed by criminal investigators.

c. Its goal is to develop all available relevant information about the incident, specifically:

(1) To determine whether the conduct involved is prohibited by state law;

(2) If criminal conduct does exist, determine the identity of the person(s) responsible for that conduct; and,
(3) If criminal conduct does exist, determine the degree of the crime(s); the existence of any factual or legal defenses to that crime; and to determine the presence or absence of any factors which would mitigate or aggravate punishment for that crime.

While the criminal investigators do not direct their investigative attention to administrative concerns, it is recognized that the criminal investigation's results are of proper interest to agency management for its internal use and those results are fully available for that purpose.

(4) If an involved agent still has personal possession of a weapon he used in the incident, the supervising officer at the scene shall promptly, but discreetly (i.e., in private, out of view of the public and other agents if possible), obtain possession of the weapon. Sidearms must not be removed from their holsters; obtain the entire gunbelt if necessary to avoid removing the weapon from its holster. Sidearms should be replaced by the supervisor as quickly as possible if the agent so wishes, unless reason dictates otherwise.

(5) In shooting cases, the supervising officer will check the firearms of all agents who were present at the time of the incident to ensure that all discharged firearms are identified and collected, and to specifically document those weapons which were not fired.

(6) The supervising officer collecting any weapon or instrument will make note of its readily visible general description and condition, the appearance, and the location of any trace evidence adhering, to the extent these observations can be made without removing a firearm from its holster or otherwise compromising physical evidence. The location where the weapon or instrument was first observed by the supervising officer and the identity of the person or location from which the weapon or instrument was received shall also be recorded.

(a) In firearms cases, the supervising officer will also make note of whether the firearm is cocked, has its safety "on" or "off," has its hammer back, any apparent jamming of either fired or unfired ammunition; the location and position of the weapon's magazine (e.g., fully or partially inserted, completely separate from the firearm, missing, etc.), to the extent possible without removal of the weapon from its holster.

If the mechanism of a firearm is obviously jammed, no attempt shall be made to unload the weapon or clear the jam.
If the firearm is cocked (or if a semiautomatic pistol cannot be determined to be cocked or not), the safety may be put "on" by the supervising officer, who must make note of that fact. If the firearm's hammer is back, it may be lowered but note must be made of that fact.

(b) Any agent receiving a weapon or instrument from another person or obtaining it otherwise shall note its serial number, if readily visible, without removing the weapon from its holster or otherwise compromising physical evidence and shall otherwise maintain the chain of evidence.

(c) Otherwise, weapons and instruments will not be disturbed in any way. They shall not be handled by anyone other than the supervising officer and that officer shall handle them minimally to preserve the exact state of the weapon or instrument when received.

(7) The collected weapons or instruments shall be transferred to the Criminalistics laboratory staff upon their arrival, along with the information required.

(8) If the supervising officer at the scene was himself an actor or victim in the incident, the responsibility for security and/or collection of weapons and instruments shall rest with an uninvolved supervisor or the next-in-line uninvolved agent at the scene.

(9) Twelve rounds of the same type(s) of ammunition fired will be collected by the criminal investigators from each shooting agent (or from another appropriate source if the agent has insufficient similar rounds remaining).

(10) Firearms which do not need to be retained in evidence, as determined by the criminal investigators, will be returned promptly after the Criminalistics laboratory has inspected and tested them. The laboratory appreciates that prompt return of agents' handguns is important, and will return them as soon as possible.

d. Transporting and sequestering of involved agents:

Agents who were present at the scene at the time of the incident, whether actors or witnesses, will be relieved of their duties at the scene as promptly as possible and shall be sent to the police station unless other suitable and agreeable arrangements are made for them. Agents not involved in the incident shall be assigned to accompany these agents, either in a group or individually. Actors should be driven to the station by an uninvolved agent.
(1) If circumstances prohibit removal of all witnessing and involved agents from the scene at once, those agents who were actors should be relieved first.

(2) An uninvolved agent shall remain with the involved agent either in a group or individually, until they can be interviewed. The sequestering agents are present to ensure the agents have privacy and that their needs are accommodated. They should not be present during confidential (privileged) conversations.

(3) Involved agents are encouraged not to discuss the case among themselves, with sequestering agents, or with others except their representatives.

(4) While awaiting interviews, involved agents are encouraged to relax and to carefully reflect upon what occurred. They may wish to make notes for their future use, especially for later interviews.

e. Interviewing police employees (Criminal Investigation):

(1) Interviews will be conducted separately.

(2) Interviews will normally be fully tape-recorded.

(3) The interviewees will be considered as witnesses unless the circumstances dictate otherwise.

(4) Police employees have the same rights and privileges regarding interviews that any other citizen would have, including the right to consult with an attorney prior to interview and the right to have an attorney present during the interview.

(5) The attorney should be allowed to consult about the facts of the incident privately with the police employee.

f. Intoxicant testing:

(1) Police employees have the same rights and privileges that any civilian would have regarding intoxicant testing. When investigators determine that a police employee's state of sobriety is relevant to the crime under investigation, they have these options:

(a) Obtain the blood and/or urine sample by valid consent.

(b) If there is a clear indication that the employee is under the influence of alcohol and/or drugs and there is probable cause to believe the employee has committed a felony crime, a felony blood draw may be accomplished.
(c) Intoxicant test results obtained by criminal investigators are available to the administrative investigators.

(d) In the event the criminal investigator does not obtain samples for intoxicant testing, the agency may then seek to obtain samples. The criminal investigators have the first opportunity however.

(e) Authority for the agency to obtain samples is found elsewhere in the department manual.

(2) Miscellaneous

(a) Blood is the best fluid for alcohol testing, while urine is best for drug screening. Optimally, samples of both should be obtained for most complete results.

(b) Samples should be collected promptly after the incident for most meaningful results.

(c) A police employee may volunteer to provide sample(s) for intoxicant testing even if criminal and administrative investigators haven't obtained samples.

2. The Administrative Investigation

a. In addition to its concern about possible criminal law violations by civilians and its own employees who are involved in an incident (which concerns are addressed by the criminal investigation), the Lakewood Police Department also has need for information about the incident for noncriminal purposes:

(1) Internal Affairs

Determination of whether or not its employees violated departmental regulations.

(2) Agency Improvement

Determination of the adequacy of its policies, procedures, programs, training, equipment, personnel programs, and supervision.

(3) Claims and Litigation

Preparing for civil litigation that may be initiated by or against the agency and its employees.

b. The Lakewood Police Department uses an administrative investigation format to investigate these concerns. While both the criminal investigation and the administrative investigation are important and should be aggressively pursued, investigative conflicts between the two formats shall be resolved by allowing the criminal investigation to have
investigative priority. It is intended that this prioritization will preclude competition between the two formats for access to witnesses, physical evidence, and the involved parties, and that it will prevent the criminal investigation from being compromised by an untimely exercise of the Lakewood Police Department's administrative investigation.

c. Interview statements, physical evidence, toxicology test results, and investigative leads which are obtained by administrative investigators by ordering police employees to cooperate, shall not be revealed to criminal investigators.