

## INFORMATION MEMO

# Planning for Critical Incident Responses

*Find information and guidance for Minnesota law enforcement agencies on planning for and managing critical incidents such as officer-involved shootings and law enforcement actions resulting in death or serious injury.*

### RELEVANT LINKS:

[Critical Incident Response,](#)  
LMC Model Policy.

## I. Planning for critical incidents

Police actions that result in the death or serious injury of another may bring tremendous scrutiny, both to the incident itself and to how the agency responded. Having a plan in place for thoughtfully navigating these circumstances is crucial.

This memo provides Minnesota law enforcement agencies with background information and guidance to assist with planning for and managing critical incidents (CIs). It should be read together with LMCIT's model Critical Incident Response Policy. These resources are intended for agencies whose officers may become involved in a critical incident. Employing agencies will want to take a methodical approach when planning for CIs because of the many issues that must be addressed, and because of the significant consequences that can result from mistakes and misjudgments. The areas requiring attention following a CI can include:

- A review of the officer's conduct for compliance with criminal laws, such as those governing the use of deadly force;
- The investigation of any other criminal issues—for example, the actual or suspected crime that led to the police-citizen encounter;
- An “internal,” or administrative review of the officer's conduct to determine whether the actions complied with agency policy;
- Assuring appropriate communications and responses to public and media inquiries;
- Providing support for employees who have been emotionally impacted by the incident;
- Anticipating any civil litigation that might ensue; and
- Caring for and appropriately managing the agency's human resources.

*\*The League wishes to thank the Minnesota Bureau of Criminal Apprehension for its review and input into these recommendations.*

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

## RELEVANT LINKS:

Although these resources have been prepared with uses of deadly force (UDFs) as the primary case in mind, much of the discussion will be relevant to other situations as well. A critical incident, for the purposes of this document, is one in which most or all the following circumstances are present:

- A law enforcement officer has used force or taken other actions;
- That resulted in death or serious injury to another;
- A review of the officer's conduct for compliance with the criminal laws will occur regardless of whether anyone makes a complaint;
- The event is likely to result in media interest, public scrutiny, or both; and
- In view of the circumstances, it will be appropriate to consider steps for the emotional health and wellbeing of staff.

## II. Before the event

According to data from the BCA Force Investigations Unit, Minnesota has averaged around two dozen deadly force incidents per year from 2020 through 2023. While the odds of any individual officer becoming involved in a critical incident are low, these events continue to occur at a relatively steady rate. Although no two circumstances are exactly alike, there are some common features of critical incidents, and needs for resources, that you can prepare for.

### A. Prepare for unusual dynamics

In the day-to-day life of a healthy law enforcement agency, officers and their leaders work collegially toward the common goal of public safety. They form bonds and friendships in the process. It naturally follows that when an officer faces a significant hardship or challenge, either at work or elsewhere, agency leaders will want to be supportive, and officers will likely expect to receive support from them.

The occurrence of a critical incident, however, can place an agency and its leaders in a situation with potentially conflicting obligations. On the one hand, the agency has an obvious interest in supporting officers who have carried out their duties under difficult circumstances. The agency wants them to be healthy and to continue their careers with a positive and engaged outlook. However, agencies also have an obligation to ensure that a thorough, unbiased, and objective review of the incident is conducted. This means that, while it is appropriate to be supportive of their employees following a CI, agencies must also guard against the appearance of favoritism, or of failing to thoroughly evaluate the officers' actions. The following measures are suggested:

## RELEVANT LINKS:

[Minn. Stat. § 626.5534, subd. 3. 2024 Minn. Laws Ch. 123, Art. 3, sec. 6.](#)

See Section V.B,  
Psychological Services.

- Develop a plan for incident management that considers, and addresses officers' needs while remaining committed to an objective review process.
- Provide or facilitate access to resources that will help officers maintain their emotional health after an incident.
- Strive to ensure that agency and municipal leaders take a thoughtful, reasoned, and predictable approach to human resource issues, such as administrative leave and limited duty assignments.
- Provide training to officers about critical incident processes, so they know what to expect and what resources will be available to them following an incident.

## B. Resources

There is considerable value in thinking in advance about the needs and challenges that may arise in connection with a critical incident and how your agency will respond.

### 1. Investigative resources

As noted above, there may be a need for up to three distinct investigations in the aftermath of a CI: (1) a review of the officer's conduct for compliance with the criminal laws; (2) a criminal investigation of other non-police conduct; and (3) an "internal" or administrative review of the incident.

A new law in 2024 requires the BCA Force Investigations Unit to conduct a criminal investigation into all officer-involved deaths, unless the involved peace officer is a BCA agent, and to deliver the report to the prosecutor for the county in which the incident occurred. The BCA offers pre-event training to officers to help them know what to expect with this process.

### 2. Post-Incident counseling

Critical incidents can, but do not necessarily, result in emotional trauma for the personnel involved. Agencies and officers share an interest in making sure that involved personnel receive individual counseling. Questions to be considered in developing your plan or policy include: (1) Should it be mandatory or optional for officers to meet with a licensed psychologist or social worker following an incident? (2) If counseling is provided at municipal expense, will the provider be a generalist or one that specializes in working with officers following critical incidents? (3) Which provider will your agency use or recommend?

### 3. Legal resources

A host of legal issues can arise following an incident, including questions about what names, data, and recordings can or must be released under the Minnesota Government Data Practices Act; labor and employment issues pertaining to the status of involved officers; and proactively addressing the risks of any liability claims that might arise from the incident. You may want to consider speaking with your city attorney or legal advisor when developing your plan, so they have an opportunity to consider the legal issues and questions that they may be called upon to address.

### 4. Communications resources

Following a CI, you may find yourself facing an array of challenging communications scenarios, including answering questions from local and national news outlets and monitoring and responding to social media. An able and seasoned public information officer would likely be invaluable. Without such a resource, you might consider obtaining assistance from an outside professional.

## III. Priorities in the immediate aftermath

Although critical incidents can vary greatly from one to the next, there are some basic priorities that will be common to most situations. The guidance and steps below are intended to supplement your regular agency practices, not replace them. Accordingly, this document and the model policy identify the priorities that should be addressed following a critical incident, but do not provide detailed instructions for accomplishing them.

### A. Immediate priorities

Common priorities in the immediate aftermath of an incident include:

- Calling for emergency medical care and providing first aid to any people with serious injuries or medical needs.
- Summoning appropriate resources to the scene.
- Protecting the public against any risks posed by ongoing hazards or dangerous people at large.
- Obtaining and broadcasting information to aid in the apprehension of any suspects.
- Notifying command staff and agency leaders of the incident.

Because each situation will be different, the model policy includes a statement that officers will need to use their professional judgment to prioritize the steps to be taken. This language is to help ensure that courts view these decisions as discretionary and, thus, immune from liability.

## RELEVANT LINKS:

[Critical Incident Response,](#)  
LMC Model Policy.

[Critical Incident Response,](#)  
LMC Model Policy.

See [Minn. Stat. § 626.8475](#)  
(duty to intercede and report).

### **B. Establishing on-scene command and control**

There should be an understanding or plan in place for who will be in charge at the scene following a critical incident. If the incident occurs in another jurisdiction, then officers from your agency will probably be expected to relinquish control of the scene once that agency has sufficient resources on hand. If the incident happens in your jurisdiction, however, you will likely be expected to continue controlling the scene until relieved by the BCA.

The model policy includes options for using a stripped-down incident command system to manage the scene, and to immediately identify who is in charge. Ensuring that someone is placed in charge promotes a structured, organized approach to managing the incident, rather than leaving individual officers to spot and address priorities on their own. The model policy includes a mechanism for identifying a non-supervisor as the incident commander, which may be appropriate in smaller agencies. On the other hand, the policy's incident command mechanism may be unnecessary if your agency is of sufficient size to know that a supervisor who was *not* involved in the incident will be available to take charge afterward. In selecting an appropriate officer to serve as the incident commander, note that officers who were present during the CI, though they may have been "uninvolved" in a legal sense, could still have been exposed to significant stress that might impair their abilities to perform. Depending on the circumstances, an officer who was not present for the event may be a more suitable choice to serve as incident commander.

## **IV. Incident management activities**

Immediate steps may be necessary to protect public safety, preserve the integrity of the investigatory process, and to prevent the loss or destruction of evidence. These steps are outlined below.

### **A. Relieving involved officers from further involvement**

The model policy calls for the incident commander or on-scene supervisor to promptly identify any involved officers and then, to the extent possible, relieve them from further duties at the scene.

The term "involved officer" has a special meaning under the policy. It refers to those who could potentially have criminal liability because of their actions or inactions during the incident.

Thus, "involved officer" includes both (1) those who used force or took other actions resulting in death or serious injury to another, and (2) those who might have been in a position to physically or verbally intercede if the force used was unlawful or unreasonable but did not do so.

## RELEVANT LINKS:

Minn. Bd. of Peace Officer Standards and Training, Minn. Dep't of Pub. Safety, [Professional Conduct of Peace Officers Model Policy](#) (revised 2011).

See Section III.A, Immediate Priorities.

See Section IV.J, Assign a "care officer" to each involved officer.

Involved officers should be relieved from duties relating to the incident as soon as possible to avoid a conflict-of-interest situation. Principle Seven of the Peace Officer Standards and Training (POST) Board model policy on Professional Conduct of Peace Officers provides that officers must refrain from acting in situations where a conflict of interest exists, unless required to act by law or policy. Following an incident, priorities at the scene will transition from immediate life and safety issues to protecting the scene and safeguarding evidence. Involved officers may need to take immediate steps to aid the injured and to protect public safety. But they should be relieved from duty as soon as possible.

"Uninvolved" officers, on the other hand, are those whose conduct will not be subject to criminal review and thus do not have a direct stake in the outcome of the investigation. From a legal perspective, these officers may be assigned to necessary tasks like identifying witnesses and safeguarding evidence. But even though they were uninvolved, these officers could still experience an emotional response to the incident that impairs their ability to perform. They may be unable to assist at the scene and could potentially require the assignment of a care officer.

Supervisors and officers from the employing agency who arrive on scene after an incident will likely be curious about what happened and may be inclined to ask questions of personnel who were present during the event. But the officers who were involved in or witnessed the incident may still be under considerable stress. Their thinking may be unclear and predominated by emotion. Asking open-ended questions about what happened could be counterproductive—instead of obtaining facts, you may become the recipient of an excited emotional response that you will be obligated to repeat in court. Responders from the employing agency will likely have no immediate business need for the details of what happened earlier, since the BCA will be conducting the investigation. The better practice for responding supervisors, officers, and command staff is to deliberately avoid talking about what occurred and to focus instead on what needs to happen going forward, including whether there are any ongoing public safety concerns that require attention.

## B. Consider taking public safety statements

In this context, a public safety statement consists of information that an involved officer provides voluntarily, closely following the incident, to identify and help address any ongoing public safety concerns.

## RELEVANT LINKS:

See [Critical Incident Response](#), LMC Model Policy, Appendix A, for a public safety statement questionnaire.

Officers involved in an incident, like all persons facing a criminal investigation, have the right to remain silent and not answer questions. The strategy behind a public safety statement is to initiate a voluntary discussion and keep it confined to safety issues, while avoiding questions that might prompt an involved officer to invoke their right to remain silent. Appropriate questions to ask during a public safety statement could include:

- Is there anyone who needs medical care? Where are they?
- Are there any ongoing threats to public safety?
- Are there any suspects at large? What crimes did they commit, are they dangerous, did they leave on foot or in a vehicle, and in what direction? Can you provide a description?
- Please indicate the direction of flight and likely impact area of any rounds that were fired, to help determine if, and where, there might be others who were injured.

Many agencies use a printed questionnaire for public safety statements. This helps ensure that the questions stay on point and do not stray into areas that might lead the involved officer to withdraw their voluntary cooperation. There is no requirement to take a public statement in every case. They are best thought of as an option for situations where the officer involved appears to be the only (or only reliable) source for the information needed. If there are uninvolved officers who can supply the necessary information, they may be called upon to provide it without any concerns as to their Fifth Amendment rights. Digital recording systems are another potential source of needed information.

There is evidence suggesting that officers' memories as to locations, distances, and where they went during critical incidents may be impaired because of attentional focus on the threat and survival tasks, to the exclusion of other information. Those conducting or reviewing public safety statements should be mindful of these potential limitations.

### **C. Identify witnesses and the evidence they possess**

Officers at the scene should take immediate steps to identify any witnesses. If witnesses wish to leave the area, officers should use appropriate methods to seek their identification and contact information but should not detain them in violation of their rights. It may also be helpful to ask witnesses whether they used a cellphone or camera to record the event, and if they will provide the recordings to law enforcement. Depending on the circumstances, it may be appropriate to request these recordings or initiate steps to obtain them by other lawful means.

## RELEVANT LINKS:

See [Body-Worn Cameras](#),  
LMC Model Policy.

Officers at the scene will need to decide on a case-by-case basis whether to attempt to interview particular witnesses. Immediate interviews may be less than optimal for several reasons. First, like the officers involved in the event, witnesses may be traumatized and will need time to recover before being able to give a cogent account. Next, the interviewer may not yet have a sufficient understanding of the incident to ask informed questions. Finally, when officers from the involved agency obtain witness statements, instead of independent investigators, it may open the agency up to allegations of a biased investigation. But on the other hand, waiting to conduct interviews involves the risk that the witnesses' memories will become contaminated by information from others or received over social media. While these factors will generally weigh in favor of deferring witness interviews until later, there may be sound reasons for conducting interviews immediately.

### **D. Preserve the integrity of the scene**

The scene of the incident will likely be thoroughly examined and documented as part of the investigation, and its integrity must be preserved until that time. Accordingly, one or more perimeters should be established, and a log of personnel entering and exiting the perimeters should be maintained.

### **E. Evidence preservation**

Ideally, the tasks of collecting and preserving physical evidence would be left entirely to the investigating agency, to avoid any basis for alleging bias in the investigation. However, the weather and other circumstances can result in evidence being degraded or permanently lost and destroyed, meaning that officers from the employing agency may need to take on an active role in safeguarding it. The emphasis should usually be on preserving evidence rather than collecting it, to avoid potential contamination. Consider both the conditions at the scene and the estimated arrival time of any evidence team when determining whether immediate action should be taken. Any actions taken should be well documented.

### **F. Protect digital evidence from being overwritten**

Some policies relating to body-worn and in-car cameras may make provision for the special handling of electronic evidence following a critical incident. Regardless of how this evidence will eventually be handled, immediate steps may be necessary to preserve it: some digital evidence systems may begin overwriting the recording of an incident if left in the "record mode" for too long afterward. Agencies may wish to provide specific instructions based on their own technologies and business practices.



## **G. Notify and coordinate with the investigating agency**

When an incident occurs in your jurisdiction, you will need to initiate the request to the BCA to investigate. You will also want to coordinate with the BCA as to such issues as securing the scene, protecting evidence, and handling witnesses. You should also seek clarity as to the scope of the BCA's investigation: will it examine only the conduct of officers who used force, or will it also investigate other potential crimes committed by non-police personnel? If your agency does not have jurisdiction over the place of the incident, then coordinate notification to the BCA with the agency having primary jurisdiction.

## **H. Preserve the evidentiary value of officers' weapons**

The firearms and other weapons that officers have used during a critical incident should be regarded as constituting or likely to yield relevant evidence. Apart from the state of the weapon itself, it may also host DNA and other biologic or forensic evidence. Therefore, care should be taken to preserve both the evidentiary value and the chain of custody.

The chain of custody for firearms should be kept as short as practicable. Depending on the circumstances, it may be appropriate for the officer to keep their firearm holstered pending the arrival of an agent or evidence technician. If it is necessary to secure the firearm sooner, take appropriate steps, such as the use of gloves and an appropriate container, and ensure the chain of custody is intact and well documented.

It appears to be a standard practice in the law enforcement industry to immediately replace any handgun taken from an officer with one that functions identically, unless there are circumstances that warrant disarming the officer after the incident. The firearm is replaced to preserve the officer's ability to protect their own safety, and to avoid any implicit message of mistrust that could result from requiring the officer to remain unarmed. The firearm should be replaced with one that functions identically to avoid errors that could arise from a mismatch between "muscle memory" and the operational characteristics of the replacement device.

## **I. Assign a liaison to work with the investigating agency**

An officer/investigator from the employing agency should be assigned to liaise with the BCA.

## RELEVANT LINKS:

The liaison can help connect the investigating agency with access to records, evidence, and personnel, and can facilitate any requests or communications between investigators and the agency.

### **J. Assign a “care officer” to each involved officer**

Officers involved in a critical incident may experience some or many of the same reactions as others who have been victimized by a violent crime. They may also be required to remain on duty for an extended period so evidence can be collected from them. The role of the “care officer” is to meet the reasonable needs of the involved officer following an incident. The role may continue until no longer needed. Care and involved officers should be instructed that role of care officer does not create a legal privilege for communications between them. Agencies may opt for other titles for this role, such as “escort officer” or “monitor officer” if concerned that the term “care officer” would foster an impression of bias. The separation of functions between the employing agency and investigating agency will hopefully mitigate this concern.

The duties of the care officer may vary depending on the circumstances. The care officer should be encouraged to seek guidance from agency leadership if in doubt as to what is appropriate. Tasks that may be carried out by the care officer include, but are not limited to:

- Providing the officer with transportation away from the scene to the police station, law enforcement center, or another appropriate location. The officer being transported should not be placed in the back seat of a law enforcement vehicle or in any other prisoner transport area, both for the well-being of the officer and to avoid a misperception that the officer has been taken into custody.
- If the officer is transported to a hospital or medical facility, the care officer should accompany and remain with the involved officer until properly relieved.
- Addressing the involved officer’s basic physical needs, such as access to a restroom and to medications, food, and hydration.
- Ensuring that the officer has an appropriate place to wait once removed from the scene, being mindful that some officers may prefer a private setting while others might find isolation to be distressing. Officers should not be directed to wait in places where criminal suspects are detained or in places associated with the administration of discipline.
- Assisting the officer with immediate communication needs, such as contacting family members, spiritual advisors, legal counsel, and union representatives.
- Picking up or delivering replacement clothing if the officer’s own garments will be collected as evidence.
- Meeting reasonable needs for transportation.

## RELEVANT LINKS:

IACP Law Enforcement Policy Center, [Concepts & Issues: Investigation of Officer Involved Shootings and Other Serious Incidents](#) pg. 6 (April 2019).

See LMC information memo, [Drug and Alcohol Testing Toolkit for the City Workplace](#).

[Minn. Stat. § 181.951](#).

- Assisting the officer in dealing with interruptions to their ability to meet scheduled parenting, family, or other obligations.

## K. Ensure the preservation of other evidence

Even though another agency may have charge over the investigation, your agency may still need to take an active role in helping to ensure the preservation of important evidence. This could include digital evidence from in-car camera systems and body-worn cameras, recorded radio traffic and telephone calls, the clothing and equipment of involved officers, and the clothing and effects of others who were involved in the incident, including those who have been hospitalized.

## L. Post-incident chemical testing

Criminal investigators ask involved officers to voluntarily provide blood samples for testing as a matter of course. According to the International Association of Chiefs of Police (IACP), the purpose of this testing is to defend against any future allegations that the involved officers were chemically impaired. To maintain the voluntary nature of this procedure, the model policy specifies that the employing agency will not penalize officers for refusing to provide samples as part of the criminal investigation. When requested by the investigating agency, the model policy also allows members of the employing agency to assist in obtaining voluntary samples, such as by supplying transportation to a hospital and witnessing the collection of the sample.

Drug and alcohol testing for employment purposes, however, is another matter. Minnesota law prohibits employment-based drug and alcohol testing except when conducted pursuant to the employer's written policy, and allows such testing only upon reasonable suspicion that the employee: is under the influence; is using or possessing drugs or alcohol in violation of the employer's work rules; sustained a personal injury or caused another employee to be injured; or caused an accident at work involving the operation of machinery or equipment.

An officer's intentional use of deadly force or other involvement in a critical incident does not, by itself, appear to constitute reasonable suspicion for employment-based chemical testing.

## V. Post-incident administrative issues

Agencies routinely place officers on administrative leave following a critical incident and provide them with psychological services to assist them in processing their experience. In addition, state law requires that the agency report firearm discharges to the Commissioner of Public Safety.

## RELEVANT LINKS:

IACP Law Enforcement Policy Center, [Concepts & Issues: Investigation of Officer Involved Shootings and Other Serious Incidents](#) pg. 10 (April 2019).

IACP Police Psychological Services Section, [Officer-involved Shooting Guidelines](#), sec. 5.1 (2018).

*Singletary v. Missouri Dep't of Corr.*, 423 F.3d 886, 891 (8th Cir. 2005). *Mwassa v. Presbyterian Homes & Servs.*, No. 19-cv-01511 (SRN/HB); 2022 U.S. Dist. LEXIS 38916, at \*25 (D. Minn. Mar. 4, 2022).

*Moore v. City of New Brighton*, 932 N.W.2d 317, 326 (Minn. Ct. App. 2019), *review denied* (Oct. 15, 2019).

Minn. Bd. of Peace Officer Standards and Training, Minn. Dep't of Pub. Safety, [Professional Conduct of Peace Officers Model Policy](#) (revised 2011).

IACP Police Psychological Services, [Officer-involved Shooting Guidelines](#), sec. 6.6 (2018).

## A. Administrative leave

The IACP recommends that officers involved in a critical incident be placed on administrative leave with pay or in an administrative assignment during the investigation. The IACP Psychological Services Section recommends that involved officers be provided with a minimum of three days off for rest and recovery, and that agencies also consider granting administrative leave to uninvolved officers who were emotionally impacted by the incident.

“Paid administrative leave” is not the same as a disciplinary suspension for doing something wrong. For the employee, this leave is a continuation of pay, grade, and benefits without the necessity of reporting to work. Courts do not consider leaves of this nature to be a disciplinary action. However, if the leave extends beyond the time necessary to investigate or resolve concerns arising from an incident, it could be considered punitive, and could potentially support a liability claim against the employer. Administrative leave should only be assigned when doing so does not violate any governing law or labor agreement. The model policy includes different options for establishing an administrative leave policy for critical incidents. It may be appropriate to consult with your city’s labor counsel in developing your policy.

Factors that could warrant consideration in determining an appropriate period of leave include the timing of any investigatory interviews and counseling appointments, the officer’s apparent wellness following the incident, and the public reaction to the incident. As to this last consideration, Principle Three of the POST Board Model Policy on Professional Conduct of Peace Officers recognizes that “[l]aw enforcement effectiveness requires public trust and confidence.” If the public’s reaction to initial information about an incident is one of substantial mistrust, then it may be difficult or even dangerous for involved officers to resume their normal duties until the matter has been fully investigated and adjudicated. In these situations, employing agencies should, in consultation with their city attorney or labor counsel, consider a continuation of administrative leave or a special or modified assignment.

## B. Psychological services

The IACP Psychological Services Section recommends that involved officers meet with an appropriately qualified and experienced mental health professional within one week of an incident. The primary purpose of the meeting is to educate the officers about what is normal during and after a critical incident, with the goal of reducing the officer’s worry and negative self-assessment. The guidelines recommend that agencies make these meetings mandatory, so officers do not opt out to avoid the stigma of seeing a mental health professional.

## RELEVANT LINKS:

[Critical Incident Response](#),  
LMC Model Policy.

[Wisbey v. City of Lincoln, Neb.](#), 612 F.3d 667, 674 (8th Cir. 2010) *abrogated on other grounds by* [Torgerson v. City of Rochester](#), 643 F.3d 1031 (8th Cir. 2011). [Watt v. City of Crystal](#), No. 14-CV-3167 (JNE/JJK), 201; U.S. Dist. LEXIS 161673, at \*18-19 (D. Minn. Dec. 2, 2015).

[Minn. Stat. § 181.9731](#) and  
[Minn. Stat. § 181.9732](#).

[Minn. Stat. § 595.02, subd. 1\(g\); State v. Ramirez \(In re State\)](#), 985 N.W.2d 581, 586-87 (Minn. Ct. App. 2023) (statutory privilege against disclosure).

There could also be uninvolved officers and other agency personnel who experienced trauma in connection with an incident and who would benefit from these services. The model policy contains language for mandatory counseling and envisions that both involved officers and others impacted by the event may be directed to participate.

The model policy differentiates between sessions with a professional for an officer's wellbeing and education, and evaluations that are conducted to assess an officer's fitness for duty. Involvement in critical incident generally does not, by itself, establish grounds for requiring a psychological fitness-for-duty evaluation (FFDE). Rather, these exams may be required only when there are objective, legitimate, and non-discriminatory reasons for doubting an employee's capacity to perform their duties. Officers are trained and legally authorized to use deadly force in certain circumstances and performing these tasks as expected does not indicate unfitness. Decisions about requiring officers to undergo FFDEs must be made on a case-by-case basis and should be made in consultation with your city attorney or labor counsel.

### C. Critical incident stress debriefing

The model policy recognizes that group or peer-to-peer counseling may be beneficial for some but takes the position that officers who face the prospect of criminal or civil liability should not participate in these processes.

Minnesota law recognizes two forms of peer programming that may be available to officers following a critical incident: Public Safety Peer Counseling and Critical Incident Stress Management. The information that officers share with peer counselors during these sessions is classified as private data and is legally protected from disclosure. These protections, however, are not the same as a legal privilege, and a peer counselor or stress management team member can be compelled, under certain conditions, to testify about an officer's disclosures to them. Because of the limited nature of these protections, it could be legally imprudent for involved officers to make any statements during peer counseling that could be construed as misgivings about their actions.

Involved officers should be directed away from peer counseling and instead toward obtaining services from a licensed psychologist or licensed social worker. The law provides stronger protections for communications that clients have with these licensed professionals.

## RELEVANT LINKS:

[Minn. Stat. § 626.553, subd. 2.](#) Find reporting form and instructions on the [MN Bureau of Criminal Apprehension website](#).

[Garrity v. New Jersey](#), 385 U.S. 493, 497-500 (1967).

See Section VI.C, Timing of statements from involved officers.

[Critical Incident Response](#), LMC Model Policy.

[Critical Incident Response](#), LMC Model Policy.

## D. Firearms discharge report

Minnesota law requires the submission of a report to the Commissioner of Public Safety whenever a peace officer discharges a firearm in the line of duty for purposes other than training or killing an animal that is sick, injured, or dangerous. The head of the officer's department must file the report within 30 days of the incident. The model policy contains language reflecting this requirement. The agency head making the report should coordinate with the BCA for the specific information to be included in the report.

## VI. Investigative issues

This section discusses some unique aspects to the investigation of critical incidents.

### A. Commitment to respecting constitutional rights

The model policy contains language reflecting the agency's commitment to respecting officers' constitutional rights. Officers who face a criminal investigation and the possibility of being charged following an incident have, like any other individual, a constitutional right to remain silent and not speak about the matter. It follows that officers may altogether refuse to answer questions, or may condition their willingness to answer on being able to speak with an attorney first. While employers can compel officers to give statements for administrative purposes, a compelled statement cannot be used against the officer in a criminal proceeding. Indeed, taking a compelled statement could potentially compromise the prosecution's ability to move forward with charges later.

### B. Written reports

If officers will be interviewed as part of the criminal investigation, then it may not be necessary to have them prepare written reports. In most cases, an officer's interview will provide a detailed account of their knowledge of the event and will occur after the officer has been given some opportunity for recovery. Next, agencies should take care to avoid backing into circumstances where they are ordering involved officers to prepare reports under a threat of disciplinary action, since this could potentially create an issue as to whether the contents will be immunized under *Garrity* from later use in a criminal prosecution.

## RELEVANT LINKS:

See, e.g., *State v. Gault*, 551 N.W.2d 719, 723-24 (Minn. Ct. App. 1996).

R. H. Grady, et al., *What Should Happen After an Officer-Involved Shooting? Memory Concerns in Police Reporting Procedures*, J. OF APPLIED RES. IN MEMORY & COGNITION, Vol. 5(3), at 246-51 (2016).

IACP Police Psychological Services Section 5.2 *Officer-Involved Shooting Guidelines*, sec. 5.2 (2018).

### C. Timing of statements from involved officers

Because officers cannot be compelled to give statements that could be used against them in a criminal proceeding, they retain a large degree of control over when they will be interviewed for the criminal investigation. When an officer declines to answer questions for the criminal investigation, the employing agency still has the option of taking a compelled statement later, under *Garrity*, for use in an internal investigation. But the mere existence of a compelled statement can become an issue for the prosecution if charges are brought. A decision to compel a statement should be made only after careful consideration and consultation with investigators and the prosecutors who will be reviewing the case.

Researchers and writers have advanced different opinions as to when officers should be interviewed following an incident to maximize the accuracy of their recall. Some suggest that interviews should be conducted without delay to capture the officer's existing state of knowledge and emotional response to the event, and to avoid opportunities for information from other sources to contaminate the officer's memory. Other researchers acknowledge competing considerations: intense stress from an incident may negatively impact memory, but delays in interviewing can also result in memory impairment. The IACP Psychological Services Section recommends that officers will benefit from at least one sleep cycle before being interviewed, citing research indicating that sleep fosters the consolidation of memory, and that sleep deprivation impairs memory retrieval. Because officers work varying schedules and may be unable to sleep following an incident, the timeframe for completing one or more sleep cycles is unclear. In the end, because officers facing a criminal investigation have the right to remain silent, the timing of their interviews is largely a matter to be worked out between them, their attorneys, and the investigating agency.

When it comes to fashioning an appropriate policy, it bears observing that reasonable, well-intentioned officers who are familiar with the research on sleep and memory could conclude that some amount of recovery time will improve their ability to supply an accurate statement. The model policy includes language acknowledging the rights of officers to defer interviewing.

### D. Officer interviews: review and use of digital evidence

An important question for agencies to consider is whether officers should be permitted to review video footage and audio recordings of incidents they were involved in before speaking to investigators. There are arguments for and against, and there is also a case to be made for taking a hybrid approach. These are these considered in turn.



## RELEVANT LINKS:

Police Exec. Res. Forum,  
*Implementing a Body-Worn  
Camera Program:  
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Annelies Vredeveldt, et al.,  
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### 1. Arguments for prior review

In 2014, the Police Executive Research Forum (PERF) asserted that allowing officers to view body camera recordings would help them remember events more clearly, which would in turn result in more accurate statements. Though PERF no longer adheres to this position, other researchers have noted that negative downstream effects can follow when officers do not watch the video before giving a statement. That is, officers may be accused of lying when their accounts do not align closely with the video footage, even though factors such as stress, tunnel vision (selective attention), and differences between the camera angle and where one is looking could fully account for the differences.

### 2. Arguments against prior review

A video recording device is likely to take in far more information than the human brain can perceive and process at any given time. As a result, when an officer watches a recording, they will probably be introduced to information that they neither perceived nor considered as the event unfolded. Next, because the brain works to make information fit into a cohesive narrative, it may be natural for officers to meld the newly acquired data with their memory to arrive at an understanding of what happened. Once this added information has been taken in, it may not be possible for the officer to differentiate it from their “original” memory of what happened. This phenomenon is known as source confusion. It is also theorized that reviewing video could make it harder for officers to recall anything that was not captured on camera. This includes events that happened outside of the camera’s view, in addition to the officers’ perceptions and thought processes. Roughly speaking, when an officer sees something on video that they also recall, it highlights the event in their memory.

But the converse may also be true: that viewing video makes the memories of events that were *not* captured in the recording grow dimmer. This is known as retrieval-induced forgetting. In experimental research, after going through a scenario and then watching their body camera footage, some officers “corrected” their reports by deleting accurate details that the recording had not captured. That is, the officers’ recollection of the event, as reflected by their reports, became less accurate after watching the video



## RELEVANT LINKS:

Annelies Vredeveldt, et al.,  
*To Watch or Not to Watch:  
When Reviewing Body-Worn  
Camera Footage Improves  
Police Reports*, L. & HUM.  
BEHAV., 45(5), at 427, 437  
(2019).

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Forum, *Body-Worn Cameras  
a Decade Later: What We  
Know Now*, pg. 30 (Dec.  
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### 3. Hybrid approach to prior review

The model policy recommends a hybrid approach of: (1) not allowing officers to view video before being interviewed; (2) providing officers an opportunity to watch the video during their interview and then clarify any issues that surface; and (3) having investigators explicitly recognize that differences between the officer's memory and the digital evidence are expected. Providing this recognition is recommended to address officers' fears over games of "gotcha" being played later by cataloging the differences between their memory and digital recordings.

This procedure aligns with PERF's revised recommendations, issued in 2023, that officers provide a "perceptual interview" before reviewing video. PERF suggests that officers then be "given the opportunity to provide a video-informed statement by reviewing BWC footage and offering clarifications that they feel appropriate." Commenters noted that both human memory and digital footage are data points in an investigation, but that an officer's memory can be tainted by reviewing video. The model policy includes language allowing agencies to depart from this procedure when circumstances might dictate a different approach.

In dealing with video evidence from critical incidents, agencies should be mindful that watching the video may itself be traumatic for officers. It is possible that the officers did not—as the incident unfolded in real time—pay attention to or notice the granular (and perhaps grotesque) details captured by the recording. Officers may be impacted greatly when exposed to this information later. Agencies should be sensitive to the possibility that viewing the video will cause trauma and give rise to a need for support and services.

### E. Meeting officers' needs during the investigation

It is normal for officers to be anxious about what may happen as they await the legal and administrative outcomes of their incident. While it is not appropriate to provide them with "inside" information about legal developments, it is appropriate and helpful to ensure that officers are kept up to date as to the scheduling of key events, such as grand jury proceedings and the like. Agency leaders may elect to communicate this information directly or through the officer's counsel, as may be appropriate under the circumstances.

## VII. Agency administrative review

Although there is usually no need to immediately start an administrative review of an incident, making sure that one gets completed is important for legal reasons.

## RELEVANT LINKS:

See generally *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978).

[Minn. Stat. § 626.89.](#)

[Minn. Stat. § 299A.44.](#)

[Minn. Stat. § 299A.465, subd. 2.](#)

By conducting a thorough review, the agency is demonstrating its commitment to detecting and addressing officer misconduct and the use of excessive force, and that it does not—by its failure to thoroughly investigate critical incidents—tacitly approve of misconduct. The criminal investigation will often bring forward most of the evidence that must be considered in the administrative review process, so in most cases it will make sense to await the results of the criminal inquiries.

If the criminal investigation produces (or other information creates grounds for believing) that an officer engaged in misconduct during the incident—and that disciplinary action may be warranted—then the matter should be handled as an allegation of misconduct. Any investigation must be conducted consistently with the Peace Officer Discipline Procedures Act, Minnesota Statutes, section 626.89, and any applicable provisions of the collective bargaining agreement.

There may be atypical cases that weigh in favor of completing the administrative review before the criminal process has reached its conclusion, such as where the agency believes it must resolve a personnel issue without delay. In such cases, however, the agency must exercise considerable caution to guard against tainting the criminal process by the use or disclosure of compelled statements. Agencies are encouraged to consult with their legal counsel, investigators, and assigned prosecutors in evaluating such circumstances and charting an appropriate course of action.

## VIII. Benefits for families and survivors of officers killed in the line of duty

There are several potential sources of benefits for survivors of officers killed in the line of duty. The following is not warranted to be an all-inclusive list, nor is any representation made that benefits will be available from the sources listed.

- Death benefits paid through the Public Safety Officers' Benefits Program, administered by the United States Department of Justice, Bureau of Justice Assistance.
- Statutory death benefits paid under Minnesota law.
- Continued employer-provided health insurance coverage for the deceased officer's spouse and dependents, as required by law.
- Educational benefits for children of officers killed in the line of duty, administered by the Minnesota Office of Higher Education.
- Workers' compensation benefits.
- Pension benefits through the Public Employees Retirement Association.
- Death benefits through the Minnesota Police and Peace Officers Association (MPPOA).
- Benefits through the Minnesota 100 Club.

**RELEVANT LINKS:**

[Concerns of Police Survivors](#)

- Concerns of Police Survivors (C.O.P.S) is an organization that serves the families of fallen officers and maintains state-by-state lists of survivor benefits and resources.
- Pro bono legal assistance to members of the MPPOA in seeking available benefits.