

CHAPTER 2
INVESTIGATING THE CRITICAL INCIDENT

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CHAPTER 2

INVESTIGATING THE CRITICAL INCIDENT

1. INVESTIGATOR RESPONSIBILITIES. The investigators shall follow the investigative guidelines listed below. **These guidelines are not all-inclusive**, but serve as a protocol for conducting critical incident investigations. If it is anticipated the incident will not generate civil or criminal action, the lead investigator may omit any unnecessary section(s) of the Critical Incident Reconstruction Report.

a. If the Division Critical Incident Investigation Team (CIIT) is activated, the team leader should designate an individual to serve as the lead investigator who shall coordinate the investigation with the appropriate Area commander(s).

(1) For incidents involving more than one Division, the involved Division commanders should mutually agree on the responsibility for preparing the required documentation with input from the appropriate Assistant Commissioner.

(2) The Area commander should designate a supervisor to act as a liaison with the CIIT.

b. One individual shall be assigned as the lead investigator for the Department and should be:

(1) A uniformed supervisor.

(2) Responsible for conducting an in-depth investigation of the incident.

(3) Responsible for directing, controlling, and supervising all departmental investigative personnel.

(4) Responsible for ensuring departmental investigative personnel cooperate with, and assist the law enforcement agency with primary jurisdiction over the criminal investigation of the incident.

c. All personnel assigned to critical incident investigations must be aware of the following terms:

(1) Criminal Investigations. The criminal investigation is normally conducted by the law enforcement agency having primary jurisdiction and venue over the criminal aspects of the critical incident. The resulting documentation is normally submitted to the appropriate district attorney (DA) for review.

(2) Departmental Investigations. The departmental or administrative investigation is normally conducted by the Department to factually reconstruct the critical incident. The results of the investigation shall be recorded in the following reports, which will be used as the primary documents for administrative review:

(a) Critical Incident Reconstruction Report, Administrative Report. Refer to Chapter 3, Report Format and Composition, paragraph 5., of this manual.

(b) Critical Incident Noninjury Report. Refer to Chapter 3, paragraph 6., of this manual.

(c) Critical Incident Policy/Procedures Evaluation Report. Refer to Chapter 3, paragraph 7., of this manual.

(d) Memorandum of Findings. Refer to Chapter 3, paragraph 8., of this manual.

(3) Concurrent/Parallel Investigations. Concurrent/parallel investigations will occur when a qualifying incident is investigated in concert with personnel from the Department and the allied agency with jurisdictional responsibility, resulting in the preparation of separate reports (criminal and administrative).

(4) Dual Role Responsibility. Dual role responsibility will occur when an allied agency declines to conduct the criminal investigation or when a previously established Memorandum of Understanding (MOU) has been agreed upon to clarify each agency's role, and investigators from the Department conduct both the criminal and the administrative investigations. Normally, the two types of investigations shall remain separate and not be conducted by the same investigator(s).

d. Upon arrival at the scene, contact the incident commander and complete the following tasks:

- (1) Ensure the scene is properly secured.
- (2) Obtain positive identification of all individuals in the immediate area.
- (3) Identify parties, vehicles, firearms, and weapons involved in the incident.
- (4) Canvas the area in order to identify and interview witnesses.

(5) Establish a plan to interview the involved parties at a suitable location and time.

e. During interviews, special attention should be given to the respective interviewee's state of mind at the time of the incident. All interviews should be audio recorded.

NOTE: Care should be taken to ensure the interviewee does not interpret the interview as a custodial interrogation. If practicable, interview the witness in the immediate vicinity. If relocation is necessary and the interviewee agrees to a change of venue or facility, obtain consent either in writing or by audio recording prior to changing the witness' location.

(1) Pursuant to the Bargaining Unit 5 MOU and departmental policy, before being questioned by the investigating agency for a shooting incident, the officer, at their discretion, may request to be ordered by their commander or alternate to answer questions. When the officer makes such a request, the commander or alternate shall order the officer to cooperate and answer questions. Upon receiving an order to cooperate with the investigating agency, the officer may request and is entitled to a representative of their choice. Once the commander or alternate has ordered the officer to answer questions, the person in charge of the investigation shall be immediately notified of such order.

(2) This policy is specific to officer-involved shooting inquiries only and does not in any way impact the actions of supervisors/managers during routine discussions (e.g., counseling sessions, ride-alongs).

(3) This policy does not preclude the officer from invoking their "Miranda Rights" if advised of those rights by the agency conducting a criminal investigation.

(4) This policy in no way prevents an officer from providing a voluntary statement to the investigating agency during the interview process with or without representation.

f. Conduct a detailed inspection of weapons or firearms, noting type, condition, position of hammer and slide, position of cylinder (if revolver), and the location of all rounds and ammunition. Do not change the status of the firearms unless necessary for safe processing.

g. The scene, physical evidence, and involved parties should be photographed and video recorded in accordance with the photography and video guidelines listed in Chapter 3, paragraph 5.g., of this manual.

- h. Retrieve and book all of the following as evidence:
 - (1) Firearms and/or other weapons.
 - (2) Live ammunition.
 - (3) Expended cartridge casings.
 - (4) Make all reasonable efforts to retrieve and account for all expended projectiles.
- i. Diagram the scene, including positions of persons and objects, together with measurements. Attempt to include trajectory of all expended rounds.
- j. Attend, or assign another investigator to attend, the allied agency interviews or interrogation of all involved parties/witnesses.
 - (1) If the lead investigator or designee is not permitted to participate in the interview or interrogation of an involved employee, the investigator shall inform the employee of the Legal Representation Program. (Refer to paragraph 7. of this chapter.)
 - (2) If legal representation is requested under the Legal Representation Program, the lead investigator shall make arrangements to request the appropriate legal counsel in accordance with Area, Division, or controlling Standard Operating Procedure (SOP).
- k. In cases resulting in death(s), attend the autopsy.
 - (1) Critical Incident Investigation Team personnel should be cognizant of In-Custody Death Syndrome, commonly associated with "Agitated" or "Excited Delirium." Some conditions include:
 - (a) Hyperthermia (strips off clothing/naked).
 - (b) Delirium (incredible strength).
 - (c) Respiratory Arrest (stops breathing).
 - (d) Cardiac Arrest (death).

NOTE: If the preliminary investigation indicates Excited Delirium may be associated with a critical incident, CIIT investigators should advise the medical examiner.

- l. If possible, attend all medical procedures to obtain physical evidence. Permission to attend surgery should be obtained from the doctor in charge. Ask the emergency room doctor clarifying questions regarding the injuries suffered by the victims or suspects.
- m. For criminal investigations, collect the clothing of anyone assaulted by gunfire or other means, or clothing containing blood splatter or other bodily fluids. Air dry the items and place them in paper bags. Do not use plastic bags. (Refer to Highway Patrol Manual [HPM] 70.1, Evidence Manual, Chapter 5, Packaging of Evidence/Property for Booking.)
- n. If possible, obtain blood samples from the employee(s), suspect(s), and victim(s) involved in a shooting incident. A voluntary blood sample may be obtained from uniformed California Highway Patrol (CHP) employees, pursuant to HPM 9.2, Substance Testing Manual, Chapter 3, California Department of Human Resources Policy, paragraph 2.e., to eliminate any future doubt as to the sobriety of those involved in the incident. Procedures for the collection and handling of this sample are contained in HPM 70.4, Driving Under the Influence Enforcement Manual, Chapter 5, Chemical Tests – Implied Consent Law.
- o. If necessary, remove CHP-related equipment from service or book as evidence for later inspection.
- p. Review the involved officer's training records and the following dates of training:
- (1) Use of Force Policy Review.
 - (2) Officer Safety Training Certification.
 - (3) Weapons Training and Qualification Records.
- q. Obtain an audio recording of the radio transmissions immediately before, during, and immediately after the incident. Obtain copies of the communications center radio cards; CHP 140, Complaint-Dispatch-APB; and CHP 141, Field Service Request, or Computer Aided Dispatch logs pertaining to the incident.
- r. Obtain criminal history and driver license printouts on the suspect(s).
- s. Obtain copies of medical reports involving any injured party in the incident. Medical reports should normally be obtained by subpoena.
- t. Obtain copies of any forensic or ballistics tests.

- u. Obtain a copy of a weather report covering the time of the incident.
- v. Obtain copies of press releases (CHP and allied agency) and any newspaper articles.

2. AREA COMMANDER RESPONSIBILITIES.

- a. Consult with local DA and allied agencies to develop a shooting and/or other critical incident investigation protocol for use by all agencies involved in the investigation.

(1) Area commanders and Division CIIT coordinators should work closely with DAs and allied agencies in advance to resolve any conflicts that may arise during a future investigation.

(a) Some allied agencies have adopted investigative protocols which prohibit a departmental supervisor from attending the interview or interrogation of an officer involved in a shooting or other critical incident involving a criminal investigation.

(b) Area commanders should be aware of the investigative protocols of allied agencies within their jurisdiction and should advise the Division CIIT coordinator of the potential need to initiate legal representation for criminal cases where a Department supervisor/investigator is prohibited from participating in the interview (refer to paragraph 7. of this chapter).

(2) Area commanders and Division CIIT coordinators should provide annual training to supervisors and officers on the multiagency shooting and critical incident investigation protocols that affect their Area. This will reduce the possibility of conflicts between investigating agencies and/or involved employees at the scene of an incident.

- b. Develop an Area SOP regarding CIIT call-out criteria and procedures in accordance with the Division SOP. Area commanders are encouraged to contact the Division CIIT coordinator for assistance in all reportable shootings or other threshold incidents involving departmental personnel.

- c. Complete a prompt and objective review of every qualifying critical incident.

- d. The Area commander shall immediately:

(1) Notify the appropriate Division commander or designee.

- (2) Notify the appropriate bargaining unit representative.
- (3) Ensure a complete investigation of the circumstances surrounding the incident is conducted.
 - (a) Threshold incidents should be investigated by activating the Division CIIT. The lead investigator should be one rank higher than the involved employee.
 - (b) If the Division CIIT is activated, the team leader or alternate should be contacted as soon as possible, in accordance with Division SOP.
 - (c) Commanders should assign an individual, usually a sergeant from the involved command, to serve as a liaison to the CIIT. The liaison is also responsible for coordinating Area reports resulting from the incident with the designated Risk Management Administrator (RMA).
 - (d) The liaison is to function as an observer throughout the investigation to collect pertinent information for the purpose of assisting with the completion of the Critical Incident Policy/Procedures Evaluation Report.
- e. Any employee whose official actions or use of force result in the death or serious physical injury of a person shall immediately be reassigned to duties that do not involve field contact with members of the public. This reassignment should remain effective pending an appropriate administrative review and approval from the appropriate Assistant Commissioner.
 - (1) An employee may be immediately reassigned from field enforcement to administrative duty at the immediate commander's discretion if an incident is of a sensitive nature.
- f. If, in the commander's opinion, peer support appears appropriate, the services of a Peer Support Officer (PSO) will be made through the local CHP Communications Center where a PSO roster is maintained.
- g. Timely notification shall be provided to the appropriate Assistant Commissioner, Emergency Notification and Tactical Alert Center, and Enforcement and Planning Division, Attention: Field Support Section (FSS).
- h. Ensure the required departmental critical incident reconstruction report is prepared in triplicate. The original and one copy shall be transmitted to the Division having jurisdiction over the incident. The second copy shall be retained at the Area involved.

i. Arrange for a critical incident stress debriefing in accordance with departmental procedures for employees involved in reportable incidents of the following nature:

(1) Employees who have discharged a firearm at a person or occupied vehicle which results in the injury or death of a person.

(2) Employees who have been a victim of an attack, regardless of whether the employee sustained an injury.

NOTE: The Area commander may arrange for critical incident stress debriefing for other employees as deemed appropriate (e.g., partner officer not

involved in the shooting, involved public safety dispatcher, and other Area employees). Critical incident debriefings may be made available by the commander for other traumatic events, but attendance is considered voluntary. (Refer to Chapter 5, Employee Assistance-Critical Incident, of this manual.)

j. With the approval of the appropriate Assistant Commissioner, the Area commander may assign the involved employee(s) to a suitable amount of administrative time off (ATO) if the appointed debriefing counselor recommends the employee(s) should not return to work for a specific period of time or, if in the opinion of the immediate commander, ATO for the employee(s) would be reasonable and prudent.

(1) The Area commander or designee may make the initial request by telephone with a memorandum to follow.

(2) If approved, the involved employee(s) may be granted up to five days of paid ATO. Additional time off may be charged to the appropriate leave credits.

(a) The purpose of the ATO is to assist the involved employee(s) in coping with the trauma of the incident. There is no requirement for an injury or disability to be apparent for time off to be granted.

(b) This will not preclude the immediate commander from ensuring the involved employee(s) receive appropriate medical care if, at any time, an injury is apparent. (Refer to HPM 10.7, Injury and Illness Case Management Manual.)

(3) Prior to releasing an employee on ATO to return to work, the Area commander shall receive approval from the Division commander and appropriate Assistant Commissioner. This approval is required for all changes

in duty status; i.e., from ATO to limited/administrative duty or limited/administrative duty to full duty.

k. Ensure the officer(s) involved in a shooting incident, in which shots were fired at another person, fires a qualifying score on the Task Oriented Qualification Course-Primary Firearm prior to returning to full duty, in compliance with HPM 70.8, Firearms Manual.

l. In the event the involved officer's soft body armor is impacted by a bullet, a report shall be forwarded to Business Services Section, Supply Services Unit, within ten working days concerning ballistic protection afforded by the soft body armor. (Refer to HPM 73.5, Uniform/Grooming and Equipment Standards.)

3. DIVISION RESPONSIBILITIES.

a. The Division commander or designated alternate is responsible for the overall management of the CIIT and the Risk Management Program within their area of responsibility. This involves the designation of an RMA, effective and timely case management, and coordination with the appropriate Assistant Commissioner and adjacent Divisions, when applicable. During the investigation of a critical incident, the decision to report the incident using the Critical Incident Noninjury format rests with the RMA in consultation with the Division commander and Office of Risk Management.

b. Establish CIITs for the purpose of assisting commanders with the investigation of incidents outlined in Chapter 1, General, of this manual.

(1) Divisions shall establish SOPs for the Division's CIIT. The SOP should include operational guidelines, call-out procedures, and provisions for training CIIT members.

(2) Divisions should coordinate any requests for legal representation with the Office of Legal Affairs (OLA).

(3) Divisions should coordinate with FSS for training of team members.

c. Review all critical incident reports and provide the immediate commander with any assistance or guidance deemed necessary.

d. Transmit the following original files to the appropriate Assistant Commissioner:

(1) Critical Incident Reconstruction Report.

- (2) Critical Incident Noninjury Report.
- (3) Memorandum of Findings.
- (4) Critical Incident Policy/Procedures Evaluation Report.
- (5) The Critical Incident Reconstruction Report shall be accompanied by a single transmittal memorandum. The memorandum shall include a statement as to whether the Division commander concurs with the immediate commander's report of the incident and findings.

4. FIELD SUPPORT SECTION RESPONSIBILITIES.

- a. Identify and coordinate in-service and out-service training needs for Division CIIT members.
- b. Coordinate Division CIIT coordinator and team leader training sessions biannually as needed.
- c. Issue critical incident investigation case numbers and maintain the database.
- d. Review critical incident investigation summaries provided by the appropriate Assistant Commissioner in order to:
 - (1) Identify investigative and reporting deficiencies for training purposes.
 - (2) Evaluate the need to revise policy relating to the investigation and documentation of critical incidents.

5. ASSISTANT COMMISSIONER RESPONSIBILITIES. The appropriate Assistant Commissioner shall review the completed reports from Division. Upon completion of this review, the Assistant Commissioner shall notify the involved Division of their concurrence. In cases where the Assistant Commissioner does not concur with the Division commander, arrangements will be made for further discussion and review of the incident in question. Upon final approval, direction to issue the Memorandum of Findings shall be forwarded to the immediate commanders(s) involved.

6. ACADEMY RESPONSIBILITIES. Review critical incident investigation summaries provided by the appropriate Assistant Commissioner in order to identify enforcement tactics deficiencies for training purposes.

7. LEGAL REPRESENTATION. When an allied agency responsible for the criminal investigation of a critical incident involving a departmental employee prohibits a departmental supervisor/investigator from participating in the interview or interrogation, the following shall apply:

a. If the lead investigator, designee, or supervisor is not permitted to participate in the interview or interrogation, the supervisor/investigator shall inform the employee of their right to representation.

b. Legal representation is voluntary and must be requested by the involved employee.

c. Attorneys from the Department's OLA or the California Association of Highway Patrolmen may be utilized to provide legal representation to the involved employee for the interview and interrogation stages of the investigation.

(1) Upon receiving a request for legal representation, the Division may contact the Department's OLA at (916) 843-3110.

(2) Outside of normal business hours, the Department's OLA may be reached through the Sacramento Communications Center at (916) 861-1333.

d. During the interview or interrogation, legal counsel will be responsible for preserving the integrity of the process and protecting the interests of the involved employee and the Department. Legal counsel will ensure all questions are relevant and pertinent to the incident inquiry.

e. If during the interview or interrogation it is determined by the legal counsel continued representation will be in conflict with the Department's interest, the legal counsel will immediately stop the interview or interrogation and facilitate a date and time for its resumption, after the employee has been counseled to seek their own legal representation.

8. INSPECTION OF DEPARTMENTAL FIREARMS.

a. In the event of the discharge of a firearm where injury or death occurs, or the operating condition of the firearm is questionable, the firearm shall be forwarded to the Academy's gunsmith accompanied by a CHP 125, Weapon Control Memorandum. In cases where the discharge is noninjury, no weapon inspection is required. The CHP 125 is not available through the CHP Intranet site. It can be ordered from the Academy, Weapons Training Unit, or the Supply Services Unit.

(1) The departmental gunsmith shall inspect the weapon prior to returning it to service.

(2) Firearms held for any duration by an allied agency as evidence shall be inspected by the departmental gunsmith prior to return to service.

(3) Any defects or modifications found shall be noted and corrected prior to the firearm being returned to service.

(4) Firearms requiring corrective action shall be reinspected and test fired by the departmental gunsmith prior to being returned to service.

9. INTERAGENCY AGREEMENTS.

a. The Department has entered into interagency agreement(s) with other state agencies to provide CIIT services on an as-needed basis. When requested, the appropriate Division CIIT will respond to an agency-involved critical incident and provide the following:

(1) Assume incident command responsibilities.

(2) Conduct an in-depth investigation of the incident.

(3) Prepare an administrative report.

b. All incidents will be handled in accordance with this manual.

c. All interagency agreements will be coordinated through FSS.