

**BOX ELDER COUNTY OFFICER-INVOLVED CRITICAL INCIDENT  
INVESTIGATION INTERLOCAL AGREEMENT**

AGREEMENT entered into this   14<sup>th</sup>   day of   June  , 2014 by and between the following law enforcement agencies (hereinafter referred to as "Participating Agencies");

Brigham City Police Department  
Box Elder County Sheriff's Office  
Garland City Police Department  
Mantua City Police Department  
Perry City Police Department  
Tremonton City Police Department  
Willard City Police Department  
Utah Division of Wildlife Resources  
Utah State Parks and Recreation  
Utah Highway Patrol

**RECITALS**

WHEREAS, the Participating Agencies are desirous of entering into an Agreement to provide for the combining of their resources for the investigation of critical incidents involving law enforcement officers from the Participating Agencies; and

WHEREAS, the Participating Agencies are desirous of complying with the Utah Interlocal Cooperation Act, and the governing bodies of each of the Participating Agencies have adopted appropriate resolutions authorizing this Agreement.

NOW, THEREFORE, based upon the above recitals and the consideration set forth herein, the Participating Agencies agree as follows:

1. **TERM**. The term of this Agreement shall be for eight (8) years.
2. **ORGANIZATION**. No separate legal or administrative entity will be created by this Agreement. A joint board, consisting of the chief law enforcement officer of each of the

Participating Agencies shall be responsible for administering this joint and cooperative undertaking.

3. **PURPOSE.** The purpose of this Agreement is to provide for a manner for the combining of resources of the Participating Agencies to be used in the investigation of critical incidents involving law enforcement officers from the Participating Agencies. In addition, a protocol will be developed to serve as a guideline in the combining of said resources.

4. **PROTOCOL.** The protocol to be followed by the Participating Agencies is entitled "OFFICER-INVOLVED CRITICAL INCIDENT INVESTIGATIONS," a copy of which is attached hereto as Exhibit "A". This protocol represents the understanding and agreement among the Participating Agencies about how such cases are to be investigated and it is anticipated that individual agencies may make minor modifications, not affecting interdepartmental provisions, to meet agency requirements. Furthermore, the protocol is neither a statute, ordinance, or regulation, and is intended in no way to increase the civil or criminal liability of Participating Agencies or their employees, and it shall not be construed as creating any mandatory obligation to or on behalf of third parties. The protocol is not a contract, and no participant or other party has any right of enforcement based upon it. The protocol is a non-binding agreement among the Participating Agencies to be used for the purpose of assisting in the investigation of officer-involved critical incidents.

5. **MANNER OF FINANCING.** Each Participating Agency will bear its own individual costs when providing the manpower and resources required for participation in this Agreement and in the investigation of an officer-involved critical incident.

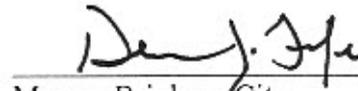
6. **TERMINATION OF AGREEMENT.** Any Participating Agency may withdraw from this Agreement at any time by providing written notice to each of the other Participating Agencies.

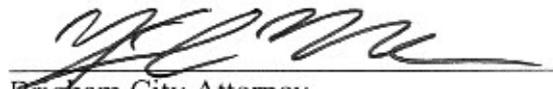
7. **ACQUISITION AND DISPOSITION OF PROPERTY.** Any real, personal or other property acquired for use in conjunction with this Agreement, shall be acquired at the sole and absolute discretion of the Participating Agencies and shall be held and/or disposed of by the Participating Agency acquiring said property at the sole and absolute discretion of said Participating Agency.

8. **APPROVAL BY ATTORNEY.** Each of the Participating Agencies represents and acknowledges that this Agreement has been reviewed and approved by an attorney authorized to represent each of said Participating Agencies.

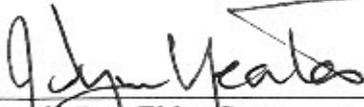
9. **FILING.** Each of the Participating Agencies understands and agrees that this Agreement shall be filed with the keeper of records of each of the Participating Agencies.

  
\_\_\_\_\_  
Chief, Brigham City Police Department  
Date: September 16-2013

  
\_\_\_\_\_  
Mayor, Brigham City  
Date: 19 September 2013

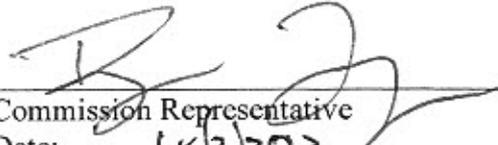
  
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Brigham City Attorney  
Date: September 17-2013

**BOX ELDER COUNTY OFFICER-INVOLVED CRITICAL INCIDENT  
INVESTIGATION INTERLOCAL AGREEMENT**



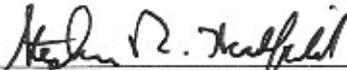
Sheriff, Box Elder County

Date: 10/2/2013



Commission Representative

Date: 10/2/2013



Box Elder County Attorney

Date: 10/2/2013

**BOX ELDER COUNTY OFFICER-INVOLVED CRITICAL INCIDENT  
INVESTIGATION INTERLOCAL AGREEMENT**

Bome

Chief, Garland City Police Department

Date: 10/30/13

Allen Bennett

Mayor, Garland City

Date: 10/23/13

Samuel D. Jones

Garland City Attorney

Date: 10/24/2013

**BOX ELDER COUNTY OFFICER-INVOLVED CRITICAL INCIDENT  
INVESTIGATION INTERLOCAL AGREEMENT**

  
\_\_\_\_\_  
Chief, Mantua City Police Department  
Date: 10-07-2013

  
\_\_\_\_\_  
Mayor, Mantua City  
Date: 10/7/2013

  
\_\_\_\_\_  
Mantua City Attorney  
Date: 10/22/13

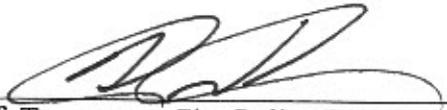
**BOX ELDER COUNTY OFFICER-INVOLVED CRITICAL INCIDENT  
INVESTIGATION INTERLOCAL AGREEMENT**

*Al Weese*  
Chief, Perry City Police Department  
Date: 4-29-2014

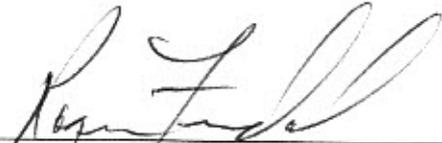
*Florencia*  
Mayor, Perry City  
Date: 4.29.2014

*Malene H. Molyard*  
Perry City Attorney  
Date: 4-29-2014

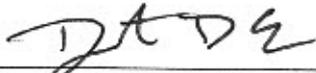
**BOX ELDER COUNTY OFFICER-INVOLVED CRITICAL INCIDENT  
INVESTIGATION INTERLOCAL AGREEMENT**



Chief, Tremonton City Police Department  
Date: 9/6/2013

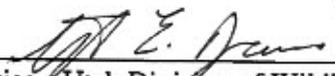


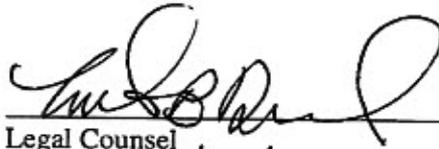
Mayor, Tremonton City  
Date: 9-11-13



Tremonton City Attorney  
Date: 9/9/13

**BOX ELDER COUNTY OFFICER-INVOLVED CRITICAL INCIDENT  
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\_\_\_\_\_  
Supervisor, Utah Division of Wildlife Resources  
Date: 10-8-2013

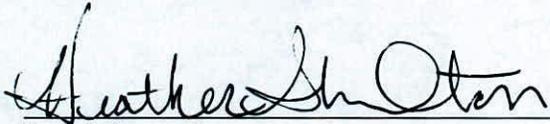
  
\_\_\_\_\_  
Legal Counsel  
Date: 9/24/2013

**BOX ELDER COUNTY OFFICER-INVOLVED CRITICAL INCIDENT  
INVESTIGATION INTERLOCAL AGREEMENT**



Supervisor, Utah State Parks and Recreation

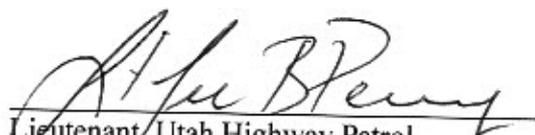
Date: 17 April 2014

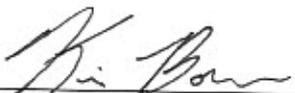


Legal Counsel

Date: 17 April, 2014

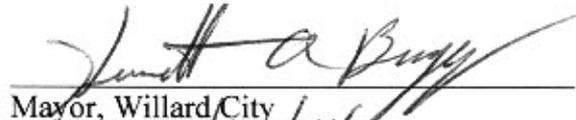
**BOX ELDER COUNTY OFFICER-INVOLVED CRITICAL INCIDENT  
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Lieutenant, Utah Highway Patrol  
Date: 7 July 2014

  
Legal Counsel  
Date: 7 July 2014

**BOX ELDER COUNTY OFFICER-INVOLVED CRITICAL INCIDENT  
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\_\_\_\_\_  
Chief, Willard City Police Department  
Date: 6/12/14

  
\_\_\_\_\_  
Mayor, Willard City  
Date: 6/12/14

  
\_\_\_\_\_  
Willard City Attorney  
Date: 6-11-14

# **OFFICER-INVOLVED CRITICAL INCIDENT INVESTIGATIONS**

**OICII**

**\* \* \* \* \***

## **MEMBER AGENCIES**

Brigham City Police Department  
Box Elder County Sheriff's Office  
Garland Police Department  
Mantua Police Department  
Perry City Police Department  
Tremonton Police Department  
Willard Police Department  
Utah Division of Wildlife Resources  
Utah State Parks and Recreation  
Utah Highway Patrol

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# **I. DEFINITIONS**

## **A. Officer-Involved Fatal Incidents**

Incidents occurring in Box Elder County involving two or more people, in which a police agency employee is involved as an actor(s), victim(s) or custodial officer(s), where a "fatal injury" occurs. (See paragraph #27 for definition.) Such "incidents" include, but are not limited to the following: **(1)**

1. Intentional and accidental shootings, including police tactical incidents involving specialized response teams. **(2)**
2. Intentional and accidental use of impact weapons or any other dangerous deadly weapons. **(3)**
3. Assaults upon police officers; assaults on other police employees who are on duty or are acting for a law enforcement purpose. **(4)**
4. Attempts by police employees to make arrests or to otherwise gain physical control for a law enforcement purpose. **(5)**
5. Physical altercations, mutual combat, and domestic violence in which the police employee is acting in a private citizen capacity. **(6)**
6. Any fatal injury in police custody, but excluding fatal injuries of prisoners which occur while the inmate is under a physician's treatment for a disease or other natural condition which has been diagnosed prior to death and which does not involve custodial trauma, custodial suicide, or custodial ingestion of toxic substance. **(7)**
7. Any fatal injury to a person who is a passenger of a police officer (such as ride-alongs, emergency transports, etc.). **(8)**
8. Vehicular collision, and specifically: **(9)**
  - a. Including any vehicle fatality which occurs **(10)**
    - 1) after, although not necessarily as a proximate cause of, police gunfire directed at the suspect or the suspect vehicle, **(11)**
    - 2) in connection with use of vehicle(s) by police as an "enforcement intervention" technique intended to apprehend a suspect. ("Enforcement intervention" includes vehicle ramming, roadblocks, and forcing a vehicle to alter its course by cutting in front of it or by contact.) **(12)**

- b. Excluding any vehicle fatality which involves: **(13)**
  - 1) off-duty non-sworn police employees who are not, at the time of the incident, acting for an actual, apparent, or purported law enforcement purpose; **(14)**
  - 2) solo vehicular collisions in which the only injury is suffered by a police employee who was the driver and sole occupant of a vehicle which was not involved in a collision with any other occupied vehicle; **(15)**
  - 3) police pursuits wherein the suspect vehicle which is being pursued by police vehicle(s) collides with another vehicle, a pedestrian, or an object, where that collision did not result from collision contact between the suspect vehicle and a police vehicle or from “enforcement intervention.” **(16)**

**B. Police Employee**

This protocol applies to employees and to certain other people affiliated with the law enforcement agencies which are members of this protocol Agreement, as follows: **(17)**

- 1. Full-time, part-time, and hourly sworn officers, whether on-duty or off-duty, and whether acting for a law enforcement or private purpose at the time of the incident; **(18)**
- 2. Full-time non-sworn employees who are on-duty at the time of the incident, or who are acting actually, apparently, or purportedly for a law enforcement purpose at the time of the incident; **(19)**
- 3. Part-time non-sworn employees (same as paragraph #18); **(20)**
- 4. Reserve police officers who are on-duty or who are acting actually, apparently, or purportedly for a law enforcement purpose at the time of the incident; **(21)**
- 5. 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 officer. **(22)**

C. Actor

1. A person whose act is a “proximate cause” of a fatal injury to another person, or **(23)**
2. a person who intends that his act be a “proximate cause” of serious bodily injury or death to another person who is actually killed by another. **(24)**

D. Deceased Subject **(25)**

The person who is injured by the act of the actor, whether or not intentionally.

E. Proximate Cause

A cause which, in a natural and continuous sequence, produces the fatal injury, without which cause the injury would not have occurred. Reasonable foreseeability of the fatal injury is not a factor relevant to this definition. **(26)**

F. Fatal Injury

Death, or injury which is so severe that death is likely to result. **(27)**

G. Venue Agency

The agency or agencies within whose geographical jurisdiction the incident occurs. **(28)**

H. Employer Agency

The agency by whom the involved police employee is employed or with which he/she is affiliated. (In many cases, the venue agency will also be the employer agency.) **(29)**

I. Criminal Investigators

Those investigators who, under this protocol, are assigned to complete the criminal investigation of an officer-involved fatal incident. **(30)**

J. Administrative Investigators

Those investigators assigned by the employer agency to conduct the administrative investigation of the incident. **(31)**

K. Member Agencies

The law enforcement agencies in Box Elder County which are members of the protocol Agreement. (32)

**II. INVOCATION OF PROTOCOL**

A. Automatic and Immediate

Upon the occurrence of an officer-involved fatal incident, this protocol is automatically effective immediately. (33)

B. Optional

1. Each member agency of this Agreement, when in the capacity of a venue agency or employer agency, may itself invoke this protocol upon the occurrence of any sensitive or critical event involving a police employee which may have possible criminal liability attached. Upon this unilateral invocation, the matter will be investigated under the provisions of this protocol. (34)

a. Examples:

1. A fatality which is not covered by this protocol.
2. An officer-involved incident where the injuries are not fatal.
3. Any other sensitive or critical event involving a police employee where criminal conduct is a possibility to be investigated.

b. The County Attorney has discretion to decline participation in optional invocations.

2. In lieu of invoking this protocol, the involved agency or agencies may, of course, investigate the matter itself or seek aid from other agencies.

**III. INVESTIGATIVE AGENCIES, FORMATS, AND RESPONSIBILITIES**

To properly recognize and accommodate the various interests and the rules of law which may be involved in any incident, investigations of these matters must be performed under two separate investigative formats: (1) the criminal investigation; and (2) the administrative investigation. (35)

A. Criminal Investigation

1. The criminal investigation has investigative priority over the administrative investigation and it begins immediately after an incident has occurred. **(36)**
2. The criminal investigation shall be performed by the member agencies with the following exceptions: **(37)**
  - a. At least one member of the criminal investigative team shall be assigned from the employer agency. **(38)**
  - b. At least one member of the criminal investigative team shall be assigned from the venue agency. **(39)**
  - c. The Box Elder County Attorney's Office (for advisory purposes only). **(40)**
  - d. The participating agencies will function under the direction of the chief investigator of the venue agency. The chief investigator has the authority to decide investigative issues. **(41)**
  - e. In the event that the chief investigator of the venue agency is unavailable, or in the event the venue agency is the same as the officer-involved agency, the lead investigator's position shall be appointed from a neutral agency within the member agencies, determined by the venue agency. **(42)**
3. The goal is to develop all available relevant information about the incident. This information will be used in two ways: **(43)**
  - a. To determine the presence or absence of criminal liability on the part of all those involved in the incident. Specifically, **(44)**
    1. to determine whether the nature and the quality of the conduct is prohibited by statutes which provide for criminal penalties upon conviction; and **(45)**
    2. if criminal conduct does exist, determine the identity of the person(s) responsible for that conduct; and **(46)**
    3. if criminal conduct does exist, determine the degree of the crime(s), the existence of any factual or legal defenses to the crime, and determine the presence or absence of any factors which would mitigate or aggravate punishment for that crime. **(47)**

- b. To incidentally provide factual information to the employer agency's management for its internal use. **(48)**

While the criminal investigators do not direct their investigative attention to administrative concerns, it is recognized that the criminal investigations results are of proper interest to agency management for its internal use and those results are fully available for that purpose. **(49)**

- 4. The investigation is required to follow the rules of law which apply to all criminal proceedings including constitutional, statutory, and case law regarding rights which are covered by the United States Constitution's 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amendments. **(50)**
- 5. It is performed in a manner that provides a thorough, fair, and professional investigation which is free of conflicts of interest. **(51)**
- 6. Venue Determination **(52)**
  - a. When an incident occurs in two or more jurisdictions, each of those jurisdictions is a venue agency. **(53)**
  - b. When an incident occurs on the boundary of two jurisdictions or at a location where the relevant boundary is not readily ascertainable or is in dispute, the venue agency shall be: **(54)**
    - 1. the employer agency if the actor is employed by either boundary agency; **(55)**
    - 2. both boundary agencies if actors are employed by both; **(56)**
    - 3. the agency which has the greater interest in the case by virtue of having the predominant police involvement in the incident or by virtue of having had the majority of acts leading up to the fatality occurring within its jurisdiction; **(57)**
  - c. For custodial deaths, the agency having custody of the person at the time his/her distress was first discovered is a venue agency. Also, a venue agency is the one within whose jurisdiction any fatal stroke was inflicted. **(58)**
    - 1. If the death was caused by conduct which was apparently criminal, the lead venue agency is the one within whose

geographical jurisdiction the act occurred. If there is apparently no criminal conduct involved in the cause of death, the lead venue agency is the one having custody of the victim when distress was first discovered. **(59)**

d. If an on-duty police officer (sworn) is involved as the actor in an incident which occurs within the jurisdiction of another member agency, and if that officer was acting in the performance of his/her duty at the time of the incident, the venue agency may elect to relinquish its role in the criminal investigation to the other team agencies. **(60)**

7. When a venue or employer agency lacks sufficient resources, or when it believes it cannot properly investigate an incident for any reason, it has two options: **(61)**

a. Obtain criminal investigative assistance from other member agencies. Borrowed officers would then be assigned to the criminal investigative team as members of the requesting agency. **(62)**

b. Relinquish criminal investigative responsibility to another member agency. **(63)**

8. Scene Security **(64)**

Each agency has initial responsibility for immediately securing the crime scene and its contents, access control, and the identification and sequestration of witnesses. Responsibility may be changed by mutual agreement as the investigation progresses. **(65)**

9. Responsibility for Physical Evidence Collection, Preservation, and Analysis **(66)**

a. The criminal investigators have the responsibility for documentation of the scene and for the collection, preservation, and analysis of physical evidence and/or transmission of collected evidence to the State Crime Lab. **(67)**

b. Prior to final relinquishment of the scene, the criminal investigators will provide the administrative investigators an opportunity to assess the need for further evidence processing. **(68)**

10. Notifications **(69)**

Upon identifying an occurrence as an officer-involved fatal incident, the venue agency shall make the following notifications as promptly as possible to: **(70)**

- a. Intra-departmental officers, as required by that agency's procedures. **(71)**
- b. The employer agency, if applicable and if not yet aware. **(72)**
- c. The County Attorney's Office. **(73)**
- d. Member agencies. **(74)**
- e. The Medical Examiner's office, upon confirmation of a fatality. This is a required notification. (Body removal can be delayed as necessary for evidence processing.) **(75)**

11. Scene Procedures **(76)**

- a. Emergency life saving measures shall have priority. **(77)**
- b. If a person is transported to a hospital with fatal injuries (see paragraph #27 for definition), an officer should accompany that injured person in the same vehicle in order to: **(78)**
  1. Locate, preserve, safeguard, and maintain the chain of physical evidence. **(79)**
  2. Obtain a dying declaration, a spontaneous statement, a contemporaneous statement, a statement of then-existing or previous mental or physical state, if at all possible. **(80)**
  3. Maintain custody of the person if he/she has been arrested. **(81)**
  4. Provide information to medical personnel about the incident as relevant to treatment, and obtain information from medical personnel relevant to the investigation. **(82)**
  5. Identify relevant people, including witnesses and medical personnel. **(83)**
  6. Be available for contacts with the victim's family, if appropriate. **(84)**

- c. The scene must be secured immediately with a perimeter established a safe distance away to safeguard evidence. In some circumstances an inner and an outer perimeter are appropriate. **(85)**
1. Access to the scene must be limited to only those officials who must enter for an investigative purpose. **(86)**
  2. A written log will be established as quickly as possible to identify all persons entering the scene, the time of their entry and exit, and the reason for entry. **(87)**
  3. When not needed for life-saving efforts, entry by fire and ambulance personnel should be restricted to the absolute minimum necessary to perform the needed duties. **(88)**
  4. No items shall be moved inside the scene or removed from the scene without approval of the team unless absolutely necessary for public or officer safety or for preservation of evidence. If removal without approval is necessary, the removal must be witnessed and logged. The log shall state the identity of the person removing the described object, the reason for removal, a witness to the removal, and the time of removal. The item should be photographed prior to removal. **(89)**
- d. If any type of weapon or instrument was involved in the fatal incident, the supervisor at the scene will promptly see to the security and/or collection of such items, as follows: **(90)**
1. If the area is secure, loose weapons or instruments shall be left in place and undisturbed. **(91)**
  2. If the area is not secure, the supervising officer at the scene shall decide whether the items can be safely left in place or whether prompt removal is necessary. If such items must be removed for protection, they should be photographed in place prior to removal if possible. **(92)**
  3. If an involved officer still has personal possession of a weapon he/she 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 officers if possible) obtain possession of the weapon. Sidearms must not be removed from their holsters; obtain the entire gun belt if necessary to avoid removing the weapon from its holster.

Sidearms should be replaced by the supervisor as quickly as possible if the officer so wishes, unless reason dictates otherwise. **(93)**

4. In shooting cases, the supervising officer will check the firearms of all officers 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. **(94)**
5. 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 which weapon or instrument was received shall also be recorded. **(95)**
  - a. In firearm cases, the supervising officer will also (see paragraph #92, 93, 94) 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 (see paragraph #93). **(96)**
    1. If the mechanism of a firearm is obviously jammed, no attempt shall be made to unload the weapon or clear the jam. **(97)**
    2. If the firearm is cocked (or if a semi-automatic 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. **(98)**
  - b. Any officer 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 (see paragraph #93-96) and shall otherwise maintain the chain of evidence. **(99)**

- 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. **(100)**
6. 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 officer at the scene. **(101)**
7. Twelve rounds of the same type of ammunition fired will be collected by the criminal investigators from each shooting officer (or from another appropriate source if the officer has insufficient similar rounds remaining). **(102)**
8. Firearms which do not need to be retained as evidence, as determined by the criminal investigators, will be returned to a designated representative of the employer agency promptly after the Crime Lab has inspected and tested them. The Lab appreciates that prompt return of officers' handguns is important, and will return them as soon as possible. **(103)**
- e. All other physical evidence at the scene which is in danger of being contaminated, destroyed, or removed must be promptly and effectively observed, recorded, and then protected for subsequent collection. Evidence adhering to live participants (such as bloodstains), footprints and fingerprints, volatile substances, various types of trace evidence, and firearms discharge evidence, are examples. **(104)**
- f. Transporting and Sequestering of Involved Officers: **(105)**
  1. Officers 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 their own police station unless other suitable and agreeable arrangements are made for them. Officer(s) not

involved in the incident shall be assigned to accompany these officers, either in a group or individually. Actors should be driven to the station by an uninvolved officer. **(106)**

2. If circumstances prohibit removal of all witnesses and involved officers from the scene at once, those officers who were actors should be relieved first. **(107)**
3. An uninvolved officer shall remain with involved officers, either in a group or individually, until they can be interviewed. The sequestering officers are present to ensure the officers have privacy, that their needs are accommodated, and to ensure the integrity of each officer's later statement to investigators. They should not be present during confidential (privileged) conversations [see paragraph #123 (1) and (2)]. **(108)**
4. Involved officers are not to discuss the case among themselves, with sequestering officers, or with others except their representatives. **(109)**
5. While awaiting interviews, involved officers 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. **(110)**

g. Custodial Death Scenes **(111)**

When an incident occurs in a jail facility or other location where inmates may have witnessed any relevant part of the incident, these inmates should be identified and separated, if possible, pending interviews by criminal investigators. **(112)**

12. Interviewing Police Employees **(113)**

Investigating officers should understand that answers given as part of an administrative investigation interview may be excludable against a police employee as not complying with the constraints of the Garrity decision if criminal responsibility is associated with the police employee's conduct.

- a. The police employee must be advised in an interview what his statement is being used for, administrative or criminal. **(114)**

- b. The interviewing officer should not be from the employer agency but the employer agency may be present during the interview. **(115)**
- c. The interview must be expressly non-custodial, the officer should be advised that he or she is free to leave, no Miranda warnings given. **(116)**
- d. If/when the interview becomes a custodial interrogation, the Miranda cases are applicable. **(117)**
- e. To insure proof of voluntariness in a non-custodial interview, the team interviewers may wish to advise certain interviewees of the following: **(118)**
  - 1. The interviewee is not in custody and is free to leave at any time.
  - 2. The interviewee is not obligated to answer any questions asked by the investigators, and no punitive action will be taken against the interviewee if he/she refuses to be interviewed by the team.
- f. However, officers will not be compelled by threats of administrative punitive action (or otherwise) to answer questions of team interviewers which could be self-incriminating. **(119)**
- g. Interviews will be conducted separately. **(120)**
- h. Interviews will normally be fully recorded. **(121)**
- i. The interviewees will be considered as witnesses unless the circumstances dictate otherwise. **(122)**
- j. Police employees have the same rights and privileges regarding team interviews that any other citizen would have, including the right to consult with a representative prior to interview and the right to have the representative present during the interview. **(123)**
  - 1. The representative should be allowed to consult about the facts of the incident privately with only one police employee at a time.
  - 2. If the representative is not a doctor, lawyer, psychotherapist, or priest, or an agent of such profession,

the contents of private conversations between the representative and his/her police employee client are not privileged.

k. If a grant of immunity is desired by interviewing officers, the County Attorney or his representative must be contacted for assistance. **(124)**

1. Intoxicant Testing **(125)**

1. Criminal Investigation **(126)**

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

- a. Obtain the blood and/or urine sample by valid consent. **(127)**
- b. Obtain a search warrant. **(128)**
- c. If an arrestee refuses to comply with the request for a sample, attempts will be made to obtain the sample in accordance with case law. **(129)**

2. Administrative Investigations **(130)**

- a. Intoxicant test results obtained by team investigators are available to the administrative investigators. **(131)**
- b. In the event the team does not obtain samples for intoxicant testing, the employer agency may then seek to obtain samples. The criminal investigators have the first opportunity however. **(132)**
  - 1. Authority for the employer agency to obtain samples includes (1) valid consent, and (2) ordering the employee to provide the samples based on the employment relationship. **(133)**

2. Some departments have blanket orders regarding employee intoxicant testing while other departments make decisions on a case-by-case basis. **(134)**
  3. Miscellaneous **(135)**
    - 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. **(136)**
    - b. Samples should be collected promptly after the incident for most meaningful results. **(137)**
    - c. A police employee may volunteer to provide sample(s) for intoxicant testing even if criminal and administrative investigators haven't obtained samples. Similarly, a person from whom criminal or administrative investigators have obtained samples may request that another sample be taken for independent testing. The taking of this sample and subsequent testing will not be at the expense of the criminal or administrative teams. Such a request will be promptly honored. **(138)**
13. Autopsy **(139)**
- a. At least one member of the criminal investigative team's members will attend the autopsy. Investigators representing other agencies may also attend. **(140)**
  - b. The autopsy pathologist will receive a complete briefing prior to the post-mortem examination. This briefing, which includes all the information known at that time which may be relevant to the cause, manner, and means of death, shall be attended by at least one member of the criminal investigative team. **(141)**

14. Box Elder County Attorney's Office **(142)**

- a. The County Attorney's office has the following roles in incident investigations: **(143)**
  - 1. An attorney will assist and advise the criminal team on various criminal law issues which may arise, such as Miranda, voluntariness, search and seizure, probable cause to arrest, detentions and releases, elements of crimes, immunity, and legal defenses. **(144)**
  - 2. Upon completion of the criminal investigation, analyze the facts of the incident as well as the relevant law to determine if criminal laws were broken. If so, prosecute as appropriate. **(145)**
- b. The County Attorney has his own separate investigative authority. When deemed appropriate by the County Attorney (or his designated alternate in his absence), the County Attorney's Office may perform an independent investigation separate from the criminal investigation. **(146)**

15. Report Writing **(147)**

- a. All criminal investigators will write reports documenting their participation in the investigation. **(148)**
- b. The investigators within the criminal team will allocate and divide among themselves the responsibility for documenting interviews and observations. **(149)**
- c. The venue agency has the ultimate responsibility for report writing and for the collection of reports from other agencies. **(150)**
- d. Prompt completion and distribution of reports is essential. All involved agencies and investigators will strive for report completion and distribution within 30 days after the incident. **(151)**

B. Administrative Investigation **(152)**

1. 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 employer agency also has need for information about the incident for non-criminal purposes. **(153)**
  - a. Internal Affairs **(154)**

Determination of whether or not its employees violated departmental regulations. **(155)**
  - b. Agency Improvement

Determination of the adequacy of its policies, procedures, programs, training, equipment, personnel programs, and supervision. **(156)**
  - c. Government and Community Relations

Informing itself of the incident's details so it may adequately inform its parent governmental body, and so it may be responsive to comments about the incident from the public and the media. **(157)**
  - d. Claims and Litigation

Preparing for administrative claims and/or civil litigation that may be initiated by or against the agency. **(158)**
2. The employer agency may use an administrative investigation and/or a more specific "civil litigation investigation" format to investigate these concerns as it considers appropriate. 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 forms for access to witnesses, physical evidence, and involved parties, and that it will prevent the criminal investigation from being compromised by an untimely exercise of the employer agency's administrative rights. **(159)**
3. The initiation of administrative investigations and the extent of those investigations is, of course, solely the responsibility of the employer agency. **(160)**

4. 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 without approval of the County Attorney's office. Other results of the administrative investigation may or may not be privileged from disclosure to others, including the criminal investigators, depending upon applicable law. **(161)**
5. The employer agency should immediately assign at least one administrative investigator upon being notified of the incident. This officer can function as a liaison between the employer and the criminal investigators, can gather information for the agency, and can be the criminal investigator's contact for personnel matters, even if no actual investigation is then warranted by that officer. (If the employer agency has a policy, it should be made consistent with this protocol.) **(162)**
6. The criminal investigative team will promptly and periodically brief the administrative investigators of the criminal investigation's progress. The administrative investigators will have access to briefings, the scene, physical evidence, and interviewees' statements. **(163)**
7. Administrative investigators are not bound by some of the same investigative restrictions that apply to criminal investigators (see paragraph #161). **(164)**

#### **IV. NEWS MEDIA RELATIONS (165)**

- A. The interests of the public's right to know what occurred must be balanced with the requirements of the investigation and with the rights of individuals involved. **(166)**
- B. As in all other cases, care must be taken to insure that intentionally misleading, erroneous, or false statements are not made. **(167)**
- C. Agencies and individuals who are not well-informed and not intimately involved with investigation's results and progress should not make statements to the press. **(168)**
- D. While any agency cannot be prohibited from making statements to the news media about an incident, these guidelines are established: **(169)**
  1. The venue agency has the responsibility for making press releases about the incident and its investigation for the first 48 hours. **(170)**

- a. Officers in close contact with the criminal investigative team are in the best position to comment about the facts of the case and the progress of the investigation. **(171)**

2. The Employer Agency **(172)**

If the employer agency is not also the venue agency, fewer problems will arise, especially at the early stages of the investigation, if the employer agency limits its comments to the following areas: **(173)**

- a. The employer-employee relationship. **(174)**
- b. Factual material revealed by the employer agency's own administrative investigation of the incident. **(175)**
- c. Information which has been cleared for release by the criminal investigative team. **(176)**

3. The Crime Laboratory **(177)**

Information released will usually be confined to general laboratory procedures, scientific facts and principles, and testing procedures. Specific results of searching, testing, and analysis will generally not be released without clearance from an investigator from the criminal team. **(178)**

4. The Medical Examiner's Office **(179)**

Release of information will generally be limited to the following:

- a. Autopsy findings, including the condition of the deceased, the cause of death, and toxicology test results, after the involved agencies have received this information. **(180)**
- b. The identity of those present at the autopsy, including the identity and affiliation of the pathologist(s). **(181)**
- c. The general nature of further medical testing or medical investigation to be done. **(182)**
- d. Information obtained by Medical Examiner investigators directly from medical sources, the deceased's family members, or witnesses. Information obtained from the incident investigators or from the involved agencies will not be released by the Medical Examiner's Office without prior clearance from those agencies. **(183)**

- e. The role of the Medical Examiner's Office in the investigation of death in general terms. **(184)**
- E. If team investigators determine that the release of a specific piece of information would materially jeopardize the investigation, they shall notify those agencies possessing that knowledge of the hazards of releasing it. **(185)**
- F. Interruptions to the investigators will be minimized if the agencies assign particular individuals to be the sole designated contacts with the news media. **(186)**

**V. ACCESS TO REPORTS AND EVIDENCE (187)**

- A. Material (as defined in paragraphs #190-193) which is created or collected by, or at the request or direction of, the criminal investigative team, will be made available in a timely manner to those agencies which have an interest in the investigation, including the administrative investigators. **(188)**
- B. The material will include: **(189)**
  - 1. Reports, written and collected. **(190)**
  - 2. Access to physical evidence. **(191)**
  - 3. Photographs, diagrams, and video tapes. **(192)**
  - 4. Audio tape recordings. **(193)**
- C. When the criminal investigative team and/or County Attorney's Office concludes that the physical evidence collected by the criminal investigators is no longer needed for criminal law purposes, the employer agency shall be notified of that decision so that it can assume responsibility for preservation of such evidence if it desires. **(194)**

**End of Protocol**