



Policy Number: 304 – Officer Involved Shooting/Critical Incident

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Approved By: Denis Otterness, Chief of Police

304.1 PURPOSE AND SCOPE

The purpose of this policy is to establish Montana State University Billings Police Department (Department) policy and procedures for the investigation of an incident in which a person is injured or dies as the result of an officer-involved shooting, or dies as a result of another action of a Department officer.

In other incidents not covered by this policy, the Chief of Police may decide that the investigation will follow the process provided in this policy.

304.2 POLICY

The policy of this Department is to ensure that officer-involved shootings, critical incidents and deaths are investigated in a thorough, fair and impartial manner.

304.3 TYPES OF INVESTIGATIONS

Officer-involved shootings, critical incidents and deaths involve several separate investigations. The investigations may include:

- A criminal investigation of the suspect's actions.
- A criminal investigation of the involved officer's actions.
- An administrative investigation as to policy compliance by involved officers.
- A civil investigation to determine potential liability.

304.4 CONTROL OF INVESTIGATIONS

Investigators from an outside agency shall be assigned to work on the criminal investigation of officer-involved shootings and deaths. A liaison officer from this Department may, at the Chief of Police's discretion, be assigned to assist with the investigation.

Jurisdiction is determined by the location of the critical incident. The following scenarios outline the jurisdictional responsibilities for investigating officer-involved critical incidents, shootings and deaths.

304.4.1 CRIMINAL INVESTIGATION OF SUSPECT ACTION

The investigation of any possible criminal conduct by the suspect is controlled by the agency in whose jurisdiction the suspect's crime occurred. For example, the Montana State University Billings Police Department would control the investigation if the suspect's crime occurred at Montana State University Billings.

If multiple crimes have been committed in multiple jurisdictions, identification of the agency that will control the investigation may be reached in the same way as with any other crime. The investigation may be conducted by the agency in control of the criminal investigation of the involved officer, at the discretion of the Chief of Police, and with concurrence from the other agency

304.4.2 CRIMINAL INVESTIGATIONS OF OFFICER ACTIONS

The control of the criminal investigation into the involved officer's conduct during the incident will be determined by the employing agency's protocol. When an officer from this Department is involved, the criminal investigation will be handled according to the Criminal Investigation Section (304.6) of this policy.

Requests made of this Department to investigate a shooting or death involving an outside agency's officer shall be referred to the Chief of Police, or their designee, for approval.

304.4.3 ADMINISTRATIVE AND CIVIL INVESTIGATION

Regardless of where the incident occurs, the administrative and civil investigation of each involved officer is controlled by the respective employing agency.

304.5 INVESTIGATION PROCESS

The following procedures are guidelines used in the investigation of an officer-involved shooting or critical incident/death.

304.5.1 UNINVOLVED OFFICER RESPONSIBILITIES

Upon arrival at the scene of an officer-involved shooting or death, the first uninvolved officer from this Department will be the officer-in-charge, and will assume the responsibilities of a supervisor until properly relieved. This officer should, as appropriate:

- a. Secure the scene and identify and eliminate hazards for all those involved.
- b. Check for injured persons and evacuate as needed.
- c. Take reasonable steps to obtain emergency medical attention for injured individuals.
- d. Request additional resources from the Department and/or other agencies.
- e. Coordinate a perimeter or pursuit of suspects.
- f. Notify a Department supervisor and brief the supervisor upon arrival.
- g. Determine if an Emergency Notification is needed and coordinate the release of the notification through the Chief of Police, or their designee.

304.5.2 SUPERVISOR RESPONSIBILITIES

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

- a. Attempt to obtain a brief overview of the situation from any uninvolved officers.
 1. In the event that there are no uninvolved officers who can supply an adequate overview, the supervisor should attempt to obtain a brief voluntary overview from the involved officer.
- b. If necessary, the supervisor may administratively order any Department officer to immediately provide public safety information necessary to secure the scene, identify injured parties and pursue suspects.
 1. Public safety information shall be limited to such things as outstanding suspect information, number and direction of any shots fired, perimeter of the incident scene, identity of known or potential witnesses and any other pertinent information.
 2. The initial on-scene supervisor should not attempt to order any involved officer to provide any information other than public safety information.
- c. Provide all available information to the Chief of Police, or their designee, and the City/County 911 Center. If feasible, sensitive information should be communicated over secure networks.
- d. Take command of and secure the incident scene with additional Department officers until properly relieved by another supervisor, or a supervisor from an assisting agency. As soon as practicable, ensure that involved officers are transported (separately, if feasible) to a suitable location for further direction.
 1. Each involved Department officer should be given an administrative order not to discuss the incident with other involved officers or Department members, pending further direction from a supervisor.
 2. When an involved officer's weapon is taken or left at the scene for other than officer-safety reasons (e.g., evidence), ensure that s/he is provided with a comparable replacement weapon or transported by other officers.
- e. The on-scene supervisor shall be responsible for coordinating all aspects of the incident until s/he is relieved by the Chief of Police, or their designee.
- f. All outside inquiries about the incident shall be directed to the Chief of Police, or their designee. The lead investigating agency shall be notified before releasing information specific to the incident. The Chief of Police, or their designee, should notify the Director of University Marketing and Communications prior to releasing information.

304.5.3 NOTIFICATIONS

The following persons shall be notified as soon as practicable:

- Chief of Police
- Assistant Chief of Police
- Billings Police Department shift Commander
- Chaplain

- Coroner (if necessary)
- Involved officer's agency representative (if requested)
- University Legal Counsel
- University Marketing and Communications Director

304.5.4 INVOLVED OFFICERS

The following shall be considered for any involved officer:

- a. Any request for legal or union representation will be accommodated.
 1. Involved Department officers shall not be permitted to meet collectively or in a group with an attorney, or any representative, prior to providing a formal interview or report.
 2. Requests from involved non-Department officers should be referred to their employing agency.
- b. Discussions with licensed attorneys will be considered privileged as attorney-client communications.
- c. Discussions with employee groups/agency representatives will be privileged only as to the discussion of non-criminal information.
- d. A licensed mental health professional shall be provided by the Department to each involved officer. A licensed mental health professional shall also be provided to any other affected Department members, upon request.
 1. Interviews with a licensed mental health professional will be considered privileged.
 2. An interview or session with a licensed mental health professional may take place prior to the officer providing a formal interview or report. However, the involved officer(s) shall not be permitted to consult, or meet collectively or in a group, with a licensed mental health professional prior to providing a formal interview or report.
 3. A separate fitness-for-duty exam may also be required (see the Fitness for Duty Policy).
- e. Communications with critical incident stress management team members are generally confidential and may not be disclosed to a third party or in a criminal, civil, or administrative proceeding, without a court order or as authorized by § 39-74-105, MCA.
- f. Care should be taken to preserve the integrity of any physical evidence present on the involved officer(s) equipment or clothing, such as blood or fingerprints, until investigators or lab personnel can properly retrieve it.
- g. Each involved Department officer shall be given reasonable paid administrative leave following an officer-involved shooting or critical incident/death. It shall be the responsibility of the Department Patrol Sergeant to make schedule adjustments to accommodate such leave.

304.6 CRIMINAL INVESTIGATION

The County Attorney's Office is responsible for the criminal investigation into the circumstances of any officer-involved shooting involving injury or death.

If available, personnel from this Department may be assigned to partner with investigators from outside agencies, or the County Attorney's Office, to avoid duplicating efforts in related criminal investigations.

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

- a. Department supervisors and management personnel should not participate directly in any voluntary interview of Department officers. This will not prohibit such personnel from monitoring interviews or providing the criminal investigators with topics for inquiry.
- b. If requested, any involved officer will be afforded the opportunity to consult individually with a representative of his/her choosing, or an attorney, prior to speaking with criminal investigators. However, in order to maintain the integrity of each involved officer's statement, s/he shall not consult or meet with a representative or an attorney, collectively or in groups, prior to being interviewed.
- c. If any involved officer is physically, emotionally or otherwise not in a position to provide a voluntary statement to criminal investigators, consideration should be given to allowing a reasonable period for the officer to schedule an alternate time for the interview.
- d. Any voluntary statement provided by an involved officer will be made available for inclusion in any related investigation, including administrative investigations. However, no administratively coerced statement will be provided to any criminal investigators unless the officer consents.

304.6.1 REPORTS BY INVOLVED DEPARTMENT OFFICERS

In the event that suspects remain outstanding or subject to prosecution for related offenses, this Department shall retain the authority to require involved officers to provide sufficient information to facilitate the apprehension and prosecution of those individuals.

While the involved Department officer may write the report, it is generally recommended that such reports be completed by assigned investigators, who should interview all involved officers as victims/witnesses. Since the purpose of these reports will be to facilitate criminal prosecution, statements of involved officers should focus on evidence to establish the elements of criminal activities by suspects. Care should be taken not to duplicate information provided by involved officers in other reports.

Nothing in this section shall be construed to deprive an involved Department officer of the right to consult with legal counsel prior to completing any such criminal report.

Reports related to the prosecution of criminal suspects will be processed according to normal procedures but should also be included for reference in the investigation of the officer-involved shooting or death.

304.6.2 WITNESS IDENTIFICATION AND INTERVIEW

Because potential witnesses to an officer-involved shooting or death may become unavailable, or the integrity of their statements compromised with the passage of time, the Department will take reasonable steps to promptly coordinate with criminal investigators to utilize available law enforcement personnel for the following:

- a. Identification of all persons present at the scene and in the immediate area.
- b. When feasible, a recorded statement should be obtained from those persons who claim not to have witnessed the incident but who were present at the time it occurred.
- c. Any potential witness who is unwilling or unable to remain available for a formal interview should not be detained, absent reasonable suspicion to detain or probable cause to arrest. Without detaining the individual for the sole purpose of identification, attempts to identify the witness prior to his/her departure should be made whenever feasible.
- d. Witnesses who are willing to provide a formal interview should be asked to meet at a suitable location where criminal investigators may obtain a recorded statement. Such witnesses, if willing, may be transported by a member of the Department.
- e. A written, verbal or recorded statement of consent should be obtained prior to transporting a witness. When the witness is a minor, consent should be obtained from the parent or guardian, if available, prior to transportation.
- f. Promptly contacting the suspect's known family, and associates, to obtain any available untainted background information about the suspect's activities and state of mind prior to the incident.

304.6.3 INVESTIGATIVE PERSONNEL

Once notified of an officer-involved shooting or critical incident/death, it shall be the responsibility of the Chief of Police, or their designee, to assign appropriate investigative personnel to handle the investigation of related crimes. Department personnel may be assigned to work with investigators from the outside agency assisting the Department (i.e. County Attorney's Office) and may be assigned to separately handle the investigation of any related crimes not being investigated by the outside agency.

All related Department reports, except administrative and/or privileged reports, will be forwarded to the designated investigative supervisor for approval. Privileged reports shall be maintained exclusively by Department members who are authorized such access. Administrative reports will be forwarded to the Chief of Police, or their designee.

304.7 ADMINISTRATIVE INVESTIGATION

In addition to all other investigations associated with an officer-involved shooting or critical incident/death, this Department will conduct an internal administrative investigation of involved

Departmental officers to determine conformance with Department policy. This investigation will be conducted under the supervision of the Assistant Chief of Police.

Interviews of Department members shall be subject to Department policies and applicable laws.

- a. Any officer involved in a shooting or critical incident/death may be requested or administratively compelled to provide a blood sample for alcohol/drug screening. Absent consent from the officer, such compelled samples and the results of any such testing shall not be disclosed to any criminal investigative agency.
- b. If any officer has voluntarily elected to provide a statement to criminal investigators, the assigned administrative investigator should review that statement before proceeding with any further interview of that involved officer.
 1. If a further interview of the officer is deemed necessary to determine policy compliance, care should be taken to limit the inquiry to new areas with minimal, if any, duplication of questions addressed in the voluntary statement. The involved officer shall be provided with a copy of his/her prior statement before proceeding with any subsequent interviews.
- c. In the event that an involved officer has elected not to provide criminal investigators with a voluntary statement, the assigned administrative investigator shall conduct an administrative interview to determine all relevant information.
 1. Although this interview should not be unreasonably delayed, care should be taken to ensure that the officer's physical and psychological needs have been addressed before commencing the interview.
 2. If requested, the officer shall have the opportunity to select an uninvolved representative to be present during the interview. However, in order to maintain the integrity of each individual officer's statement, involved officers shall not consult or meet with a representative collectively, or in groups, prior to being interviewed.
 3. Administrative interviews should be recorded by the investigator. The officer may also record the interview.
 4. The officer shall be informed of the nature of the investigation. If an officer refuses to answer questions, s/he should be given his/her *Garrity* rights and ordered to provide full and truthful answers to all questions. The officer shall be informed that the interview will be for administrative purposes only and that the statement cannot be used as part of any criminal investigation.
 5. The Assistant Chief of Police shall compile all relevant information and reports necessary for the Department to determine compliance with applicable Department policies.
 6. Regardless of whether the officer's actions are an issue in the case, the completed administrative investigation shall be submitted to the Response to Aggression and Resistance Review Board (Department Policy #301), which will restrict its findings as to whether there was compliance with Department Policy #300 - Response to Aggression and Resistance, or any other relevant Department policy.

Any other indications of potential Departmental policy violations shall be determined in accordance with standard disciplinary procedures.

304.8 CIVIL LIABILITY RESPONSE

A member of this Department may be assigned to work exclusively under the direction of legal counsel for the Department to assist in the preparation of materials deemed necessary in anticipation of potential civil litigation.

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

304.9 AUDIO AND VIDEO RECORDINGS

Any officer involved in a shooting or critical incident/death may be permitted to review available Mobile Video Recording (MVR), body-worn video, or other video or audio recordings prior to providing a recorded statement or completing reports. The decision regarding whether officer(s) may review video/audio evidence will be made in conjunction with the County Attorney's Office or other prosecuting authority.

Upon request, non-law enforcement witnesses who are able to verify their presence and their ability to contemporaneously perceive events at the scene of an incident, may also be permitted to review available MVR, body-worn video, or other video or audio recordings with the approval of assigned investigators or a supervisor.

Any MVR, body-worn video, and other known video or audio recordings of an incident should not be publicly released during an ongoing investigation without consulting the prosecuting attorney or County Attorney's Office, as appropriate.

304.10 DEBRIEFING

Following an officer-involved shooting or critical incident/death, the Department should conduct both a critical incident stress debriefing and an operational debriefing.

304.10.1. CRITICAL INCIDENT STRESS DEBRIEFING

A critical incident stress debriefing should occur as soon as practicable. The Chief of Police, or their designee, is responsible for organizing the debriefing. Notes and recorded statements should not be taken because the sole purpose of the debriefing is to help mitigate the stress-related effects of a traumatic event.

The debriefing is not part of any investigative process. Care should be taken not to release or repeat any communication made during a debriefing unless otherwise authorized by policy, law, or valid court order (§ 39-74-105, MCA).

Attendance at the debriefing shall only include those members of the Department directly involved in the incident, which can include support personnel (i.e. City/County 911 Communications personnel and other non-sworn personnel). Family or other support personnel may attend with the concurrence of those involved in the incident. The

debriefing shall be closed to the public and should be closed to all other members of the Department including supervisory and management personnel.

304.10.2 OPERATIONAL DEBRIEFING

An operational debriefing should take place to identify any training, equipment, or policy considerations. The Chief of Police should identify the appropriate participants. This debriefing should not be conducted until all involved members have provided recorded or formal statements to the criminal and/or administrative investigators.

304.11 MEDIA RELATIONS

Any media release shall be prepared by the Chief of Police, or their designee, with concurrence from the Director of University Marketing and Communications.

No involved Department member shall make any comment to the media unless s/he is authorized by the Chief of Police.

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