

**Milwaukee Area Investigative Team**

*Protocol*

*To Investigate*

*Officer Involved Critical Incidents*

*In The Milwaukee Area*

## Table of Contents

Statement of Purpose .....	3
Overall Goals of the Milwaukee Area Investigative Team (MAIT) & Investigations Committee .....	4
Milwaukee Area Investigative Team Commander/ Membership Agencies/ Activation .....	5
MAI Team's Authority/ Response by MAI Teams/ Investigative Goals .....	6
Investigative Priority/ Investigative Costs/ Involved Agency's Responsibilities .....	7
Public Safety Statements/ Involved Officers Responsibilities/ Scene Security .....	8
Assignment and Duties of MAI Team Leader/ Lead Investigator .....	9-10
Investigators Meeting .....	11
Command Staff Meeting/ Transportation and Separation of Involved and Witness Officers	
Employee Rights/ Interviewing Involved and Witness Officers .....	11-13
Involved and Witness Officers and the Viewing of Digital Evidence .....	13
Firearm Collection/ Interviewing Citizen Witnesses .....	13
Physical Evidence Collection, Preservation and Analysis / Evidence Storage, Retention, and Release/ Neighborhood and Vehicle Canvass Responsibilities .....	14-15
Report Writing and Release of Records .....	15
Case Files/ Media Relations .....	15
District Attorney's Offices (Milwaukee / Waukesha) .....	16
Medical Examiner's Offices (Milwaukee / Waukesha) .....	17
Wisconsin Regional Crime Laboratory-Milwaukee Office .....	17
Vehicle or Traffic Related Critical Incidents/, Notifications and Follow Up/ The Administrative and Internal Investigation .....	17-18
Definitions .....	18-20

## Statement of Purpose

This protocol establishes the response, roles, responsibilities and processes that ensure a thorough and proper investigation of all officer-involved deaths<sup>1</sup> or other critical incident<sup>2</sup> involving participating law enforcement agencies within the Milwaukee area. It is specifically created to ensure compliance with the requirements of 2013 WI. Act 348 as spelled out in WI. § 175.47. It addresses the formation and responsibilities of the Milwaukee Area Investigative team in the event that a participating Milwaukee area law enforcement agency needs the following investigated:

1. Officer involved, duty related applications of deadly force which result in death or wounding of a subject<sup>3</sup>;
2. Death, or injury which may result in death, to a subject while in police custody, detention or control and;
3. Officer initiated actions or omissions in which death, or injury which may result in death may occur.
4. Any other officer involved critical incident that involves suspected criminal action that results in death or injury which may result in death; including but not limited to off duty or non-duty related incidents.
5. In instances where the severity of the injury to the subject resulting from the officer involved action is uncertain, the provisions of WI. §175.47 should be applied.

The focus of this protocol is the investigative process, both criminal and administrative. This protocol is not intended to alter or interfere with any agency's employer-employee relationship reflected in statute or a collective bargaining agreement. Any relevant statutes, case law ruling, department rules and/or policies, or contents of the collective bargaining agreement shall take precedence over this protocol should the contents of this protocol conflict.

This protocol addresses the potential for one of the agencies officers becoming involved in a critical incident resulting in death or injury which may result in death, either within or outside of their jurisdiction. As is so typical in these situations, the amount of personnel and other resources used to investigate them lends itself to the use of outside resources. This protocol allows and, in some circumstances requires, the use of the involved agencies personnel to assist in these investigations.

A law enforcement agency's reputation within the community and the credibility of its personnel are largely dependent upon the degree of professionalism and impartiality that the agency can bring to such investigations. We recognize that officer involved critical incidents in general and particularly in instances where citizens are wounded or killed can have a devastating impact on the professional integrity and credibility of the entire law enforcement agency.

## **Overall Goals of the Milwaukee Area Investigative Team (MAI Team)**

To investigate Critical Incidents occurring with participating agencies in the Milwaukee Area following law enforcement best practices and;

- To ensure public trust by conducting accurate, objective, transparent, timely, and professional multijurisdictional investigations of major incidents, primarily officer involved critical incidents.
- To maximize the availability and sharing of the latest technological equipment and techniques.
- To consolidate and share the skills of the most experienced supervisors and investigators.

### **Milwaukee Area Investigations Committee**

The Committee of the Milwaukee Area Investigative Team shall consist of the current Milwaukee County Law Enforcement Executives Association Board and:

- The Chief of the Greenfield Police Department or his/her designee
- The Chief of the Milwaukee Police Department or his/her designee
- The Chief of the West Allis Police Department or his/her designee
- The Chief of the Oak Creek Police Department or his/her designee
- The Chief of the City of Waukesha Police Department or his/her designee
- The Chief of the Wauwatosa Police Department or his/her designee
- The Chief of the Brookfield Police Department or his/her designee
- The Chief of Police or his/her designee of an agency involved in a critical incident that took place within the past calendar year.

Representatives of the Milwaukee County District Attorney's Office, The Waukesha County District Attorney's Office, The Milwaukee County Medical Examiner's Office, The Waukesha County Medical Examiner's Office, The Wisconsin Regional Crime Lab (Milwaukee Office) and the Wisconsin Department of Justice – Division of Criminal Investigation (Milwaukee Office) will be invited to all Committee meetings and their input will be solicited. For voting purposes and decision-making, it will be the majority rule of the participating agencies.

The Chairman of the Committee or their designee will rotate every year between the Greenfield Police Department, Milwaukee Police Department, West Allis Police Department, Oak Creek Police Department, Wauwatosa Police Department, Waukesha Police Department and Brookfield Police Department. The Chairman of the Committee shall schedule a meeting of the board in January of each year. The Chairman of the Committee will be responsible to communicate findings to the rest of the participating agencies.

The purpose of the meeting will be to receive a comprehensive report from the Milwaukee Area Investigative Team Commander over the past year; addressing issues pertaining to the operational support of the team, choose a new team commander if applicable and address changes to the MAI team protocol. Special meetings may be called at any time by the chairman of the Committee and may also be requested by the MAI Team Commander.

## **Milwaukee Area Investigative Team Commander**

The MAI Team Commander may be the Captain or designee in charge of the homicide unit of the Milwaukee Police Department or the person in charge of an Investigative Bureau from agencies contributing to the MAI Team. The commander position will rotate every two years between the agencies contributing to the MAI Team. At the discretion of the Committee, that assignment length may be adjusted. The Commander and their designees have the overall responsibility to manage and coordinate readiness and training of the team. The Team Commander will coordinate with the team supervisors on readiness and other pertinent investigative matters. The MAI Team Commander reports to the head of the Committee.

## **Milwaukee Area Investigative Team**

For the purposes of investigative continuity and normal follow-up procedures, the MAI Team will consist of supervisors, investigators, officers and/or necessary command staff from contributing agencies. The initial response for the team will include the team of investigators, supervisors and/or command staff assigned to the team and who have been properly trained.<sup>4</sup> If the team supervisor requires more resources, they will call additional investigators from the contributing agencies.

An active list of investigative resources shall be located at the Technical Communications Division of the Milwaukee Police Department and shall be maintained by the Team Commander.

### **Activation:**

1. Automatic and Immediate -Upon the occurrence of an officer involved critical incident as defined within this protocol, the invocation of this protocol is automatically and immediately in affect, upon the request of the involved agency.
  - A Chief Executive or their designee shall make the request for the MAI team in this order:
    - Team Commander
    - Current Lead Agency
    - Milwaukee Communications Division **414-935-7472**
  - Communications shall contact the MAI Team through the standard call out instructions on City Watch.
  - **The MAI Team Supervisor shall be the lead supervisor and have the same meaning as “lead investigator” in WI. § 175.47.**<sup>5</sup> Most often, the supervisor assigned to the scene investigation will be the lead supervisor/lead investigator. The MAI team supervisor/lead investigator shall be responsible for determining how many investigators will be needed. In cases of officer involved fatalities, the team supervisor/lead investigator and at least one other investigator shall not be from the involved agency. WI. § 175.47 requires two

outside investigators to investigate, and as stated previously, this is to ensure state law is being followed and to ensure public trust by conducting accurate, objective, transparent, timely, and professional multijurisdictional investigations of major incidents, primarily officer involved critical incidents.

2. Invocation when not required

- Each member agency of this agreement may invoke this protocol upon the occurrence of any critical incident involving a law enforcement officer which may have possible criminal liability attached. Under this unilateral invocation, the matter will be investigated under the provisions of this protocol.

3. Upon the request of an agency not part of the Milwaukee Area Investigative Team Memorandum of Understanding.

- This provision allows for non-participating agencies to use the MAI Team under the following circumstances. If a participating agency, provided they are part of the M.O.U., is involved in a critical incident outside of Milwaukee County or outside the City of Waukesha or the City of Brookfield, the agency where the critical incident occurred will contact one of the committee members to activate the team.

**Authority:** Once the MAI team has agreed to investigate an incident as requested by the involved agency representative, the MAI team shall have sole and exclusive authority concerning the investigation of the incident.

**Response by MAI Teams:** Once the MAI team activation has been authorized; the team supervisor will direct resources to the investigation. If additional resources are needed, it will be at the discretion and direction of the team supervisor in charge of the main scene. The team supervisor will call upon the law enforcement agencies that are contributing members of the MAI team.

## Investigative Goals

The goal of the investigation is to develop all available relevant information about the incident. When the investigation is completed, including all forensic testing, toxicology report and autopsy report, the case will be submitted to the District Attorney in the county of occurrence. The District Attorney will make a final determination on the presence or absence of criminal liability on the part of those involved in the critical incident specifically:

1. To determine the presence or absence of criminal liability on the part of those involved in the incident, specifically:
  - To determine whether the nature and quality of the conduct involved is prohibited by Wisconsin state statute's which provide for criminal penalties upon conviction and
  - If criminal conduct does exist, determine the identity of the person(s) responsible for the conduct and
  - If criminal conduct does exist, determine the degree of crime(s) the existence of any factual or legal defenses to that crime, and presence or absence of any factors which would mitigate or aggravate punishment for the crime.

2. To incidentally provide factual information to the involved agencies management for its internal use. While the criminal investigators do not direct investigative attention to the administrative concerns, it is recognized that the investigations results are of proper interest to the involved agencies management for internal use, and those results are fully available for that purpose.

**Investigative Priority:** The criminal investigation has investigative priority over the administrative investigation and begins immediately after an incident has occurred. The criminal investigation is performed by the MAI team headed by the team supervisor (lead investigator) and an assistant lead investigator appointed from the MAI team. The lead investigator and assistant lead investigator will both be a supervisor however will not be from the involved agency per state law.

Agencies should note the law allows for a separate internal investigation into the incident, provided it does not interfere with the criminal investigation under §175.47 and provided the involved agency's policy details this provision.

**Investigative Requirements:** The investigation is required to follow the rules of law which apply to all criminal proceedings; these include constitutional, statutory, and case law.

Investigators will maintain the integrity of the investigation by following the rules of evidence throughout the investigation and consulting with and obtain the permission of the prosecutor prior to releasing any evidence, to include 911 tapes, or witness statements, video, etc.

The investigation will be performed in a manner that provides an accurate, complete, objective, timely, and professional investigation, free of conflicts of interest.

**Investigative Costs:** Each participating agency in the MAI Team shall be responsible for their employees' wages and associated costs until the completion of the investigation. Any non-routine costs deemed necessary by the lead supervisor/ lead investigator shall be the responsibility of the involved agency (e.g. HAZMAT removal, long term storage of vehicles, special evidence testing).

### **Involved Agency's Responsibilities<sup>6</sup>:**

- The involved agency shall make the initial request for the MAI team.
- The involved agency shall provide an incident commander.
- The involved agency shall make all department personnel available to the responding MAI team.
- The involved agency shall be responsible for all non-routine investigative expenditures (e.g. HAZMAT removal, long term storage of vehicles, special evidence testing, see evidence retention).

- The involved agency shall make all documents, reports, squad and body camera footage, computer aided dispatch reports etc. available to the MAI team as soon as practicable.
- The involved agency shall allow use of space and equipment as needed by the MAI team.

Many times there is an underlying crime that takes place before officers are called to the scene and/or is the reason why officers are called. This underlying crime needs to be investigated thoroughly. Like in so many critical incident investigations, the underlying crime is so interconnected to the officer's use of force that it may be hard to separate the investigation of the critical incident and the underlying crime. Therefore, the Team Supervisor will communicate with the involved agency as to when the involved agency will process the arrest(s) of subject(s), facilitate District Attorney reviews, provide hospital guards, or any other investigative follow up needed to adequately investigate the underlying crime.

**Public Safety Statement<sup>7</sup>:** First responding supervisors should be encouraged to obtain a public safety statement from the involved officers. The statement will be delivered to the involved agency investigative supervisor for review and dissemination to the responding MAI team. The questions that should be asked include the following items:

- Type of Force used
- Direction of shots fired
- Knowledge of any injured persons and their location
- Knowledge of any suspects at large and direction of travel
- Time lapse of event
- Any knowledge of witnesses, including names descriptions, and locations
- Any knowledge of evidence at the crime scene
- The scope of the crime scene

**Involved Officers Responsibilities<sup>8</sup>:** After the initial confrontation has been quelled, there are four general areas of concern that shall be addressed by the involved officer and responding back up officers and supervisors;

- The welfare of the officers and others at the scene including victims of the use of force
- The apprehension of suspects
- Preservation of evidence
- Identification and location of witnesses (*see public safety statements*)
- All involved officers, whether involved in the direct use of force or witness officers shall be relieved from these duties as soon as practicable.

**Scene Security:** The jurisdiction in which the incident occurred will have the responsibility for immediately securing the crime scene(s) within its territorial jurisdiction. This responsibility includes preservation of the integrity of the scene(s) and its/their contents, controlling access to the scene(s), and the identification and separation of witnesses.



The overall scene perimeter will contain the inner (evidence) perimeter secured by red crime scene tape and an outer (control) perimeter secured by yellow conventional police tape. Access to the inner (evidence) perimeter of the scene must be limited only to personnel who must enter for valid investigative purposes as authorized by the involved agency's Incident Commander, or later, by the MAI team scene supervisor.

A written log will be established as quickly as possible to identify all persons entering the inner (evidence) perimeter of the scene, the time of their entry and exit, and the reason for entry. This scene report can be delegated to the involved agency but the report must be turned over to the scene investigator upon completion of the scene investigation.

### **Assignment and Duties of MAI Team Supervisor/ Lead Investigator:**

Assignment of the MAI team supervisor is of great importance. The MAI team supervisor / lead investigator will be responsible for the oversight of the entire investigation as it relates to the death and/or injury which may result in death portion of the investigation in accordance with Wisconsin §175.47 (3)(a). The MAI team supervisor at the scene shall be the overall supervisor in charge of the MAI team and the investigation. He/she will have the following responsibilities.

**AT THE SCENE:** The team supervisor shall accomplish (personally or by delegation) the following tasks related to the scene investigation.

- Supervise the crime scene and ensure that all principle parties and witnesses are kept separate during the scene investigation. If these parties are moved to a different location, this responsibility is transferred to the team supervisor/investigator at that location.
- Liaison with the involved agency supervisor/incident commander to ensure the necessary equipment and/or personnel are brought to the scene including a mobile command post (if available)
- Ensure scene security is maintained keeping out unnecessary police personnel, media, union representation, and attorneys. It is the responsibility of the involved agency to manage their resources committed to the investigation.
- Act as a liaison between the involved agency and the District Attorney's Office. Liaison with the next of kin throughout the investigation up until conclusion of the District Attorney's ruling.
- Ensure next of kin notification is made to the deceased subject's family. The next of kin notification shall be documented. Per WI. § 950, Rights of Victims and Witnesses of Crime, which may or may not apply in all instances, shall be followed.
- Decide if a walk-through of the secure and intact scene for personnel from the DA's office, Command Staff, and/or internal investigators from the involved agency is appropriate. The purpose of the walk through is to give these representatives an understanding of the conditions and layout of the scene for future proceedings. Scene security is of the utmost importance and certain evidentiary items may be removed prior to the walk through.

**OFF SITE LOCATION/INTERVIEWS:** In the course of an officer involved critical incident investigation, interviews of the involved/witness officers and key citizen witnesses will ordinarily be conducted at a

location away from the scene. This may be at the headquarters building of the involved agency or at another location, at the discretion of the team supervisor. The team supervisor (personally or by delegation) shall ensure that the following duties are accomplished.

- Act as a liaison between the principal parties and their representatives if representation is requested by the member(s)
- Control all access to principal members and provide that they have a private meeting place to consult with their representatives.
- Coordinate, monitor and document the subsequent interview(s) of involved members, witness officers, and citizen witnesses conducted by the team supervisor or designee.
- Ensure citizen witness statements given at the offsite location are video and audio recorded.
- Notify the involved agencies administration of any firearms or other department owned property that will be collected as evidence.
- Liaison with the command staff and internal investigators from the involved agency regarding the information obtained during the interviews as soon as possible.

**Medical Facility:** If the incident results in an officer, citizen or subject being transported to a medical facility, the team supervisor or designee shall respond to the facility and be responsible for the following.

- Liaison with the hospital staff to ensure that all principal members are kept separate from prisoners, and that the investigation does not unduly disrupt normal hospital operations.
- In conjunction with the involved agency, establish appropriate hospital guards for prisoner(s) or officers.
- Establish a liaison with the involved agency's administration and ensure that the injured officer's family members, spouse, or significant other is notified, and if practicable, transported to the medical facility.
- Ensure that MAI investigators are assigned to interview any witnesses present, make other next of kin notifications when needed, and that all evidence is collected.
- Brief the command staff of the involved agency and/or family members of any injured officer(s) as soon as circumstances allow.

These are not exhaustive lists and communication between the scene, offsite interview location and medical facility is absolutely critical.

The team supervisor will be responsible for guiding the investigation, interviewing of the witnesses and officers involved and will take possession of all evidence. The team supervisor should also be the primary contact for the prosecutor. Generally the lead investigator will be the supervisor of the responding team.

The involved law enforcement agency shall designate the necessary personnel and support staff to assist in the initial investigation, preservation of evidence and interview of witnesses. They shall also assist in any subsequent follow-up investigation that is needed to complete the case. Additional manpower may be called up under this MOU or through current established mutual aid or Suburban Mutual Assistance Response Teams (SMART) agreements.

The team supervisor conducting the investigation under §175.47 (3)(a) shall, in an expeditious manner provide a complete report to the District Attorney's Office in the county of occurrence.

The team supervisor for a traffic related fatality or injury which may result in death shall meet requirements as outlined in §175.47 (3) (b).

**Investigators Meeting:** After the initial scene has been processed, the team supervisor will conduct a briefing with the primary investigators to determine what has been accomplished and what still needs to be accomplished to complete the initial scene investigation. Attendees of this meeting will consist of the investigative team supervisor and the investigators involved in the investigation.

**Command Staff Briefing:** The purpose of this briefing is to advise the agency heads of the status of the incident and to determine what information is appropriate for the media release. Attendees to this meeting typically will consist of the team supervisor, command staff of the involved agency, and the public information officer of the agency. This meeting shall take place as soon as possible after the investigation has begun.

### **Transportation and Separation of Involved<sup>9</sup> and Witness<sup>10</sup> Officers:**

The transporting and separation of involved and witness officers shall be conducted as follows:

- Officers who were present at the scene at the time of the incident, whether involved or witness, will be relieved of their duties at the scene as promptly as possible.
- The first responding supervisor from the involved agency shall ensure that the involved and witness officers are placed with a non-involved supervisor or officer as soon as practicable.
- Where and when to transport the officers involved will be at the discretion of the team supervisor.
- Typically, the involved and witness officers will be conveyed to their agency where they will be allowed to meet with their representatives.

**Employee Rights:** Law enforcement employees have the same rights and privileges regarding MAI Team Interviews that any other citizen would have, including the right to remain silent, the right to consult with an attorney prior to an interview and the right to have an attorney present during the interview

**Interviewing Involved and Witness Officers:** Generally speaking, it is the intent of the MAI team to obtain details of any officer involved incident as soon as practicable after the event by interviewing and obtaining reports/statements from involved officers and witness officers. MAI team members should always give the involved officer the opportunity to provide a voluntary statement or give details of the incident at any point during the investigation. If the officer has invoked his or her right to counsel, such requests of a statement must be correlated through such counsel.

If the involved officer(s) chooses to provide a statement, the interview will be conducted by the team supervisor or his/her designee. The time of this interview shall be accomplished as soon as practicable

and within the policy of the involved agency.

- It is accepted best practice to record involved and witness officer interviews so all relevant circumstances surrounding the incident are documented, however, the officer cannot be forced to give a recorded statement. If the officer does not consent, the statement shall not be recorded.
- Involved and witness officers will be interviewed as victims and/or witnesses unless directed by the team supervisor or higher authority. The lead investigative agency will communicate with the chief of the involved agency and the District Attorney's Office as to when an officer is arrested unless exigent circumstances exist. Absent an arrest, no Miranda warning will be given.
- The interview should be conducted by the team supervisor or designee with the following personnel in attendance, the involved officer and their attorney. Included in the interview may be the District Attorney of the county of occurrence or their designee, and a District Attorney investigator of the county of occurrence. It will be at the discretion of the team supervisor/ lead investigator as to the inclusion of a representative of the involved agency. Command staff and internal investigators should not be present for the interview.
- Involved Officers and Witness Officers are not to file any reports. The team supervisor shall ensure that the officers who need to file reports shall do so.
- Only the involved officer's agency will order/compel an involved officer to give a statement relative to an officer involved critical incident. This will only occur during an internal investigation of the incident, which will be separate from the criminal investigation being conducted by the MAI team.
- The team supervisor or designee shall ensure that the involved officer is separated from other witnesses and removed from unnecessary contact with other officers.
- A request for representation shall be accommodated pursuant to Wisconsin §164.02. However, unless extraordinary circumstances exist, the meeting between the officer and his/her representative shall be conducted at the offsite location and not at the scene.
- The interviewing investigator from the MAI team is responsible for remaining with and/or monitoring the involved/witness officer until the conclusion of the initial investigation.
- The interviewing investigator from the MAI team shall not take a member's firearm at the scene, unless directed by the team supervisor or higher authority. The investigator shall inspect it for evidentiary purposes and provide that information to the team supervisor/scene investigator as soon as practicable.
- Ensure that photographs are taken of the involved and witness members in the clothing or uniform they were wearing at the time of the incident. Officers clothing may contain evidence and may be taken when appropriate.
- Recover and properly inventory any weapons used by the involved officer, to include unused magazines. Noninvolved officer's weapons should be inspected but not recovered unless circumstances dictate.
- The investigator may meet with the officer and/or the officer's legal counsel, after the interview report is prepared, to review the report and make clarifications.

## Involved and Witness Officers and the Viewing of Digital Evidence

The following protocol will be used outlining the viewing of digital evidence prior to an involved or witness officer(s) consensual statement.

- Formal interviews of involved or witness officer(s) should be conducted without the officer(s) having any prior review of related squad or dash camera video, surveillance or body mounted camera video, electronic control device downloads, or other definitive forensic evidence. This best practice investigative technique allows investigators the opportunity to obtain a statement that reflects the officer's observations, perceptions, thoughts and feelings.
- After the statement by the officer(s) they will then be offered an opportunity to view recorded digital evidence. The officer(s) may decline to view the digital evidence.
- If the officer elects to view the digital evidence, team members may remain present during viewing, or may leave for a minimal amount of time (to be determined based on the length of the recording in question) to allow the officer to consult with his/her representative.
- Following the digital evidence review, the team member will complete the interview by documenting any additional statements made by the officer following the officer's review of the digital evidence.
- This protocol in no way diminishes the Lead Investigative Agency's overall decision making authority as to when digital evidence is viewed by involved or witness officer(s)

**Firearms/ Collection:** In shooting incidents, the team supervisor shall ensure that investigators examine the firearms of all officers who were present at the time of the incident to ensure that all discharged firearms are identified and collected. All discharged firearms will be placed into evidence in adherence to Wisconsin Regional Crime Lab Procedures. Equipment taken from an officer for evidence will be replaced by the involved agency in accordance with their policies.

**Interviewing Citizen Witnesses:** The team supervisor/ lead investigator shall ensure that all citizen witnesses are interviewed and the interviews properly documented. This includes those witnesses who claim to have only heard and not seen the incident, as well as those nearby who claim to have not witnessed the incident. The team supervisor must also ensure that:

- All citizen witness interviews conducted by a team investigator shall be at least audio recorded. Investigators will be equipped with portable audio recorders for this purpose.
- Team investigators shall confer with the team supervisor and if deemed appropriate, the citizen will be conveyed to an offsite location to facilitate a videotaped interview. When this interview is complete the witness will be conveyed to the location of their choosing.
- Team investigators will thoroughly corroborate all witness accounts to include viewing the locations that witnesses observed the incident from. Investigators will ensure appropriate photographs and/or video of those views are taken.

- Investigators are responsible for personally monitoring and/or ensuring that any key witness is secured with a uniform officer until the team supervisor determines that they are no longer needed.
- In the event a citizen witness refuses to be tape recorded or videotaped, then investigators shall prepare a written narrative of the statement to be signed by the witness.

**Physical Evidence Collection, Preservation, and Analysis:** Applicable involved agencies having the capability to assist team supervisors in the preservation and locating evidence at the scene should do so. Nothing in this protocol should be interpreted as requiring the involved agency to "freeze the scene" or otherwise wait to conduct a preliminary investigation, particularly when doing so could result in the loss of witnesses or evidence.

The Wisconsin Regional Crime Lab can be called to investigate the scene, collect evidence, video the area and take appropriate photographs of any officer involved critical incident.

Firearms which do not need to be retained as evidence, as determined by the MAI team, in consultation with the District Attorney's Office, will be returned to the designated representative of the involved agency promptly after any testing that is needed.

### **Evidence Storage / Retention:**

- Evidence storage: All evidence shall be stored under the control of the lead investigative agency. The involved agency shall be responsible for storage and handling costs of extraordinary items such as vehicles, hazmat etc.
- Evidence retention: No evidence shall be released or destroyed without the consent or agreement of the agencies involved in the criminal investigation. Once the criminal prosecution is completed, all property owned by private citizens will be released in accordance with state law. All involved agencies shall receive their evidence back as soon as practicable and it will be up to the involved agency to hold evidence pending any civil litigation that may arise from the incident. This may include inventoried property owned by private citizens.

**Neighborhood, Video and Vehicle Canvass:** The canvass for witnesses is an important task, and one that is likely to be delegated to a supervisor of the involved agency by the MAI team supervisor/ lead investigator. The involved agency supervisor or MAI Team member assigned this task shall ensure the following:

- Officers or investigators assigned to accomplish this task shall insure that all building addresses within their assigned area are accounted for and that all persons present are interviewed.
- Officers or investigators shall document all addresses where no answer was obtained as well as the identity of persons who may have since left. It is important that this information be turned over to the supervisor of the MAI team.

- Likewise, it is important that the canvass supervisor notify the MAI supervisor of witnesses found during the canvass. The MAI supervisor will determine if those witnesses need an investigator interview.
- Officers or investigators shall document the locations of all identifying information for vehicles parked in the canvass perimeter. Department of Transportation records shall be included for the vehicles in the canvass perimeter.
- Officers or investigators shall search for and document all video cameras within the canvass perimeter and notify the supervisor of the MAI team of video that may have captured the incident.
- An overall report by the supervisor in charge of the canvass will be written summarizing the addresses checked, by whom the addresses were checked, and the addresses still needed to be checked.

## **Report Writing/Release of Records:**

- All individuals participating in the criminal investigation will write a report documenting their participation. This includes all scene security personnel, canvassing officers, and other peripheral officer duties.
- Involved officers are not to file any reports nor pertinent witness officers.
- The investigators within each investigative MAI team will allocate and divide among themselves the responsibility for documenting interviews and observations.
- Prompt completion and distribution of reports is essential. All involved agencies and investigators will strive for completion and distribution of reports within **SEVEN** days of any investigative activity. The Medical Examiner's report may be delayed beyond 30 days pending results of some scientific tests.
- Wisconsin §175.47 requires that, "the investigator conducting the investigation under sub. (3)(a) shall, in an expeditious manner, provide a complete report to the district attorney of the county in which the officer involved death occurred.
- If the attorney determines there is no basis to prosecute the law enforcement officer involved in the officer involved death, the investigators conducting the investigation under sub (3)(a) shall release the report except that the investigators shall, before releasing the report, delete any information that would not be subject to disclosure pursuant to a request under s. 19.35 (1) (a).
- The team supervisor shall prepare a single source narrative document that provides a chronological summary of the incident, to include all precursor events, enforcement, and investigative actions taken<sup>11</sup>. This report will summarize the entire investigation, including the actions by the team supervisor, as well as those actions performed by other investigators even though most tasks were delegated. A complete copy of reports, photographs, audio/video

recordings and all other records collected by the team supervisor will be turned over to the district attorney along with the lead investigator's report.

- In the event that the MAI Team investigates a non-fatal officer involved incident, it will be the decision of the involved agency to release reports per their release of records protocol.

## **Case Files**

- All original reports, statements, photographs, videos and other investigative documentation shall be maintained by the lead investigative agency. The lead investigative agency head or records designee shall safeguard the investigative product until the final ruling by the District Attorney of the county of occurrence.
- Copies of all case files shall be made available to the involved agency or agencies as soon as practicable.
- The complete investigation/case file will be sent to the District Attorney's Office in the county of occurrence as soon as the investigation is complete.

## **Media Relations:**

- The involved agency's Chief of Police or designee can provide prompt communications with the community following a critical incident. Once the MAI team has initiated an investigation, this protocol recommends that media releases made by the involved agency be in consultation with the MAI team supervisor for that incident. This consultation is recommended to prevent releasing information that could affect the integrity of the investigation and to provide known facts to the community.
- It shall be the responsibility of the involved agency to determine when the involved officer's names will be released to the public, pursuant to their policies and procedures.
- The involved agency shall ask the public for any eye or ear witnesses to come forward and to provide an appropriate contact number and email for citizens to do so.
- This protocol allows the Chief of Police from the involved agency or designee to make a media release/statement from the scene using the information from the MAI Team Media Release Template (see attachment A).

## **The District Attorney's Office in the County of Occurrence:**

Upon notification of any officer involved critical incident that results in the use of deadly force, that results in the wounding or death of a subject, or any officer involved death, or injury which may result in death of a subject, members of the District Attorney investigative unit and/or legal staff may respond to obtain an initial briefing on the circumstances of the incident and to observe and participate in a walk-through of the scene, when appropriate. Investigators and/or legal staff will assist the primary investigative agency as requested and will provide guidance to the lead investigators as needed, and may request additional fields of examination that may be helpful to determining the legality of the officer's actions. The District Attorney's Office will not be the lead investigative agency and will have a limited role.



The District Attorney investigative and/or legal staff may request to participate in the interviews of officers, subjects and witnesses, and will keep the District Attorney fully informed of information as it develops.

The District Attorney in the county of occurrence will conduct an independent review of all officer involved deaths as defined under Wisconsin State Statute 175.47(c), and will make a determination if any criminal liability exists, as determined and in compliance with Wisconsin State Statutes.

### **Medical Examiner's Office:**

- The MAI team will contact the Medical Examiner's Office in the county of occurrence on any critical incident involving death to respond to the scene, take custody of the body, and conduct their own investigation.
- The MAI team supervisor will designate an investigator to document and observe the autopsy in cases of death and to take custody of any evidence recovered.

### **Wisconsin Regional Crime Laboratory (Milwaukee Laboratory):** The

Wisconsin State Crime Laboratories provide technical assistance in cases involving death, serious bodily injury likely to result in death, scenes that are being investigated as possible homicides, and police-involved shootings. Wisconsin State Crime Lab can be contacted at 414-382-7500, 24 hours a day.

At a crime scene, the following services can be provided:

- Scene/evidence documentation using photography and/or video
- Scene/evidence documentation using laboratory notes and/or diagrams
- Evidence collection and preservation
- Processing of a scene for latent prints, footwear, and tire track evidence
- Specialized evidence collection and packaging, e.g., biological fluids, hair, fibers, footwear impressions,
- Tire impressions, tool marks, and other materials/substances of evidentiary value
- Bullet path trajectory examination and documentation
- Bloodstain pattern documentation

**Vehicle/Traffic Related Critical Incidents<sup>12</sup>:** Vehicle collisions where law enforcement actions are the proximate cause of the fatality shall be investigated by the MAI team. A pursuit which ends in a crash of a fleeing suspect due to the fleeing drivers' reckless driving does not qualify for a MAI team investigation unless there are additional factors present. They may be joined by collision investigation specialists from the Wisconsin State Patrol or any other non-involved member agency. The vehicle collision reconstruction specialists have the primary responsibility for documentation, collection, and preservation of physical evidence related to the collision.

## Notifications and Follow-Up:

- In the event that the critical incident involves the death of a subject, it shall be the responsibility of the MAI team supervisor/lead investigator to assign his/her designee to make the appropriate next of kin notification. The MAI team supervisor/lead investigator or designee shall also inform the subject's family of crime victims' rights which they may be afforded under WI. § 950, Rights of Victims and Witnesses of Crime.
- During the investigation of the critical incident, the MAI team supervisor/lead investigator shall continue updating the next of kin about the progress of the investigation. Notifying the family regarding specific milestones include; "investigation continuing", "investigation complete", or "case file turned over to the District Attorney's office" etc. All contact that MAI team members have with the subject's family shall be documented in a report and placed with in the case file.
- **A crisis response team from** the county of occurrence may be called and notified of the incident, if necessary. This will allow services to be dedicated to the family of the subject. The number for Milwaukee County is **414-257-7222**. The number for Waukesha County is **262-446-5070**
- The MAI team supervisor shall be at the family meeting that takes place either at the Milwaukee County District Attorney's Office or The Waukesha County District Attorney's Office after a ruling by that office has been made.
- The MAI team supervisor/ lead investigator shall on a routine basis, update the progression of the investigation to the involved agency's Chief of Police, or their designee.

## The Administrative/Internal Affairs Investigation

Nothing in this protocol shall prevent or limit any law-enforcement agency from conducting a separate administrative/internal affairs investigation of these officer related critical incidents as long as it does not interfere with the criminal investigation as outlined in §175 (3)(c).

---

<sup>1</sup> **Officer Involved Death** is an incident that involves "A death of an individual that results directly from an act or an omission of a law enforcement officer while the law enforcement officer is on duty or while the law enforcement officer is off duty but performing activities that are in the scope of his or her law enforcement duties." Wis. § 175.47(1)(c)

<sup>2</sup> **Other Critical Incident** is an incident involving a law enforcement officer that results in death or injury which may result in death to a person that is caused by a member's actions, occurs while in police custody, or any incident that the Chief of Police or his or her designee declares a critical incident. An injury to a person as a result of a firearm discharge by a law enforcement officer, not resulting in death shall also be considered a critical incident.

<sup>3</sup> **Subject** The person who is injured by the act of the officer, whether or not this injury is intentional.

<sup>4</sup> **Investigative Supervisor** Shall be a law enforcement officer of a supervisory rank that is in charge of an investigative section or bureau with experience investigating large complex investigations.

<sup>5</sup> **MAI Team Supervisor / Lead Investigator**

- MAI team supervisors shall be chosen from the team and have the training and experience required for supervising crime scenes and investigations. The normal duties of all MAI team supervisors shall be in investigative units whose primary function is to investigate homicides, violent crimes or other major offenses.
- MAI team supervisors will have the same designee as “Lead Investigator” in WI. § 175.47 and will have the same responsibilities. In a clarifying letter by the Attorney General of Wisconsin on 06-06-2014, the Lead Investigator is a person in charge of the investigation and plays a principle and guiding role.
- The MAI Team Supervisor/Lead Investigator must, for example and without limit, direct the overall investigation and activities of others involved in the officer involved shooting, coordinate with the lead officer/agency conducting the underlying criminal investigation of the event, or events which led to the officer involved shooting.
- Take possession of, or direct the collection of, all evidence, take or direct the taking of statements of witnesses, or interview police officers and act as the primary (but not exclusive) contact for prosecutors.

<sup>6</sup> **Involved Agency** is the law enforcement agency which employs the officer(s) who is/are directly involved in the officer involved incident. In the event that officers from more than one agency are directly involved, there can be multiple involved agencies. Additionally, it is feasible that officers from one agency may be involved in an officer-involved death in another jurisdiction. This agency will likely have resources involved in the securing the scene and the initial investigation, and their level of involvement in the investigation will be determined by the team supervisor/lead investigator.

<sup>7</sup> **Public Safety Statement** Philadelphia Police Department’s Collaborative Reform Initiative (published in 2015) recommendation 32.1 states in part that a standard checklist of items constituting a public safety statement that supervisors must obtain from an officer involved in a shooting should be developed. The statement should contain the items listed above. Fayetteville Police Department’s Collaborative Reform Initiative published the same recommendations.

<sup>8</sup> **Involved Officers Responsibilities** The stated responsibilities are taken from The International Association of Chiefs of Police National Law Enforcement Policy Center, Investigation of Officer-Involved Shootings, Concepts and Issues Paper published in August, 1999.

<sup>9</sup> **Involved Officer** Generally the involved officer is the officer(s) that directly uses force against the subject or in the absence of force, is in direct contact with the subject.

<sup>10</sup> **Witness Officer** Generally the witness officer is the officer that witnesses the critical incident or parts thereof.

<sup>11</sup> **Team Supervisor Report** Wisconsin Act 348, WI. § 175.47 (5)(a) states “The investigators conducting the investigation under sub(3)(a) shall, in an expeditious manner, provide a complete report to the district attorney of the county in which the officer involved death occurred. (5)(b) states “If the district attorney determines there is no basis to prosecute the law enforcement officer involved in the officer involved death, the investigators conducting the investigation under sub(3)(a) shall release the report except that the investigators shall, before releasing the report, delete any information that would not be subject to disclosure pursuant to a request under s. 19.35 (1) (a).

---

In the Collaborative Reform Initiative for the Philadelphia Police Department, recommendation 31.3, Report Writing, states in part that the single source narrative document providing a chronological recap of the critical incident should be filed.

<sup>12</sup> **Traffic Related Officer Involved Death** If the officer involved death being investigated is traffic related, the investigation must use a crash reconstruction unit from a law enforcement agency that does not employ a law enforcement officer involved in the officer involved death being investigated.

April 2022 Revisions were approved by MCLEEA at the May 25<sup>th</sup>, 2022 meeting.