

PROVIDENCE POLICE DEPARTMENT

 HEADQUARTERS
 COLONEL OSCAR L. PEREZ
 CHIEF OF POLICE

TYPE OF ORDER	NUMBER/SERIES	ISSUE DATE	EFFECTIVE DATE
General Order	310.02	6/12/2024	6/13/2024
SUBJECT TITLE		PREVIOUSLY ISSUED DATES	
Investigations of Serious Use of Force Incidents		1/5/2022; 5/15/2020; 4/26/2019; 2/6/2019; 5/6/2018; 11/14/2016; 8/7/2015; 6/5/2014; Supersedes: G.O. 310.02 of 2/8/2009 entitled "Force Investigation Team/Use of Force Review Board"; G.O. #14 Series 2006; G.O. #8 Series 2002	
REFERENCE		RE-EVALUATION DATE	
CALEA 4.2.3		4/26/2027	
SUBJECT AREA		DISTRIBUTION	
Law Enforcement Operations		All Sworn Personnel	

PURPOSE

The purpose of this policy is to provide procedures for the investigation of serious use of force incidents.

POLICY

It is the policy of the Providence Police Department that all serious use of force incidents are investigated with the utmost thoroughness, professionalism, and impartiality to determine if the sworn member's actions conform with the law and this agency's policies on use of force.

DISCUSSION

For the purpose of the General order, the following definitions shall apply:

Serious Use of Force: Lethal and less-lethal actions by officers including but not limited to:

1. Any incident involving the discharge of a firearm, CEW, or LLM by an officer, with the exception of scheduled range training.
2. Any use of force by an officer, including but not limited to the use of a police canine, that results in serious bodily injury.
3. Any strike to the head with an impact weapon.

4. Any use of force by an officer that results in the loss of consciousness.
5. Any use of force by an officer that results in death.

Force Investigation Team (FIT): A panel of three (3) sworn Department officers, which is responsible for investigating a serious use of force incident. The panel is formed at the discretion of the Chief of Police or his/her designee, and shall consist of a certified Weapons Bureau training instructor of the type of force used; an officer from the Office of Professional Responsibility (OPR); and an officer designated by the Chief of Police or his/her designee. The panel shall not consist of any officers who were involved in the incident under investigation, their first-line supervisor, or their District/Bureau/Unit Lieutenant.

Use of Force Review Board: A panel consisting of three (3) sworn Department officers designated by the Chief of Police, which is responsible for reviewing the findings of the FIT and conducting further analysis of a serious use of force incident. The panel is formed at the discretion of the Chief of Police upon his review of the FIT report, and shall include a chairperson. The panel shall not consist of any officers excluded from eligibility for the FIT or who comprised the FIT which investigated the serious use of force incident under review.

PROCEDURE

I. INITIAL ON-SCENE RESPONSIBILITIES

Officers who are at the scene of an occurrence of a serious use of force incident, and first responding officers, shall take those measures that are reasonably possible and appropriate to protect their safety and to preserve evidence essential to the investigation. This includes the following actions, undertaken in the order deemed appropriate and depending upon the fluidity of the situation:

- A. Consider personal safety. Ensure that the threats to officer safety and to the safety of others are over.
- B. Secure and separate suspects.
- C. Relay information on fleeing suspects and work with other available field units to establish a containment area.
- D. Request a supervisor and additional backup. Also request emergency medical services, if necessary, and any other assistance required.
- E. Secure weapons once the threat has ceased. Holster any involved handguns or secure them in place as evidence. Secure long guns in the prescribed manner or in place as evidence. Do not open, reload, remove shell casings, or, in any other manner, tamper with involved firearms.
- F. Memorialize observations. Take note of the time; survey the entire area for relevant facts; take note of individuals who are present and who departed the scene, witnesses, potential suspects and suspect vehicles.
- G. Preserve the incident scene as time and capabilities permit before supervisory and other assistance arrives:

1. Secure the area. Establish a perimeter with a crime scene barrier or crime scene tape and limit access to authorized persons necessary to investigate the incident and assist the injured.
 - a. Exclude all unauthorized persons from the incident scene.
2. Protect evidence from contamination, alteration, loss, destruction or damage that is likely to occur before backup can arrive. Ensure that evidentiary items are not moved. If the items were moved, then note the original location and position of persons, weapons, and other relevant objects and evidence.
 - a. A preliminary determination should be made as to whether or not there is a need for a search warrant or if there exists an exception to the search warrant requirement. If a search warrant is needed, notify a supervisor immediately. However, if it is reasonably believed that persons may be in need of aid, make a prompt warrantless search for possible victim(s) and/or perpetrator(s).
3. Record the names, addresses and telephone numbers of all witnesses and other persons present at the shooting/incident scene and request that they remain at the scene in order to ascertain if they possess valuable information. Efforts should be made to keep individual witnesses separated from one another.

II. SUPERVISORY RESPONSIBILITIES AT THE SCENE

The responding supervisor will be responsible for attempting to control and stabilize the incident scene, and shall notify the Patrol Bureau Shift Commander (OIC) of the situation.

The Patrol Bureau Shift Commander (OIC) shall respond without delay, and shall take the following actions in the order deemed appropriate under the circumstances:

- A. Aid the injured and assess needs. Ensure the safety of the officers and determine their conditions, along with that of any suspects and third parties. Summon emergency medical service providers to the scene as necessary
 1. Medical aid should be rendered without unnecessary disturbance of the scene. Be observant of tire impressions, footwear impressions, blood spatter, etc.
- B. Safeguard injured officers. If an officer has been seriously injured during the incident:
 1. Ensure that another officer accompanies and remains with the injured officer at the hospital.

2. Implement those portions of the Department's directives pertaining to line-of-duty deaths/serious injuries that may apply to the situation.
- C. Safeguard uninjured officers who were involved in the serious use of force incident. Move such officers away from the center of activity, accompanied by an officer who was not involved in the incident.
 - D. Follow-up on initial actions. Confirm that the initial on-scene responsibilities have been adequately addressed, and if they have not, take the appropriate actions.
 - E. Ensure that next-of kin notifications are made in accordance with Department policy.
 - F. Ensure that any witnesses to the incident are identified and sequestered according to Department policies and procedures.
 - G. Ensure that the scene of the incident is secured and that access within the incident scene perimeter is restricted in accordance with Department policies and procedures.
 1. In all cases involving the discharge of a firearm, CEW, or LLM by an officer, and in all cases involving the use of a K-9 resulting in either observable or alleged injury, the OIC shall insure upon arrival to the incident scene that an intensive search of the surrounding area is made to attempt to determine the trajectory of any fired round(s) or cartridge(s); where the round(s) or cartridge(s) may have struck or in the case of a CEW where the leads may have struck and/or what may have been subjected to the weapon's electrical discharge; and whether or not any persons/animals were injured or property damaged, as applicable.
 2. The OIC shall coordinate evidence retrieval with BCI and the FIT.
 - i. Whenever a determination is made to not activate the FIT in response to a CEW discharge incident as per the discretionary parameters provided within General Order 310.04 *Conducted Electrical Weapons*, the investigation of the incident shall instead be documented as a reportable use of force and handled in accordance with General Order 300.01 *Use of Force*.
 3. The OIC shall furnish a full oral report to the FIT upon its arrival explaining the circumstances surrounding the incident and any findings of fact.
 - H. Ensure that he/she makes all required notifications to other Department personnel, including the FIT, in accordance with Department policy; to include:

1. The Chief of Police or his/her designee and the Division Commanding Officer(s) of the officer(s) who engaged in the serious use of force.
 - a. The Chief of Police or his/her designee shall communicate his/her choice of officer for the FIT, when applicable.
 - b. The OIC shall contact the officer chosen by the Chief of Police, who shall immediately respond to the scene and participate in the FIT.
 2. The Weapons Bureau Commanding Officer (WBCO) and the Commanding Officer of the Office of Professional Responsibility.
 - a. Each of these Commanding Officers shall either respond or designate and notify a sworn officer under their respective commands to respond and participate in the FIT.
 3. The Bureau of Criminal Identification (BCI).
 - a. BCI shall respond and process the incident scene in accordance with established procedures pertaining to crime scenes and the collection and preservation of evidence.
 - b. Color photographs shall be taken of involved officers as they appear at the scene, to include any injuries sustained.
 4. The Investigative Division.
 - a. These officers shall respond to investigate criminal activity that may have been perpetrated by the suspect(s) during the incident, but will refrain from investigating the actions of the officer(s) who engaged in the serious use of force.
 - b. Video/audio tape-recorded statements shall be taken from all suspects involved in accordance with Department policy.
 5. The Commanding Officer(s) of any member(s) of outside agencies who have participated in a serious use of force incident with our Department officers within the City of Providence.
- I. Any officer who engages in a serious use of force resulting in the death of or serious bodily injury to any person, and any officer who is directly involved in a critical or traumatic incident resulting in the death of any person, shall be immediately relieved from line-duty assignment and placed on non-punitive administrative duty, pending an administrative review of the findings within the FIT report and, when applicable, the findings of the Use of Force Review Board. The Commanding Officer or designee from the Office of Professional Responsibility shall be tasked with the notification of said relief of duty, upon approval of the Chief of Police or his/her designee.

1. Officer(s) shall be provided with the opportunity to participate in a critical incident stress debriefing by member(s) of the Peer Support Unit and/or a clinical appointed professional.
- J. In accordance with “The Attorney General’s Protocol Regarding Use of Deadly Force Incidents and Custodial Deaths” (attached), the Attorney General’s Office and the Rhode Island State Police will be notified whenever a serious use of force by police results in the death of or serious bodily injury to any person.
1. One representative from each of the aforementioned agencies will respond to the incident scene and join the FIT in the investigation of the incident.

III. WEAPONS CONSIDERATIONS

- A. Whenever the FIT is activated, and in the interest of evidentiary preservation, any officer having discharged a firearm, CEW, and/or LLM, or having used any other type of weapon in the course of engaging in a serious use of force incident, shall turn-over the weapon(s) so discharged/used and any remaining magazines, cartridges and/or rounds, to the Commanding Officer of the Weapons Bureau (WBCO) or his designee.
1. In no case shall demand and turn-over occur any sooner or later than is determined to be practicable and prudent via the combined discretion of the WBCO or his designee and the OIC.
 2. Turn-over shall be performed in a discrete manner, outside the view of the media or the public.
- B. Re-issuance of a Department-issued replacement weapon and/or Department-issued magazines/cartridges/rounds shall be at the combined discretion of the WBCO or his designee and the OIC.

IV. THE FORCE INVESTIGATION TEAM (FIT)

- A. The FIT shall be responsible for conducting the investigation into the serious use of force incident.
1. The FIT may call upon any member of this Department, or any member of any other agency to assist in the conduct of its investigation.
 2. The FIT shall receive a descriptive statement of the serious use of force event/incident from the officer’s recollection and perception of the event/incident, in either a recorded “walk-through” procedural statement or other type of recorded statement. Detailed questions from the lead investigating officer/supervisor, Force Investigation Team (“FIT”) members, or any other investigators shall not be permitted at this stage of the officer statement process.

- a. If the involved member is present and able to assist at the scene, a supervisory officer may be assigned to act as the liaison between the involved member and FIT to aid in reconstructing the incident as it unfolded.
 - b. Notwithstanding (a) above, the walk-through shall be conducted in the manner stipulated within Section III of General Order 320.02 Body-Worn Camera (BWC) Program whenever BWC audio/video/image/data of any kind that pertains to the serious use of force incident exists.
3. The FIT shall ensure that all non-Department material witnesses are located, identified, and interviewed. These interviews shall become part of the official record and FIT report.
4. The FIT shall ensure that all involved Department members complete their preliminary reports of the incident as soon as practicable. Said members may consult with counsel and/or union representative prior to completing their preliminary reports. (A preliminary report does not constitute an interrogation or interview.)
 - a. Preliminary reports include:
 - i. Use of Force Report via Blue Team software.
 - ii. An Incident/Arrest Report.
 - ii. A Witness Statement.
 - b. The completion of a Supervisor's Use of Force Review Inquiry will not be necessary whenever a serious use of force incident occurs as long as the FIT's arrival is contemporaneous with the incident.
 - c. Reasonable time extensions may be granted when deemed appropriate by the OPR Commanding Officer or his superiors.
5. Whenever a serious use of force by police results in the death of or serious bodily injury to any person, the Commanding Officer of OPR and the FIT's OPR representative shall ensure that all involved members are separately interviewed on audiotape as soon as practicable.
 - a. Involved members shall be entitled to all the rights and privileges that are guaranteed under Rhode Island law and the Constitutions of the State of Rhode Island and the United States of America. All such interviews shall also be conducted in accordance with the provisions contained in the Law Enforcement Officers' Bill of Rights under Rhode Island General Law § 42-28.6.

6. In the event that the Office of Attorney General determines that a serious use of force incident shall be presented to a grand jury, as is mostly the case whenever, for instance, the incident has resulted in a fatality, all subsequent investigative efforts shall be coordinated with and approved by the Office of Attorney General prior to commencement.
7. The FIT shall forward a report to the Chief of Police within thirty (30) days of the incident, along with a recommendation as to whether or not the incident should be reviewed by the Use of Force Review Board. The Chief of Police shall then decide if the Use of Force Review Board shall review the incident.
 - a. The FIT report shall contain all incident/arrest reports, witness statements, Use of Force report in Blue team, photographs, interviews of officers and suspects, and any other reports, records, dispatch logs, audios and/or videos (including any and all Department-issued/authorized body-worn camera data/images/audio/video), and any other pertinent documentation, that are associated with the incident under review.
 - b. The FIT shall also contain a cover document prepared by the FIT's OPR representative and signed by all members of the FIT. This document shall convey, at a minimum:
 - i. The identities of the FIT members.
 - ii. A summary of the unfolding of the incident under review and the actions of the key players.
 - iii. A summary of the investigative steps taken during the investigation.
 - iv. Any conclusions drawn from the body of evidence pertaining to the investigation.
 - v. A recommendation as to whether or not the case should undergo further review by the Use of Force Review Board.

V. THE USE OF FORCE REVIEW BOARD

- A. The Use of Force Review Board (the "Board") shall review the FIT report and avail itself of any resources it deems necessary to conduct a complete and thorough examination of the incident under review.
- B. The Board shall complete its review and report its findings to the Chief of Police or his/her designee within thirty (30) days of it being called to order. It shall furnish conclusions and recommendations to the Chief of Police, which may include but may not be limited to:

- a. Actions within policies and procedures.
 - b. Actions not within policies and procedures.
 - c. No action necessary.
 - d. Retraining required.
 - e. Department training required.
 - f. Disciplinary action recommended.
 - g. Policy/procedure amendment recommended.
- C. The Chairperson of the Use of Force Review Board shall draft the conclusions and recommendations of the board. Upon review and agreement by the members of the board, the draft shall be finalized and signed by all of the Board members.

VI. PROVISIONS

- A. The Chief of Police and the Commissioner of Public Safety shall have the final decision regarding the conclusions and recommendations of the Use of Force Review Board and any actions stemming therefrom.
- B. The Chief of Police and the Commissioner of Public Safety reserve the right to request that additional actions be performed relative to any aspect of a serious use of force incident.
- C. A Use of Force Review Board file shall be established within the Administrative Division. All final reports shall be forwarded to the Administrative Division with copies to the Office of Professional Responsibility, where they shall be maintained. Access to these files shall be strictly controlled via a written request to the Chief of Police.

APPROVED:



COLONEL OSCAR L. PEREZ
CHIEF OF POLICE

State of Rhode Island and Providence Plantations
OFFICE OF THE ATTORNEY GENERAL
Peter F. Neronha, Attorney General



**THE ATTORNEY GENERAL'S PROTOCOL FOR THE REVIEW OF
INCIDENTS INVOLVING THE USE OF DEADLY FORCE, EXCESSIVE
FORCE AND CUSTODIAL DEATHS**

June 17, 2020

BACKGROUND

It has been the long-standing practice in this State that when a police officer uses deadly force, or where there has been a custodial death, the law enforcement agency reports the incident to the Office of the Attorney General for review and joint investigation. This Protocol updates and expands upon the Attorney General's Protocol Regarding The Review Of Incidents Involving The Use of Deadly Force and Custodial Death (last revised in 2007). It is designed to promote greater uniformity, accountability and impartiality in the investigation of police use-of-force incidents where deadly force was employed, where there has been an allegation of excessive use of force by police, and where a custodial death occurs. **It is applicable to all Rhode Island state and municipal law enforcement agencies.** For convenience, the terms "police officer" and "police department" are used in this Protocol.

A police officer's use of deadly force, alleged use of excessive force and the death of a person in police custody are some of the most sensitive matters that law enforcement agencies investigate. These investigations frequently pose complex factual and legal issues and are closely followed by the public we serve. It is critical that the public have confidence that when police use force, and deadly force in particular, that that use of force was reasonable and lawful. This Protocol sets forth the policies and practices of the Office of the Attorney General for the investigation of deadly force and custodial death incidents and for the investigation of allegations of the use of excessive force. It also provides guidance on potential *Garrity* issues.

USE OF THE PROTOCOL

The Protocol shall be followed whenever:

A police officer uses deadly force, whether or not death or injury of any person results.

A person dies while in police custody or dies during the apprehension or attempted apprehension of a person.

A police officer uses less than deadly force that results in serious bodily injury to any person.¹

A police department receives a complaint alleging that a police officer used excessive force during his/her interaction with a person, and there is evidence, including but not limited to video or other electronic evidence, to warrant additional investigation.

This Protocol may also be followed:

Whenever a person dies or is injured as a result of a police interaction even if the police did not intentionally use force or deadly force. For example, motor vehicle accidents involving the police where there is a fatality or serious injury.

In any situation, not explicitly addressed above, where the police department and the Attorney General jointly agree that review by the Attorney General would be in the public interest.

OBLIGATIONS OF THE EMPLOYING POLICE DEPARTMENT

The police department employing the police officer whose action prompts the application of this Protocol ("Employing Police Department") shall immediately notify the Office of the Attorney General (after hours, an Assistant Attorney General may be reached through the Bureau of Criminal Identification at 401-732-7629) and, in situations involving the use of deadly force or a custodial death, the Rhode Island State Police (401-444-1000). Where the action of a member of the Rhode Island State Police prompts the application of this Protocol, notification shall include the police department of the city or town where the action occurred.

¹ Serious bodily injury" means physical injury that: (1) creates a substantial risk of death; (2) causes protracted loss or impairment of the function of any bodily part, member, or organ; or (3) causes serious permanent disfigurement

The Employing Police Department shall limit the investigative steps taken prior to assembly of the multi-agency investigative team (see “Investigative Team” section below) to those measures necessary to secure the scene, preserve evidence, identify witnesses, and any other measures necessary to address exigent circumstances.

The Employing Police Department shall immediately collect, preserve, and turn over to the multi-agency investigative team all video and audio recordings that pertain to the incident in question. Any public release of video and audio recordings in the possession of law enforcement shall be done in accordance with the law and in a manner that preserves the integrity of the criminal investigation, protects the rights of the accused, and respects the privacy of civilians captured on the recording. Absent extraordinary circumstances, video and audio recordings should not be released until all witness statements have been collected and the criminal investigation has concluded.

The Chief of Police of the Employing Police Department, or, where the matter involves the conduct of a member of the Rhode Island State Police, the Colonel of the State Police, shall serve as the primary point of contact for media inquiries, coordinating all responses with the Attorney General and other members of the multi-agency investigative team. The Chief of Police, or, where applicable, the Colonel of the State Police, may also refer such inquiries to the Attorney General.

ROLE OF THE ATTORNEY GENERAL

The Attorney General shall assign a senior prosecutor (or prosecutors) to work with and provide legal advice to investigators throughout the course of the investigation.

As a general rule, the Attorney General will present every police-involved use of force incident resulting in death or serious bodily injury to a grand jury for its review and consideration.

Incidents involving use of force that did not result in death or serious bodily injury and where the undisputed facts indicate that the use of force was objectively reasonable under the law may be concluded without a formal grand jury presentation.

The Attorney General may, however, present any matter to a grand jury where doing so is necessary to obtain evidence, develop the testimony of witnesses, and otherwise conduct a full and complete investigation.

INVESTIGATIVE TEAM

Matters Involving the Use of Deadly Force and Custodial Death

Where a police officer uses deadly force, regardless of whether death or injury results, or where a person dies in police custody or during apprehension or attempted apprehension by police, the investigative team will be comprised of members of the Attorney General's Office, the Rhode Island State Police and the Employing Police Department.

Where a member of the Rhode Island State Police uses deadly force, regardless of whether death or injury results, or where a person dies in State Police custody or during apprehension or attempted apprehension by the State Police, the investigative team will be comprised of the Attorney General's Office, the Rhode Island State Police, and the municipal police department of the city or town where the incident occurred.

The investigative team will respond to the scene immediately after notification of the incident initiating application of this Protocol.

Matters Involving Less than Deadly Force and Allegations of Excessive Use of Force

Whenever a police officer uses less than deadly force that results in serious bodily injury to a person, or is alleged to have used excessive force and the evidence supporting such allegation, including but not limited to video or other electronic evidence is sufficient to warrant additional investigation, the Employing Police Department shall:

- Promptly notify the Attorney General; and
- Provide the Office of the Attorney General with copies of all non-compelled statements and any other evidence pertaining to the matter.

The Attorney General and the Employing Police Department will jointly review the evidence pertaining to the matter and pursue any follow up investigation as necessary. It is strongly preferable that members of the Employing Police Department's Professional Standards Unit or equivalent be assigned to the investigation.

The Attorney General will determine whether criminal charges are appropriate, and, if charges are appropriate, the nature of such charges, including whether the appropriate charge or charges constitute a misdemeanor or felony or

both. The Attorney General will determine whether presentation to a grand jury is necessary to obtain additional evidence or develop the testimony of witnesses.

GARRITY ISSUES

Pursuant to the United States Supreme Court's decision in *Garrity v. New Jersey*, 385 U.S. 493 (1967), when a police officer is compelled by a supervisor to make a statement in the course of an administrative or internal investigation or face termination, such statement and any evidence derived from that statement cannot be used in any subsequent criminal investigation or prosecution of that officer.

If a police officer agrees to provide a voluntary statement, the officer's statement may be shared with all investigators and prosecutors assigned to the matter.

If an officer is not willing to provide a voluntary statement, the investigative team, in consultation with the Attorney General, must determine whether a statement should be compelled by a supervisor. If the decision is to compel a statement, under *Garrity*, his or her statement and evidence derived from that statement cannot be used in any subsequent prosecution. Accordingly, under these circumstances, the investigative and prosecution team must be divided into two groups. The first group will be allowed access to the compelled statement and any evidence obtained as a result. The second group must be walled off from the contents of any compelled statement and the evidence derived from such statement.

The first group will be assigned to investigate any administrative and departmental violations allegedly committed by the police officer providing the compelled statement. They may also participate in the criminal investigation and/or prosecution of any other individual, including a police officer, whose statement was not compelled.

The second group will be assigned to pursue the criminal investigation and/or prosecution of any officer whose statement was compelled.



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