

Fennimore Police Department Officer Involved Death		
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PURPOSE

The purpose of this policy is to provide Fennimore Police Department personnel with guidelines as required by Wis. Stat. § 175.47 regarding responses to any Officer-Involved Death.

POLICY

The policy of Fennimore Police Department is to obtain an unbiased, thorough and professional criminal investigation of all Officer-Involved Deaths.

DISCUSSION

The Fennimore Police Department believes an independent criminal investigation of any Officer-Involved Death incident completed by qualified investigators not employed by the department is important to protect the integrity of the review process. An Officer-Involved Death incident is extremely traumatic to the deceased party's family, the officer involved and the community in general. An independent and outside criminal investigation will assure those affected by the incident that the review has been completed in an objective manner.

DEFINITIONS

Officer-Involved Death means a death of an individual that results directly from an action 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 within the scope of his or her law enforcement duties, Wis. Stat. § 175.47(1)(c).

Examples of an Officer-Involved Death include:

- Intentional or accidental use of deadly force
- Use of force, other than deadly force that results in the death of an individual
- Vehicular collisions resulting in death which resulted from:
 - Police gunfire directed at the suspect or suspect vehicle

- A police vehicle pursuit that resulted in a crash/death or the driver or passenger
- A police vehicle being used as a technique to apprehend a suspect (PIT maneuver, ramming, roadblock)
- Injuries suffered by a person who was a passenger in a police vehicle (ride-along, emergency transports)
- Any custodial death, except those that occur while the prisoner is under a physician's treatment for a disease or other natural condition which has been diagnosed prior to death and which does not involve custodial trauma, custodial suicide or custodial ingestion of a toxic substance.

Involved Officer means an officer who is involved in an Officer-Involved Death incident as an actor, victim or custodial officer. When circumstances warrant, a witness officer may be deemed an involved officer for the purposes of this policy.

PROCEDURES

The Chief of Police or his/her designee will require the criminal investigation of the Officer-Involved Death incident to be conducted by two investigators from another uninvolved law enforcement agency. One of these investigators will be designated as the lead investigator and neither investigator will be employed by a law enforcement agency that employs any law enforcement officer involved in the Officer-Involved Death, Wis. Stat. § 175.47(3)(a).

If the Officer-Involved Death incident being investigated is traffic-related, a crash reconstruction unit from a law enforcement agency that does not employ any officer involved in the crash will complete the investigation, Wis. Stat. § 175.47(3)(b).

In addition to the Fennimore Police Department's concern about possible criminal violations by its employees, the department also requires facts about the incident for administrative purposes. Specifically:

- To determine whether employees violated department policies, procedures, standards, training or supervisor instructions.
- To determine the adequacy of the department's policies, procedures, standards, training, equipment and supervision.
- To provide details of the incident to management and governmental bodies, so they can be responsive to the public and news media.
- To prepare for administrative claims and/or civil litigation that may be initiated by or against the Fennimore Police Department.

An administrative investigation into the Officer-Involved Death may occur concurrently to the independent criminal investigation provided the administrative investigation does not interfere with the criminal investigation. A criminal investigation has investigative priority over any administrative investigation.

The Chief of Police or his/her designee will determine when the administrative investigation will begin. The findings of a criminal investigation may be used by the Fennimore Police Department for administrative purposes.

Responsibilities of Department Administration

When the department experiences an Officer-Involved Death or any incident that has resulted in an injury that could foreseeably become an Officer-Involved Death, the Chief of Police or his/her designee will make arrangements for a non-involved law enforcement agency to provide at least two investigators, one of whom is the lead investigator, to conduct the criminal investigation.

The Chief of Police or his or her designee will lead the administrative investigation and, if requested, will make a department officer available to the lead criminal investigator. This department officer will not participate in the investigation of the Officer-Involved Death and will only serve as an informational resource to the investigatory team.

An Officer-Involved Death checklist shall be maintained by the department and the form attached to this policy as Appendix A.

Responsibilities of the Involved Officer

In the event of an Officer-Involved Death, or any incident that has resulted in an injury that could foreseeably become an Officer-Involved Death, the involved officer shall:

- Request emergency medical assistance as soon as practical and render first aid to any injured person(s) when it is safe to do so.
- Promptly notify the Grant County Sheriff's Office communications center of the incident and make reasonable attempts to preserve the scene.
- Promptly notify the Chief of Police or his/her designee of the incident.
- Remain at the scene until cleared to leave by the Chief of Police or his/her designee, unless the involved officer is injured, or his/her continued presence renders the situation unsafe.

- Protect any firearm used for later submission to the officer's supervisor or lead investigator responsible for the Officer-Involved Death criminal investigation.
- Refrain from discussing the incident with anyone except appropriate supervisors, investigating officers or other assigned law enforcement personnel, the prosecuting attorney, the officer's attorney, a mental health professional or physician, the officer's clergy, the officer's spouse or domestic partner, or other persons specifically authorized by the Chief of Police or his/her designee.
- Remain available, while on administrative leave, for any interviews or statements required during the course of the criminal investigation. In addition, the officer shall be subject to recall to full duty at any time.

Public Safety Statement

A "Public Safety Statement" is information given by an officer immediately after an Officer-Involved Death incident or any incident that has resulted in an injury that could become an Officer-Involved Death incident. The purpose of the statement is to ensure subject, officer and public safety by providing enough information to address immediate safety concerns following an incident.

An officer present for an Officer-Involved Death or any incident that has resulted in an injury that could foreseeably become an Officer-Involved Death will be asked to give a supervisor or lead investigator a Public Safety Statement regarding the incident. This statement may include a scene walk-through or video review.

The Public Safety Statement shall not be recorded unless extremely rare circumstances exist in which the supervisor or investigating officer can articulate a specific reason for doing so. The Public Safety Statement is attached to this policy as Appendix B.

The Public Safety Statement should be limited to:

- Location of injured person(s) and nature of their injuries.
- Nature or cause of contact with the deceased or injured subject.
- Application of force or tactics attempted or used during the incident.
- Description of outstanding suspect(s), direction of travel, time last seen, and suspect's weapons.
- Description and location of any known witnesses.
- Description of the incident scene and location of any known evidence.

- Direction and approximate number of shots fired by the involved officer(s) and suspect(s).
- Any other information necessary to ensure officer, subject and public safety, and assist in the apprehension of suspects still at large.

The involved officer may be asked to provide a blood sample by the supervisor, lead investigator or his/her designee for the purpose of drug/alcohol toxicology.

Administrative Leave

An officer involved in an Officer-Involved Death or any incident that has resulted in an injury that could foreseeably become an Officer-Involved Death shall be placed on administrative leave with pay for a minimum of three days. This removal from duty is not punitive in nature and is meant to provide the officer with time to recover from the incident.

The Chief of Police or his/her designee will determine if the involved officer should remain on administrative leave until the criminal investigation and prosecuting attorney's review of the incident is complete. Any extension of administrative leave shall not be interpreted to indicate or imply that the officer has acted improperly.

An officer placed on administrative leave after an Officer-Involved Death incident shall remain available for questioning or recall between the hours of 8am and 4pm, Monday through Friday, unless the officer receives prior approval from the Chief of Police to deviate from this schedule.

Formal Investigative Interview

The involved officer will be offered a period of 24 to 72 hours for sleep and recovery prior to submitting to a formal interview by the criminal or administrative investigators. The involved officer may be allowed to review any department audio or video recordings of the incident prior to or coinciding with the formal interview but will not be allowed to consult with any other personnel involved.

It is an accepted best practice to record the formal interview of an officer who is directly involved in an incident or who is otherwise a critical witness. The lead investigator shall make an assessment as to the appropriateness of recording statements and shall advise the officer being interviewed of his/her decision. Investigating officers shall remember that interviews are consensual in nature and involved parties have the ability to refuse to be recorded.

Officer Rights

Fennimore Police Department officers have the same rights and privileges regarding interviews as any other citizens, including the right to consult with a representative (legal and/or union) prior to a criminal or administrative interview and the right to have the representative present during the interview.

- The representative should be allowed to consult with the officer privately about the facts of the incident. However, the representative may consult with only one involved officer at a time.
- Officers will not be compelled by threats of administrative punitive action to answer questions posed by criminal investigators that would be self-incriminating.
- Officers may be compelled to answer questions directly related to his/her official duties or actions during an administrative investigation. Answers received in such a manner may not be used in a criminal proceeding involving the employee. Prior to any administrative questioning, the employee shall be read the standardized "Garrity Warning" that appears in Appendix A of the Personnel Complaints policy.

Counseling and Support

The Fennimore Police Department will ensure officers involved in the incident are treated fairly and professionally.

A post-incident debriefing with a qualified mental health professional will be required of the involved officer as soon as practical. The debriefing shall not be used in any department investigation and will only be used to determine fitness for return to duty. The debriefing shall be kept confidential as required by law.

If requested, additional counseling services will be available to the officer, any other officer or personnel affected by the incident or the family of the involved officer. The consultation sessions will remain protected and confidential as required by law.

Returning to Duty

If deemed appropriate by the Chief of Police or his/her designee after consultation with the involved officer and his/her mental health professional, the involved officer will be assigned to limited duty for a reasonable time period before resuming full duty responsibilities.

Prior to returning to full duty, the involved officer shall demonstrate proficiency in the law enforcement tactic used during the Officer-Involved Death. An officer may also be required to demonstrate proficiency in all approved deadly force tactics.

Disposition

Investigators conducting the criminal investigation of the officer involved death incident will provide a complete report to the Chief of Police and the Grant County District Attorney in an expeditious manner, Wis. Stat. § 175.47(5)(a).

If the district attorney determines there is no basis to prosecute the officer involved in the officer involved death incident, the criminal investigative reports provided to the district attorney will be released to the public, Wis. Stat. § 175.47(5)(b).

If the district attorney files charges against the officer involved in the Officer-Involved Death incident, the criminal investigative reports provided to the district attorney and all records related to the investigation will be subject to Wisconsin's public records laws.

DISCLAIMER

This policy is for internal use only and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this policy may form the basis for departmental administrative action, but it is not intended for use in courts of civil or criminal jurisdiction.

/s/ Christopher J. French

09/22/2020

Christopher J. French
Chief of Police

Date

APPENDIX A
OFFICER-INVOLVED DEATH CHECKLIST
Revised 09/30/2015

A supervisor will place his/her initials next to each task after it has been completed.

- Ask each witness, suspects or officer involved in the incident if they need medical attention. Secure medical attention if requested or otherwise needed.
- All emergency personnel (EMS, Fire and Law Enforcement) will be removed from the scene once EMS is done with the patient. Obtain roster of all emergency personnel on scene from beginning to end of incident.

Scene related tasks

- Secure the scene with officers and barricades/tape if appropriate to preserve evidence.
- Safeguard any evidence related to the incident until collected by the investigating agency.
- Photograph and/or video document the scene
- Establish an initial command post location.
- Make arrangements for area to be canvased in attempt to identify people present who may or may not have witnessed anything and any audio/video recordings they may have. These contacts should be recorded **and vantage points photographed**.
- Decide if FPD will maintain control of the scene or if another agency will take possession of the scene.
- Notify coroner, but do not allow access until DCI has arrived.
- Identify any audio or video recordings associated with the incident and make arrangements for their security or procurement as evidence. This includes non-law enforcement sources such as video surveillance or bystander cell phones.
- Notify District Attorney's office of the incident and obtain a direct contact number for DCI. Consult the district attorney regarding any need for a search warrant for scene.
- Contact DCI at (608) 266-1221 or after hours at (608) 266-1671. DCI will want as much information as possible.

- If requested, assign a Fennimore Officer to serve as a local resource to DCI during the criminal investigation.
- Contact the Wisconsin Crime Lab at (608) 266-2031.
- Allow DCI to complete death notifications.
- Make any requested training or other records available to DCI.
- Obtain a roster of all responding EMS and Fire personnel.

Media Tasks

- A general news release will be prepared for the purpose of keeping the public informed if there is any further threat to the community.
 - When possible, the content of this press release will be coordinated with the investigating agency to avoid releasing any information which will compromise the investigation.
- Officers involved in the incident will be notified if they are to be named in the press release.
 - When possible, immediate family members of the deceased person will be notified of an impending press release which identifies the deceased person by name.

Notes:

Officer related tasks

- Ensure officer's wellbeing and remind officer to not discuss the incident with other officers, reporters or any personnel not authorized by policy.
- Allow the officer to contact WPPA at 800-362-8838 or their business agent.
- Allow the officer to contact his/her immediate family if desired to make notification before family receives information from other sources.
- Complete the Public Safety Statement with the officer.
- Remove the officer to a private location, preferably a medical facility.
- In a private location, obtain the officer's firearm and magazines if it was used in the incident. Advise officer they will be returned or replaced as soon as practical.
- In a private location, photograph the officer's uniform and any injuries the officer may have.
- In a private location, collect any evidence that may be on the officer's uniform or person. Collect the officer's uniform, duty belt and shoes as evidence.
- Ask officer to submit to a voluntary blood draw for the purpose of drug/alcohol toxicology. An administrative blood draw can be compelled, but not shared with the investigative team. Garrity warning should be given if compelled.
- Advise the officer he/she may be allowed to see any video and complete a walkthrough of the scene before any formal interview if possible.
- Provide the officer with a copy of the Officer-Involved Death policy.
- Allow DCI to complete a walkthrough of the scene with the involved officer if requested.
- Advise the officer he/she will be placed on administrative leave with pay and must make him/herself available to the police department during the hours of 8 am to 4 pm, Monday through Friday, while on administrative leave.
- Secure support through department, family or friends before allowing the officer to go off duty. Do not send the officer home alone if possible.
- Make arrangements for the officer to see a qualified mental health professional.

- Remind officer of the risks of participating in social media prior to completing a formal interview.
- Remind officer that exposure to any community negativity through viewing of television and/or web-based postings may complicate post-incident thoughts and emotions.

Notes:

APPENDIX B
PUBLIC SAFETY STATEMENT

Date and Time:

To be read to the officer:

You have been involved in an incident that has resulted or may result in the death of another person. FPD's Officer Involved Death policy explains the department's procedures in handling this type of incident. FPD or another local agency will secure the incident scene and an outside agency will be completing an investigation into this incident. The information solicited by the questions below is necessary to ensure immediate public safety.

Are you injured? Do you need medical attention?

Are there other persons who may need medical attention? Do you know where those persons would be?

Are there any suspects who are unaccounted for? Please provide a description of these persons and their vehicles and weapons.

Are there any witnesses who are unaccounted for? Please provide a description of these persons and their vehicles.

What was the nature or cause of contact with the deceased or injured subject?

What type of force or tactics did you use during the incident?

Please provide a description of the number and directions of shots fired by the suspect.

Please provide a description of the number and direction of shots fired by you.

Has the incident scene been changed or altered in any way?

Please provide a description of the incident scene and location of any known evidence.

Please provide a description of any possible evidence (DNA transfer during a gun grab, items disturbed in an altercation, footprints etc...)

Please provide a minimal summary of the event in order to address and better understand the information provided above.

Is there any other information necessary to ensure officer, subject and public safety, or assist in the apprehension of suspects still at large?