

Deadly Force Response Investigations

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Policy Statement

Incidents in which deputies have responded with deadly force require carefully coordinated investigations to ensure that facts and circumstances are gathered and reported in a thorough, fair and impartial manner and the rights of involved officers are protected. Whatcom County Sheriff's Office personnel who have been called upon to respond with deadly force and who are assigned to the resulting investigations will follow the guidelines in this policy.

This policy does not apply to the destruction of animals.

Persons Affected

All Sheriff's Office employees

Directives Affected

Rules and Regulations Manual Chapter 22, Sections 22.9 – 22.11 - canceled

Definitions

Compel – to order under threat of loss of employment (e.g., to require a statement following a *Garrity* advisement)

Involved officer – any deputy sheriff (including corrections and reserve), police officer, etc., who responded with, or was in the immediate vicinity of an officer who responded with, deadly force during an incident. *Involved deputy* specifically refers to any involved officer who is a Whatcom County deputy sheriff.

LEMART Participation

The Whatcom County Sheriff's Office will contribute resources to the Law Enforcement Mutual Aid Response Team (LEMART) as specified in the [LEMART Protocol](#).

Incident Response

Responding deputies, supervisors and command staff members should complete the actions listed in the [Deadly Force Incident Response Protocol](#).

After [involved deputies](#) have completed actions required by the above protocol, responding command staff members will place those directly involved in the application of deadly force on administrative leave for an initial period of 72 hours.

A determination to place other involved deputies, who may have not applied deadly force, on administrative leave, will be made by command staff based on the totality of the known facts, to include the overall wellbeing of those involved.

Due to the potentially traumatic nature of deadly force response incidents, involved deputies must obtain clearance from the sheriff via their chains of command before returning to duty.

Deputies will be provided the opportunity to meet with a counselor who specializes in traumatic stress and PTSD.

Investigation Types and Control

Incidents involving deadly force responses may require several separate investigations including:

- Criminal – to gather all available and relevant information and evidence to assist the appropriate prosecutorial authority with determining the criminal culpability of any person involved in the incident
- Administrative - to assess agency practices and systems, and/or employee policy compliance
- Civil – to document facts and circumstances relevant to risk management.

Criminal investigations are controlled by agencies in whose jurisdictions investigations are conducted to determine if criminal culpability exists.

Administrative investigations may be conducted by any involved employees' agencies. Such investigations are controlled by the agencies who conduct them.

Civil investigations may be conducted by any jurisdiction in whose area the incident occurred or whose employees were involved in the incident.

Investigation Assignments

Table 1 and this section contain *guidelines* command staff members should use to determine how to assign investigations of incidents involving deadly force responses that occur within the Sheriff’s Office’s jurisdiction or that involve Sheriff’s Office personnel.

Table 1 – Investigation Assignments

Incident Location	Employing Agency	Investigation Assignment	
		Criminal	Administrative
Whatcom County	WCSO	LEMART	WCSO OPS
Whatcom County	Other agency	LEMART or WCSO	Other agency
City limits (in Whatcom County)	WCSO	LEMART	WCSO OPS
Outside Whatcom County	WCSO	Other agency	WCSO OPS

Criminal

Sheriff’s Office command staff members will normally call upon the Law Enforcement Mutual Aid Response Team (**LEMART**) to conduct criminal investigations of incidents that occur in areas where the Sheriff’s Office exercises jurisdiction. For incidents involving personnel from other agencies, command staff members should consider the totality of the circumstances and consult with the involved officers’ agency to determine the most appropriate assignment.

When Sheriff’s Office employees respond with deadly force inside the limits of a city in Whatcom County, command staff members will ensure that the LEMART conducts the criminal investigation.

If it appears that any officer may become or is a suspect in a criminal investigation, command staff members shall promptly take steps to ensure the continuing fairness and impartiality of the process, at minimum by ensuring that continuing investigation of deputies or officers is not conducted by members of the deputies’/officers’ agencies (e.g., using two teams of investigators from the LEMART, calling in another agency).

Administrative

The Office of Professional Standards will normally conduct any administrative investigation ordered by the sheriff of deadly force response incidents involving Sheriff’s Office personnel.

Civil

Sheriff’s Office personnel may be assigned to assist the Whatcom County Prosecuting Attorney’s Office with risk management or civil investigations.

Investigation Guidelines

Sheriff's Office personnel who conduct investigations related to deadly force responses will follow the guidelines in this section.

Criminal

Involved Officers – Verbal Incident Summaries / “Public Safety Statements”

Following any incident in which they have been involved, officers have a general duty to communicate exigent circumstances to responding personnel, including information necessary to:

- Prevent harm to any person.
- Identify and secure evidence.
- Apprehend suspects.
- Identify witnesses.

Following any incident that included a deadly force response, **involved officers** will fulfill this duty by giving a compelled *verbal summary* of such information to the first responding supervisor who will document the summary using the appropriate form/card.

Investigators

Criminal investigators will conduct fair, complete and professional investigations. They shall fully respect and observe the constitutional and statutory rights of all involved officers.

Involved Officers – Voluntary Statements

Prosecutorial authorities who review, assess and make decisions regarding incidents involving deadly force responses rely on information from involved officers. Therefore, investigators will normally invite involved officers to provide voluntary statements about their actions during deadly force response incidents, with the understanding that such statements will be turned over to prosecutors as part of the criminal investigation. These voluntary statements may take the form of a normal written report or recorded interview.

Investigators will not seek out such voluntary statements from involved officers until at least 72 hours after a deadly force response incident. Investigators shall obtain prior approval from the sheriff before accepting voluntary statements from involved officers before this 72 hours period has elapsed.

If during the course of a criminal investigation a deputy invokes his or her constitutional rights, investigators will coordinate subsequent requests for a voluntary statement through the deputy's attorney.

Involved Officers – Compelled Statements Prohibited

The Whatcom County Prosecuting Attorney's Office will not accept **compelled** statements from criminal investigators. Therefore:

- Neither persons conducting criminal investigations of deadly force response incidents nor first level supervisors have the authority to compel involved officers to make any statements other than the compelled verbal summary (Public Safety statement) provided to the on-scene first level supervisor, nor will they be present during interviews in which administrative investigators have ordered involved officers to make statements.
- No command staff member will compel any involved deputy to make a statement following a deadly force response incident unless specifically authorized to do so by the applicable prosecutorial authority, except as part of a separate **administrative investigation**.
- No Sheriff's Office employee will provide any compelled statement taken from an involved deputy to a prosecuting attorney in a criminal investigation.

Administrative

The sheriff may designate a command staff member to monitor criminal investigations into deadly force responses involving Sheriff's Office personnel. The sheriff may order a separate administrative investigation if he or she determines there is a need to assess agency practices and systems, and/or employee policy compliance.

Investigators

Administrative investigations of incidents involving deadly force responses will follow all applicable laws, agency directives and collective bargaining agreements. Administrative investigators shall not be present during interviews of involved officers by criminal investigators.

Involved Deputies – Reports

As part of an administrative investigation, the chief inspector or designated investigator may order involved deputies to complete reports they would normally have completed to document their involvement in a deadly force response incident. Such reports shall be considered **compelled** statements and investigators shall obtain them in accordance with applicable law and collective bargaining agreements.

The chief inspector or designated investigator shall cause these reports to be protected in Sheriff's Office records management systems so that access to them is limited to only those involved in the conduct and adjudication of the administrative investigation and any related allegations. Sheriff's Office employees shall not provide such reports to criminal prosecutorial authorities or criminal investigators.