



Police Use of Deadly Force Investigations

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Policy Statement / Objective:

This policy provides guidelines and sets parameters for Bureau of Criminal Apprehension (BCA) involvement in police use of deadly force investigations. When a law enforcement officer uses force and a citizen dies or is seriously injured, the public expects a thorough investigation regarding the circumstances of the use of force. The BCA conducts criminal investigations of these incidents at the request of other law enforcement agencies and does not conduct internal or administrative inquiries of these actions.

Once requested by another law enforcement agency, it is the BCA's responsibility to conduct an independent, thorough, and unbiased investigation. The BCA will limit any outside agency assistance with the investigation. While the investigation is open and active, the investigative case file and related materials will remain investigative data and will typically only be disseminated to the reviewing prosecutorial authority. The investigative materials and data may also be shared with federal law enforcement related to a review of the incident under federal law.

Definitions:

Officer/Deputy: Since multiple titles such as; (Victim, Witness, Suspect) could be given for the law enforcement official that used deadly force against another, the term Officer or Deputy will be used for BCA documentation purposes.

Subject: Since multiple titles such as, Victim, Witness, and Suspect could be given for the person whom the peace officer used force against, the term subject shall be used for BCA documentation purposes.

Public Safety Statement: A public safety statement is a statement provided by involved officers that briefly describes the facts and circumstances so that responding personnel can assess the security of the scene, possible injured parties, possible witnesses, persons who are not currently in custody, and understand the nature of the crime scene.

Policy:

1. Protocols

- a. The BCA will respond to and investigate critical incidents when intentional force is used that results in great bodily harm or death. If a peace officer attempts to use deadly force, but no one is injured the BCA will evaluate each request on a case by case basis.
- b. The initial responding agent shall notify the appropriate supervisor of the BCA's response to such scene. The appropriate supervisor shall ensure the Deputy Superintendent of Investigations is promptly notified with timely and pertinent information.
- c. Frequently, two separate and different investigations may be conducted simultaneously when an agency is investigating criminal activity prior to the deadly force being used. The BCA will conduct the officer involved use of deadly force investigation and the requesting agency or another agency will conduct any other criminal investigations that are required surrounding the use of deadly force incident. The BCA will coordinate with the requesting agency to decide who performs what duties for any overlapping investigative activities.

- d. In order to avoid overlapping or a duplication of investigative activities, requesting agencies are encouraged to delay any agency internal investigation until the independent BCA criminal investigation is complete. This is to avoid any possible *Garrity* issues that could arise.
- e. The requesting agency(s) should designate a primary contact person to liaison with BCA investigative personnel who has sufficient knowledge of the incident to inform responding the responding BCA case agent. In most cases, this person should not be the Chief Law Enforcement Officer (CLEO). The designated person will be the contact for BCA Agent(s) for investigative needs.
- f. Agencies should refrain from asking any questions that relate to the decision to use deadly force or the deadly force incident.
- g. All officers involved or present during the initial incident should be removed from the scene as soon as possible. Involved officers should not confer with each other about the critical incident, and should be assigned a monitoring officer from the time of the critical incident until the officer is off duty.
- h. Due to quickly changing scene conditions, agencies should take measures to protect the scene and any possible evidence located at the scene, taking care not to alter the evidence within the scene. This includes, but is not limited to leaving emergency vehicles and equipment at the scene.
- i. BCA Agents will determine the amount of BCA resources needed such as crime scene response, interview teams, canvass teams, etc.
- j. BCA Agents should meet with the involved officers and agency CLEO(s) or designated command staff as soon as practical to explain the BCA's investigative process and investigative needs.
- k. BCA Agents should photograph each officer who used deadly force and document any injuries sustained as soon as practical. Officer(s) should be photographed in the same attire they were wearing during the use of deadly force incident.
- l. BCA Agents should obtain a copy of the involved officer's pertinent training records and internal affairs files for inclusion in the case file.
- m. BCA Agents should obtain a copy of the involved agency's use of force policy and any other pertinent policies for inclusion in the case file.
- n. BCA Agents shall attempt to have a voluntary blood toxicology sample collected from the officer(s) who have used deadly force. BCA Agents should have the officer(s) review and sign the BCA Consent to Provide Chemical Test of Blood form should they be willing to give a blood toxicology sample.
- o. If an officer(s) is killed or injured, BCA Agents should work closely with the local agency administration to make notification to the officer(s) family as soon as practical. BCA agents should also work with the agency to assist them in implementing their line of duty death procedures.
- p. If a subject is killed or injured, agents should coordinate with the local agency and should make notification to the subject(s) family as soon as practical. Agents should also explain the investigative process to the family and provide their contact information.
- q. Arrangements should be made to have BCA personnel attend autopsies related to the officer involved use of deadly force investigation whenever practical.

- r. BCA Agents should consult with the county attorney or their designee within the first 24-48 hours of the investigation to share information regarding investigative strategy.
- s. BCA Agents should share officer involved use of deadly force investigative information with the requesting agency CLEO and/or appropriate command staff, on a limited basis, and only if the CLEO was not directly involved in the use of deadly force incident. Information should be shared to enhance the decision making process for the CLEO, as it relates to work status of their employees that were involved in the use of deadly force incident, as well as to address any officer safety related training issues. This should include making arrangements for the CLEO and/or the appropriate command staff to view the video of the incident.
- t. At the conclusion of the investigation, the BCA will turn the case file over to county attorney or assigned prosecutorial authority. It is important to note that once the case file has been turned over, the investigation is still active, and frequently there will be additional follow-up conducted.

2. Interviews

- a. All interviews conducted as part of the use of deadly force investigation will be digitally recorded and transcribed unless unusual mitigating circumstances exist which prevent recording of the interview.
- b. All interviews conducted with the officer(s) who have used deadly force will be voluntary.
- c. Interviews will be conducted at a time and place determined by BCA Agents and the involved officer and/or their legal representation.
- d. All non-custodial interviews conducted with the officer(s) who have used deadly force will be presented with the BCA Criminal Investigative Warning. This warning should be reviewed with the officer and they should acknowledge their understanding of the warning.
- e. All custodial interviews conducted with the officer(s) who have used deadly force will be read the *Miranda* warning.
- f. When an agent is taking a statement from an officer who used or attempted to use deadly force in a critical incident and the incident is captured on video or audio recordings the following process should normally take place:
 - i. If the agency has a written policy that explicitly allows the officer to view video prior to providing a statement to the investigating agency, the agent shall permit the agency to administer their policy. The agency shall be permitted to arrange viewing of video if the officer requests to do so under their policy. The agent shall document the viewing of the video in any subsequent voluntary interview.
 - ii. If the agency does not have a written policy governing viewing of video by officers involved in a critical incident or the agency policy defers to the BCA, the following procedures should occur.
 - i. The peace officer will be requested to provide a voluntary interview of the facts and circumstances surrounding the incident.
 - ii. Neither the officer or their attorney will be permitted to view the video prior to providing a voluntary interview. However, the peace officer may view the video following the voluntary interview if they request to do so to assist in clarifying any portion of their statement. The viewing of the video will be

limited to the incident captured on the officer's own dash camera or body worn camera.

- iii. If the peace officer requests to view the video they will be afforded an opportunity to do so at the conclusion of the voluntary statement. The agent should make arrangements to show the video as soon as feasible following the statement. BCA personnel should be present for the viewing of the video and the officer's legal representation may be present as well. No other persons other than people needed for technical assistance should be present for the viewing of this video.
 - iv. If multiple cameras from other sources captured the incident, the agent shall determine if additional video should be shown to the involved officer on a case by case basis.
 - v. At the conclusion of the viewing of this video the peace officer shall be afforded an opportunity to consult privately with their attorney.
 - vi. Once such consultation has occurred, the agent shall provide an opportunity to the involved peace officer to clarify any portions of their statement after viewing the video.
- g. The viewing of videos by witness officers and/or other witnesses will be left to the discretion of the investigative agent and should only be done so if the agent believes it may aid in the investigation. Under no circumstances will the video be shown prior to taking an initial statement from any witnesses.
 - h. BCA Agents may ask officers, subjects and witnesses to complete a voluntary hand-drawn diagram depicting the layout of a deadly force incident. This drawing should be labeled "Not To Scale", as spatial memory can be distorted.
 - i. A determination will be made by BCA Agents as to whether witness officer(s) will be interviewed or asked to complete a police report to document the incident. All officer(s) interviewed by the BCA will not normally write a police report, as their interview will act as their report. If a report is required to be written by the involved officer via agency policy, the agent should work with appropriate agency personnel to determine how to proceed. BCA Agents should attempt to conduct all interviews as soon as practical.
 - j. BCA Agents should attempt to canvass the area surrounding the scene for potential witnesses.
 - k. BCA Agents may conduct additional follow-up interviews with officers, subjects and witnesses as deemed necessary.

3. Evidence

- a. If the BCA is requested to conduct an officer involved use of deadly force investigation, the BCA will become the controlling entity of all evidence associated with the officer involved use of deadly force until the conclusion of the investigation.
- b. Any digital evidence obtained by the BCA in connection with the investigation will be considered evidence in the investigation and should not be disseminated without the permission of the BCA. All digital evidence related to the officer involved use of deadly force such as squad camera video, body camera video, recorded police radio traffic, recorded telephone calls and all other audio/video recordings, whether they reside on tangible media (DVD, CD, server, data storage device, etc.) or cloud-based storage should become original evidence in their original format when feasible. A copy obtained from a device, server, or

cloud based storage shall serve as the original evidence when obtaining the actual media is not feasible.

- c. It is preferred that involved officer(s) keep their weapons holstered and a BCA Agent(s) will recover the weapon from the officer(s). When feasible, if the weapon used is a long gun or another weapon, the officer(s) should keep the weapon with them until it can be recovered by BCA Agent(s). All weapons should be either holstered or placed on "safe", and should not be unloaded or manipulated in any other way. This process will help to ensure the minimum number of people involved in the chain of custody. All firearms discharged, and all firearms carried but not discharged by the involved officers should be cataloged and documented. It

is understood that there may be some circumstances in which it would be beneficial to have the officers weapon secured prior to the arrival of a BCA Agent. In these situations, the weapon should be secured in a location where chain of custody can be documented and the agency should attempt to have as few people as possible in the chain of custody.

- d. All recorded interviews will be transferred to disc or other digital media storage device, labeled as evidence and later transcribed.
- e. BCA Agents may collect officer(s) complete uniforms and duty gear if later laboratory analysis is foreseeable.
- f. BCA Agents may collect a known DNA Buccal Swab sample from the involved officer(s) if DNA testing of evidence is foreseeable. DNA Buccal Swab samples may be collected through voluntary consent or by application of a search warrant.
- g. BCA Agents should assure that all clothing and evidence collected by hospital personnel is preserved and collected for all subject(s) and officer(s) transported to the hospital.
- h. If possible, a blood sample should be taken for all officers and subjects prior to any blood transfusion. Blood samples from involved officers will be taken through appropriate consent or proper legal process. If an agency requires a blood sample to be taken as part of their internal process, BCA should still request consent for a sample for the BCA investigative process separate from the administrative sample.
- i. BCA Agents should use the Minnesota Standard Consent Form to Release Health Information for all officers and subjects who receive medical care related to the officer involved use of deadly force incident.
- j. BCA Agents should evaluate what laboratory testing will be needed prior to turning evidence in to the BCA Laboratory or BCA Crime Scene Team. If evidence will not be tested by the BCA Laboratory, that evidence will be stored as evidence within the BCA Investigation Division according to BCA evidence handling procedures.

4. Crime Scene

- a. BCA Agents will determine whether the BCA Crime Scene Team (CST) will be asked to respond to process a crime scene. BCA Agent(s) will communicate with the BCA CST Team Leader to request the CST for scene processing.
- b. All scenes where a subject suffers great bodily harm or death should be processed by the BCA CST in accordance with BCA procedures.
- c. BCA Agents will assure that the crime scene is fully documented by BCA Agent(s) through photography, videography and crime scene diagramming.
- d. In most cases agents should apply for a search warrant to process crime scenes on private property. Agents should try to avoid processing crime scenes with only consent approval.

- e. The crime scene should have an exterior perimeter and interior perimeter cordoned off by police tape. Care should be taken to inhibit the public's view of disturbing items within scenes, such as deceased individuals. Agents should ensure a large crime scene perimeter is set to ensure safety of the scene, preservation of the evidence, and limit access or viewing of the scene that may compromise the integrity of the scene.
- f. In most cases involved officers should not be brought back to the crime scene for a walkthrough prior to the officer(s) initial interview. If, on the rare occasion after the initial interview, involved officer(s) are brought back to the scene for a walkthrough, care should be taken to conduct the walkthrough under the same conditions as during the incident and a subsequent follow-up interview should be conducted.
- g. The BCA case agent should meet with the BCA CST Team Leader following the crime scene examination to discuss processing of evidence within the BCA laboratory.

5. Media

- a. Agencies requesting the BCA to conduct an officer involved use of deadly force investigation should refrain from giving any information to the media until agents and/or the BCA Public Information Officer can consult with the involved agency regarding what information should initially be made public.
- b. If the requesting agency chooses to issue a brief initial press release or media briefing, agencies are asked to direct all further media inquiries to the BCA Public Information Officer.
- c. After the optional initial press release/statement, all further media updates and information should come from the BCA. The BCA will strive to provide as much pertinent information as possible while maintaining the integrity of the investigation.
- d. Typically, the BCA shall issue a statement(s) when information is available to provide additional information on the incident following the initial release of information. Such information will typically include the following:
 - i. A brief preliminary background of information known in the preliminary stages of the investigation.
 - ii. Release of involved officer(s) name, rank and years of service will follow the completion of initial interviews.
 - iii. Identification of the subject either by the BCA or in coordination with the medical examiner if the subject is deceased.
 - iv. The anticipated prosecutorial authority.
 - v. Other facts and information deemed appropriate by the BCA and the DPS Office of Communications.
- e. In accordance with Minnesota law, digital media related to the police deadly force investigation will not be publicly released until the investigation is no longer active in accordance with the Minnesota Data Practices Act and any possible redaction have been completed.

6. Data Practices

- a. All data released will be released in accordance with the Minnesota Data Practices Act and accordance with Minnesota Department of Public Safety and Minnesota Bureau of Criminal Apprehension policies.
- b. BCA data practices requests from the media, including non-traditional media outlets, will be directed to the Public Information Office.
- c. The BCA will redact the officer involved use of force investigative case file and provide a redacted copy of the case file to the requesting agency after the case has been adjudicated.

References:

1. BCA Criminal Investigation Warning
2. BCA Consent to Provide Chemical Test of Blood or Urine
3. Minnesota Medical Information Release