

# ***Spokane Independent Investigative Response Team***



***S.I.I.R.***

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**A PROTOCOL TO INVESTIGATE**

**OFFICER INVOLVED DEADLY FORCE INCIDENTS**

**WITHIN SPOKANE COUNTY, WA**

**(Revised 12/04/2020)**

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## **DEFINITIONS:**

### **Family**

Adult persons related by blood or marriage. Persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

### **Deadly Force**

The intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury. (9A.16.010)

### **Involved Agency**

The agency by whom the involved law enforcement employee (actor) is employed or with which he/she is affiliated.

### **Involved Agency Liaison Officer**

Supervisors from the Involved Agency that respond to and are available to the SIIR investigators at the scene of a deadly force investigation.

### **Involved Officer**

A person whose act is a “factual proximate cause” of a reportable use of force that caused death, substantial bodily harm, or great bodily harm to another person.; or

A person who intends that his/her act be a “factual proximate cause” of a reportable use of force that caused death, substantial bodily harm, or great bodily harm to another person.

### **Mutual Aid**

Is an agreement between emergency responder agencies to lend assistance across jurisdictional boundaries when requested (RCW 10.93).

### **Subject**

The person who’s death, substantial bodily harm, or great bodily harm is the result of the act of the Involved Officer, whether or not this result is intentional.

### **Team Supervisors**

SIIR Team Supervisors shall be sergeants and lieutenants from the Spokane County Sheriff’s Office, the Spokane Police Department, and the Washington State Patrol. The sergeants from the Spokane County Sheriff’s Office – Crimes Against Persons Unit, the Spokane Police Department – Major Crimes Unit/SVU, and the Washington State Patrol – Criminal Investigation Division will be assigned as the SIIR Team Supervisors.

### **Team Detectives**

SIIR Team Detectives shall be detectives who are currently assigned to the Crimes against Persons Unit of the Spokane County Sheriff’s Office, the Major Crimes Unit/SVU of the Spokane Police Department, and Criminal Investigation Division of the Washington State Patrol’s Spokane district.

# SIIR TEAM PROTOCOL

## STATEMENT OF PURPOSE:

The focus of this Protocol is the independent investigative process of officer involved deadly force incidents, both criminal and administrative. The integrity of deadly force investigations is the guiding principle in all decisions. 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 a 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 agency's officers becoming involved in a deadly force incident, either within or outside of their jurisdiction. This Protocol, in compliance with WAC 139-12-010, calls for the use of outside personnel to conduct an independent investigation into officer involved deadly force incidents.

This Protocol and the related procedures are presented for your consideration. It is believed they are sound and take into consideration the major concerns related to officer-involved deadly force incidents and their investigation. Permission is hereby granted to law enforcement agencies in other regions to copy, use, modify, or alter them as needed to address the needs of their region or jurisdiction.

## GOALS OF THE SPOKANE INDEPENDENT INVESTIGATIVE RESPONSE (SIIR) TEAM:

To investigate incidents following the Officer Involved Deadly Force Incident Protocol Manual adopted by the below listed Board of Directors and Membership Agencies.

- To enhance accountability and increase trust to improve the legitimacy of policing for an increase in safety for all, using the five (5) principals of independent investigations;
  - Independence;
  - Transparency;
  - Communication;
  - Credible process; and
  - Credible Investigators.
- To maximize the availability of the latest technological equipment and techniques to bring about the most professional and transparent investigation using best practices.
- To ensure thorough investigations are conducted in a timely manner and independent of the involved agency in all facets (unless no other reasonable alternative exists to their use in the most limited of ways).
- To provide an independent investigation of facts to the Prosecutor's Office for review.

## **BOARD OF DIRECTORS:**

The Board of Directors of the SIIR shall consist of:

- The Spokane County Sheriff or his/her designee
- The Spokane Police Chief or his/her designee
- The Washington State Patrol Captain assigned to the Spokane District or his/her designee

Representatives of the Prosecutor's Office and the Medical Examiner's Office will be invited to all board meetings and their input will be solicited. For voting purposes and decision-making, it will be the majority rule of the Board of Directors.

The Chairman of the Board of Directors will rotate every two years between Spokane Police Department, Spokane County Sheriff's Office, and Washington State Patrol. The Chairman of the Board of Directors shall schedule a meeting of the Board in January of each year. The purpose of the meeting will be to receive a comprehensive report from the SIIR Team Commander concerning activities of the Team over the past year, address issues pertaining to the operation and support of the Team and address changes to the SIIR Team protocol. Special meetings may be called at any time by the Chairman of the Board. Special meetings may also be requested by the SIIR Team Commander.

## **MEMBERSHIP AGENCIES:**

- Airway Heights Police Department
- Cheney Police Department
- Eastern Washington University Police Department
- Liberty Lake Police Department
- Spokane County Sheriff's Office
- Spokane County Detention Services
- Spokane Police Department
- Washington Department of Fish and Wildlife (Spokane County)
- Washington State Patrol (Spokane County)

## **SANCTIONS/REMOVAL OF AGENCY:**

Willful violations of the protocol agreement will be brought to the attention of the Board of Directors by the SIIR Team Supervisors. The SIIR Team Board of Directors, by majority, may elect to immediately stop the investigation and turn the investigation over to the Involved Agency. An agency failing to abide by this agreement may also be removed from the SIIR Team by vote of the Board of Directors.

**COSTS:** Each participating agency shall be responsible for their employees' wages and associated costs. Any non-routine costs shall be the responsibility of the Involved Agency.

## **TEAM COMMANDER:**

The SIIR Team Commander shall be a Lieutenant or equivalent rank, in command of the Major Crimes unit of either the Spokane County Sheriff's Office or the Spokane Police Department, or the Washington State Patrol FOB lieutenant/CID Eastern Region lieutenant. The SIIR Commander position will rotate every two years between the three listed departments. At the discretion of the Board of Directors, that assignment length can be adjusted. The SIIR Commander has the overall responsibility to manage and coordinate readiness and training of the team. The Commander must be willing to be on call and reasonably available for call out. The SIIR Team Commander reports to the Board of Directors.

The SIIR Commander is responsible for the coordination and implementation of annual training for SIIR Team members. The Commander has the duty of reviewing the conflict of interest statement within 72 hours. The Commander or designated SIIR representative is responsible for providing weekly updates. The Commander approves specialized equipment use from the involved agency.

## **TEAM SUPERVISOR:**

The SIIR Team supervisor shall be a sergeant and/or lieutenant in command or supervision of the Major Crimes unit of either the Spokane County Sheriff's Office or the Spokane Police Department, or the Washington State Patrol. The supervisor must be willing to be on call and reasonably available for call out. The IIT Team supervisor will be responsible for contacting a family member of the person whom deadly force was used upon as soon as they can be located. The involved agency can also notify the family if they are in contact with the family first but preferably the SIIR Investigating Agency should perform the notification. The supervisor acts as the family liaison to keep the family apprised of all significant developments in the investigation and to give advance notice of all scheduled press releases. The supervisor acts as tribal liaison to keep the tribe apprised of all significant developments in the investigation.

## **TEAM LEAD INVESTIGATOR:**

The SIIR Team Lead Investigator shall be a detective or equivalent rank. The Lead Investigator must be willing to be on call and reasonably available for call out. To serve in a lead investigator role, the investigator must meet the training criteria detailed in WAC 139-12-010 and obtain a "Qualified Lead Investigator" Certificate from the Washington State Criminal Justice Training Commission. Certified Lead Investigators will be responsible for the roles of overall lead investigator, scene lead investigator, and interview lead investigator.

## **TEAM ASSISTANT INVESTIGATOR:**

The SIIR Team Assistant Investigator shall be a detective or equal rank. The SIIR Team Investigator not serving in a lead role is not required to have the "Qualified Lead Investigator" Certificate, therefore he / she cannot serve in lead investigator role. However, this investigator can serve in an assist role. These investigative positions may not be directly assigned or listed as a member of the SIIR Team,

however are commissioned or employed by SIIR Team agencies and should be members of their respective Major Crimes Units.

### **INVOLVED AGENCY LIAISON OFFICER:**

The involved agency will provide a liaison to the SIIR Team in the rank of Sergeant or above. This liaison officer should be from the Major Crimes unit and will assist with obtaining resources / assistance for the SIIR Team upon specific request. The liaison officer will be responsible for maintaining scene / perimeter security for the SIIR Team throughout the scene investigation. The involved agency liaison will not be provided with any information on the officer involved deadly force investigation and will be situated outside of the SIIR Team command post.

### **COMMUNITY REPRESENTATIVES:**

A minimum of two non-law enforcement community members who have ties to the communities impacted by the law enforcement use of deadly force will be selected and appointed by the Chief and Sheriff. The role of the community representatives are as follows;

- Participate in the selection of SIIR Team investigators.
- Complete and review conflict of interest statements within 72 hours of the commencement of an officer involved deadly force investigation.
- Be present at the briefings with the involved agencies Chief or Sheriff.
- Have access to the investigative file after the Prosecutor's Office has reviewed it and it has been redacted.
- Be provided a copy of all press releases and communication to the media prior to release.
- Review notification of equipment use of the involved agency.
- Will sign a binding confidentiality agreement at the beginning of each officer involved deadly force investigation that remains in effect until the prosecutor of the jurisdiction either declines to file charges or the criminal case is concluded.

### **THE COUNTY PROSECUTING ATTORNEY'S OFFICE:**

The County Prosecutor's Office has the following roles in SIIR Team investigations:

- Assist and advise the investigative teams on various criminal law issues which may arise, such as Miranda, Garrity, voluntariness, search and seizure, probable cause to arrest, detentions and releases, elements of crimes, immunity, and legal defenses.
- Upon completion of the Criminal Investigation, analyze the facts of the incident as well as the relevant law to determine if criminal charges are appropriate. If so, prosecute as appropriate.

## **INVESTIGATIVE AUTHORITY:**

Once the SIIR Team has agreed to investigate an incident and the SIIR Commander has the appropriate resources on scene, the SIIR Team shall have sole and exclusive authority concerning the independent investigation of the incident.

For incidents that do not meet the qualifying standards of the SIIR Team, requests for law enforcement assistance through a mutual aid (RCW 10.93) request, to the appropriate agency, would be appropriate. The SIIR Team will not respond to an incident that is not an attempt or use of deadly force by a law enforcement officer.

## **INVESTIGATIVE PRIORITY CRIMINAL / ADMINISTRATIVE:**

The Criminal Investigation has investigative priority over the Administrative Investigation and it begins immediately after an incident has occurred. The Criminal Investigation is performed by the SIIR Team headed by a lead detective and assistant detective appointed from the SIIR Team. The incident will be supervised by a sergeant and lieutenant from a non-Involved Agency.

The Administrative Investigation will be subordinate to the Criminal Investigation; However, the Criminal Investigation must be conducted in a manner that does not intentionally inhibit the involved agency from conducting their Administrative Investigation. The two investigations can be conducted concurrently as long as the Administrative Investigation prohibited content is not furnished to the SIIR investigators and vice versa.

Investigators assigned to conduct the Administrative Investigation will be provided access to the scene at the discretion of the lead Investigative Agency, typically after the scene has been processed by criminal investigators.

## **INVESTIGATIVE REQUIREMENTS:**

The independent 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 obtaining the permission of the prosecutor prior to releasing any evidence, to include 911 tapes, statements, video, body camera, etc.

The independent investigation will be performed in a manner that provides a thorough, fair, complete, and professional investigation, free of conflicts of interest.

## **INVESTIGATIVE GOALS:**

The goal of the independent 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 County Prosecutor.

The County Prosecutor will make a final determination on the presence or absence of criminal liability on the part of those involved in the incident, specifically:



- To determine whether the nature and the quality of the conduct involved is prohibited by statutes which provide for criminal penalties upon conviction; and
- If criminal conduct does exist, determine the identity of the person(s) responsible for that 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 the presence or absence of any factors which would mitigate or aggravate punishment for that crime.

While the Criminal Investigators do not direct their investigative attention to Administrative concerns, it is recognized that the Criminal Investigation's results are of proper interest to the Involved Agency Management for its internal use.

### **ACTIVATION:**

Automatic and Immediate - Upon the occurrence of an Officer-Involved Deadly Force incident within Spokane County, WA the invocation of this Protocol is automatically and immediately in effect, upon the request of the Involved Agency.

- A Chief of Police or the Sheriff, WSP District Commander, or their designee shall make the request for the SIIR Team to the Spokane Communication Center Contact telephone number: (509) 532-8930
- Dispatch shall contact the SIIR Team Commander through the standard call-out instructions.
- The Investigating Agency SIIR Incident Commander shall assign a Supervisor as the Lead Supervisor. The Lead Supervisor in collaboration with the SIIR Incident Commander, shall be responsible for determining how many investigators and/or additional resources will be needed to complete a thorough, accurate, and independent investigation.

### **INVOLVED AGENCY RESPONSIBILITIES:**

- The Involved Agency shall make the initial request for the SIIR Team.
- Secure the incident scene and maintain the integrity of the scene.
- Set, maintain, and protect a secure and identifiable perimeter.
- Locate and preserve evanescent evidence.
- Identify and obtain contact information of witnesses.
- Photograph, video record, or take reasonable steps to document the location and scene/s for evidentiary location.
- Locate and identify witnesses and perspective locations of witnesses.
- Make all documents, reports, and information related to the investigation available to the SIIR Team.
- Make all department personnel and investigative equipment resources available to the SIIR Team.

## **EVIDENCE:**

- Evidence Storage: All evidence shall be stored under the control of the Spokane Police Department's Property Room. The investigating agency shall ensure the involved agency has no access to the evidence until the case has been reviewed and actions decided upon by the Prosecutor's Office. 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 consent or agreement of the other agencies involved in the investigation. Once the criminal prosecution is completed, all property owned by private citizens will be released in accordance to State law.

## **CASE FILES:**

The completed investigation will be sent to the Prosecutor's Office and the Involved Agency's Major Crimes Unit.

- All original reports, statements and other documentation shall be filed and maintained by Spokane Police Department Records LERMS Record Management System with the lead investigating agency and appropriate assisting agency personnel only, having access to the documentation.
- The Prosecutor's Office can request a working copy of the case file prior to its completion.
- A copy of the case file from the SIIR criminal investigation shall be made available to the Involved Agency's Internal Affairs unit at the conclusion of the investigation and contemporaneous to the filing with the Prosecutor's office.

## **RESPONSE BY SIIR TEAM:**

Once a SIIR Team activation has been authorized, the SIIR Team Incident Commander and agency representatives will direct resources to the investigation. The type of resources and number of investigators needed shall be determined and coordinated by SIIR Team Supervisors. If additional resources are needed and necessary, that will be at the discretion and direction of the SIIR Incident Commander with input from agency representatives and lead investigators.

## **ASSIGNMENT OF LEAD INVESTIGATORS AND ASSISTANT INVESTIGATORS:**

Assignment of lead investigators is of great importance. Generally, the best available investigators should receive the assignment. The City, County and State will provide sufficient training to meet the requirements of WAC 139-12-010 so that the investigative skills of City, County and State employee SIIR Team members will be sufficient to meet best practices in the investigation of officer involved deadly force incidents. There are three areas of an officer involved deadly force incident investigation that require the assignment of a certified lead investigator and they are as follows: overall lead investigator, scene lead investigator, and witness interview lead investigator. The lead investigators will be assigned an assistant investigator who is not required to be a certified

lead investigator. Other roles (I.E. Canvass, Officer Inventory, etc.) of the investigation may be assigned to investigators who are not certified lead investigators.

### **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 perimeter units are not part of the SIIR investigation and will remain the responsibility of the involved agency to provide security for the SIIR investigators in the scene. The only position of the perimeter units that will be relieved by the SIIR is the law enforcement officer that was initially tasked with the crime scene log.

### **SCENE PERIMETER:**

The scene(s) must be secured immediately, with a perimeter established for each scene a sufficient distance away to safeguard evidence. In most circumstances an inner (evidence) perimeter and an outer (control) perimeter are preferable.

- Access to the inner (evidence) perimeter of the scene(s) must be limited only to personnel who must enter for investigative purposes as authorized by the Incident Commander or, later, by the SIIR Team. A written report shall be produced by anyone entering the crime scene.
- A written log will be established as quickly as possible to identify all persons entering the inner (evidence) perimeter of the scene(s), the time of their entry and exit, and the reason for entry. This role will be relinquished to the SIIR when the SIIR takes control of the scene.

### **PHYSICAL EVIDENCE COLLECTION, PRESERVATION AND ANALYSIS:**

Applicable agencies or units such as the Spokane County Sheriff's Office Forensics Unit, the Washington State Patrol Crime Laboratory, and the Washington State Patrol Crime Scene Response Team, having the capability to assist lead investigators in the documentation of the scene(s) and for assisting in the collection, preservation, and analysis of physical evidence should do so when requested by the SIIR Team. This will be conducted outside of the involved agency personnel (unless no other reasonable alternative exists or the loss or degradation of evanescent evidence will occur if not secured / collected immediately). This evidence will be turned over to the SIIR Team investigators as soon as reasonably possible for documentation and logging into evidence.

Prior to final relinquishment of the scene, the lead detectives, crime scene detectives, authorized agency supervisors, and the SIIR Incident Commander will confer to determine if the collection of evidence is complete.

## **PUBLIC SAFETY STATEMENT:**

If first responding supervisors compel a public safety statement, this statement will be delivered to the Involved Agency's Internal Affairs supervisor via the Involved Agency's on scene Liaison Supervisor. The SIIR Team Commander, Supervisor, and Investigators will be briefed on the results of the public safety statement by the Involved Agency Liaison Supervisor.

## **FIREARMS:**

- In shooting incidents, the SIIR Team investigator shall examine the firearms of all officers who were involved in firing their weapon(s) at the time of the incident to ensure that all discharged firearms are identified and collected. All discharged weapons will be placed in police property in adherence to Property Room procedures. Equipment taken from an officer for evidence will be replaced by the Involved Agency in accordance with their policies.
- Firearms which do not need to be retained in evidence, as determined by the SIIR Team in consultation with the Prosecutor's Office, will be returned to a designated representative of the Involved Agency promptly after testing has been completed.

## **TRANSPORTATION AND SEPARATION OF INVOLVED OFFICERS:**

Involved or Witness Officers will be transported to their own agency station in a timely manner. These officers shall avoid conversation regarding the incident.

## **INTERVIEWING LAW ENFORCEMENT EMPLOYEES:**

- Generally speaking, it is the intent of the SIIR Team to obtain details of any officer involved deadly force incident as soon as possible after the event by interviewing and obtaining reports/statements from involved officers and witness officers.
- SIIR Team investigators should always give the Involved Officer(s) the opportunity to provide a voluntary statement or give details of the incident at any point during the investigation. If the Involved Officer has invoked his/her right to counsel, such requests must be coordinated through such counsel.
- The SIIR Team does not have the authority to issue "Garrity" orders to Involved Officers. This can only be done by the Involved Officer's agency head or designee.
- The SIIR Team Supervisor shall be advised prior to a "Garrity" order being given to an involved officer.
- Investigators shall interview any primary witness officers to the incident.

## **EMPLOYEE RIGHTS:**

Law enforcement employees have the same rights and privileges regarding SIIR 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.

## **REPORT WRITING:**

- All individuals participating in the criminal investigation will write reports documenting their participation. Individuals writing reports will use their agency specific case number and relay that information to the investigating agency so they can obtain the reports/documentation in a timely manner.
- The investigators within each investigative 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 report completion and distribution within 7 days of any investigative activity. The Medical Examiner's report may be delayed beyond 30 days pending results of some scientific tests.

## **MEDIA RELATIONS:**

- SIIR TEAM: Once the SIIR Team has initiated an investigation, all SIIR Team media releases related to the investigation shall be made by the Public Information Officer (PIO) or other official designee from the lead investigation agency with the approval of the SIIR Team Commander for that incident. The SIIR Media Release Template will be used whenever appropriate (see Appendix C). The SIIR Team will release information typically on the day of the incident, an intermediate news release, and then a conclusory release when the complete investigation is sent to the prosecutor.
- It shall be the responsibility of the Involved Agency to determine when the involved officers' names will be released to the public, pursuant to their policies and procedures.
- THE INVOLVED AGENCY: The Involved Agency's PIO or other official designee will have the opportunity to make an initial release of information, both in person and through media release, in coordination with SIIR Team supervisors. This will not be construed as a SIIR Team release.
- The Involved Agency may release information regarding the Involved Officer's employment history and related performance as an employee. The Involved Agency is prohibited from releasing information that could affect the integrity of the investigation.

## **INVESTIGATOR'S MEETING:**

After the initial scene has been processed, the lead investigator will conduct a briefing with the primary investigators to determine what has been accomplished and what still needs to be accomplished to complete the investigation. Attendees to this meeting will consist of the investigative lieutenants, sergeants, and key detectives involved in the investigation. The Prosecutor and Medical Examiner may also attend.

## **COMMAND STAFF BRIEFING:**

Briefings will be provided to the Sheriff and/or Chief or their authorized representative for the Involved Agency from the SIIR Team about the progress of the investigation on a limited basis. The Sheriff and/or Chief or their authorized representative for the Involved Agency may request information from the investigation be released through the SIIR Team with the agreement of the Prosecutor's Office and the SIIR Commander.

**APPENDIX A:** Conflict of Interest Statement

**APPENDIX B:** Confidentiality Agreement

**APPENDIX C:** SIIR Press Release Template

**APPENDIX D:** SIIR Qualified Lead Investigators

**APPENDIX E:** SIIR Community Representatives