



OFFICER INVOLVED SHOOTING PROTOCOL

Effective – 8/5/2019

I. INTRODUCTION

The Hennepin County Attorney's Office (HCAO) Officer-Involved Shooting (OIS) Policy is a collection of current and evolving best practices based on the work and experience of prosecutors and office staff who have reviewed OIS cases since 2015. In 2015, Hennepin County Attorney Mike Freeman announced that the Hennepin County Grand Jury would no longer be the decision-making authority regarding whether to issue charges in cases where police officers kill a citizen in the line of duty. Since that time, and as of today's date, the office has reviewed 10 OIS cases. Among those cases have been deferrals for additional investigation, declined prosecutions, and one case charged and tried to verdict. That work has resulted in the following protocol for investigating agencies who present an OIS case to the HCAO for review.

OIS cases are matters of significant public concern and accountability, in material ways different from other cases submitted for review. The HCAO OIS Policy aims to ensure:

1. Complete, thorough, and fair review of all relevant facts and circumstances that precede and result in an OIS;
2. A decision on the reasonableness or unreasonableness of the use of force that is supported by the facts and Minnesota and national law;
3. Public accountability and transparency by disclosure of data appropriate and authorized by law depending on the decision by the HCAO.

All of the cases the HCAO has reviewed since 2015 have been investigated by agencies (investigating agencies) other than the agency employing the officer(s) involved in the shootings (originating agency), specifically the Hennepin County Sheriff's Office (HCSO) and/or the Minnesota Bureau of Criminal Apprehension (BCA). The protocol outlined in this document applies whether or not the originating agency uses a separate agency to investigate a shooting and applies to all investigating agencies, whether they have previously submitted a case to the HCAO or not, or whether they are an agency other than the HCSO or BCA.

In all cases received since 2015, it has been the practice of investigating agencies to submit cases without rendering an opinion as to the reasonableness of any officer's use of force. This regularly requires the HCAO to request additional investigation to determine the issue of reasonableness and the HCAO may consult with experts of the

HCAO's choosing. In any OIS, the investigating and originating agencies should presume that the HCAO's requests for additional investigation are necessary to make a proper charging decision and should be prepared to comply with such requests.

II. OIS INVESTIGATIONS

As soon as possible after the occurrence of an OIS, either the investigating agency, the originating agency, or both, should contact the appropriate designee from the HCAO and alert him or her to the event and first steps, specifically addressing this portion of the protocol:

A. Protocol at time of an OIS:

1. Originating agency either assumes responsibility for investigation (a practice which is not recommended) or contacts a separate agency to investigate.
2. Investigating agency designates one representative to communicate with one representative of the HCAO. If a representative changes, the investigating agency will communicate that information to the representative from the HCAO. The goals are clear and efficient communication.
3. Investigating agency contacts HCAO for preliminary discussions about scene, etc.
4. Originating agency takes and properly preserves public safety statements from involved officer(s). Investigating agency confirms and documents the taking of such statements. Take public safety statements from all officers who witnessed or participated in the incident. Statements taken from witness officers are not a substitute for obtaining one from the involved officer(s).
5. Investigating agency documents the briefing received by originating agency in detail, including who received it, the time and place, and anyone present. The best way to preserve information exchanged in the briefing is by audio recording.
6. Investigating agency arranges for voluntary statements from involved officers and witness officers. If officers are represented by counsel, speak to their attorneys about arranging the statements. If there are multiple requests for an interview, document the time, location, and wording of each request. Document the officer's response and/or that of his or her attorney.
7. Investigating agency should take a voluntary statement from an involved officer at the earliest possible opportunity, taking into consideration such factors as availability, injury, and desire to speak to investigators. A policy of observing a "waiting period" before speaking to officers is discouraged.

8. If an officer's attorney is present for an interview and the officer or attorney reviews or otherwise has access to evidence, investigating agency ensures that no evidence, reports, photos, or audio/video files are left in the possession of the officer or the attorney. Do not permit copying of documents or evidence. Document what evidence they were allowed to see, where they saw it, for how long, and how many times. If any third party is permitted to record any interview (a practice that is discouraged for data practices concerns, among other reasons) document that, as well.
9. Either the originating agency, the investigating agency, or both, takes photos of involved officer(s) in full uniform as soon as possible and always before the officer changes into other clothing or alters the appearance of the uniform.
10. Investigative agency takes full uniforms from involved officer(s), including weapons, body worn cameras (BWCs), and all accessories and preserves for future testing. Follow crime lab procedures in preserving the evidence by, for example, wearing gloves. If it is necessary to return a BWC to the originating agency for uploading and preserving video, representatives of the investigating agency should be present and take the BWC once the video is preserved.
11. Preserve video from all responding officers' BWCs, cell phones, squad cars, dash cams, surveillance video from businesses or homes, Metro Transit, as applicable. etc. Verify with originating agency that all video is preserved. Where there is reason to believe a witness officer's BWC video captured the shooting, seize that officer's camera, as well. Verify that the originating agency either does not possess or does not permit future access to BWC and other audio/video files unless required as part of the investigation. Document methods used to restrict access to evidence.
12. If any officers are permitted to watch their own BWC video before giving a statement or being interviewed, document the number of times, personnel present for viewing, etc.
13. Scene investigators from investigating agency should write reports and document all crime lab response, measurements, etc., taken at the scene.
14. Investigating agency collects all police reports generated by and/or kept by the originating agency that pertain to the event. Verify that originating agency has supplied full case reports and that access to the reports at the originating agency is restricted or prohibited pending the outcome of the investigation. Officers from originating agencies may write reports but such

reports are not a substitute for speaking with investigating agency and providing a statement.

15. Investigating agency takes recorded statements from all witness/scene officers regarding observations and activities at scene. All interviews should take place at law enforcement facilities and as soon as possible. Every officer that responded to the scene of the OIS should expect to provide a Q&A to the investigating agency and/or the HCAO.
16. Preserve and seize any ambulance video and reports, where applicable.
17. Obtain any automatic vehicle location (GPS) records from the squad cars of involved officer(s).
18. Arrange for blood draw from the involved officer(s). If the originating agency's department policy does not require it, obtain a consent sample or request a search warrant.
19. Seize any cell phone in possession of the involved officer(s), including work-issued and personal phones in their possession before and after the event. Protect phones from remote wiping while in the possession of investigating agency. If applicable, attempt to get passcodes, etc. Work with the HCAO if court orders for thumbprints are needed. Send preservation letters immediately to cell phone carriers.
20. Analyze cell phones and their associated data as requested by HCAO.
21. Acquire and preserve any relevant 911 calls, as well as all radio/dispatch traffic associated with the case.
22. If applicable, acquire and preserve cell phone audio and video recordings made by civilians at scene and all surveillance video. Use all available means to acquire this data from consent to search warrant, as appropriate.
23. Conduct recorded interviews with all civilians who witnessed the event, showed up afterward, and/or have information relevant to the shooting or the original call that prompted police response. Juvenile witnesses should be interviewed at Cornerhouse. Where officers or investigators conduct a neighborhood canvass, fully document addresses, names, whether there are any surveillance cameras, and sufficient relevant information to assist further investigation.
24. Obtain all crime scene logs.

25. Inventory all evidence immediately.
26. If applicable, designate an investigator to monitor and preserve social media posts related to the event, including posts by witnesses, civilians, or officers.
27. If applicable, obtain and preserve jail audio/video pertaining to arrests of subject or witnesses.
28. If any squad car contains evidence on the inside or outside, secure the car as evidence.
29. Obtain all police reports associated with the involved officer(s)' shift and/or work that day. Obtain any relevant information from originating agency including roll call briefings, precinct or department-wide alerts, etc.
30. Obtain a complete criminal history, if any, of the subject, including narrative police reports associated with any past charges, convictions, arrests, or investigations involving the subject. The originating agency should fully pursue any criminal investigation into the subject or other civilians associated with the event.

As the investigation continues, the investigating agency should work with assigned staff at the HCAO and provide regular progress reports. Coordinate with HCAO staff to determine the medium and format of report and evidence submission. Electronic copies of documents are preferred. Discuss issues concerning release of content in press releases, BWC video, or any other evidence with an effort toward reaching agreement on release of any information. As reports, test results, etc., become available, submit these materials to the HCAO.

B. Follow up investigation:

1. Work with HCAO on data requests and press releases. Prepare for initial call/response data requests and disclosure.
2. HCAO will assign victim/witness staff to be point of contact for family/next of kin of deceased.
3. Presume all search warrants will be publicly filed. Personal information such as officer addresses and DOBs should not appear in search warrants unless relevant to the issue of probable cause or the reason for the search.

4. If subject was treated at the scene or hospitalized, obtain all medical records, including fire and EMS (emergency medical service) run reports. If fire/EMS provided medical treatment, take recorded statements from all.
5. HCAO will obtain complete ME (medical examiner) file and decide whether additional toxicology testing is necessary. HCAO will contact ME as soon as practical to set timeframes and expectations. The investigating agency should obtain all physical evidence associated with the subject from the ME, including bullet fragments, clothing, jewelry, sheets, etc. Document any conversations with the ME about how such evidence was kept, stored, and/or preserved.
6. If the OIS occurred during another call, e.g., domestic, unknown trouble, etc., investigation should continue into the case giving rise to the initial call, whether by the originating or investigating agency. Interview all witnesses to the original event.
7. Obtain complete personnel file for involved officer(s), including training records, previous complaints and investigations, hiring information, fitness for duty information, and psychological records as appropriate or applicable. If originating agency will not consent to release, obtain a search warrant.
8. Obtain use of force policy and any other relevant policies from originating agency.
9. Use a crime lab to verify the firearm used is operational and match to any recovered ammunition/casings, etc. In the event multiple officers fire multiple rounds, testing may be much more extensive.
10. Obtain Taser logs, if applicable.
11. Secure known DNA profiles as appropriate. Consult with HCAO to determine which parties should give samples.
12. Submit all evidence to lab for any appropriate follow-up testing requested by HCAO.
13. All crime lab reports submitted to the HCAO should be complete and unabridged; for example, provide all forensic scientist scene notes, DNA packets, and full fingerprint files. Provide lab request sheets for all items.
14. No evidence of any kind shall be returned to any agency or person without express permission of HCAO and supporting documentation.

15. Where evidence is referred to an outside lab, submit contracts, agreements, and payment data to HCAO with test results.
16. Review all BWC video connected with the incident. In the event review of an officer's BWC video creates a need for further investigation or another interview, follow up with that officer.
17. Where BWC video contains relevant evidence, work with HCAO on audio/video issues for eventual release or courtroom presentation, including addressing audio issues or speed, and possible transcription.
18. As appropriate and needed, conduct follow-up interviews for and/or with HCAO staff. In the event any officers refuse to give statements at the time of the event or after, the HCAO may commence grand jury proceedings. Officers from either the originating agency, the investigating agency, or both, as well as civilians may be called before a grand jury. While consultation with the originating and/or investigative agency on the issue of obtaining officer statements may be appropriate, the decision to submit a case to the grand jury for any reason belongs exclusively to the HCAO.
19. When applicable, serve grand jury subpoenas.
20. Conduct follow up investigation as needed and requested as a result of consultation with use-of-force experts.

When the investigating agency and HCAO agree that the investigation is substantially complete or complete, the investigating agency should submit the case for review. Whether and how the investigative agency should release information to the public that a case has been submitted to the HCAO is a matter that depends on the particular case and, ideally, should be a matter of joint agreement. As the HCAO reviews a submitted investigation, there may be additional requests for investigation, analysis of data, or testing. While a case is under review, refer all contact with counsel for involved officer(s) to the assigned prosecutor. When the HCAO has made a decision, the prosecutor will discuss the decision with the case agent and other appropriate parties, depending on the case.

C. If prosecution is declined:

1. Work with HCAO to redact any confidential/non-public data prior to release of decision and data.
2. HCAO will submit any report accompanying a decision to the case agent no later than 24 hours before the HCAO announces its decision.

3. Work with HCAO to coordinate release of decline information, notification to family, notification to involved officer(s), chief of police of originating agency, etc.
4. Investigating agency and HCAO will coordinate release of any physical evidence to family or involved officer(s). Investigating agency is responsible for permanent storage of any evidence collected and unreturned. Under no circumstances is physical evidence to be released to the originating agency or any third party without written authorization of HCAO.

D. If case results in criminal charges against an involved officer or officers:

1. Work with HCAO to prepare case for courtroom presentation and trial.
2. Work with HCAO to coordinate defense access to evidence.
3. Conduct all follow up investigation throughout case preparation and trial, including, where appropriate, assisting with investigation resulting from evidence disclosed by defense.
4. Serve any requested subpoenas.