



**Division of State Patrol
Policy and Procedure**

Number
2-6

Subject OFFICER-INVOLVED DEATH INVESTIGATION	
Author/Originator Office of the Superintendent	Approved by <i>Stephen Fitzgerald</i> Superintendent
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I. POLICY

It is the policy of the Division of State Patrol (DSP) to provide sworn personnel guidelines regarding critical incidents involving their actions or omissions that result in the death of an individual while on duty, or while off duty but performing activities that are within the scope of their law enforcement duties.

The DSP recognizes that these guidelines are supported by statutory and case law and that the application of force by DSP sworn personnel must be deemed reasonable.

II. BACKGROUND

2013 Wisconsin Act 348 relates to investigations of deaths involving a law enforcement officer. The Act defines an officer-involved death as "...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 consistent with his or her law enforcement duties." Further, the Act stipulates that each law enforcement agency to have a written policy regarding the investigation of officer-involved deaths that involve a law enforcement officer employed by the law enforcement agency with specified requirements.

III. DEFINITIONS

- A. **Law enforcement agency** – has the meaning stated in s. 165.83(1)(b).
- B. **Law enforcement officer** – has the meaning stated in s. 165.85 (2)(c).

- C. **Officer-involved death** – 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 consistent with his or her law enforcement duties.

IV. GENERAL PROVISIONS

- A. **Non-Traffic Incident** – The investigation of a non-traffic related critical incident involving the death of an individual that results directly from an act or omission of DSP sworn personnel, while they are on duty or while off duty but performing activities that are within the scope of their duties must be conducted by two investigators from another uninvolved law enforcement agency, one of whom is designated as the lead investigator, pursuant to Wisconsin Statute §175.47 - Review of deaths involving officers.
- B. **Traffic Incident** – The investigation of a traffic-related critical incident involving the death of an individual that results directly from an act or omission of DSP sworn personnel, while they are on duty or while off duty but performing activities that are within the scope of their duties must include the use of a crash reconstruction unit from a law enforcement agency that does not employ a law enforcement officer involved in the officer-involved death being investigated.

With approval from the superintendent or his/her designee, members of the DSP Technical Reconstruction Unit (TRU) may be utilized in any traffic-related investigation involving DSP personnel.

V. RESPONSIBILITIES OF INVOLVED DSP PERSONNEL

In the event that the direct action or omission by DSP sworn personnel results in the death of an employee or another individual, the involved DSP personnel will:

- A. Request emergency medical assistance as soon as practical and render first aid to any injured person(s) when it is safe to do so
- B. Promptly notify local law enforcement in the jurisdiction of the incident and make reasonable attempts to preserve the scene.
- C. Promptly notify the duty supervisor or other DSP supervisor of the incident.
- D. Remain at the scene until cleared to leave by a DSP supervisor or the lead investigator unless the involved employee is injured or his/her continued presence renders the situation unsafe.
- E. Protect any firearm and/or other weapon used or related to the direct action or omission for later submission to a DSP supervisor or lead investigator.

- F. Refrain from discussing the incident with anyone except appropriate DSP supervisors, investigating DSP employees or other assigned law enforcement personnel, the prosecuting attorney, the employee's attorney, a mental health professional or physician, the employee's clergy, the employee's immediate family, or others specifically authorized by the DSP superintendent or his/her designee.
- G. Remain available, while on administrative leave, for any interviews or statements required during the course of the investigation. In addition, the employee shall be subject to recall to full duty status at any time.

VI. SUPERVISORY RESPONSIBILITIES

- A. When a DSP sworn employee is involved in an incident which results in the death of an employee or another individual, the DSP supervisor shall:
 - 1. Notify the DSP superintendent or his/her designee through the established chain-of-command as soon as practical.
 - 2. The applicable DSP supervisor shall communicate with the designated lead investigator from another agency and provide all required support and coordination during critical incidents.
- B. If the employee used a firearm or other weapon, it will be collected for evidentiary purposes by a DSP supervisor or the lead investigator. Unless circumstances dictate otherwise, a replacement firearm or weapon, as applicable, shall be issued to the involved employee at the time his/her weapon is relinquished. Transfer of the firearm or weapon, as applicable, shall occur at a private location.
- C. The involved employee may be asked to give the lead investigator a "Public Safety Statement" regarding the critical incident, which may include a scene walk-through. The supervisor should ensure every consideration is given to the mental and emotional state of the involved sworn personnel. The "Public Safety Statement" should be limited to:
 - 1. Type of force used.
 - 2. Direction and approximate number of shots fired by the officer(s) and suspect(s).
 - 3. Location of injured person(s)
 - 4. Description of outstanding suspect(s), direction of travel, time last observed, and suspect's weapons.
 - 5. Description and location of any known witnesses.
 - 6. Description and location of any known evidence.

7. Any other information as necessary to ensure officer and public safety, and assist in apprehension of suspects still at large.
- D. The “Public Safety Statement” shall not be recorded unless extremely rare circumstances exist in which the investigating employee can articulate a specific reason for doing so.
- E. The involved employee may be asked to provide a blood sample by the lead investigator or his/her designee, for the purpose of drug/alcohol toxicology. The supervisor should ensure the employee is informed this is a voluntary request, and is not a portion of the administrative inquiry.
- F. Ensure the involved employee is allowed a period of at least 24 hours for sleep and recovery prior to submitting to a formal interview by the lead investigator(s). The involved employee will be allowed to review any audio or video recordings of the incident prior to coinciding with the formal interview but will not be allowed to consult with other personnel involved.
- G. It is an accepted practice to record the formal interview of employees directly involved in an incident or of critical witnesses. The DSP supervisor shall make an assessment as to the appropriateness of recording statements and shall explain the benefits of doing so to the employees involved in the incident. If appropriate, the employee involved in the incident shall be asked for consent to record the formal interview. Interviews are consensual in nature and involved parties have the ability to refuse to be recorded.
- H. DSP employees 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 an interview and the right to have the representative present during the interview.
 1. The representative should be allowed to consult with the employee privately about the facts of the incident. However, the representative may consult with only one involved employee at a time.
 2. Employees will not be compelled by threats of administrative punitive action to answer questions posed by criminal investigators that would be self-incriminating.

VII. DSP SUPERINTENDENT RESPONSIBILITIES

- A. In officer-involved death incidents, the DSP superintendent or his/her designee should request a non-involved law enforcement agency to provide at least two investigators, one of whom is identified as the lead investigator, to conduct the criminal investigation.
- B. The DSP superintendent or his/her designee will determine if the involved employee should be placed on administrative leave. If it is determined that administrative leave

is warranted, the involved employee will begin administrative leave with pay, pending the results of the investigation or until the employee is reinstated to full duty by the superintendent or his/her designee. The assignment to administrative leave shall not be interpreted to indicate or imply that the employee has acted improperly.

- C. The DSP superintendent or his/her designee shall select a DSP supervisor to lead an Administrative Board of Review investigation when appropriate. This supervisor shall be from a Post other than the one which the involved employee is assigned. This supervisor will identify a corresponding primary point-of-contact with the outside investigating agency. See P&P 11-12 for guidance.

VIII. INTERNAL INVESTIGATION

- A. Nothing in this policy restricts the convening of an Administrative Board of Review under special circumstances as indicated in P&P 11-12. The purpose and intent of the Board is to preserve the integrity of the Division and its employees, and to maintain public confidence. Specifically:
 - 1. To determine whether employees violated Division policies and procedures.
 - 2. To determine the adequacy of the Division's policies, procedures, training, equipment, personnel programs and supervision.
 - 3. To provide details of the incident to management and governmental bodies, so they can be responsive to the public and news media.
 - 4. To prepare for administrative claims and/or civil litigation that may be initiated by or against the Division.

IX. REFERENCES

DSP Policy and Procedures 2-2, 2-3, 2-4, and 11-12
Wis. Stats. Ch. 165.83(1)(b)
Wis. Stats. Ch. 165.85 (2)(c)
Wis. Stats. Ch. 175.47
Wisconsin Legislative Council Act Memo, dated April 29, 2014