

SOUTH BURLINGTON POLICE DEPARTMENT

PR-302: Use of Force – Appendix A Lethal Force Post-Incident Procedures

Effective: 10/1/2021

Updated: 9/15/2021

1. PURPOSE

Impartial and thorough investigation of officer involved shootings and other serious use of force incidents is essential to ensure police accountability, transparency and to maintain public trust. The following procedure is to be followed whenever an officer is involved in a lethal force incident (see definition below).

Among other things, this document describes the transition from an officer(s) being the investigator to that officer(s) becoming the subject of parallel investigations (administrative and potential criminal) in the wake of a lethal force incident. It also provides clear direction on the use of BWC recordings in the wake of a lethal force incident.

2. DEFINITIONS

- A. **Chief Executive Officer (CEO):** Means the person in control of a police agency, normally the Chief, Colonel or Sheriff.
- B. **Lethal force incident:** Whenever an officer uses lethal force (whether the subject is injured or not); and, any incident where an officer takes any action that results in death or serious bodily injury to a person. Hereinafter referred to as “incident”.
- C. **Public Safety Statement:** A statement given at the scene of a lethal force incident, or as soon as practical, that allows the on-scene investigation to continue once the involved officer(s) leaves the area. It is a brief statement provided to the on-scene supervisor. The statement should include initial information such as type of force used; location of injured or dead person(s); description of any outstanding subject(s) including direction and mode of travel, known weapons, clothing description, etc.; description and location of any known victims, witnesses or evidence; and, any other information necessary to ensure officer and public safety and assist in the apprehension of outstanding suspects.

3. PROCEDURE

When an incident covered by this policy occurs:

- A. Officers should take actions necessary to render the scene safe.
- B. When necessary or requested by subject(s) involved, officers shall immediately summon emergency medical services and immediately provide appropriate medical attention.
- C. The ranking officer on scene shall assume incident command, and immediately request the response of a supervisor. Upon arrival, the supervisor shall take control of the incident scene.

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- D. The incident location should be secured for purposes of investigation and evidence preservation.
- E. The involved officer(s) should provide a Public Safety Statement prior to leaving the scene when practical. The Public Safety Statement should be made as contemporaneously to the event as possible.
- F. The involved officer(s) should be removed from the scene to a secure location or a medical treatment facility if necessary. An officer or other support person should be assigned to stay with the involved officer(s). If available, a Peer Officer Support Team (POST) member or similar crisis response staff should be assigned this task. The support person should avoid conversation about the incident and instead focus on the officer's health and well-being.
- G. To maintain the integrity of the investigation those involved should not discuss the incident amongst themselves. This excludes communication with family, legal counsel, mental health personnel, medical personnel or union representation. Employees should be encouraged to refrain from watching or listening to the news, social media or podcasts regarding the incident in which they were involved.
- H. Appropriate personnel should be contacted, including but not limited to the CEO, the VT State Police Major Crime Unit, the State's Attorney's Office and POST members or counselors as necessary.
- I. At the direction of the Major Crime Unit, the involved officer(s) shall be photographed, and any injuries documented prior to the end of the shift. All BWC or other recordings of the incident shall be preserved as evidence by the home agency. The home agency will be asked to provide all video, audio, phone and radio transmission recordings of the entire incident to the Major Crimes Unit. Additionally, the officer(s)' firearm or other tools used in the incident will be collected and preserved as evidence. The CEO will determine if and when a replacement firearm will be issued to the involved officer(s).
- J. When practical, the involved officer may walk through the scene to assist Major Crimes Unit with his/her location at the time lethal force was used and/or leading up to lethal force.
- K. Involved officers shall **not** be allowed to view their body-worn camera footage prior to being interviewed by the Major Crime Unit, nor will they be permitted to review any other recordings of the incident or have them described by others. (See below for additional detail)

4. VERMONT STATE POLICE INVESTIGATION

- A. When a Vermont law enforcement agency is involved in a lethal force incident, there are multiple priorities that must be considered. First and foremost, the agency must ensure public safety by cooperating with any investigation that seeks to identify person(s) who violate State or Federal law. Further, the agency has an obligation to its community to be as transparent and

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accountable as possible. Agencies also have an obligation to their employees who have the right to be treated fairly and in accordance with applicable collective bargaining agreements. There are times in the wake of a lethal force incident when the officer(s) becomes the focus of a criminal investigation to assess compliance with the law.

- B. Officers involved in lethal force incidents are afforded the same constitutional rights as any person under criminal investigation. It is preferable for transparency that officers participate in the Major Crime Unit's investigative process.
- C. The following procedure is the statewide practice for Major Crime Unit review of lethal force incidents:
 - 1. Officer(s) provides a public safety statement at the scene.
 - 2. Officer(s) do not review BWC or other recordings of the incident, nor are they given an account of any recordings by anyone.
 - 3. Officer and their attorney meet with investigators to provide an initial statement unaided by recordings or other information surrounding the incident.
 - 4. Following this statement, the officer and their attorney may review the officer's BWC or cruiser camera footage and or other video that would show the officer's perspective at the time force was used.
 - 5. The officer and their attorney may then provide investigators with additional information.
- D. Discrepancies between an officer's unaided and aided statements following an incident are expected. The science of memory in the wake of a stressful or traumatic event is extensive and points to numerous physiological phenomena during acutely stressful situations (e.g. auditory exclusion and tunnel vision) being common causes of discrepancies.

5. ADMINISTRATIVE INVESTIGATION

- A. In the event that an outside law-enforcement agency with jurisdiction (normally the VSP Major Crime Unit) initiates an investigation into the incident for the purpose of determining if there is criminal liability, the administrative investigation should occur after the criminal investigation and decisions by the Attorney General's Office and the State's Attorney's Office are complete.
- B. The administrative investigator will interview the involved officer(s) and witnesses, and review all available evidence, information and statements. The administrative investigator may use information obtained as part of the criminal investigation but may **not** provide any information from the administrative investigation to criminal investigators or prosecutors. All applicable collective bargaining agreements will be followed during an administrative investigation.
- C. The officer shall be kept informed of the progress of the administrative investigation and upon completion, notified in writing of the outcome.

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- D. The CEO or their designee shall notify the State’s Attorney, relevant municipal/state legal counsel, and any duly appointed police oversight body (in executive session) of the administrative investigation’s outcome. If the investigation concludes a necessity to report to the VCJC pursuant to 20 V.S.A. §2401, it shall be done without delay. A guide to reporting officer misconduct can be found here: <https://vcjc.vermont.gov/content/act-56-reference-guide>.

6. RETURN TO DUTY

- A. The officer(s) should be placed on administrative leave or assigned to administrative duties with no enforcement responsibilities pending completion of the criminal investigation and decision about prosecution by both the Attorney General’s Office and the State’s Attorney’s Office.¹
- B. The CEO shall direct the officer to obtain psychological follow-up for post-incident trauma, the agency shall pay for such services. With prior approval from the CEO, an officer may seek psychological follow-up from a licensed professional of their choice. An initial psychological follow-up shall be completed before the officer is reassigned to duty.

7. RELEASE OF BWC OR OTHER RECORDINGS IN THE WAKE OF A LETHAL FORCE INCIDENT

- A. Recordings, or portions thereof, taken during the course of these significant incidents do become public pursuant to public records law. In the wake of an incident, ensuring due process for every person involved is essential. The question of releasing recording is not *if*, but *when*.
- B. Following lethal force incidents, it is not uncommon for multiple agencies to possess copies of BWC or other recordings. For instance, the home agency, the Vermont State Police and the State’s Attorney’s Office or Attorney General’s Office may all have copies of the relevant recordings. This can create confusion, duplication of effort and expense as well as inconsistency when presented with public information requests for release of the footage. Because multiple copies of digital recordings will exist, the following guidance is intended to identify the agency with the superordinate interest at certain stages post-incident.
- C. When an outside agency (usually VSP) conducts a criminal investigation, the investigating agency will provide the home agency with a letter requesting preservation of all evidentiary items and describing the investigative process. Recordings are considered evidence in a criminal investigation. While the criminal investigation is ongoing, VSP (or other outside agency) is in control of the record² and, in consultation with prosecutors, will control release of recordings until the investigation is complete and the case has been reviewed by both the Attorney General’s Office and the State’s Attorney’s Office.

¹ Keeping an officer on admin duty may not be feasible in some agencies. The CEO should carefully evaluate the circumstances and consult with the State’s Attorney and Attorney General’s Office prior to returning the officer to duties that may involve enforcing laws/ordinances or using force.

² 1 V.S.A. 317(c)(5)

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- a. If the VSP investigation results in criminal charges, the prosecuting agency shall be in control of the record and control release until such charges are resolved.
 - b. If the VSP investigation does not result in criminal charges, the home agency resumes its controlling role as the keeper of the record.
- D. This procedure is intended to provide clarity to involved agencies, members of the public and media and to avoid confusion and unnecessary duplication of effort to process requests for recordings. Nothing in this guidance is intended to shield recordings from public examination. There are numerous factors that impact the release of body-worn camera or other recordings of a serious incident. It is not possible to create a definitive timeline for the release of recordings given the number of legal, investigative, operational, and external factors that bear on events on a case by case basis. Footage should be released as soon as practical in consultation with investigators, prosecutors, and organizational leaders. Whenever possible, release will occur within 30 days of the incident.