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## **Interagency Memorandums of Agreement For Officer-Involved Shooting Investigations**

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### **❖ Introduction**

In about half of the states, the sheriff is a constitutional officer, and usually styles himself as the chief law enforcement *officer* in his county or parish. Prosecutors are often constitutional officers and describe themselves as the chief law enforcement *official* for their county or district. Coroners hold an ancient office recognized by English common law, and convene inquests that investigate unnatural deaths. [1]

Who is in charge of a fatal crime scene – the municipal police chief, the county or parish sheriff, the prosecutor or the coroner? Which agency should lead a homicide or officer-involved shooting investigation?

What if an incident does not involve a death, but an officer wounds or injures a suspect?

## ❖ Interagency conflict avoidance

A 1977 Illinois Attorney General's Opinion concluded that while police may not impede a coroner who is seeking to determine the cause of a death, he lacks the authority to control a police crime scene investigation. [2]

In central Illinois, a coroner and police lieutenant temporarily arrested each other in a dispute about access to the scene of a possible arson and homicide. The coroner initiated a civil action seeking guidance from the Circuit Court.

The court concluded that the issue is not the right of the coroner to control the general police investigation but rather the authority of the police to control or interfere with the coroner's investigation. Although the coroner is a peace officer, his powers are no greater than the sheriff. He shares the authority conferred by law with the sheriff and local police. [\*Anderson v. City of Bloomington\*](#), #87-KR-92, 11th Cir. Ct. IL (1988).

In some jurisdictions, the law may require an outside agency to conduct a criminal investigation, following an officer-involved shooting (OIS) or when the use of force results in a death or serious bodily injury to the involved suspect.

There is potential for interagency conflict

1. Whenever an incorporated city is contained within a larger county, or
2. An incident involves officers from more than one agency, or
3. An incident involves an off-duty officer from another agency.

These problems can range from simple interagency misunderstandings, jurisdictional arguments, to a total lack of information sharing and cooperation between departments – creating numerous other issues for the agency involved in the OIS/UOF, and for the agency where the incident occurred.

Additionally, where agencies have an *unwritten* mutual understanding to conduct OIS/UOF investigations (the administrative or criminal portions) for another agency, there can be misinterpretations about agency-specific responsibilities, the scope of an investigation, what information will be shared with the other agency and when it will be shared, problems associated with required personnel cooperation (providing statements), and issues concerning the provision of periodic briefings or updates as to the current status of an investigation.

## ❖ **Formal Memorandums of Agreement**

It is generally recognized that officer-involved shootings and other critical use of force incidents contain many inherently sensitive and complex components, requiring specific forethought to eliminate ambiguity, misunderstandings and even jurisdictional disputes.

Potential conflicts can generally be avoided by agencies drafting and implementing clearly worded and specific interagency Memorandums of Agreement (MOA) or Letters of Intent (LOI).

As defined in part by Black's Law Dictionary, a typical MOA or LOI is a written statement detailing the preliminary understanding of the parties, in this case law enforcement agencies, planning to enter into a contract or some other agreement where there is a potential for interagency conflict to meet an agreed objective.

## ❖ **Essential components**

Concerning OIS/UOF investigations, effective MOAs should clearly address the following:

1. Purpose
2. Definitions
3. Parties
4. Existing scope and legal authority
5. Administrative investigative responsibilities
6. Criminal investigative responsibilities
7. Adherence to existing district/state's attorney protocols
8. Limitations of a MOA
9. Conflicts with other agreements
10. Modification and termination of agreement

Some Internet websites contain MOA/LOI exemplars that can be modified to fit an agency's specific needs.

- Agencies contemplating the drafting of an MOA should ensure that their subject matter experts (OIS investigators), risk management staff and command staff carefully review the provisions of the document to make certain it is on-point,

legally sound and most importantly, that each agency is very clear concerning their specific duties, responsibilities and expectations in the OIS/UOF investigation process.

Although exceedingly important, the last consideration in the MOA process is not the drafting and implementation of an effective agreement, but rather ensuring that all personnel assigned to provide command and control over such incidents, and those charged with the responsibility of investigating them, clearly understand the specific duties and responsibilities delegated in the agreement.

#### ❖ **Recommendations**

1. A law enforcement agency's command staff, watch commanders, front line supervisors and investigators should keep a copy of the MOA in the field to assist in resolving misunderstandings between agencies, and as a means of clarifying their own duties and responsibilities at the scene of an OIS/UOF incident.
2. Any agency that is subject to an outside investigation, per an existing MOA, should likewise exercise those provisions in the agreement allowing them access (sometimes immediately) to certain types of information from the investigating agency that can be employed in the necessary efforts to apprehend and prosecute a suspect, or other information deemed critical to department operations or management of the involved agency.
3. An agency subjected to an OIS/UOF investigation, conducted by an outside department, should ensure it maintains an active interest in the investigation by requesting (as per agreed upon provisions) periodic updates on the current status of the outside investigation.

#### ❖ **Notes:**

1. Anderson on Sheriffs, Coroners and Constables. (Dennis, 1941); Crocker, Sheriffs, Coroners & Constables, (Banks, Gould & Co., 1855).
2. [\*Coroners Crime Scene Investigation\*](#), A.G. Opin. S-1279 (1977).

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– APPENDIX –

**Specimen Memorandum of Agreement  
Between the  
County Sheriff’s Department and  
City Police Department  
Regarding Investigative Responsibilities of  
Law Enforcement Officer Involved Shootings**

*Contents*

- Purpose
- Definitions
- Criminal Investigative Responsibilities
- Adherence to the District/State’s Attorney’s Protocol
- Application of Agreement on Other Use of Force Investigations
- Limitations of MOA
- Modifications and Termination
- Conflict With Other Agreements

**Purpose:**

This Memorandum of Agreement (MOA) between the City Police Department (CPD) and the County Sheriff’s Department (CSD) is intended to clearly delineate the administrative and criminal investigative responsibilities of each agency in advance of any officer involved shooting (OIS)/deputy involved shooting (DIS) that may occur within the policing jurisdictions of the CPD and CSD. This agreement is intended to assist with the timely and orderly assignment of investigative authority and eliminate ambiguity regarding jurisdictional control from the onset of the investigation through its conclusion.

This MOA is not intended to address every possible scenario, but rather to establish investigative responsibilities and jurisdictional guidelines for OIS/DIS incidents. Both agencies retain the right and authority to defer investigative responsibilities enumerated under this MOA to the other agency. Any decision to do so requires the concurrence of command staff at the rank of commander or above from both agencies.

## **Definitions:**

For purposes of this MOA, the following definitions are provided in an effort to clarify the use of specific words and phrases:

- Law Enforcement Officer - [*General description along with statutory authorization*]
- Officer/Deputy Involved Shooting - Any occurrence wherein one or more law enforcement officers discharge a firearm, irrespective of injury to any person.
- On-Duty - Refers to normal working hours when a law enforcement officer is on salary to actively pursue the objectives of an employing agency.
- Criminal Investigative Responsibilities - The act of fact gathering pertaining to any criminal acts leading to, and including, the OIS/DIS, including the submission of findings to the County District/State's Attorney's Office for review and filing of applicable criminal charges. The criminal investigation is separate and distinct from any administrative inquiries.
- Involved Agency - The agency of the law enforcement officer who discharged a firearm.

## **Criminal Investigative Responsibilities:**

On-Duty Shootings - The criminal investigative responsibility for shooting involving on-duty law enforcement officers in the City and/or County, shall reside exclusively with the agency whose officers are involved in the shooting. No other agency shall assert criminal investigative authority without the approval from command staff of both agencies holding the rank of commander or above. However, the involved agency may, at its discretion, elect to have another agency assume the responsibilities of the criminal investigation.

Off-Duty Shootings - The criminal investigative responsibility for shootings involving off-duty law enforcement officers shall reside with the policing agency of the jurisdiction where the incident occurred. The involved officer's agency may monitor the criminal investigation to such extent granted by the investigating agency. The investigating agency may, at its discretion, elect to have another agency assume the responsibilities of the criminal investigation.

Shootings Involving Law Enforcement Officers from Multiple Agencies - Except for multi-agency task forces, if officers of two or more agencies are at the scene of an incident where officers from multiple agencies are involved in an OIS/DIS, the criminal investigative responsibility shall rest with the agency whose personnel initiated the incident, as long as the OIS/DIS resulted from the uninterrupted participation of the initiating agency.

If members of only one agency are involved in the OIS/DIS, the agency of the involved members shall have criminal investigative responsibility for the OIS/DIS portion of the incident. Either agency may elect to have another agency assume the responsibilities of the criminal investigation, with the agreement of command staff of both agencies (commander or higher). Each agency involved in the OIS/DIS is responsible for conducting its own administrative policy investigation.

Shootings by Members of Multi-Agency Task Forces - In the case of multiple agencies formally organized into group or Task Force operations, absent express agreement(s) governing the group task force to the contrary, the criminal investigative responsibility for on-duty shootings resides with the agency that has supervisory and investigative authority over the Group/Task Force. The supervisory agency may, at its discretion, elect to have another agency assume the responsibilities of the criminal investigation.

#### **Adherence to the District/State's Attorney's Protocol:**

Both the CPD and CSD agree to follow all protocols set forth by the District/State's Attorney pursuant to the established, "District/State's Attorney's Office Protocol for OIS/DIS Guidelines."

#### **Application of Agreement on Other Use of Force Investigations:**

The assignment of criminal investigative responsibility for OIS/DIS incidents detailed in this MOA shall also apply to all use of force incidents resulting in death or serious injuries to suspects as a result of CPD and CSD actions.

#### **Limitations of MOA:**

Agency Criminal Investigative Protocols - Each agency has its own established procedures and protocols for conducting criminal investigations of an OIS/DIS. Nothing

in this MOA is intended to change, hamper or affect in any way such established procedures or protocols.

Administrative Investigations - This MOA recognizes the need for timely administrative reviews and investigations of OIS/DIS incidents by the involved agency. Nothing in this MOA is intended to describe, restrict or inhibit any such investigation. However, in the event the criminal investigation of the OIS/DIS incident is to be conducted by an agency other than the agency involved in the shooting, the criminal investigation shall take precedence over the administrative investigation. The criminal investigative personnel shall make every effort to provide the involved agency with:

- Access to requested information;
- Access to personnel;
- Access to evidence; and,
- Periodic updates as to the status of the investigation

While being mindful of the paramount importance of the criminal case.

**Modifications and Termination:**

This MOA may be modified or amended only by written mutual agreement of the parties and either party may terminate this MOA by providing written notice to the other party. The termination shall be effective (30) calendar days following notice unless a later date is agreed upon.

**Conflict With Other Agreements:**

In the event any provisions in this MOA conflict with any prior agreements between CPD and CSD, this MOA supersedes any protocol or procedure for conducting administrative and criminal investigations into the incidents described herein without any impact upon any other portion of such agreement.

The parties have caused the MOA to be executed by their duly authorized officers as set forth below.

Dated:

Dated:

.....  
Chief of Police

.....  
Sheriff

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