

NORTHERN VIRGINIA CRITICAL INCIDENT RESPONSE TEAM

MEMORANDUM OF UNDERSTANDING

I. AGREEMENT

- A. This agreement is known as the Northern Virginia Critical Incident Response Team (CIRT) Memorandum of Understanding and is established under the authority of the Code of Virginia § 15.2-1726. *Agreements for consolidation of police departments or for cooperation in furnishing police services*, and § 15.2-1736. *Mutual aid agreements among governing bodies of localities*.
- B. All critical incident investigations shall be conducted pursuant to the protocols outlined in this Memorandum of Understanding (MOU). This MOU shall be in effect for a term commencing on this 15th day of December 2020 and shall be extended and renewed for consecutive periods of five years if mutually agreed upon by the Parties to the MOU.
 - 1. Any Chief Executive Officer (CEO), in a jurisdiction that is party to this agreement, may activate the CIRT upon the occurrence, within that CEO's jurisdiction, of any critical incident involving a law enforcement employee or a law enforcement officer suicide. Upon this activation, the matter will be investigated under the provisions of this MOU.
 - 2. The CIRT will conduct the criminal investigation of a critical incident in close conjunction with the Commonwealth's Attorney or Prosecuting Attorney for the jurisdiction which had the critical incident. The internal administrative investigation remains the responsibility of the affected Agency.
 - 3. CIRT will not investigate motor vehicle crashes resulting in the death of any person, unless the vehicle was used as deadly force.
- C. Any party may terminate its participation in this MOU upon thirty (30) days written notice to the CIRT Board of Directors. This MOU is not intended to increase the civil or criminal liability of member agencies or their employees and it shall not be construed as creating any mandatory obligation to, or on behalf of, third parties.

II. PURPOSE

- A. To promote public confidence that an objective investigation will occur when an officer is involved in a critical incident as defined by this MOU. This includes but is not limited to:
 - 1. Intentional and accidental shootings.
 - 2. Any action used by a sworn law enforcement officer which results in the death or a life-threatening injury of a person during the performance of the officer's duties.
 - 3. Any In-Custody Death as defined by this MOU.

4. Police officer suicide.
 5. CIRT will not investigate motor vehicle crashes resulting in the death of any person, unless the vehicle was used as deadly force.
- B. To establish uniform procedures and mutually agreed-upon investigative guidelines that allow for an objective investigation of a critical incident with the goal of mitigating concerns regarding potential conflicts of interest should the affected agency investigate the incident itself.
 - C. To present the completed case investigation, and provide updates as the investigation proceeds, to the affected Commonwealth's Attorney, or designated prosecuting authority, who shall determine whether to initiate or decline prosecution ensuring persons are held accountable for their criminal conduct and those who have not engaged in criminal conduct are absolved.
 - D. The CIRT will not conduct internal administrative investigations.

III. DUTIES

- A. Ensure a thorough and objective investigation of all critical incidents within the scope of CIRT responsibilities, in accordance with applicable laws, CIRT Standard Operating Procedure, and policies.
- B. Ensure that proper investigative procedures are followed, evidence is collected and preserved, and reports are generated in a timely manner.
- C. Supervisors assigned to CIRT and the internal affairs function of the affected law enforcement agency, will meet with the Involved Officer(s) at the beginning of the criminal investigation to explain the investigative process.
- D. Provide briefings and updates to the affected law enforcement agency, its liaison team, command staff, and the affected Commonwealth's Attorney, or designated prosecuting authority regarding the status of the investigation as needed or reasonably requested.
- E. Ensure CIRT is solely a fact-finding body and shall present the facts of the investigation to the Commonwealth's Attorney, or designated prosecuting authority.
- F. Refer the completed investigation to the affected Commonwealth's Attorney, or designated prosecuting authority, for review. The affected law enforcement agency shall be notified prior to the time the investigation is presented to the Commonwealth's Attorney, or designated prosecuting authority.
- G. At the conclusion of the investigation, provide the completed investigation to the internal affairs function of the affected law enforcement agency.
- H. Participate in any critical incident review meetings, as requested by the affected agency or Commonwealth's Attorney, or designated prosecuting authority.
- I. All CIRT members will sign a confidentiality agreement upon assignment to the CIRT.

IV. ACTIVATION

- A. Any Chief Executive Officer in a jurisdiction that is a party to this agreement may activate the CIRT upon the occurrence, within that CEO's jurisdiction, of any critical event as defined in II.A and Appendix A of this MOU involving a law enforcement employee which may have possible criminal liability attached or a law enforcement officer suicide. Upon activation, the matter will be investigated under the provisions of this MOU.
 - 1. All requests for CIRT assistance shall be made to the CIRT Commander, or if unavailable, the CIRT Assistant Commander, who will then notify and direct the appropriate CIRT Supervisor(s) to coordinate the CIRT response to the incident.
 - 2. CIRT members from the affected agency shall not participate in the CIRT critical incident investigation. However, they may be assigned as the affected agency's Liaison Officer.

V. PERSONNEL AND EQUIPMENT EXPENSE

- A. In the event of a CIRT activation, member agencies agree to relieve team members assigned to the investigative team for the duration of the investigation.
- B. Member agencies shall not be liable to each other regarding reimbursement for injuries to personnel or damage to equipment incurred when going to or returning from another jurisdiction.
- C. Member agencies shall not be accountable to each other for the salaries or expenses of their personnel, vehicles and equipment used in association with, or arising out of, the rendering of assistance pursuant to this agreement.
- D. The affected agency shall be responsible for all investigative expenditures and will provide all reasonable and necessary support, resources, equipment, and supplies as required by CIRT to conduct its investigation. Prior to incurring costs associated with obtaining specialized equipment or testing, the CIRT Commander, or designee, will attempt to identify if logistical support exists in the region and will consult with the Chief Executive Officer or designee of the affected agency.

VI. INTERNAL ADMINISTRATIVE INVESTIGATION

- A. The affected agency's Internal Administrative Investigation will be conducted independent of the CIRT investigation.
- B. The CIRT investigation will have priority over the affected agency's Internal Administrative Investigation.
- C. Investigators from the internal affairs function of the affected agency assigned to conduct the Internal Administrative Investigation may remotely observe the criminal investigation interviews.
- D. Investigators assigned to conduct the Internal Administrative Investigation will be provided access to the crime scene(s), in collaboration with the CIRT.

VII. CIRT STRUCTURE

A. Board of Directors

1. The Board of Directors for the Northern Virginia Critical Incident Response Team consists of the Chief Executive Officers from each of the member agencies that are a party to this MOU.
2. The main role of the Board of Directors is CIRT oversight, planning, guidance, and direction for the future.
3. The Board will appoint a CIRT commander for a two-year term. This term may be extended at the discretion of the Board of Directors.
4. Important matters shall be brought before the full board for a vote. The full board need not deliberate all matters, some may be delegated to subcommittees.
5. The Board of Directors, by majority, may elect to immediately stop an investigation and turn it over to the affected agency for willfully failing to abide by this agreement. Further action may also result in the agency's removal from the CIRT MOU.

B. CIRT Commander

1. Shall be a command level officer from a participating law enforcement agency and shall be appointed by the CIRT Board of Directors for a two-year term, regardless of agency assignment.
2. Shall provide an annual report to each member of the CIRT Board of Directors (TBD; e.g. February). The report will detail, at a minimum, CIRT investigations, training, and areas identified for further development or growth.
3. Shall clearly outline the goals, objectives and expectations of the CIRT to all members.
4. Shall establish procedures for the activation of CIRT and maintain and distribute CIRT notification rosters to each participating agency.
5. Shall establish Standard Operating Procedures (SOP) related to the investigative process that ensures a well-defined, systematic, criminal investigation and ensure that all parties understand the SOP. The SOP, when developed and/or updated, will be presented to the CIRT Board of Directors for approval.
6. Shall establish a standardized reporting document for use on all critical incident investigations.
7. Retains the ultimate responsibility for the management and conduct of the investigation team and its individual members and must ensure that there are no conflicts of interest that may impact the investigative process.
8. Shall not be assigned to investigate their own agency.
9. Will assign a CIRT Supervisor to manage the investigation.
10. Responsible for presenting the documented investigation to the affected agency

and affected Commonwealth's Attorney, or designated prosecuting authority.

11. Responsible for the readiness and training of CIRT members. At a minimum, personnel assigned to CIRT should attend a critical incident response/investigations course upon appointment.
12. Shall establish a method for the affected agency's personnel to readily identify CIRT members at the scene of a critical incident.
13. May remove any team member upon the recommendation of a CIRT Supervisor or at the request of a Chief Executive Officer.

C. Assistant CIRT Commander

1. Shall be a command level officer from a participating law enforcement agency and shall be appointed by the CIRT Board of Directors for a two-year term, regardless of agency assignment. The Assistant Commander and Commander shall not be from the same agency.
2. Serves when the Commander's agency is the agency affected by a critical incident.
3. Serves when the Commander is not available.
4. Will be responsible for scheduling routine team meetings and coordinating training courses for all members.

D. CIRT Supervisors

1. Each member agency should appoint one supervisor to serve a two-year term, regardless of agency assignment. This term may be extended at the discretion of each member agency's Chief Executive Officer.
2. Generally, supervisors will be rotated through incidents.
3. Shall not be assigned to investigate their own agency.
4. The Supervisor assigned to a CIRT investigation is responsible for directing the criminal investigation and ensuring the affected Commonwealth's Attorney has been notified of the event and is kept informed of the investigation.
5. The assigned Supervisor will determine the number of investigators required by the CIRT at the scene of a critical incident and is responsible for delegating investigative and administrative tasks to CIRT members.
6. The assigned Supervisor will designate a primary and secondary investigator to conduct the criminal investigation.
7. The assigned Supervisor may request the assistance of other CIRT Supervisors for various support functions but retains overall management responsibilities of the investigation.
8. The assigned Supervisor shall determine a location for the team to assemble and arrange for a briefing of the incident with the affected agency and affected Commonwealth's Attorney, or designated prosecuting authority. The affected agency shall identify an employee, who was not directly involved in the critical incident, to provide an initial briefing to the CIRT.

9. The assigned Supervisor will organize a team debriefing in order to review performance and training needs at the conclusion of a CIRT response.
10. Any CIRT Supervisor may propose training needs to the CIRT Commander that would enhance the knowledge, skills, and abilities of CIRT members.
11. Shall provide annual training to their own agency. Training should include, at a minimum, information contained in this MOU.
12. When the Commander and Assistant Commander are not available, two Supervisors will be appointed to serve as Commander and Assistant Commander during their absence.
 - a. The Commander will appoint the Acting Commander and Acting Assistant Commander. The appointment will be documented and distributed to all members and member agencies through written communication.

E. Investigations Team

1. CIRT Investigators will be appointed by their respective Chief Executive Officer.
 - a. Generally, investigators assigned to the CIRT will be appointed for a two-year term. This term may be extended at the discretion of each member agency's Chief Executive Officer.
 - b. The CIRT is made up of personnel from participating agencies and while larger agencies are expected to appoint 2-3 investigators to the Investigations Team smaller agencies may endeavor to appoint 1-2 investigators to the team.
 - c. Agencies should assign their most skilled and experienced personnel to investigate these incidents as the CIRT will be judged by the quality of their investigation.

VIII. EVIDENCE COLLECTION, PRESERVATION AND ANALYSIS

- A. Upon notification of a critical incident, the CIRT Commander or designee, shall immediately request a Crime Scene Unit from a non-involved CIRT agency.
1. The assigned Crime Scene Unit shall report directly to the CIRT Commander or designee.
 2. The assigned Crime Scene Unit will be responsible for processing the crime scene(s) and collection and preservation of evidence.
- B. Scene Security
1. The jurisdiction in which the incident occurred will have the responsibility for immediately securing the crime scene(s).
 2. This responsibility includes preservation of the integrity of the scene(s), its contents, controlling access, and the identification and separation of witnesses until the CIRT arrives and assumes command.

- C. Prior to returning the crime scene to the exclusive purview of the affected agency, the lead investigators, crime scene technicians, CIRT Supervisor(s), Liaison Officer and investigators from the internal affairs function for the affected agency will confer to determine if the collection of evidence is complete.
- D. Evidence collection and preservation shall be stored by the collecting agency to ensure chain of custody and quality control.
- E. The assigned Crime Scene Unit shall maintain a record of the affected agency's case number or evidence control number to ensure complete accountability of records.
- F. The assigned Crime Scene Unit shall provide the CIRT with the case number or evidence control number being used to log and store evidence.
- G. Upon conclusion of the criminal investigation and/or prosecution, if warranted, and the expiration of the Statute of Limitations for Civil Action, all evidence collected and stored by the collecting agency will be returned to the affected agency to be stored and retained per the affected agency policies and procedures.

IX. INTERVIEWING THE INVOLVED OFFICER(S)

- A. The formal interview will be conducted in accordance with the affected agency's policies and procedures.
- B. It is the intent of the CIRT to only conduct the criminal investigation and not become involved in the administrative investigation. It should be made clear to Involved Officer(s) that "Garrity" advisements do not apply.
- C. Interviews should be videotaped with an audio recording back up whenever possible.
 - 1. Interviews of incident participants and primary witnesses must, at a minimum be audio recorded.
- D. Members of the internal affairs function of the affected law enforcement agency will be provided with copies of all interviews for use during the Internal Administrative Investigation.

X. REPORT WRITING

- A. The affected agency shall document the critical incident on their standard report form. The involved officer(s) shall not be expected to complete this task.
 - 1. This initial report will be provided to the CIRT Commander or designee.
 - 2. The affected agency will generate a case/incident number to be used on all CIRT documents.
- B. Investigators shall deliver all reports to the assigned Supervisor, or designee.
 - 1. Investigators will write reports documenting their participation in the investigation.
 - 2. Investigators will not destroy any reports, notes or memorandums created during their involvement with the investigation.
 - 3. The lead investigator has the ultimate responsibility for report writing and for

collecting reports, notes and memorandums created during the investigation from other investigators and agencies.

4. Prompt completion and distribution of reports is essential.
5. At the conclusion of the investigation the Liaison Officer is responsible for collecting all investigative reports from the lead investigator and ensuring these documents are retained per the affected agency's policies and procedures.
 - a. Any and all records created during the investigation are considered property of the affected agency. Therefore, at the conclusion of the investigation, each investigator will ensure all records created have been provided to the lead investigator and will not retain any personal copies.

XI. AFFECTED AGENCY RESPONSIBILITY

A. Liaison Officer

1. The Commander, or designee, will assign a Liaison Officer who will act as the affected agency's point of contact for CIRT. They will typically be utilized to communicate and coordinate the activities between the affected agency, the CIRT, and the Commonwealth's Attorney, or designated prosecuting authority. The Liaison Officer will be selected from the affected agency's CIRT Supervisor or Investigations Team assigned member(s).
2. The Liaison Officer should remain available to facilitate the assignment of additional resources and personnel as needed to aid the assigned CIRT Supervisor. This may include the sharing of previous agency criminal investigative reports, training records or other agency documents as needed by the CIRT.
3. The Liaison Officer shall have the authority to activate investigative resources and personnel from their agency as requested by the assigned CIRT Supervisor.

B. The scene of an officer involved critical incident will be secured and preserved by the affected agency. Other than essential law enforcement information needed to preserve public safety and/or information necessary to reassure the community there is no active/ongoing threat, no information regarding the incident will be discussed until contact is made with and the arrival of a CIRT Supervisor.

C. The below guidelines, at a minimum, shall be incorporated into the CIRT SOP.

1. Officer Processing – Whenever possible, the Involved Officer(s) should be transported to the affected agency's police facility for processing and interviews.
 - a. The initial incident commander of the critical incident should ensure involved officers are photographed/video recorded as they appear on scene, to include any injuries sustained. This attempt to document an officer's appearance must not interfere with medical care.
 - b. Statements from the Involved Officer(s), beyond the public safety

statement, should only be taken by CIRT and/or members from the affected agency's internal affairs function.

- c. Unless extenuating circumstances exist, after the public safety statement is made and the scene is secured, the Involved Officer(s) should be afforded the opportunity to be checked by medics.
2. Additional Investigative Assistance – The CIRT may request additional personnel from the affected agency as needed. However, affected agency personnel shall only act under the command of a CIRT Supervisor.
3. Witness Interviews – Prior to CIRT arrival, when witnesses are unable or not willing to wait for those resources to arrive, detectives or officers from the affected agency may conduct those interviews. These interviews should be recorded, documented and contact information for future follow-up shall be obtained.
4. Media Relations
 - a. The affected agency's media office will maintain exclusive responsibility for the release of information to the media, publishing press releases, handling media inquiries, holding/coordinating press conferences, and releasing information to the public.
 - b. Prior to releasing any information and to maintain the integrity of the investigation, all media releases shall be reviewed with the CIRT Commander and Supervisor, the lead investigator, and the Chief Executive Officer or designee of the affected and/or employer agency.
5. Police Video or Audio Recording
 - a. Affected agency personnel responsible for police video recording systems will endeavor to ensure all video and/or audio recordings are downloaded and saved in accordance with the affected agency's policy.
 - b. Copies of all video and/or audio recordings will be made and distributed to CIRT.
6. Administrative procedures related to the Involved Officer(s) duty status, replacement weapon/firearm, care, peer support and access to Union Representative(s) will be subject to the affected agency policies and procedures.
7. Virginia Freedom of Information Act (FOIA)
 - a. The affected agency is responsible for handling all FOIA requests.
 - b. Any and all FOIA requests shall be handled in compliance with the affected agency's policies and procedures.
 - c. Prior to providing a response, the affected agency FOIA officer shall collaborate the FOIA response with all investigative parties.
 - d. No record created during the course of an investigation shall be destroyed and will be provided to the affected agency to be retained per agency policy.

XII. ROLE OF THE COMMONWEALTH’S ATTORNEY, OR DESIGNATED PROSECUTING AUTHORITY

- A. The affected Commonwealth’s Attorney, or designated prosecuting authority, shall be notified of all officer involved critical incidents and provided an initial assessment of the event by the CIRT Commander, or designee.
- B. Assist and advise the CIRT.
- C. Shall be given access to reports, videos, audio, interviews, and all relevant information gathered in respect to the investigation.
- D. The return of any evidence, to include involved weapons and vehicles, must be approved by the Commonwealth’s Attorney, or designated prosecuting authority, and coordinated between the CIRT Commander or designee, and the affected agency.

XIII. ROLE OF THE OFFICE OF THE CHIEF MEDICAL EXAMINER (OCME)

- A. The OCME shall be notified by the CIRT Commander or designee of any fatal incident and be requested to respond to the scene.

XIV. CIRT FINAL REPORT

- A. When the investigation is complete the CIRT Final Report will be presented by the CIRT Commander, or designee, to the affected Chief Executive Officer and Commonwealth’s Attorney, or designated prosecuting authority.
- B. The Chief Executive Officer of the affected agency may request that the CIRT Commander make a separate presentation to the affected agency and any other review board.
 - 1. No officer(s) directly involved in the incident may attend the presentation to the Commonwealth’s Attorney, or designated prosecuting authority.

XV. CIRT CASE FILE

- A. When the investigation is complete the entire CIRT case file will be provided to the internal affairs function for the affected agency. This will be facilitated by the Liaison Officer.

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum of Understanding as of the day and year shown below.

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| ARLINGTON COUNTY POLICE DEPARTMENT _____ Charles A. Penn, Acting Chief of Police Date | CITY OF FAIRFAX POLICE DEPARTMENT _____ Erin Schaible, Chief of Police Date |
| CITY OF FALLS CHURCH POLICE DEPARTMENT _____ Mary Gavin, Chief of Police Date | TOWN OF HEARNDON POLICE DEPARTMENT _____ Maggie A. DeBoard, Chief of Police Date |
| TOWN OF LEESBURG POLICE DEPARTMENT _____ Gregory C. Brown, Chief of Police Date | CITY OF MANASSAS POLICE DEPARTMENT _____ Douglas W. Keen, Chief of Police Date |
| CITY OF MANASSAS PARK POLICE DEPARTMENT _____ Mario Lugo, Chief of Police Date | METROPOLITAN WASHINGTON AIRPORTS AUTHORITY POLICE DEPARTMENT _____ David Huchler, Chief of Police Date |
| PRINCE WILLIAM COUNTY POLICE DEPARTMENT _____ Jarad L. Phelps, Acting Chief of Police Date | TOWN OF PURCELLVILLE POLICE DEPARTMENT _____ Cynthia McAllister, Chief of Police Date |
| TOWN OF VIENNA POLICE DEPARTMENT _____ Jim Morris, Chief of Police Date | |

APPENDIX A - DEFINITIONS

Administrative Investigation – Non-criminal internal investigation by police department personnel utilized to identify any policy and/or procedure violations. Generally conducted by the Employer Agency's internal affairs function.

Affected Agency – The employing agency of the involved law enforcement officer(s).

Chief Executive Officer – The Chief of Police or Sheriff from each of the member agencies that are party to this MOU.

Command Level Officer – Officers with command rank (lieutenant, equivalent or above).

Criminal Investigation – Investigation conducted by the CIRT to determine if any criminal laws have been violated. The investigation shall be performed following standard operating procedures.

Critical Incident – *The discharge of a firearm, use of force, or other action by an officer(s) that results in death or serious bodily injury to any person, or the unexplained death of a person in police custody, or the suicide of an officer.*

In-Custody Death – Any custodial death where a subject is being detained, arrested, or is in the custody of a law enforcement officer except those that occur while the subject is under a physician's treatment for a disease or other natural condition which has been diagnosed prior to death and which does not involve custodial trauma, custodial suicide or custodial ingestion of toxic substance.

Investigations Team – Those investigators assigned by the CIRT member agencies to conduct the criminal investigation of the incident.

Involved Officer – Unless otherwise indicated, refers to those sworn personnel in an on-duty or off-duty status whose use of force or other action results in the death or serious bodily injury to another person, and any officer who discharges his/her firearm at a subject or detainee, regardless of injury or death.

Member – Appointed or assigned personnel to the CIRT from member agencies.

Member Agency – The law enforcement agencies that are members of the Northern Virginia Critical Incident Response Team.

Officer-Involved Shooting – A discharge of a firearm by an officer during a hostile encounter, while on-duty or off-duty, irrespective of injuries to self, subjects, officers, or third parties.

Police Employee – A person compensated by a particular law enforcement agency or authorized volunteer of that law enforcement agency who performs an act for the benefit of and subject to the control of that agency. However, an officer acting pursuant to authority of a special commission is not considered an employee of that agency.

Serious Bodily Injury – Injury that involves a substantial risk of death, protracted and obvious disfigurement, or extended loss or impairment of the function of a body part or organ.

Subject – The person who is injured by the act of the Involved Officer, whether or not the injury is intentional.

Team Supervisor – The investigator who is assigned by the CIRT Commander to lead and manage the CIRT investigation.