

PROTECTING ★ THE ★ UNPROTECTED

A Law Enforcement Guide



The Ohio Bureau of Criminal Investigation's response team is prepared to ensure a comprehensive investigation of officer-involved critical incidents.

Requesting BCI Investigative Services for an

Officer-Involved Critical Incident



DAVE YOST
OHIO ATTORNEY GENERAL



Letter from the Attorney General

When an Ohio law enforcement officer is involved in a critical incident, the resulting investigation should be independent, professional and prompt – exactly what the Attorney General’s Office provides when a local agency requests the Bureau of Criminal Investigation’s assistance in investigating the incident.

Depending on the situation, BCI’s response team could incorporate agents from the Special Investigations, Crime Scene, Cyber Crimes, Narcotics and Criminal Intelligence units – all of whom work to ensure that the investigation yields a comprehensive and impartial report. The factual, documented account of the officer-involved incident, in turn, is crucial to helping the prosecutor’s office determine how the case should proceed.

This guide outlines BCI’s recommended protocol for any agency that plans to seek the bureau’s assistance in investigating an officer-involved critical incident – including how to request that help, what to expect when BCI is called in, the requesting agency’s role and the records that should be gathered for the investigation. It is designed to ensure that the proper steps are taken to maintain the integrity of the scene, the evidence and statements, and the fairness of the investigation.

My office, when called upon, stands ready to aid local law enforcement agencies.

Sincerely,

Dave Yost
Ohio Attorney General

Response Team



The Ohio Bureau of Criminal Investigation's Officer-Involved Critical Incident Response Team makes sure that an investigation is:

- Standardized.
- Consistent.
- Independent.
- Professional.
- Timely.

A BCI team of resources — potentially including agents from the Special Investigations, Crime Scene, Cyber Crimes, Narcotics and Criminal Intelligence units — responds when ordered by the BCI superintendent (or designee) after the bureau receives a formal request for help from an Ohio law enforcement authority (such as a county prosecutor, sheriff or police chief) in the event of:

- A shooting.
- An in-custody death.
- An investigation involving law enforcement (or another government agency).



What Is an ‘Officer-Involved Critical Incident’?

BCI defines an “officer-involved critical incident” as:

- The discharge of a firearm by a law enforcement officer or other official conducting an enforcement activity that results in human injury and/or death.
- Any incident in which a law enforcement officer suffers serious physical harm or death at the hands of another, including “friendly fire” situations.
- Any incident involving the use of force by a law enforcement officer against another person that results in serious physical harm or death.
- The death of a person while “in custody” by a law enforcement officer. [“In custody” is defined as “a situation when there has been a formal arrest or when, under the totality of the circumstances, there has been a restraint on freedom of movement of the degree associated with formal arrests.” United States v. Lacy, 2009 U.S. Dist. LEXIS 86970, 2-3 (E.D. Wis. Aug. 13, 2009)]
- Any other incidents as determined by the BCI superintendent (or designee).

What To Expect

When BCI is asked to investigate an officer-involved critical incident, the bureau prefers to handle all facets of the investigation (crime scene processing, investigation, laboratory testing, cyber-analysis and so on).

When the requesting agency makes its initial call to BCI's communications center, the caller is asked for basic preliminary information (see Page 4, "How To Contact BCI To Request a Response/Investigation"). The communications center then contacts a BCI special agent supervisor, who typically calls the agency's point of contact to gather further details to assist in the dispatching of appropriate personnel. The special agent supervisor provides an estimated time of arrival. A team of BCI special agents from multiple disciplines, as determined by the situation, responds. The time of day and the agents' physical proximity to the incident location are the primary factors affecting response time.

The requesting agency is asked to support BCI in some aspects of the incident management (see Page 7, "Role of the Requesting Agency").

The BCI investigation is criminal, not internal or administrative. Disciplinary issues are the responsibility of the employer. Investigators from the requesting agency generally are permitted to accompany BCI special agents during most activities – to the extent that their participation does not hamper the BCI investigation, that independence is maintained, and that Garrity information does not impact the criminal investigation.

To maintain its unbiased and independent function, BCI directs the investigation. Allowing the presence of representatives from the requesting agency is a courtesy that can be revoked. The criminal investigation takes precedence over any internal or administrative investigation. BCI works independently of the requesting agency's policies, procedures and chain of command.

As a fact-finder, BCI does not determine whether a use of force was legally justified. After the investigation is completed, the investigative report is provided to the prosecutor's office and, with the prosecutor's approval, to the requesting agency. Those entities may then use the investigation to determine the appropriateness of the officer's actions.

BCI investigates potentially related crimes only when specifically asked to do so by a requesting agency and when BCI agrees to do so. Otherwise, the requesting agency is responsible for the investigation, the filing of charges and the prosecution of other potential crimes leading up to, contemporaneous with or subsequent to the officer-involved critical incident.

How To Contact BCI To Request a Response/Investigation

BCI is accessible 24/7 through its communications center, at 855-BCI-OHIO (855-224-6446). If BCI's assistance is to be sought, the requesting agency should seek it immediately, regardless of the time of day. Delayed requests might hamper the bureau's ability to observe or collect relevant evidence or statements, and may result in the denial of investigative services.

The requesting agency should be prepared to provide the following information:

- The specific resources being requested. BCI becomes involved in the investigation of an officer-involved critical incident only under certain circumstances, the most common being a request for BCI's involvement from the law enforcement agency with jurisdiction over the matter. When calling for assistance, the requesting agency should specify its desired level of BCI involvement. Do you want BCI to handle the entire investigation (BCI's preference), or do you want only a partial response (for example, the use of the Crime Scene Unit to process the scene, with another agency conducting the investigation)? Clarity on the desired resources expedites the dispatching of the appropriate personnel.
- An overview of the incident, including the number of officers and witnesses. To avoid potential Garrity issues, do not include any statements made by the involved officer(s).
- An agency contact name and that contact's direct phone number. The contact person should be at the scene or have the most knowledge about the incident. A BCI supervisor or responding agent is likely to contact this person for additional information.
- The number and location of scenes. GPS-recognizable addresses are preferred.
- The current location and status of the individuals involved. Note whether those involved are deceased, at the hospital, in custody or at large.
- Environmental details. Is the scene indoors or outdoors? Are there any hazards or special circumstances about which BCI should be aware (such as weather conditions that could alter evidence, multiple scenes or a large volume of evidence)?



POLICE LINE DO NOT CROSS

Involved-Officer Statements

To avoid potential Garrity issues, the requesting agency should take no statements from the involved officer(s) before BCI takes a formal statement. However, if the involved officer agrees to voluntarily answer public safety questions, the requesting agency is encouraged to ask those questions promptly, before BCI's arrival, to ensure that any threats at the scene have been mitigated.

Public Safety Statement

These are the questions that a responding agency asks of the involved officer(s) as soon after the incident as possible, to make sure there are no known threats at the scene. The officer's responses are understood to be voluntary. If the officer refuses to voluntarily answer the questions and the requesting agency believes it necessary to compel the officer to do so, the officer's answers should not be communicated to BCI personnel.

Below is what the requesting agency tells and/or asks the officer:

In the interest of public safety, the following questions are being asked. Your response to these questions is completely voluntary; you are not required to answer these questions.

- 1** Are you injured or are you aware of anyone else who is injured and in need of immediate medical attention? If so, where are they?
- 2** Are you aware of the location(s) of any weapons or other hazards in need of being secured?
- 3** Are you aware of other witnesses/participants? If so, what is their location?
- 4** Are there any outstanding suspects? If so, what is the description, direction and mode of travel of each? How long have they been gone? What crime or crimes are they wanted for? What weapons are they armed with?
- 5** In what approximate location was any person who discharged a firearm? In what direction was the weapon fired? Approximately how many shots were fired from each location?
- 6** Can you identify and describe the scope (size and location) of the involved scene?

BCI will attempt to obtain a quality interview from the involved officer(s) as soon as reasonably possible. As part of the interview process, BCI at a minimum provides the officer with an admonition (Criminal Investigation Notification) informing him/her that the investigation is criminal, not internal; that his/her participation in the interview is voluntary; that he/she has the right to refuse to answer any questions; and that, he/she is not compelled to cooperate. At the investigating agent's discretion, the Miranda warning might also be read. The interview is recorded, and the officer is afforded his/her right to legal counsel should he/she desire it.

Role of the Requesting Agency

When BCI's assistance is sought, the requesting agency's cooperation throughout the bureau's investigation is crucial. What follows are responsibilities the requesting agency is asked to assume before BCI arrives and might be asked to continue with after the bureau takes control. Failure to assist with these logistical needs may result in the denial of investigative services.

- Ensure that the safety and well-being of the public, officers, subjects and investigators are maintained. Summon medical assistance for the injured.
- Preserve the crime scene. Establish and maintain an adequate perimeter with physical barriers (crime scene tape, for example) and preserve all evidence without disturbing or moving it. Remove non-essential personnel from the scene.
- Maintain a crime scene access-control log (see Pages 13-15). Document the people who were within the scene during or after the incident, including all police, fire and EMS personnel.
- Provide personnel (uninvolved in the incident) to control traffic, crowds and the scene.
- If necessary, notify the county coroner or medical examiner's office.
- If necessary, notify the county prosecutor.
- If necessary, notify next of kin.
- Provide a briefing to BCI personnel that omits any Garrity-derived statements or evidence.
- To the extent possible, ensure all witnesses and/or the involved officer(s) are kept apart (though not necessarily alone).
- Transport the involved officer(s) to a safe location (such as a hospital or police department) to await contact by BCI. Direct him or her to remain clothed as he/she was at the time of the incident until he/she is photographed. Direct him/her to keep his/her firearm holstered until it is inspected/collected by BCI.
- Determine whether any photographs or recordings (including photos or videos from civilian and officer cellphones) were taken prior to BCI's arrival and, if so, obtain them.
- Identify all witnesses and request that they remain available for interviews with BCI. Do not allow the involved officer(s) or witnesses to view any recordings of the incident. Do not question the involved officer(s) regarding the incident except as directed in the "Involved-Officer Statements" section of this booklet.
- Take responsibility for filling out the Uniform Crime Reporting (UCR) information for the incident as well as any additional optional or mandated statistical incident reports.

Records To Be Requested

A requesting agency should expect the items listed below to be sought from your department's designated point of contact in the days following an officer-involved critical incident. To help expedite the incident review, you should prepare the records for BCI agents as soon as possible:

- A written letter of request (for the BCI investigation) signed by the chief law enforcement executive of the agency or designee
- Audio and video recordings, including dashcam, bodycam, surveillance footage, etc.
- Incident reports, including any witness statements or use-of-force reports but excluding any Garrity- derived reports
- Dispatch logs, radio logs, CAD reports
- Audio recordings from 911 or other phone calls relative to the incident
- Photographs, videos (including personal cellphone videos) or other recordings taken by officers, witnesses or anyone else
- Radio recordings for the time frame in question
- Crime scene log (see Pages 13-15 for a sample log)
- EMS run reports and a list of all first responders
- The involved officer's personnel file (including disciplinary or internal affairs records for previous incidents) but excluding copies of any internal affairs investigation or Garrity statements relative to the current incident under investigation
- The involved officer's training records
- Ohio Peace Officer Training Commission (OPOTC) certification records for the involved officer
- Firearm qualification records for the involved officer
- Copy of agency's use-of-force policy
- Mobile data terminal (MDT) entries and instant messages from the vehicle of the involved officer
- Police reports/recordings of the subject's previous encounters with law enforcement
- Any other pertinent records or recordings that would help provide a complete and accurate understanding of the incident under investigation



Frequently Asked Questions

Each investigation of an officer-involved critical incident is unique, a fact that often inhibits the universal application of the answers provided below. Each situation must be evaluated independently and might require deviation from typical procedures. Therefore, the answers to these frequently asked questions are subject to change based on the circumstances of a case.

| How long will the investigation take?

BCI uses a systematic approach to investigating officer-involved critical incidents, aiming for efficiency and thoroughness. Factors outside the bureau's control that might affect the length of an investigation include, among others, autopsy results, laboratory testing, electronic evidence analysis, search warrant or subpoena response, medical records and prosecutorial review. When a case involves a fatality, the time frame is influenced by the three- or four-month wait for autopsy results. Those results may be crucial to an investigation, providing information such as location, distance and trajectory of shots; the firearm that fired the fatal shot (in cases of multiple shooters); alcohol and/or drug influence that might have affected the subject's behavior; cause and manner of death; and documentation of other relevant injuries. Less- complex cases not involving a fatality or other complicating circumstances may be completed in fewer than 90 days. If you have a specific concern or question regarding the length of an investigation, you should discuss the issue with the Special Investigations Unit (SIU) special agent supervisor.

| Will the involved officer be Mirandized?

Possibly. At a minimum, BCI provides the involved officer(s) with an admonition (Criminal Investigation Notification) informing him or her that the investigation is criminal, not internal; that his or her participation in the interview is voluntary; that he or she has the right to refuse to answer any questions; and that, under Garrity, he or she is not compelled to cooperate. At the investigating agent's discretion, Miranda warnings might be read.

| Will the involved officer be afforded the opportunity to review video footage of the incident before providing a formal statement to BCI?

BCI generally prefers that officers and witnesses not view any recordings of the incident until after a formal, untainted interview has taken place. In *Graham v. Connor*, the U.S. Supreme Court held that "the reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." What is important is the objective reasonableness of the officer's actions to what he or she believed was occurring – not necessarily what was taking place (20/20 hindsight, which is what the video might show). Therefore, it becomes important to fully understand and explore what the officer believed the circumstances and actions to be, from his or her perspective. If an officer views the video before being interviewed, he or she could confuse those beliefs with what the video shows. Officers who have viewed video tend to just narrate what the video depicts during their interview rather than explain their thoughts, perceptions and any phenomena (such as tunnel vision, auditory exclusion and slowing of time) they might have been experiencing. After the untainted statement is obtained, the case investigator generally allows the officer to view the video and add any relevant information or memories he or she recalls due to that viewing. Additionally, the officer is permitted to explain any discrepancies between his or her recollection and the video.

| What information will be released to the media and by whom?

The requesting agency's representative should discuss the situation with the SIU special agent supervisor. It is preferred that a public information officer from the Ohio Attorney General's Office handle all media inquiries and releases. However, if the requesting agency decides to also brief the media, the SIU special agent supervisor

should be consulted prior to the public release of any substantive information regarding the investigation. In general, the public information officer for the Attorney General's Office does not release information that is considered a confidential law enforcement investigatory record. The public information officer generally does not release the names of the involved officers — although the requesting agency may decide to do so. Additionally, the public information officer generally does not release the name of the decedent, allowing the coroner or medical examiner's office to do so. BCI generally does not release recordings of the incident until the investigation is closed, except if required by law or when it is determined that doing so would not hamper investigative efforts. If the requesting agency wishes to release such information directly, the agency should consult with the SIU special agent supervisor before release.

The requesting agency is responsible for reviewing and responding to any public record requests made to the department. Public record requests cannot be referred to BCI for compliance, although BCI does respond to public record requests made directly to the bureau in accordance with applicable law.

Who do I contact with questions about the investigation?

The primary point of contact for an investigation is the case agent, who generally would be the lead SIU special agent. The SIU supervisor for the quadrant of the state in which the incident occurred can also be contacted. If the requesting agency does not know the supervisor's name or phone number, he or she may contact the closest regional BCI facility and ask to speak with the SIU special agent supervisor, who will direct you to the proper person.

Can the involved officer return to work while the investigation is ongoing?

Disciplinary issues are fully the responsibility of the employer, not BCI. BCI makes no recommendations regarding policy violations, administrative leave, return-to-duty assessments or termination decisions. It is solely the decision of the employing agency to determine whether an officer returns to work and, if so, in what capacity. Upon request, preliminary copies of reports, with authorization from the prosecutor, can be provided to the requesting agency to supply what is known at the moment; that information may be useful in any internal/administrative action or decision, pending the completion of the full criminal investigation.

When an officer's weapon or other equipment is seized, it is returned to the department only with the approval of the prosecutor reviewing the case. If the prosecutor wants the weapon retained as possible evidence, the officer's agency is notified of this decision.

What happens at the conclusion of the investigation?

After the investigation is completed, a report is provided to the prosecutor's office and, with the prosecutor's approval, the requesting agency. The prosecutor then determines whether/how the case proceeds. BCI makes no determinations regarding the legality of the use of force. Once the case is deemed closed, the investigation (or portions thereof) might become subject to public release under the Ohio Sunshine Laws.

Does BCI make a determination of fault?

As a fact-finder, BCI does not determine whether a use of force was legally justified. At the conclusion of the investigation, BCI provides a copy of its findings to the appropriate prosecutor's office for review and a determination. BCI does not make recommendations regarding charges and/or the appropriateness of the use of force.

Can/should the requesting agency do its own internal investigation, and, if so, when?

Ideally, an internal investigation takes place only after the criminal investigation is completed. However, if staffing and other concerns necessitate quicker determinations about policy violations, a department's internal investigation may — with stipulations — run concurrently with BCI's criminal investigation.

First, BCI asks that the involved officer(s) not be questioned under Garrity until after BCI has completed its formal interview. Next, BCI requires that any information garnered during the internal investigation not be shared with BCI agents because of potential Garrity concerns (although BCI's criminal investigative materials may be shared with the department for internal purposes). Finally, although internal affairs investigators may attend witness interviews alongside the BCI agents, no one from the requesting agency may be present during the involved officer's interview unless the officer specifically requests it. Again, this stems from Garrity concerns, with the officer potentially feeling compelled to speak if a superior officer or agency representative is present. Criminal investigations require any statements obtained to be voluntary, not compelled.

Crime Scene Log

A completed copy of this log is among the records that BCI typically seeks from the requesting agency.





Crime Scene Log

Date: _____ Time: _____

Name/Badge #	Agency	Time In	Time Out	Reason



Crime Scene Log

Date: _____ Time: _____

Name/Badge #	Agency	Time In	Time Out	Reason



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