RESPONSE TO CIVIL LITIGATION

Model Policy

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Response to Civil Litigation

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I. PURPOSE

The purpose of this policy is to provide employees with guidelines for (1) responding to law enforcement activities that represent a potential high risk of civil liability in a manner that will decrease this risk level, and (2) responding to civil litigation that involves the department or its employees.

II. POLICY

Litigation alleging misconduct by law enforcement officers has increased dramatically. Such litigation can be extremely expensive and harmful to the reputation of the department and its employees. It is the policy of this department to (1) take such proactive measures as are possible to avoid civil litigation through personnel training, supervision, and adherence to departmental policy and procedures among other means; (2) to take such steps as are necessary following high-risk incidents to document the event and actions of agency employees; and (3) to maintain a strong and coordinated response to civil litigation involving this agency and its employees.

III. DEFINITIONS

Discovery: The judicial process for compelling production of written records or other evidence for use in litigation.

In-Camera Inspection: Judicial inspection of allegedly privileged information to determine whether the need to present such information as part of the essential proof of the case outweighs the interest in maintaining its confidentiality.

IV. PROCEDURES

A. High-Risk Incidents

1. The following types of law enforcement activities are most frequently the subject of civil litigation and will therefore merit special attention as described herein. However, the following are not inclusive of all high-risk incidents and officers should follow post-event procedures described in this policy in any event where civil litigation may be more likely.
   a. Uses of deadly and non-deadly force that result in death or bodily injury.
   b. Vehicular pursuit resulting in personal injury or property damage.
   c. Searches and seizures; physical arrests.
   d. Failure to take law enforcement action.
   e. Rendering medical assistance.

2. All personnel shall regularly review department policy on these topics.

B. Response to High-Risk Incidents:

1. Law enforcement officers shall adhere to the following procedures when on the scene of a high-risk incident:
   a. Secure the scene and all evidence.
   b. Record the names and addresses of all witnesses on the scene, and attempt to obtain a statement. A statement should also be obtained from ambulance and emergency room personnel, where applicable.
   c. Request that a supervisor and/or an investigator be dispatched to the scene.
   d. Where a high-speed chase has occurred, note all weather and traffic conditions, route of chase, use of emergency response
equipment, and other relevant information within the police report.

2. A supervisor shall be requested to conduct an independent review of all relevant information prior to the booking process or a search where circumstances indicate that there is a potential for a false arrest or improper search.

3. On-scene investigators shall process the scene according to department procedures.
   a. Color photographs or a videotape shall be taken from several angles of the entire scene.
   b. Where possible, photographs of all witnesses should be taken on the scene.

4. Where an arrest has been made, the following information shall be documented by the booking officer during the booking process. Officers should refer to this agency’s policies and procedures on transporting prisoners and booking for additional details.
   a. Whether medical treatment is necessary, was requested, or received prior to arrival at the facility. The suspect’s general physical health and the presence of any specific health problems requiring special treatment should be documented.
   b. Assessment of suspect’s general mental health, including any indications of overt, aggressive behavior or potential for suicide indicating a need to summon a mental health specialist, should be done.
   c. A booking photograph of the suspect should be taken. Any injuries shall be specially photographed and documented.
   d. Medical or psychological services shall be obtained for any suspect that has requested, or is in apparent need of, such assistance prior to the booking process.

C. Post-Incident Procedures
1. All law enforcement personnel involved in a high-risk incident shall submit a special report fully documenting the incident to their supervisor before concluding their tour of duty.
2. The supervisor shall review the report, requesting any necessary supplemental information, and then forward it to the agency chief executive as soon as practicable.
3. The chief executive or his designee shall prepare and submit a confidential memo to the department’s legal counsel providing a full assessment of the incident. As soon as practical, the chief executive or his designee shall meet with legal counsel, and the officers involved in the incident to

a. Advise the officers that any internal investigation initiated does not necessarily imply misconduct on their part.
b. Advise the officers that they are not required to discuss the incident with reporters or attorneys not associated with the department unless pursuant to court order.

D. Responsibilities of the Chief Executive’s Office
1. The chief executive or his designee shall coordinate all departmental responses to pending or potential litigation in conjunction with the department’s legal counsel.
2. A litigation file shall be developed and securely maintained containing copies of all relevant documents generated in each case, to include:
   a. Copies of all relevant departmental policies pertaining to the incident.
   b. Copies of any relevant radio communications, computer, or telephone records or tapes.
   c. Blowups of all relevant photographs pertaining to the incident.
   d. Copies of the disciplinary and training records of all involved personnel.
   e. Where applicable, the criminal docket from any criminal case arising from the incident.
3. An accounting process shall be established to ensure that
   a. All documents are routed to the appropriate unit for resolution.
   b. All documents are processed and fulfilled by the due date.
   c. A record is kept detailing the information released in each case and the purpose for its release.
4. The chief executive or his designee shall undertake a regular audit of departmental litigation to determine whether a need for policy revision or training exists. The audit shall include settlements and all litigation filed or resolved during the period to be reviewed.
5. Updates on current case law and statutes relevant to law enforcement shall be disseminated to the department employees.
6. Upon conclusion or settlement of any civil litigation, the chief executive’s office shall notify those officers and their supervisors of the outcome of the case who were directly involved with the incident forming the basis for the lawsuit.

E. Responsibilities of Law Enforcement Employees
1. Any law enforcement employee named as a party in a civil action for acts or omissions
allegedly arising out of the scope of his/her official duties shall immediately notify the agency chief executive and the department’s legal counsel.

a. The employee shall inform the legal counsel whether the employee will engage a private attorney, or whether representation through the department’s legal counsel is requested.

b. Where the employee has requested legal representation through the department’s legal counsel, the employee has a duty to cooperate fully with his/her legal representative.

c. Departmental legal counsel shall determine whether the employee is eligible for departmental representation or will be required to seek separate representation, and shall notify the employee of such determination.

2. All law enforcement employees shall maintain accurate and detailed reports at all times.

3. No law enforcement employee shall make public statements in his/her official capacity as a law enforcement agency employee concerning litigation affecting the department without approval of the chief executive.

F. Response to Subpoenas and Discovery Requests

1. Any law enforcement employee receiving a subpoena to testify as to actions undertaken in his/her official capacity shall immediately notify the chief executive’s office and the department’s legal counsel of such subpoena. A copy of the subpoena shall be forwarded with the notification.

2. All discovery requests or subpoenas for department records, reports, or notes will be complied with as directed by the department’s legal counsel and in accordance with state law.

3. The following information is generally only subject to release to a judge for in-camera inspection regarding discovery:
   a. Personnel records
   b. Citizen complaints
   c. Internal investigatory files related to the incident that is currently the subject of criminal or civil litigation
   d. Blanket requests for all past internal investigations into misconduct of the officers currently the target of litigation
   e. Blanket requests for all internal investigations into officer misconduct or misconduct similar to that being litigated

4. The following information may or may not be fully discoverable:
   a. Records of official review boards
   b. Departmental policies and procedures
   c. Training records
   d. Internal memos that do not fall within the attorney work product privilege

5. Privileged material generally not subject to discovery:
   a. Names of confidential informants or citizens who wish to remain anonymous
   b. Records of ongoing internal investigations that would be jeopardized by disclosure
   c. Investigative files relating to ongoing criminal investigations
   d. Communications subject to any legal privilege

G. Response to Media

1. The chief executive or his designee shall be responsible for coordinating all department statements pertaining to any incident or litigation involving the department.

2. The chief or his designee shall work with the department’s legal counsel to present fair and accurate media statements pertaining to testimony, legal issues, or other concerns arising from litigation or any other incident involving the department.
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