

**MEMORANDUM OF UNDERSTANDING  
AMONG  
TENNESSEE BUREAU OF INVESTIGATION  
THE DISTRICT ATTORNEY GENERAL FOR THE 20<sup>th</sup> JUDICIAL DISTRICT AND  
THE METROPOLITAN NASHVILLE POLICE DEPARTMENT**

This Memorandum of Understanding (MOU) is entered into among the Tennessee Bureau of Investigation (TBI), the District Attorney (DA) General for the 20<sup>th</sup> Judicial District for Tennessee and the Metropolitan Nashville Police Department (MNPD), hereinafter collectively referred to as the "Parties," in furtherance of their respective duties, under law, for the purpose of facilitating investigations of incidents as described hereafter.

The parties agree to the following terms and conditions of this MOU:

1. Pursuant to T.C.A. § 38-6-102 (a), the DA for the 20<sup>th</sup> Judicial District, through this MOU, requests the TBI to investigate any incident involving use of force by a MNPD Officer, or person holding a MNPD Special Police Commission, acting in their official capacity that results in a fatality.

2. Upon the occurrence of the above described event, the MNPD and its agents shall:

A. Immediately notify the DA, or a representative of the DA, for the 20<sup>th</sup> Judicial District;

B. Secure a crime scene perimeter;

C. Identify all eyewitnesses for subsequent interview by TBI.

3. Upon notification of the above described event by the MNPD or the DA for the 20<sup>th</sup> Judicial District, the TBI, in furtherance of the provisions of T.C.A. § 38-6-102(a), is responsible for the following:

A. Initiating an investigation in accordance with the TBI Standard Operating Procedure: Law Enforcement Use of Force and Custodial Deaths Investigation Manual;

B. Providing an electronic copy of said manual to all other parties, to include any future updates;

C. Dispatching any TBI Personnel necessary for the proper conduct of such an investigation. At least one TBI investigator shall arrive at the scene within thirty minutes after being notified of the incident in accordance with the provisions of this MOU, with the remainder of the TBI response team to arrive within one hour after being notified;

D. Notifying the medical examiner;

E. Retaining operational direction of investigations and forensic assistance or coordination initiated pursuant to this MOU to include all laboratory testing being overseen by the TBI Crime Laboratory;

F. Issuing of investigative reports and summaries to the DA of the 20<sup>th</sup> Judicial District as appropriate in the investigative process; and,

G. Submitting final reports to the DA for the 20<sup>th</sup> Judicial District for review. TBI will report factual findings of the investigation, but will offer no recommendations or reach legal conclusions concerning whether the force used, if any, was justified.

4. TBI recognizes MNPDP's experience and expertise in investigating officer-involved shootings. MNPDP shall assign at least one investigator to provide assistance to TBI with the investigation as needed and requested by TBI. Such MNPDP investigator(s) shall work under the direction and supervision of TBI.

5. The parties agree the criminal investigation conducted by TBI takes precedence over any internal or administrative investigation conducted by the MNPDP. The parties also agree that there may be situations where both the TBI criminal investigation and the MNPDP internal or administrative investigations can be conducted simultaneously without interference. Accordingly, the MNPDP agrees to advise TBI and the DA before initiating any internal or administrative investigation. When there is a reasonably foreseeable likelihood an internal or administrative investigation would interfere with the criminal investigation, MNPDP agrees to postpone components of the internal administrative investigation that would likely interfere with the criminal investigation until an appropriately agreed upon time. At the conclusion of the TBI investigation, the Chief of the MNPDP may request a copy of the TBI file for use in any MNPDP administrative investigation. TBI will release the file to the MNPDP upon approval by the DA for the 20<sup>th</sup> Judicial District.

6. The parties agree that upon completion of the investigation by TBI, the DA for the 20<sup>th</sup> Judicial District, may petition the appropriate court of record in Davidson County, Tennessee for public disclosure of the TBI Case File pursuant to T.C.A. § 10-7-504 (a) (2) (A).

7. The parties agree protocols shall exist to ensure the role of the MNPDP in these types of investigations is strictly limited to scene security, crowd control, traffic control, reporting and administrative investigations that do not interfere with the TBI investigation. The following protocols are designed with the sole purpose to create transparency and to reduce or remove any appearance to the public that the MNPDP is in any way interfering with, participating in or influencing the TBI criminal investigation. In summary, the criminal investigation will be conducted under the direction of TBI. MNPDP will be responsible for ancillary or procedurally required procedures (reporting, safety, security, etc.) at the direction or approval of TBI.

#### A. Crime Scene Protocols:

- 1) MNPDP will be responsible for scene security and TBI will be responsible for directing scene investigation.
- 2) MNPDP officers and supervisors will immediately begin securing the crime scene area by cordoning off the inner perimeter, intermediate perimeter and outer perimeter. Access to the intermediate perimeter will be limited. If TBI investigators are unable to begin collecting evidence within one hour of being notified about the incident, MNPDP may preserve the evidence and turn it over to TBI when they arrive.
- 3) Media shall be placed within an area that will allow an easy transfer of information from the TBI Public Information Officer (PIO) and the MNPDP Public Affairs personnel to the news media, provided that media shall not be permitted within the crime scene or otherwise interfere with the investigation.
- 4) If a scene is held overnight, MNPDP will continue to provide scene security. This includes keeping the media and citizens at a safe and appropriate distance.
- 5) If a weapon is on the scene, MNPDP will secure that weapon and notate who was assigned to secure it. This will be accomplished by posting an officer to stand near the weapon. If, for safety reasons, the weapon is collected, this information will be notated and forwarded to TBI upon their arrival. MNPDP involved officer weapons should remain holstered until instructed otherwise.
- 6) Exigent circumstances may arise (weather, safety issues, etc.) that could require involvement by the MNPDP CSI Unit. Circumstances may also arise that call for any deceased individuals to be moved prior to TBI arrival. MNPDP will notify the TBI Special Agent in Charge or Assistant Special Agent in Charge (SAC/ASAC) prior to actual involvement by MNPDP CSI.
  - (a) MNPDP CSI may deploy a tent and side shields prior to the arrival of TBI, if needed. Deployment of these items will be documented and given to TBI (who deployed, when deployed, etc.). MNPDP may post an officer near the body if determined to be needed for security.
  - (b) If any deceased individual must be moved prior to TBI arrival, the preferred action is to mark the position and location of the head, hands and feet. These actions will be documented in detail, to include photographs, and provided to TBI.
  - (c) If MNPDP CSI officers take photos of a scene (in exigent circumstances) that is later surrendered to TBI, TBI Agents will be able to download electronic media from the camera/device(s) at the scene.

(d) All paper reports that might be generated (in exigent circumstances) by MNPD CSI will be provided to TBI as soon as possible.

- 7) All offense reports will be the responsibility of MNPD. TBI will provide all the necessary information for MNPD to complete Law Enforcement Officers Killed or Assaulted (LEOKA) reports as soon as is practicable.

B. Handling of Witnesses at the Crime Scene:

- 1) To the extent possible, all identified witnesses will be separated as soon as possible until the arrival of TBI. Such witnesses are not to be questioned by MNPD Investigators unless otherwise directed by TBI.
- 2) TBI will canvass witnesses upon their arrival.
- 3) MNPD will transport lay or civilian witnesses to TBI Headquarters only after being instructed to do so by TBI Personnel. To the extent legally permissible, witnesses should remain separated and secured on the scene until TBI Agents advise otherwise. Witnesses shall not be taken to any MNPD facility prior to being transported to TBI Headquarters.
- 4) Public safety is the highest priority and if a suspect remains at large, MNPD should continue efforts to apprehend the suspect(s). Any need to apprehend a suspect(s) will be articulated to TBI.
- 5) MNPD Officers who are witnesses should be interviewed by TBI prior to giving any administrative statements. MNPD agrees that all witnesses (civilian or sworn) will be interviewed by TBI first. The Metro Office of Professional Accountability (OPA) will obtain approval from TBI to approach witnesses prior to interviews (in the event additional criminal investigative tasks are necessary).
- 6) TBI encourages MNPD, as with all agencies where TBI conducts Use of Force Investigations, to delay conducting administrative or internal investigations until TBI has concluded their investigation. However, TBI realizes that agencies may start their administrative investigations prior to the conclusion of the TBI investigation. With this in mind, any "walk-throughs" associated with administrative or internal investigations should be delayed until TBI has completed their on-scene investigation. This in no way shall preclude the asking of "Public Safety Questions" to involved officers by MNPD on-scene supervisors.

C. Involved Officers:

- 1) TBI will photograph the involved officers, including any injuries they may have sustained, in the clothing and gear they were wearing at the time of the incident. TBI will collect and photograph gun belts, uniforms, boots, and any other items necessary for testing.
- 2) TBI will collect any weapons used by involved officers for testing.
- 3) OPA may, after TBI completion, conduct post-incident drug testing. If TBI suspects an involved officer is impaired, TBI will obtain a search warrant(s) or consent from the officer(s) for the appropriate testing before OPA conducts any administrative testing.


D. Video / Digital Media:


The importance of keeping the public informed on the aspects surrounding a use of force incident by law enforcement is understood by all parties. Therefore, all reasonable steps shall be taken to facilitate the rapid dissemination of MNPD audio/video, 911 call recordings, recovered surveillance video, etc. In an effort to prevent the hindrance of an ongoing investigation and/or the tainting of existing or potential witnesses, MNPD audio/video, 911 call recordings, recovered surveillance video, etc., shall only be released to the news media after consultation and approval by the DA for the 20<sup>th</sup> Judicial District once the TBI assumes responsibility for the investigation.

8. TBI shall provide weekly updates to MNPD OPA regarding the status of the investigation.

9. This agreement shall become effective on the last date of execution by the parties and may be terminated upon thirty (30) days' notice by mutual agreement of the parties.

Entered unto this 7 day of April, 2017.

  
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MARK GWYN  
Director, Tennessee Bureau of Investigation  
State of Tennessee

  
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GLENN R. FUNK  
District Attorney General  
Tennessee 20<sup>th</sup> Judicial District

  
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STEVE ANDERSON  
Chief, Metro Nashville Police Department