

Covid-19 Protocols for Conducting Investigations

The current Covid-19 environment necessitates certain modifications to the protocols which govern the conduct of serious incident investigations. As we have learned, there are three values associated with a real investigation; speed, thoroughness and objectivity. While fears connected to the potential spread of the Coronavirus may make it tempting to simply delay investigations until the threat has passed, any delays in the initiation and/or completion of an investigation will have a detrimental impact on two of these three values. As a result, it is critical that investigations continue to be initiated and completed in a timely manner.

Agencies charged with the conduct of serious incident investigations must: (1) assess their pre-pandemic investigative protocols; (2) determine and implement appropriate protocol modifications to protect the safety of all individuals who may be involved in current and future investigations (investigative staff, alleged victims, witnesses, alleged perpetrators and others who may come into contact with investigative staff during the course of an investigation); and (3) ensure that both their investigative staff and the agencies/facilities/providers in which investigations may occur are aware of any protocol changes.

I. Protocol Assessment

The process should begin with an in-depth assessment of the investigative protocols in place prior to the start of the pandemic. By closely examining each step of the pre-Covid protocols, agencies should be able to identify the activities that create the potential for the spread of the Coronavirus. Many investigative actions, including visits to the scene, collection of physical evidence, conduct of interviews, and statement taking, significantly increase the potential for spread. Identifying potential hazards will allow an agency to begin making necessary adjustments to their protocols, aimed at limiting or eliminating the risk for spread.

II. Protocol Modification

A. Pre-investigation Preparations

The most reasonable place to start is monitoring the ever-changing guidelines put forth by the US Centers for Disease Control (CDC). Investigative staff must be aware of the guidelines, and fully trained and equipped to follow the guidelines. It is incumbent on the employer to ensure that all investigative staff are equipped with appropriate personal protective equipment (PPE), which may include facemasks, goggles, face shields, disposable gloves, disposable gowns, disposable shoe coverings, etc. Once the appropriate levels of PPE are determined, and staff are appropriately trained, the proper use of such equipment should be mandated for all investigative staff.

Another critical step in preventing the spread of the virus is the implementation of a continual process for monitoring the health of investigative staff. Employers should require all investigative staff to immediately report any potential Coronavirus

symptoms, known or suspected Coronavirus exposures, and any positive Covid-19 test results. Contingency plans should be developed to ensure that staff with an increased risk for spreading the virus either be removed from the investigative rotation or placed in non-contact positions until the increased risk has passed.

It is equally important that investigative staff be aware of any increased risk for spread at the locations of their investigations, or with the individuals they may encounter during the course of investigation. One idea is for the agency to develop a list of questions that investigators should ask before visiting a location or coming into contact with others. Questions as to whether anyone at a particular location has tested positive for, has been exposed to, or is exhibiting possible symptoms of the virus would be appropriate.

B. Conduct of Investigations

1. Visits to the Scene and the Collection of Physical and Demonstrative Evidence

Agencies should take steps to determine when physical visits to the scene of an alleged incident are appropriate. Consideration must be given to the importance of the scene visit to the outcome of the investigation. This importance must then be weighed against the risk such visits pose. It is reasonable to assume that each time a new location is visited and each time personal contacts occur, even when all CDC guidelines are followed, the risk for additional spread of the Coronavirus has increased. A determination must be made regarding whether such risks can be reasonably accepted in a given situation. For instance, the agency may determine that the risk of an in-person scene visit can be reasonably accepted for investigations into allegations of physical or sexual abuse, but not into allegations of verbal abuse or negligence, where the risk for harm is lower.

If a visit to a scene is warranted, the investigator may want to use a device that can be cleaned after use on-site such as an iPad or laptop, rather than paper, to record information.

For certain investigations, in-person scene visits may be determined to be unnecessary. For these, protocols can be developed to allow investigators to conduct virtual scene visits. Current technology, such as online video conferencing, can allow an investigator to “visit” the scene of an incident virtually. Via video conference connection, an investigator can view the scene to determine items of potential physical evidentiary value and the spatial relationships between things present at the scene. The investigator can also review any available documentation pertinent to understanding the scene.

The video connection can also allow the investigator to direct and observe the collection of certain evidence. The investigator can direct, via video connection, the taking of photographs, creation of scene diagrams, collection of physical evidence, etc. The person assisting the investigator in these activities should not have been involved in the incident - perhaps an administrator or supervisor. The investigator may also use the video connection to direct the preservation and transfer of collected evidence so that the investigator can safely obtain them. Instructions given by the investigator can ensure the chain of custody of collected evidence. Additionally, the fact that an investigator has witnessed the identification and collection of certain evidence, via video connection, can confirm the validity of evidence, should questions arise.

2. Witness Interviews

As is the case with scene visits, determinations should be made regarding the necessity of in-person interviews and statement taking. Again, technology allows the investigator to interview witnesses and obtain written statements remotely. In many cases, interviews can be conducted via video conferencing connections, in much the same manner as they would be if conducted in person. However, some additional considerations are required. For instance, it is more difficult for an investigator to ensure the privacy and confidentiality of an interview, when conducted via video connection. A witness could, potentially, have another person present in the room in which he/she is located, without the knowledge of the investigator. The investigator should take appropriate steps to ensure privacy and confidentiality, prior to beginning an interview. For instance, the investigator can communicate with an on-site manager or supervisor, prior to conducting the interviews, and provide direction regarding the necessity of confidentiality.

Conducting an interview through a virtual platform (ZOOM, MS Teams, Cisco WEBEX, etc.) requires some extra steps to be added to the investigative process. The following are recommendations to keep the process thorough and objective:

- a. Determine who you need to interview in the same manner that you have in the past. Focus on the reporter, then the victim, eye witnesses, circumstantial witnesses, and finally the alleged perpetrator.
- b. Contact the interviewee's supervisor (or other administrator as you have done in the past) and set an interview time.
- c. As noted above, the interviewee should have a private place that they can sit during the interview process. It is best if the agency has a designated area where a computer equipped with a camera and microphone are readily accessible.

- d. It is recommended that the agency provides hand sanitizer and regularly cleans the area that will be utilized for the interview process.
- e. At the time of the interview, the investigator will send a digital “invitation” to the interviewee.
- f. When the interviewee is connected, and their face can be seen, please have the interviewee confirm that there is no one else in the room. If possible, it would be appropriate to request that the witness pan 360 degrees around the room, with the video conferencing camera, to ensure that doors are closed, that no one else is present in the room, etc. The witness should also be directed to notify the investigator immediately, should anyone else attempt to enter the interview location, or should other confidentially concerns arise.
- g. The investigator should also pan their surroundings to provide assurance to the interviewee that no one else is in the room where the investigator is sitting. Once privacy and confidentiality are ensured, the virtual interview can proceed much as it would if conducted face-to-face.
- h. The interviewee should be informed that the interview is not being recorded (unless this is against current policy) and their screen will notify them if the interviewer attempts to start a recording. Similarly, the interviewee needs to be informed that they cannot record the interview, and if they attempt to start a recording, the investigator will also get a notification on their screen that the interview is being recorded. If this occurs, the interview should be stopped until the recording is stopped.
- i. Any forms that will be utilized, specifically written statement forms, and envelopes, should be readily available to the interviewee prior to the start of the interview.
- j. The investigator will conduct the interview in the same manner that they conduct an in-person interview. The investigator will slice the bologna with the interviewee and ask all appropriate follow up questions.

3. Statement Taking

Video conferencing also provides a means by which appropriate written statements can be remotely obtained. The video connection allows the investigator to visually observe the actual writing of the witness statements, as if he/she were physically present. The same technology can allow the investigator to ensure the integrity of statements taken, until the statements come into the possession of the investigator.

- a. After the investigator has completed the initial interview, the investigator will then take a written statement from the interviewee in the same manner that they conduct an in-person statement. The investigator will

re-slice the bologna and have the interviewee write their response, one sentence at a time.

- b. At the conclusion of the written statement process, the interviewee should be instructed to take the statement and place it in an envelope that is provided. The interviewee should seal it and the seal can then be signed and dated by the witness. The sealing, signing and dating can all be witnessed by the investigator via the video connection.
- c. Instructions can be provided to the manager or supervisor at the site regarding the safeguarding and transfer of the statements to the investigator. For example, this sealed envelope may be placed in a secure designated location at the agency to be picked up by the investigator, thus eliminating contact between the investigator and witnesses. The investigator will obtain the written statements from the agency and complete their investigative report as has been done in the past.

(NOTE: Statements may also be taken utilizing a computer, by following the instructions provided in the LRA manual entitled “Conducting Serious Incident Investigations”, Chapter 8, Section II, page 61.)

4. Obtaining Documents during COVID-19

The investigator’s access to certain areas of the agency may be limited during COVID 19. The gathering of documentary evidence will still be necessary, but may need to be done with the assistance of an agency employee. After reviewing the initial case, you should make a list of documents that you will need to complete your investigation (as we have always done in the past). If you are unable to collect the documents yourself (either electronically or in person), the investigator should have an agency contact person that will assist in the gathering of documents. An administrator or supervisor who is clearly not part of the incident should be utilized. The request should be sent to the contact person, in writing, to protect the integrity of the investigation. Documents should be placed in a sealed envelope for the investigator to pick up at an agreed upon location. The envelope should be signed and dated by the person(s) who collected the documents. It is permissible to have those documents “sit” for a day or two prior to picking them up to lessen the chances of contamination.

III. Implementation

Once appropriate modifications to investigative protocols are made, it is necessary that the agency instruct all potentially involved parties regarding the changes. Not only must the investigative staff members be appropriately trained, but the management of those agencies/facilities/providers in which the investigations may be conducted must be appropriately advised and prepared. For instance, plans for conducting scene visits and/or witness interviews via video conferencing connections will be useless, if the agencies/facilities/providers in which the investigations occur are not equipped with the technology necessary to participate. Many service sites may not be equipped with an on-site camera-enabled computer. Luckily, many video conferencing platforms require only that participants have access to a “smart” phone. Further, advance preparations should be made regarding which specific video conferencing system will be used, since many such systems require that applications are downloaded to the supporting device (computer, tablet, phone, etc.) in advance.

IV. Summary

In closing, the Covid-19 pandemic has forced all of us to make numerous changes in the activities of our daily lives. Few businesses or professions can say that they now operate in exactly the same manner as they did prior to the outbreak. The presence of the virus dictates that changes be made. This premise certainly applies to the conduct of serious incident investigations. Every agency has the responsibility of continuing to conduct investigations with speed, thoroughness and objectivity. However, the safety of everyone involved in the investigative process must be protected. By carefully assessing pre-pandemic investigative protocols and implementing necessary modifications, both objectives can be successfully attained.