

6Th Judicial District Officer Involved Investigation Team

POLICY

It is the consensus of law enforcement agencies in the 6th Judicial District that an Officer Involved Investigations Team should be formed. This team will be made up of highly trained and skilled investigators from various law enforcement agencies within the 6th Judicial District. The team will be formed in order to investigate incidents in which any law enforcement officer within the District uses deadly physical force under the color of official law enforcement duties. The team can also be utilized, however, for any special investigation or criminal incident requiring unusual investigative resources. The team will ensure that a neutral, impartial and thorough investigation of these incidents is conducted. The team will conduct criminal investigations only. Any administrative or “internal” review of an incident will remain the responsibility of the requesting agency.

6th Judicial District Team Protocol

The Officer Involved Investigations Team concept has been implemented in the 6th Judicial District to aid and assist agencies investigating Peace Officer involved fatal or near fatal incidents. Peace Officers are unique because society has granted Peace Officers the power and authority to use deadly force. Stringent laws and guidelines related to the use of deadly force insure that Peace Officers do not abuse the power that has been granted to them by our free society.

This unique power presents challenges to Agencies who are tasked with investigating use of deadly force incidents. It is the intention of the 6th Judicial District Officer Involved Investigations Team concept to make these investigations less traumatic for the involved Peace Officer, their Agency, and the Community they serve. It is not the intent of the members of this protocol to mandate any action that would be contrary to any policy or procedure of any member agency. The pooling of resources will hopefully lessen the time that it takes to complete these investigations and reach closure for the Peace Officer, the Agency, the Community, as well as other involved parties. The Officer Involved Investigations Team will be staffed with experienced highly trained investigators supported by experienced supervisors.

When activated, the Team will respond, investigate, and present the facts, in the most expeditious manner possible. It is trusted that this unit will be viewed by both member agencies and the public as highly professional, unbiased, fact finding team, working together to resolve difficult situations.

I. PROCEDURES

- A. The 6THJDOIIT is available to all participating law enforcement agencies within the 6th Judicial District to assist the requesting agency with any applicable investigation.
- B. The 6THJDOIIT will be activated only upon the request of the Chief Executive Officer (CEO), or the CEO’s designee, having the investigative jurisdiction over the

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incident.CEO is defined as a Police Chief, Sheriff, Marshal, or highest ranking official that exercises daily command and control of the participating Agency.

- C. The 6THJDOIT will investigate and present fact-finding reports to the requesting jurisdiction and the District Attorney's Office. This will be the sole responsibility of the 6THJDOIT unless otherwise directed by the requesting agency CEO or the CEO's designee.
- D. All procedures regarding notification of the District Attorney's Office following a law enforcement officer's use of deadly physical force, shall apply and be followed precisely, as well as the notification of the appropriate coroner's office.

II. PERSONNEL

- A. The 6THJDOIT shall consist of peace officers and ancillary personnel designated by the CEO of each participating agency within the 6th Judicial District.
- B. A 6THJDOIT team coordinator from the Colorado Bureau of Investigation will be selected by the CEOs and their appointment will be reviewed every three years. The coordinator is responsible for making sure that yearly meetings and trainings are held with the 6THJDOIT investigators.
- C. A co-coordinator shall be selected by the coordinator but, the coordinator and co-coordinator shall not be from the same agency. The co-coordinator appointment will be reviewed every two years and will be selected from participating agencies within the 6th Judicial District.
- D. The 6THJDOIT should consist of at least one investigator from participating agencies with an alternate investigator named. Each member will serve at the discretion of the appointing or current CEO. The 6th JDOIT recognizes that agencies having less than 10 officers may appoint a team member but are not required under this policy. All personnel assigned to the 6th JDOIT remain subject to the operational control of their individual agencies and agency policies.
- E. Any member may be removed upon recommendation of the coordinator and with the approval of the participating CEO. All appointments to the team shall be reviewed on an annual basis.
- F. All investigators or supervisors appointed to the 6THJDOIT **shall** attend an officer involved fatal investigations training within twelve months of appointment at the appointing agencies expense unless it can be shown that this training has already been provided previously. Investigators appointed to the 6THJDOIT should have at least two years of investigative experience prior to being appointed to the 6THJDOIT. All appointed team members shall attend an officer involved fatal investigations refresher training every three years.

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III. NOTIFICATION

- A. Requests for the 6THJDOIT assistance shall be made as soon as possible by the CEO or the designee from the agency having jurisdiction over the investigation.
- B. All requests for assistance shall be made to the 6THJDOIT coordinator, or if unavailable, the team co-coordinator, who will then serve as the 6THJDOIT coordinator for the incident. A list of three members will be designated as a committee to activate the 6THJDOIT in the event both the coordinator and co-coordinator cannot be reached. A decision to activate shall require a majority approval of the committee in circumstances where the coordinator and co-coordinator cannot be reached. This should eliminate the need for an on call schedule.
- C. The coordinator will assess the details of the incident and decide what personnel and equipment will be needed for the investigation.
- D. The coordinator will contact the necessary members of the 6THJDOIT with response instructions.
- E. It is highly recommended if at all possible that both the 6THJDOIT coordinator and co-coordinator respond to the incident.

IV. EQUIPMENT/TESTS/PERSONNEL COSTS

- A. All necessary equipment shall be supplied by the requesting agency. If additional or specialized equipment is needed, the cost of obtaining such equipment shall be borne by the requesting agency, upon approval of the agency CEO. This does not prohibit any individual team member from bringing any piece of equipment he/she deems necessary, providing the requesting agency has no objection.
- B. Specialized tests shall be approved by the requesting agency. The requesting agency shall be responsible for any costs pertaining to these tests.
- C. All normal personnel costs shall be the responsibility of the agency providing the members to the team and not the requesting agency. Any other personnel costs must be approved by the requesting agency prior to being incurred and, if approved, shall be the responsibility of the requesting agency.
- D. All team members, while responding to a call out, regardless of jurisdiction, shall be deemed to be on duty and responding to a call of mutual aid.

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V. ANNUAL REPORT

The 6THJDOIT Coordinator shall prepare and submit a written annual report to all CEOs, describing the activities of the team for the previous calendar year. This report will be submitted no later than February 1 of the following year.

VI. CHANGES TO POLICY AND PROCEDURE

Any member agency CEO may request a change to this policy and procedure yearly unless exigent circumstances arise. To facilitate the change, the CEO requesting consideration of the change shall contact the team coordinator and request a meeting be called. A minimum of twenty days will be needed to schedule the meeting. Any requested changes shall be made at such meeting by a consensus of the participating CEO's.

VII. DEFINITIONS

A. "Officer-Involved Fatal/Near Fatal Incidents"

An event occurring in the venue of a participating agency involving two or more people, in which a police agency employee is involved as an actor, victim or custodial officer, where a fatal injury or an injury where a substantial risk of death occurs. Such "Incidents" include but are not limited to the following:

1. Intentional and accidental shootings, including police tactical incidents involving specialized response teams.
2. Intentional and accidental use of any other dangerous or deadly weapon.
3. Assaults resulting in death or a substantial risk of death upon police officers, or assaults on other police employees who are on duty or are acting for a law enforcement purpose.
4. Any fatal injury occurring in police custody.
5. Any fatal injury to a person who is a passenger of a police officer (such as ride-a-longs, emergency transports, etc.).
6. Vehicular collisions:
 - a. Including any vehicle fatality which occurs, or:

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- i. After, although not necessarily as a proximate cause of, police gunfire directed at the suspect or the suspect vehicle.
- ii. Police pursuits wherein the suspect vehicle, which is being pursued by police vehicle(s), collides with another vehicle, a pedestrian, or an object, and causes death or substantial risk of death.
- iii. Police pursuits wherein the police vehicle collides into another vehicle, a pedestrian, or an object, and causes death or a substantial risk of death.
- iv. Vehicle accidents (non-pursuits) involving police vehicles where death occurs or substantial risk of death occurs.

B. Intentional discharge of a firearm at a person

1. Any deliberate discharge of a firearm by an on duty officer that is directed at a person, that does not meet the injury criteria set forth in VII, section A. (i.e. non injury shooting)

C. “Police Employee”

This policy applies to employees and to certain other people affiliated with the law enforcement agencies, which are members of this policy agreement, as follows:

1. Full-time and part-time members, whether on-duty or off-duty, engaged in a Police function who become involved in a crime in progress and acting for a law enforcement agency at the time of the incident.
2. Temporary employees and volunteers whether paid or unpaid, who are on-duty or who are acting actually, apparently or purportedly for a law enforcement purpose at the time of the incident. This category includes informants when they are working under the direct control and supervision of a police officer.

D. “Actor”

1. A person whose act is a “proximate cause” of a fatal injury or injury which poses a substantial risk of death to another person, or
2. A person who intends that his/her act be the “proximate cause” of serious bodily injury or death to another person and this act does cause death or serious bodily injury to another.

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- E. “Subject”
The person who is injured by the act of the actor, whether or not it is intentional. When used in this policy, this word does not imply existence of criminality; it is used to designate the person who is physically injured.
- F. “Proximate Cause”
A cause, which, in a natural and continuous sequence, produces a fatal injury, or an injury that constitutes a substantial risk of death, without which cause the injury would not have occurred. Reasonable foreseeability of the fatal injury is not a factor relevant to this definition.
- G. “Fatal Injury”
Death.
- H. “Deadly Physical Force”
Deadly physical force means force, the intended, natural, and probable consequences of which is to produce death, and which does in fact, produce death.
- I. “Serious Bodily Injury”
An injury that poses substantial risk of death.
- J. “Venue Agency”
State, County or Municipal agencies, within whose geographical jurisdiction the incident occurs.
- K. “Employer Agency”
The agency by which the involved police employee is employed or with which he/she is affiliated. (In many cases, the Venue Agency will also be the Employer Agency.)
- L. “Criminal Investigators”
Those investigators assigned by the Venue Agency(ies), the Employer Agency(ies), the Colorado State Patrol and the District Attorney’s Office to conduct the criminal investigation of the Incident.
- M. “Administrative Investigators”
Those investigators assigned by the Employer Agency to conduct the Administrative Investigation of the Incident.
- N. “Member Agencies”
The law enforcement agencies, which are members of the 6THJDOIIT agreement.
- O. “Conflict of Interest”
I : a conflict between the private interests and the official or professional responsibilities of a person in a position of trust

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2 : a conflict between competing duties (as in an attorney's representation of clients with adverse interests)

VIII. INVESTIGATIVE AGENCIES, FORMATS AND RESPONSIBILITIES

- A. To properly recognize and accommodate the various interests and the various rules of law which may be involved in any incident, investigations of these matters must be performed under two separate investigative formats: (1) the Criminal Investigation; and the (2) Administrative Investigation.
- B. The Criminal Investigation:
 1. The Criminal Investigation has investigative priority over the Administrative Investigation and it begins immediately after an incident has occurred.
 2. It is performed by the 6THJDOIT made up of criminal investigators from the LaPlata County Sheriff's Office, Durango Police Department, Archuleta County Sheriff's Office, Bayfield Marshal's Office, the Colorado State Patrol, Pagosa Springs Police Department, Ignacio Police Department, San Juan County Sheriff's Office, Fort Lewis College Police, 6th Judicial District Attorney's Office and the Colorado Bureau of Investigation formed into a team for each incident. The lead investigator will be assigned from an agency other than the employer agency by the team coordinator. An Employer Agency may be requested to provide a liaison between the investigative team and the agency.
 - a. Any irreconcilable investigative issues that occur during an investigation shall be decided by the team coordinator and lead investigator.
 3. The 6THJDOIT goal is to develop all available relevant information about the incident. This information will be used in two ways:
 - a. To determine the presence or absence of criminal liability on the part of those involved in the incident. Specifically:
 - i. to determine whether the conduct involved is prohibited by state statutes;
 - ii. if criminal conduct does exist, determine the identity of the person(s) responsible for that conduct;
 - iii. if criminal conduct does exist, determine the degree of the crime(s); the existence of any factual or legal defenses to that crime; and to determine the presence or absence of any factors which would mitigate or aggravate punishment for that crime.

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- b. To incidentally provide factual information to the Employer Agency's management for its internal use. (While the Criminal Investigators do not direct their investigative attention to Administrative concerns, it is recognized that the Criminal Investigation's results are of proper interest to Agency Management for its internal use and those results are fully available for that purpose.)
4. The investigation is required to follow the rules of law, which apply to all criminal proceedings including constitutional, statutory and case law regarding rights, which are covered by the United States Constitution's 4th, 5th, 6th, and 14th Amendments.
5. The investigation is performed in a thorough, fair, complete and professional manner, which is free of conflicts of interest.
6. Venue Determination:
 - a. When an incident occurs in two or more jurisdictions, each of those is a Venue Agency.
 - b. When an Incident occurs on the boundary of two jurisdictions, or at a location where the relevant boundary is not readily ascertainable or is in dispute, the Venue Agency(ies) shall be:
 - i. The Employer Agency if the Actor is employed by either boundary agency;
 - ii. Both boundary agencies if Actors are employed by both;
 - iii. The agency which has the greater interest in the case by virtue of having the predominate police involvement in the Incident or by virtue of having had the majority of acts leading up to the fatality occurring within its jurisdiction.
 - c. When death occurs while subject is in custody, the venue agency is the agency having custody of the subject at the time of death, except when death occurs at a certified medical facility (outside of the original venue) the original agency remains the venue agency.
7. Vehicle collision Incidents:
 - a. Accidental collision fatalities shall be investigated by the 6THJDOIT criminal investigators, joined by accident investigation specialists from the Colorado State Patrol or from another member agency. The accident investigation specialists have primary responsibility for documentation, collection and preservation of physical evidence. On-scene collaboration with the crime laboratory personnel is encouraged.
 - b. Accident investigation specialists will be used if the fatality results from a collision that was not accidental; or, if the vehicle movement was merely incidental to a fatality which was caused by non-vehicular means. The accident investigation specialist's role within the 6THJDOIT will not be limited to investigating physical movement of vehicles.

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8. Scene Security:

Each Agency has initial responsibility for immediately securing crime scene(s) within its jurisdiction. This responsibility includes preservation of the integrity of the scene(s) and its/their contents, access control, and the identification and sequestration of witnesses. Responsibility may be changed by mutual agreement as the investigation progresses.

9. Crime Scene:

- a. The Colorado Bureau of Investigation will be selected for documentation of the scene(s) and for the collection, preservation, and analysis of physical evidence.
- b. Pending arrival of CBI personnel, crime scene security will be initiated by responding officers and supervisors.
- c. The Venue or Employer Agency(ies) may be requested by CBI to furnish officers to assist with evidence and scene documentation, collection, and preservation. Officers so involved will work in conjunction with the criminalists. Laboratory opinions and analysis will be obtained from a laboratory designated by the 6THJDOIT, usually the Colorado Bureau of Investigation.
- d. Prior to final relinquishment of the scene, the 6THJDOIT investigators and the criminalists will provide the Administrative Investigators an opportunity to assess the scene.

10. Notifications:

Upon identifying an occurrence as an Officer-Involved Fatal Incident, or incident where there is a substantial risk of death, the Venue Agency(ies) shall make the following notifications as promptly as possible:

- a. Inter-departmental officers, as required by that agency's procedures. To include personal legal representation as dictated by each employer agency's procedures.
- b. The Employer Agency, if applicable and if not yet aware.
- c. The 6THJDOIT Coordinator or his designee. 6THJDOIT personnel will be responsible for the following notifications:
 - i. The Assistant or Chief Deputy District Attorney.
 - ii. The Colorado Bureau of Investigation.
- d. For officers involved in vehicular collision deaths, or collisions where there is a substantial risk of death, the Colorado State Patrol should be notified by 6THJDOIT if not already dispatched. Team and Accident Investigators should be called through the Coordinator or Co-coordinator.

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- e. The Coroner's Office, upon confirmation of a fatality. This is a required notification. Body removal will only occur after consultation with the team coordinator.

11. Scene Procedures:

- a. Emergency life saving measures have first priority.
- b. The scene(s) must be secured immediately with a perimeter established a sufficient distance away to safeguard evidence. In some circumstances an inner and outer perimeter is appropriate. It is highly recommended that crime scene tape or other barriers be used to define the perimeters.
 - i. Access to the scene(s) must be limited to only those officials who must enter for an investigative purpose.
 - ii. A written log will be established as quickly as possible to identify all persons entering the scene(s), the time of their entry and exit, and the reason for entry.
 - iii. When not needed for life saving efforts, entry by fire and ambulance personnel should be restricted to the absolute minimum necessary to perform the needed duties.
 - iv. Nothing inside the scene(s) shall be moved or removed without approval of the 6THJDOIT Coordinator unless absolutely necessary for public or officer safety or for preservation of evidence. If removal without approval is necessary, the removal must be witnessed and logged. The log shall state a description of the object moved, the identity of the person removing the described object, the reason for removal, a witness to the removal, the time of removal, and the location to which the object was taken. The item should be photographed prior to removal.
 - v. If the area is secure, loose weapons or instruments shall be left in place and undisturbed.

IX. INTERVIEWING POLICE EMPLOYEES

- A. It is the intent of the 6THJDOIT to only conduct criminal investigations and the agency will not become involved in administrative review of officer incidents. It should be made particularly clear to involved officers that Garrity advisements do not apply.

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- B. Interviews should be conducted in a sterile setting, void of interruptions or any audio contamination. Interviews should be video-taped with an audiotape back up whenever possible. Interviews must be audio taped at the minimum. It is recommended that a period of 72 hours occur prior to any interview.
- C. The Agency administrative review team will be provided with copies of all interview tapes. At the conclusion of the criminal interview, the administrative team can conduct their interview.
- D. The involved officer is to be informed that the interview is non-custodial and that all statements are voluntary. Should there be evidence that there was any criminal intent on the officer's part, either before the interview or during the interview, the officer may be advised under Miranda. Should the officer invoke, the interview will conclude and the administrative review team can proceed under advisement of Garrity. Any incriminating information obtained by the administrative review **shall not be disclosed** to any member of the 6THJDOIT. Administrative investigators will not be part of the criminal interview.
- E. The 6THJDOIT has no responsibility to contact legal representation or mental health providers. That is the responsibility of the officer/deputy or his agency.

X. POLICE VIDEO EVIDENCE

Concerning whether the involved employee is allowed to, or not to view police video recordings shall be in accordance with the employer agency(ies) policies and procedures manual.

XI. INTOXICANT TESTING

- A. As soon as practical, the involved officer/deputy will be offered the opportunity to submit to a blood/urine test. Intoxicant test results will be made available to the administrative review team. If the involved agency(ies) require intoxicant testing as part of the administrative investigation, the involved officers will not be offered a separate test, but will be asked permission for the administrative test to be shared with the criminal investigation.

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XII. AUTOPSY

- A. At least one member of the 6THJDOIT will attend the autopsy and will take possession of any evidence.
- B. The autopsy pathologist will receive a complete briefing prior to the post mortem examination. This briefing, which includes all information known at that time which may be relevant to the cause, manner of death shall be provided.

XIII. THE DISTRICT ATTORNEY'S OFFICE

Attorneys from the District Attorney's Office have the following roles in Incident Investigations:

- A. Assist and advise the 6THJDOIT on various criminal law issues that may arise, such as Miranda, voluntariness, search and seizure, probable cause to arrest, detentions and releases, elements of crimes, immunity, legal defenses.
- B. Upon completion of the Criminal Investigation, analyze the facts of the Incident, as well as the relevant law to determine if criminal laws were broken. If so, prosecution is possible.

XIV. REPORT WRITING

- A. All criminal investigators will write reports documenting their participation in the investigation. 6THJDOIT packets will be provided to help with consistency in report format.
- B. The lead investigator has the ultimate responsibility for report writing and for collecting reports from other agencies. All reports shall be reviewed by the team coordinator, or his designee.
- C. Prompt completion and distribution of reports is essential.

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XV. C.R.S. 24-33.5-517 COMPLIANCE REPORTING

- A. The 6THJDOIT member agencies have designated the “team” to complete the Division of Criminal Justice (DCJ) mandatory reporting requirements as stated in Senate Bill 15-217 to be filed no later than September 1, of each fiscal year with the DCJ.
- B. This report will be completed by the lead agent in charge of each qualifying event at the conclusion of the investigation. The report should be filed by the lead agent without unnecessary delay to the DCJ. The team Coordinator shall ensure that all qualifying events have been submitted to the DCJ no later than September 1 of each fiscal year.

XVI. NEWS AND MEDIA

- A. The venue and/or the employer agency will be responsible for all news media relations, 6THJDOIT does not provide for agency PIO's.
- B. To maintain the integrity of the investigation, all media releases should be reviewed with the team coordinator, the lead investigator, and the CEO of the venue and/or employer agency.
- C. Coroner's Office. Release of information will follow the policy and procedure of the appropriate Coroner's Office, as well as applicable Colorado statutes.

XVII. ACCESS TO REPORTS AND EVIDENCE

- A. Material that is created or collected by, or at the request or direction of, 6THJDOIT Criminal Investigators (including CBI) will be made available in a timely manner to those agency CEO's that have an interest in the investigation, including the Administrative Investigators.
- B. The material will include:
 - 1. Reports, written and collected
 - 2. Access to physical evidence (view only)
 - 3. Photograph, diagrams, and video tapes
 - 4. Audio tape recordings

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- C. When the 6THJDOIT and/or District Attorney's Office concludes that the physical evidence collected by the Criminal Investigators is no longer needed for criminal prosecution purposes, the Employer Agency shall be notified of that decision so it can assume responsibility for preservation of such evidence if it desires.
- D. 6THJDOIT report archives will be held by the Venue agency of the incident.

XVIII. DEBRIEFING

At the conclusion of an investigation, there will be a debriefing and critique of actions taken. The purpose of this debriefing will be to ensure a thorough and complete investigation has taken place. This meeting will also serve as a way to evaluate, and make suggestions to improve the performance of this unique multi-jurisdictional investigative team. All attempts will be made to have the debriefing prior to submission of documents to the District Attorney's Office. This will enable the 6th Judicial District Officer Involved Investigations Team Coordinator to make additional assignments, if deemed necessary by the critique. It is important to have at least members from the District Attorney's Office, the venue agency, the employee agency (if different from the venue agency), the Coroner's Office, and CBI in attendance. The debriefing will be open to all 6THJDOIT members and appropriate command staff from involved agencies. They are encouraged to attend to help keep communications open. The debriefing will be closed to the media, and all media releases will be in accordance with Section XIV of this policy.

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Protocol Adopted by the Following Agencies:



LaPlata County Sheriff's Office – Sheriff

Date:

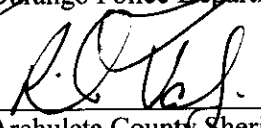
7/12/16



Durango Police Department – Chief of Police

Date:

5/25/16



Archuleta County Sheriff's Office – Sheriff

Date:

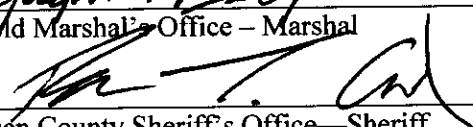
5/18/16



Bayfield Marshal's Office – Marshal

Date:

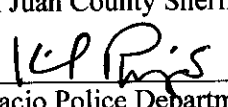
4-21-16



San Juan County Sheriff's Office – Sheriff

Date:

02/04/16



Ignacio Police Department – Chief of Police

Date:

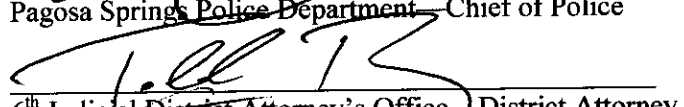
07/18/16



Pagosa Springs Police Department – Chief of Police

Date:

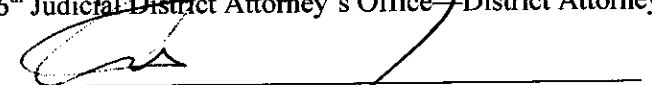
05/19/16



6th Judicial District Attorney's Office – District Attorney

Date:

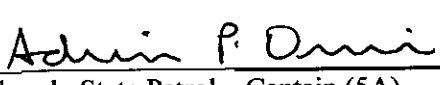
6/29/16



Fort Lewis College Police Department – Chief of Police

Date:

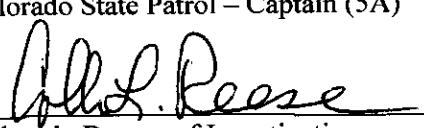
06/29/16



Colorado State Patrol – Captain (5A)

Date:

07/12/16



Colorado Bureau of Investigations

Date:

4-21-16