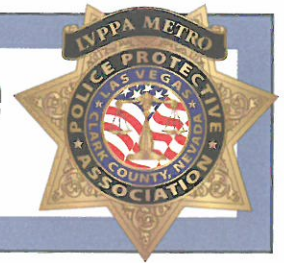





# Las Vegas Police Protective Association Metro, Inc.



To: Executive Board  
Board of Directors  
LVPPA Members

From: David Roger, General Counsel 

Re: Post Use of Force Procedures

Date: February 7, 2014

In the last memo, I discussed the changes and ramifications of LVMPD Policy 4/101.14 Duty to Provide Statements. The change of policy shields officers and civilians with *Garrity* protections when they are required to provide statements pursuant to administrative compulsion. This memo will discuss procedural changes to critical incident investigations.

## PUBLIC SAFETY STATEMENTS

Section IV (C) (2) (g) provides that the first supervisor who arrives at the scene of a use of force investigation is required to ask all involved officers a series of questions. These questions focus on the direction of shots fired; outstanding suspects; identification of witnesses; and evidence, which should be secured. Because policy requires officers to answer the questions posed, LVMPD Policy 4/101.14 and *Garrity v. New Jersey* prohibits prosecutors from using the statements against the declarant.

## MONITORS

Section IV (C) (4) (e) requires the Incident Commander to assign officers to monitor each involved officer and witness officers:

1. To ensure that involved officers and witness officers do not discuss the incident being investigated.
2. The monitor shall allow the officer's attorney and association representative to communicate privately with the officer.
3. The monitor will not talk to the officer about the facts and circumstances of the incident.
4. Remain with the officer until firearms countdown is completed.

The monitors are to stay with the officers to ensure they do not collaborate about the event. However, once your PPA attorney arrives at the scene, your legal counsel will be allowed to have a private and confidential conversation with you.

### CRIME SCENE WALKTHROUGHS WITH DETECTIVES

Generally a walkthrough is an opportunity for officers to identify physical evidence at the scene of a critical incident. At times, these brief interactions have resulted in officers providing more information than required. In the past, Garrity has not protected these statements.

#### *Involved Officers:*

Section E (1) allows an Involved Officer to refuse to participate in a walkthrough with detectives:

“The purpose of the scene walkthrough with an involved officer is to help investigators develop an understanding of the scene and identify potential physical evidence. The walkthrough is voluntary and it is not an interview. Detailed narratives shall be avoided. If more than one officer is involved in the incident, their walkthroughs will be conducted independently of each other. Walkthroughs will be conducted by FIT personnel. The personnel observing the walkthrough shall be limited to:

- a. The officer involved or witness officer;
- b. A representative of the officer or legal counsel;

- c. FIT detectives;
- d. FIT sergeant and/or lieutenant;
- e. CSI Director and/or supervisor.”

Because any statements you make during the walkthrough may be used against you, your attorney will discuss with you whether it is necessary to provide such information. If witness officers are available to provide information about the scene, your attorney may likely advise against your participation.

*Witness Officers:*

Conversely, Section E (2) mandates that witness officers participate in walkthroughs. However, *Garrity* protects their statements. The policy states, “Witness officers shall provide information as needed and directed either by supervisory personnel or FIT. An officer who refuses to provide such information shall be deemed to be in violation of section 4/104.04 Obedience and Insubordination and 4/104.14 Duty to Provide Statements”

### FIT INTERVIEWS

*Involved Officers:*

Involved Officers are not required to speak with FIT detectives. Additionally, because policy does not compel involved officers to provide statements to FIT, *Garrity* will not protect officer statements. Thus, if an officer chooses to provide a voluntary statement to detectives, he should know the statement will be used against the officer in any subsequent proceeding.

Section IV (B) (4)(a) provides:

Involved Officer: An officer or supervisor, who participated in, directed or influenced the application of the issue of force.

1) Involved Officers may provide a recorded statement to FIT investigators. If given, involved officer statements should be taken at least 48 hours after the incident by FIT investigators. Note: The 48 hours may be waived by the involved Officer.

To underscore that Involved Officers are entitled to refuse to submit to an interrogation section IV (H)(1) and (3) state:

1. The involved officers have the same rights and privileges, regarding criminal investigation interviews that all persons have.

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3. FIT will conduct a voluntary interview, a minimum of 48 hours after the incident (unless waived by the involved officer), with the officer whose use of force resulted in death. Since the interviews are voluntary, involved officers have the right to decline to be interviewed.

Based upon this policy, which is appropriate for a criminal investigation, your PPA attorney will almost always advise you to exercise your right to not give a statement.

*Witness Officers:*

The new policy provides witness officers with *Garrity* protections. Section IV (B)(4)(b) states:

- a. Witness Officer: An officer or supervisor who did not participate in or directly influence the application of the use of force.
  - 1) Witness Officers shall provide a recorded statement to FIT investigators. An officer who refuses to provide such information shall be deemed to be in violation of

section 4/104.04 Obedience and Insubordination and 4/104.14 Duty to Provide Statements. Witness Officer statements will be taken at a date, time and location determined by FIT investigators.

It is important to remember that your statement to FIT detectives is compelled by policy and thus, protected by *Garrity*. Your statement is not *voluntary* and you should make correct a detective who characterizes your interview as *voluntary*. If you do not do so, you may waive your *Garrity* protections.

In sum, these changes are significant for our officers. After two (2) years, the Department is finally providing officers their constitutional protections as a matter of course.

Should you have any questions, please do not hesitate to call me.