

1.3: The Formal Criminal Justice Process

The Formal Criminal Justice Process ^[13]

Components of Criminal Justice

Most of these criminal justice systems consist of five components- law enforcement, prosecution, defense attorneys, courts, and corrections. Each of these play a unique but critical role in criminal justice proceedings.

Law enforcement officers are tasked with hearing and investigating reports for crimes which happen in their jurisdiction. These officers investigate crimes by gathering and protecting evidence, making arrests, providing testimony during court processes, and conducting follow-up investigations as needed.

After law enforcement officers investigate a criminal offense, it is up to the prosecution to represent the state or federal government throughout the court process. Prosecutors must review the evidence gathered by officers and determine whether to file formal charges against the suspect or to drop the case. They are also tasked with presenting the evidence in court, questioning witnesses, determining what charges a suspect will be charged with, and more.

While the prosecution represents the state or federal government, it is the job of defense attorneys to represent the individuals accused of a criminal offense. They can either be hired by the defendant themselves or assigned by the court since legal representation is a basic right outlined in the Constitution.

Both the prosecution and defense attorneys are involved in the courts which are run by judges. Their role is to ensure that the law is followed along with overseeing what happens in court. Judges are able to determine whether or not to release offenders before a trial, accept or reject plea agreements, oversee trials, and sentence individuals convicted of illegal acts. Judges are easily some of the most powerful individuals in the criminal justice system.

Finally, after an individual has been investigated, tried, convicted, and sentenced, they enter the last criminal justice component of corrections including jails and prisons. These terms are often used interchangeably, but in reality, jails are used to house individuals sentenced to less than one year of incarceration as well as those awaiting trial, while prisons house individuals sentenced to be incarcerated for a year or more. Correction officers are tasked with supervising convicted individuals in jail or prison, and also include probation (jail) and parole (prison) officers who are responsible for monitoring these individuals either after they have completed their sentence or in some cases in lieu of incarceration. Corrections officers typically prepare pre-sentencing reports on the individual which are used to help judges decide on sentences as well as overseeing the day-to-day custody of incarcerated inmates (NCVC, 2008a).

What is the sequence of events in the criminal justice system?

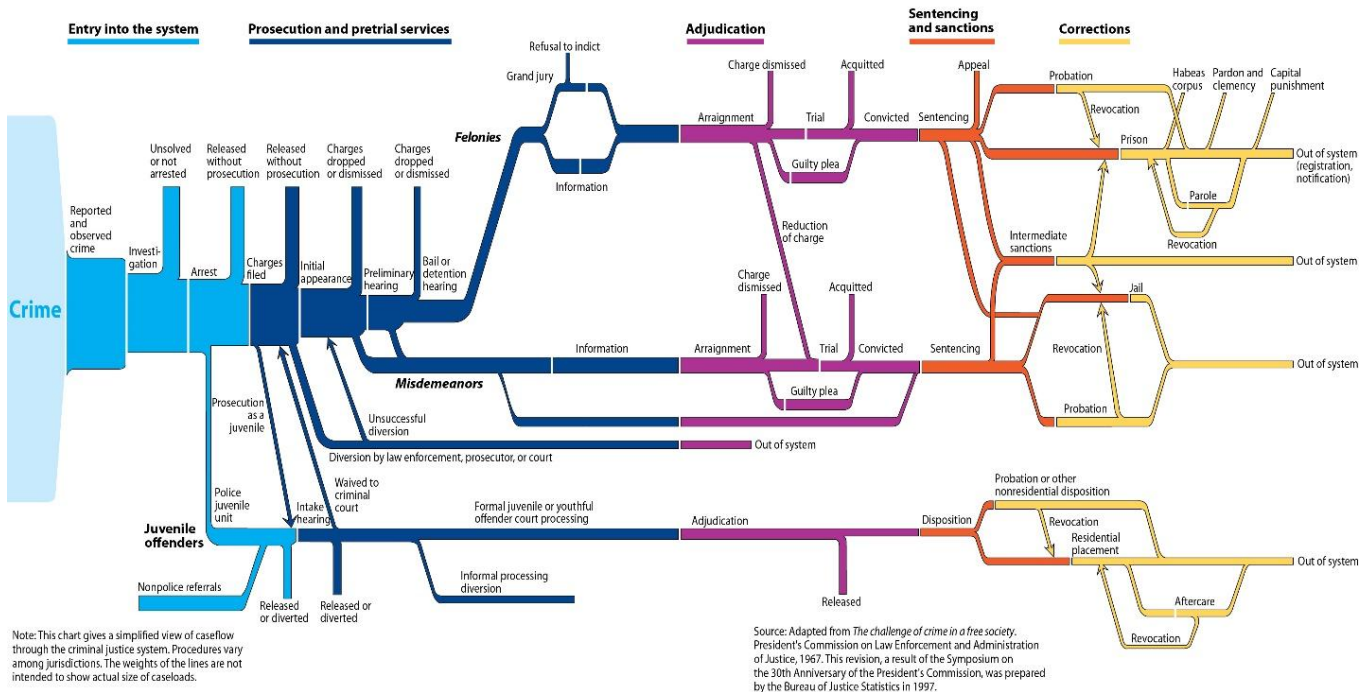


Figure 1. 10 The flowchart of the events in the criminal justice system (shown in the diagram) updates the original chart prepared by the President's Commission on Law Enforcement and the Administration of Justice in 1967. The chart summarizes the most common events in the criminal and juvenile justice systems including entry into the criminal justice system, prosecution and pretrial services, adjudication, sentencing and sanctions, and corrections. A discussion of the events in the criminal justice system follows. ^[14]

Initial Contact ^[15]

Initial contact is the step in which the police takes some action against the suspected perpetrator. The police contact the suspect and inform him/her about the violation he/she has committed. Making initial contact, investigating crimes, apprehending offenders/potential offenders (arrest), and booking them in the local jail all happens after the officer has made initial contact. Making initial contact does not mean that the suspect has actually committed the crime; law enforcement does not determine guilt or innocence, hand down punishments, or implement the punishment.

During an investigation, police officers may need to obtain a search warrant. The Fourth Amendment of the Constitution requires that police officers have probable cause before they search a person's home, their clothing, car, or other property, with some exceptions explored later on. In order to ensure due process, searches usually require a search warrant, issued by a "neutral and detached" judge. Arrests also require probable cause and often occur after police have gotten an arrest warrant from a judge. Depending on the specific facts of the case, the first step may be an arrest. As stated above, if they catch a person in the commission of a crime, they will arrest first and investigate later.



Figure 1.11 Police on Standby ^[16]

Investigation ^[17]

“For the court to be satisfied that the investigator acted lawfully and within the bounds of legally prescribed authority, the judge needs to hear the investigator describe their thinking processes to form reasonable grounds, or in some emergency cases, to have a reasonable suspicion that justifies the action taken.”

An effective strategy for learning any new skill is to define it and break it down into logical steps, establishing a progression that can be followed and repeated to reach the desired results. The process of investigation is no exception and can be effectively explained and learned in this manner. In this chapter, you will learn how each of the following issues relates to the process of investigation.

1. The distinction between investigative tasks and investigative thinking
2. The progression of the investigative process
3. The distinction between tactical investigative and strategic investigative responses
4. The concepts of event classification and offence recognition
5. The threat vs. action response dilemma
6. The distinction between active events and inactive events
7. The connection of active events and Level 1 priority results to the powers afforded under exigent circumstance
8. The Response Transition Matrix (RTM) and the critical need to transition from tactical response to strategic response

Topic 1: The Distinction Between Investigative Tasks and Investigative Thinking

To understand the process of investigation, it is necessary to comprehend the distinction between investigative tasks and investigative thinking. Investigative tasks relate to the information gathering processes that feed into investigative thinking and the results. Investigative thinking, on the other hand, is the process of analyzing information and theorizing to develop investigative plans. Let us consider this distinction in a little more depth.

Investigative Tasks

Investigative tasks relate to identifying physical evidence, gathering information, evidence collection, evidence protection, witness interviewing, and suspect interviewing and interrogation. These are essential tasks that must be learned and practiced with a high degree of skill to feed the maximum amount of accurate information into the investigative thinking process. Criminal investigation is aimed at collecting, validating, and preserving information in support of the investigative thinking process. Accordingly, it is important to learn to do these evidence collection tasks well.

Investigative Thinking

Investigative thinking is aimed at analyzing the information collected, developing theories of what happened, the way an event occurred, and establishing reasonable grounds to believe. Those reasonable grounds to believe will identify suspects and lead to arrest and charges. Investigative thinking is the process of analyzing evidence and information, considering alternate possibilities to establish the way an event occurred and to determine if they are reasonable.

Topic 2: Progression of the Investigative Process

The investigative process is a progression of activities or steps moving from evidence gathering tasks, to information analysis, to theory development and validation, to forming reasonable ground to believe, and finally to the arrest and charge of a suspect. Knowing these steps can be helpful because criminal incidents are dynamic and unpredictable. The order in which events take place, and the way evidence and information become available for collection, can be unpredictable. Thus, only flexible general rules to structured responses can be applied. However, no matter how events unfold or when the evidence and information are received, certain steps need to be followed. These include collection, analysis, theory development and validation, suspect identification and forming reasonable grounds, and taking action to arrest, search, and lay charges.

In any case, as unpredictable as criminal events may be, the results police investigators aim for are always the same. And you should always keep the desired results in mind to provide focus and priority to the overall investigative process. We will talk more later in this book about developing a mental map of the investigative process to assist in recording, reporting, and recounting events. It is mentioned now because a mental map is an appropriate metaphor to illustrate the investigative thinking process.

In this process, even though the path we will take to investigate may be unclear and unpredictable at first, the destination, the results we seek in our investigation, will always be the same and can be expressed in terms of results and their priorities.

Results and priorities focus first on the protection of the lives and safety of people. They focus second on the priorities of protecting property, gathering and preserving evidence, accurately documenting the event, and establishing reasonable grounds to identify and arrest offenders.

Priorities refer to Level One Priorities, as the protection of the lives and safety of people. This includes the protection and safety of the police officer's own life and the life and safety of other officers.

The Level Two priorities are the four remaining aforementioned results, and these may be considered equal value to each other. Depending on circumstances, a rationale can be made for choosing to concentrate on one Level Two priority at the expense of another depending on the circumstances presenting.



Figure 1.12 Priority Results ^[18]

The critical point to be made here is that under no circumstances should an investigator ever choose to focus his or her efforts and attention to a Level Two priority if doing so would compromise the Level One priority of protecting the life and safety of a person, including police officers themselves. In the event that evidence is lost or destroyed, or that a suspect is not identified or apprehended because investigators were taking care of the Level One priority, that is a justifiable outcome. A response that would sacrifice the safety of people to achieve a level two priority would not be justifiable and could even lead to civil or criminal outcomes against the investigators making such a choice.

Now that we have looked at the critical aspects of investigative tasks and the response priorities police investigators need to apply to decision making when they take action, we can proceed to examine the two different types of investigative response. We will refer to these as the Tactical Investigative Response and the Strategic Investigative Response .

Topic 3: Distinction Between a Tactical Investigative Response and a Strategic Investigative Response

These two different types of investigative responses are defined by the nature and status of the event that the investigator is facing. If it is an active event, it will require a Tactical Investigative Response and if it is an inactive event it will require a Strategic Investigative Response. It is important for an investigator to understand these two different levels of response because they include different response protocols, different legal authorities, and limitations to authority.

Tactical Investigative Response

Tactical Investigative Response is faced by operational officers who are engaged in the frontline response to criminal events. As mentioned earlier, police are often challenged to respond to events, sometimes life and death situations, where information is limited, and critical decisions need to be made to take action. In these Tactical Investigative Responses, the responding officers often have little or no time to undertake the tasks of gathering information. They must rely on the information of a dispatched complaint, coupled with their own observations made once they arrive at the scene. If an officer takes the action of making an arrest or using force to bring the situation under control, they are accountable for the action they have taken, and they may be called upon by the court to articulate their thinking, albeit based on limited information.

Strategic Investigative Response

Once an investigator has arrived at the scene of an event and has brought the event under control by either making an arrest or by determining that the suspect has fled the scene and no longer poses a threat to the life or safety of persons, the investigation

becomes a strategic investigative response. With this expiration of life and safety issues, also comes the expiration of exigent circumstances and the additional authorities to detain persons suspected and to enter and search private property without a warrant.

Clearly understanding and being able to define and articulate the circumstances of either an active event and tactical response, or a controlled event and a strategic response is critical. In court, it becomes important for a police investigator to describe what they were told going into the complaint, what they saw and heard when they arrived at the complaint, and, most importantly, what they were thinking to justify the action that was taken. For the court to be satisfied that the investigator acted lawfully, the judge needs to hear the investigator describe their thinking process to form reasonable grounds, or in some emergency cases, to have a reasonable suspicion that justifies the action taken.

To properly articulate their thinking in these investigative responses, it is important for the officer to understand the situational elements that can help define their thinking process when they testify in court. Two of the most important situational elements to understand are event classification and offence recognition .

Topic 4: Event Classification and Offence Recognition

In order to enter any investigation in either the tactical or the strategic response mode, an investigator must engage their thinking processes and make decisions about the event they are confronting. Is it an active event in progress that requires immediate and decisive tactical actions; or is it an inactive event where a less urgent, slower, and more strategic approach can be taken? This slower and more considered approach is the strategic investigative response, and the situational elements of this approach will be discussed in detail later in this chapter. Thinking about these situational elements of active event or inactive event is call event classification.

Considering the possible crime being committed in the event is called “offence recognition,” and this recognition of a specific offence activates the investigator’s thinking to look for the evidence that supports the elements of that recognized offence.

Topic 5: Classifying the Event as Either an Active Event or an Inactive Event

For each of these classifications of active event or inactive event , the investigator has some different legal authorities to put into action, as well as some immediate responsibilities for the protection, collection, and preservation of evidence. When attending the scene of any reported event, the investigator should assume that the event is active until it has been established to be inactive.

In many cases, an event can be re-classified as an inactive event when it is determined that the suspect has left the scene of the event, or the event has concluded by the suspect being arrested. In cases where the suspect is still at the scene of an active event, the investigator needs to be thinking about the possibility of detaining the suspect or making an arrest of that suspect for an offence in progress. To make that detention or arrest, the investigator should be thinking about what possible offence they are being called to investigate by the initial complaint, and also by the evidence they are seeing and hearing upon arrival.

The classification of active event or inactive event is critical. It is a distinction that will guide an officer to determine what powers of detention, arrest, use of force, entry to property, and search may be relied upon to take action. The defining elements between active event and inactive event are:

An Active Event

1. The criminal act is or may still be in progress at the scene.
2. The suspect is or may still be at the scene of the event.
3. The situation is, or may be, a danger to the life or safety of a person, including the life or safety of attending police officers.

An Inactive Event

1. The criminal act has concluded at the scene.
2. The suspect or suspects have left the scene or have been arrested or detained.
3. The situation at the scene no longer represents a danger to the life or safety of a person, including police officers.

Topic 6: Threat vs. Action Analysis Dilemma

The critical elements of this Threat vs. Action Analysis Dilemma were demonstrated in what became known as “Active Shooter calls” flowing from the incident at Columbine High School in 1999 (Police Executive Research Forum, 2014). In this incident, two armed teenagers went on a shooting spree in the high school killing 13 people and wounding 20 others before turning their weapons on themselves and committing suicide. Officers responding to that call followed departmental protocols of that era. These protocols dictated they should wait for the arrival of their Emergency Response Team in events where armed suspect confrontations

were taking place. The fact that these first responders waited despite ongoing killing taking place inside the high school led to a determination that police have a duty to take action in such cases, and waiting is not the correct response. As a result of these determinations, active shooter response protocols were adopted across North America and police agencies re-trained their personnel to respond to active shooters with more immediate action and strategies to enter and confront the shooters in order to protect lives of possible victims.

The Threat vs. Action Analysis Dilemma response protocols in the active shooter response situations now provide the standard or benchmark that a responding officer must consider when faced with the decision to enter a dangerous situation alone and take action, or to wait for back-up before entering to take action. For active shooter situations, the protocols across North America are now prescribed responses, where responding officers are trained to enter and confront with minimal back-up. That said, not every potentially dangerous Threat vs. Action Analysis Dilemma is going to be an active shooter. Responding officers will often be faced with other calls where danger exists to the safety of persons and the decision to enter or wait for back-up must still be made. In these cases, the responding officer must weigh the available information and respond or wait for back-up per their own threat vs risk assessment of the facts. The active shooter protocols have provided something of a calibration to this analysis where extreme ongoing threat to life and safety of person equals high duty and high expectation to take action.

Topic 7: Rules of Engagement for an Active Event or an Inactive Event

Police officers may be called to action by many different means. It may be a radio dispatch 911 call to attend an emergency, a citizen flagging down the passing police car to report an incident, or an officer coming upon a crime in progress. Whatever the means of being called to action, this is the first step of the police officer becoming engaged in a thinking process to gather and evaluate information, make decisions, and take action. The first step of this thinking process for the investigator is to make the evaluation and ask the questions:

1. Is this an Active Event requiring a Tactical Investigative Response?
2. Is this an Inactive Event requiring a Strategic Investigative Response?

As a subsequent part of this evaluation determining an Active Event or Inactive Event, the investigator should also be alert to the type crime being encountered. For example, is it an assault, a robbery, or a theft? From the perspective of police tactical investigative response, an investigator confronted with an active event must first assess the threat level. Is there a danger to the life or safety of persons that would require a Level One Priority Result, taking immediate action to protect life and safety of persons, including the life and safety of attending police officers?

In assessing these threat levels to life and safety, police are often faced with very limited information. Sometimes there is only a possible threat, or an implied threat to the life or safety of persons. In such cases, it is only necessary for the police to suspect that there is a threat to the life or safety of a person to evoke the extended powers provided by exigent circumstances. In these cases of implied threats, police are authorized to rely on the powers afforded by exigent circumstances to enter private property without a warrant and to detain and search suspects who may present a danger. These are significant powers, and an investigator must be aware that if they use these powers, there is a strong possibility they will later be called upon to justify the exercise of those power.

An officer desiring to conduct a search needs probable cause for the search to be lawful. Because society expects police officers to find evidence and arrest criminals, they may be overzealous in determining whether they do or do not have probable cause. Generally, the evidence establishing probable cause must be submitted to an impartial magistrate, and if the magistrate agrees that probable cause exists, then he or she will issue a search warrant.

Scenario #1

A uniform patrol officer receives a call to attend a complaint through radio dispatch. The 911 caller is reporting that he has just witnessed his neighbor punch his wife in the front yard and then drag her forcibly into their house. The responding officer is immediately able to classify this event as an active event. The officer's offence recognition of the criminal act is that it is likely an assault and possibly a forcible confinement. Given this assessment, the situation requires a Tactical Investigative Response. The suspect is still at the scene and there is an ongoing possibility of danger to the life or safety of the suspect's wife. In this type of case, the officer can draw upon the extended powers under exigent circumstances to ensure the safety of the wife. Considering the information that has been reported, the officer may go to the residence with a view to using the necessary force to enter without a warrant to investigate the safety and well-being of the identified victim. If, after entering the home, further investigation provides evidence to confirm an assault, the officer can arrest the identified suspect for that offence. In this scenario, the information that allows the classification of the active event and the offence recognition is fairly clear in the reported circumstances.

Scenario #2

Sometimes an event cannot be immediately classified as either an active event or an inactive event. In these cases, where the information is less clear, the investigator may be justified to assume an ongoing danger to the life or safety of persons and remain in the tactical investigative response mode utilizing the powers afforded under exigent circumstances to pursue the investigation until it is determined that an implied danger no longer exists. For example, consider the situation where police dispatch receives a 911 call from a woman crying. Before any further information can be obtained from the caller, the call is terminated from the caller's end. A patrol unit is dispatched to attend the residential address associated with the identified phone number. Upon arrival at the front door of the caller's address, attending officers are met by a male resident of the home who identifies himself as the homeowner. The attending officers advise the male that a terminated 911 call from a crying woman was received from this address. The male states that there is nothing wrong in his home and he refuses to allow officers to enter the premises. The officers advise the male that they need to enter the premises to satisfy themselves that there is no ongoing threat to the life or safety of the crying woman caller. The officers warn the man that they will be entering the premises and if he resists, he will be arrested for obstructing a police officer.

The man steps aside and the officers enter the home and find a woman in the bedroom area with a bleeding nose and a bruised face. The woman tells officers that the male, her husband, punched her in the face during an argument and when she attempted to call police, he ripped the phone cord from the wall and struck her again. She states that he threatened to kill her if she cried out when the police came to the door. The man is arrested for assault, forcible confinement, and uttering threats. He is provided with his Charter Rights and warning, and he is then asked if he wishes to make any statement.

To evaluate this scenario, the officers had very little information in the first instance that would allow them to make a determination of active event or inactive event. The information to identify a criminal act was equally limited. Fortunately, case law has evolved to recognize this kind of information-limited case, and it provides a framework for making a response that can protect life and safety. In such situations, an officer is still empowered to act under the authority of "exigent circumstances." Considering information-limited circumstances like this, the officer only needs to have a suspicion that there is a threat to the life or safety of a person to act. That threat may be simply implied by the circumstances being presented. In this case, the implied threat to life or safety of a person was the disconnected 911 call. The officers had a duty to attend and resolve the possible threat to life or safety of a person implied in this disconnected 911 call (*R v Godoy* , 1999).

As you might imagine, an officer attending the calls outlined in the preceding scenarios needs to be very clear on the circumstances where implicit distress and exigent circumstances can be interpreted to use the powers to enter private property. This same need extends to using appropriate levels of force and making an arrest. Considering these are active and still evolving criminal events, there is urgency to act. It is critical for the investigating officer to have a clear understanding of these principles to quickly assess the presented facts, make the event classification, and take the necessary action in an expedient manner.

As outlined earlier in this book, there is a significant difference between reasonable grounds to believe and reasonable grounds to suspect, and an officer who is not clear on the distinction might have a difficult time articulating to the court how and why they took the initiative to act or not to act. It is these types of cases, where there is implied distress, or an implied threat to life or safety, that an investigator must be clear on their interpretation of the event and on their authorities to take action. The thinking involved might be described as an active event and an explicit or implied threat to life or safety equals exigent circumstances.



Figure 1.13 Exigent Circumstances ^[19]

More on Offence Recognition

At the same time the event is being classified as either active event or inactive event, the investigator should be engaging in the thinking process of offence recognition. In other words, what offence is being reported or what is the offence being observed in the fact pattern that is unfolding? With this offence recognition, the investigator will begin to assemble a mental inventory of the evidence and information that will be required to support the recognized offence(s). Having an offence in mind, the investigator will also begin to consider their range of powers and authorities that can be used under the law regarding that offence. The investigator will ask themselves

- Is this a summary conviction offence where the suspect must be found committing to justify an arrest?
- Or, is it an indictable or dual procedure offence where there is direct evidence or strong circumstantial evidence to support an arrest?

If the investigator determines that they are attending to an Active Event and their offence recognition suggests that there may be a danger to the life or safety of a person, such as assault causing bodily harm, they will know that they need only find evidence to form reasonable grounds to believe in order to make an arrest. As part of attendance to the scene of the event, the investigator should be classifying the location to determine what their legal requirements are for their authority to enter. Consideration of the possible authorities to enter private property would include:

- Consent of the property owner
- Section 487 CCC warrant to search
- Exigent circumstances to suspect a need to protect the life or safety of a person
- Exigent circumstance with reasonable grounds to believe there will be a destruction of evidence of an indictable offence
- Fresh pursuit of a suspect found committing an offence

If the investigator arrives at the scene where a suspect is immediately apparent, the investigator can make an immediate detention or perhaps even an arrest. The investigator may rely on the Section 529 (2) of the Criminal Code of Canada (1985) under exigent circumstance to enter private property without a warrant to make the arrest and ensure the safety of persons at the scene. If the investigator makes an arrest after forming reasonable grounds for belief, they are required by the Canadian Charter of Rights and Freedoms to tell the suspect what offence they are being arrested for.

Required Warnings

The following is the standard Charter of Rights (Canadian Charter, 1982, s 10(a,b)) warning and police warning. These standard caution warnings are given as follows:

I am arresting you (or detaining you) for [name of offence(s)].

POLICE WARNING

I wish to give you the following warning: You need not say anything. You have nothing to hope from any promise or favor, and nothing to fear from any threat whether or not you do say anything. Anything you do or say may be used as evidence.

Do you understand? (Transit Police, 2015)

CHARTER WARNING

You have the right to retain and instruct counsel without delay. You also have the right to free and immediate legal advice from duty counsel by making free telephone calls to [toll-free phone number(s)] during business hours and [toll-free phone number(s)] during non-business hours.

Do you understand?

Do you wish to call a lawyer?

You also have the right to apply for legal assistance through the provincial legal aid program.

Do you understand? (Transit Police, 2015)

Let us consider the following scenario to illustrate these principles in action.

Scenario #3

An officer is dispatched to attend the complaint of an assault with a weapon and determines that it is taking place in a residential dwelling house in a nearby subdivision. Upon arrival, the officer is met on the front lawn by a man claiming to have witnessed the owner of the home stab a visitor to the home during an altercation as a second male runs out the front door holding his side and bleeding from an apparent wound. A third man holding a bloody knife comes to stand in the front doorway and the witness identifies him as the owner of the home. The officer directs the man with the knife to drop it on the ground and step out of the residence. The man complies and is arrested for assault with a weapon.

From this fact pattern the investigator could make an immediate arrest for assault with a weapon. The investigator would seize the bloody knife and protect it as evidence of that offence. The facts within this scenario that allow the investigator to take action, enter the private property, and form their reasonable grounds for belief and make the arrest. When the case goes to court, the investigator

of this case will articulate the chain of events along with their thinking to substantiate their reasonable grounds for belief. To achieve this, the investigator's testimony would be that:

- they were dispatched to attend a complaint of assault with a weapon in progress,
- the suspect was still on scene and it was an active event,
- considering the potential danger to life or safety of a person, they entered the property under the provisions of exigent circumstances,
- an independent witness at the scene stated the homeowner had stabbed a guest in the home,
- a man bleeding from an apparent wound ran from the home, and
- another man standing in the doorway was holding a bloody knife and was identified by the witness as the homeowner.

The investigating officer arriving at the scene of this event would treat this as a Level One priority because there is an ongoing danger to the life and safety of persons. Under these circumstances, the Criminal Code authorities of exigent circumstances would apply. The investigator would be justified in detaining all parties present, including the witness and the victim, on the reasonable suspicion that they may all have been involved in combative behavior and might each still pose a threat to the life and safety of others, including the investigator. The powers of exigent circumstances are significant in this kind of scenario and provide authority to take immediate action that will neutralize threats to the safety of people. Even if the facts of this assault with a weapon had evolved to show that it was taking place inside the private home of the suspect with the bloody knife, the authority of exigent circumstances would permit the investigator to enter that home without a warrant to protect the life and safety of persons. A very significant point to be made here is that as soon as the event is under control the extended powers of exigent circumstances expire.

Once this event has been brought under control and the threat to the life or safety of persons had been eliminated by arresting or detaining all persons present, the investigator must reclassify this event as an inactive event. As soon as this occurs, some of the rules of engagement and legal authorities to take action change, and the investigation must switch to a Strategic Investigative Response.

With the expiry of exigent circumstances and the switch to a Strategic Investigative Response, several factors change. If this assault with a weapon had been taking place in the suspect's private home, and the investigator had entered under the authority of exigent circumstance, the authority to remain in the private residence and search it would expire. If the investigator needed to collect additional physical evidence in that home, such as blood from the stabbing assault, a warrant or consent to search would now be required.

In this type of case, the residence of the suspect could be locked down externally and all persons removed until a search warrant was obtained to complete the investigation. Evidence obtained up to the point where the arrest was made and before exigent circumstances expired would be lawfully seized without a warrant. This would include the seizure of the bloody knife as plain-view search or a search incidental to arrest. Anything else searched for and seized after the arrest could be challenged as an unlawful seizure if it was taken without a search warrant.

In addition to the requirement for search warrants, in some cases after exigent circumstances expire, other priorities and investigative must also change. As you will recall, the protection of life and safety of people is the Level One priority. With that priority, the court allows significant leeway to investigators in regard to the protection of crime scenes and the collection of evidence. If an investigator is attending any criminal event, the protection and collection of evidence always takes a backseat to the protection of life or safety of people. That said, once the life and safety issues have been resolved, the securing of the crime scene and the subsequent protection and collection of evidence becomes the number one priority.

Once the life and safety issues are resolved, it is time to lock down the crime scene and start protecting evidence for court. If it is possible to protect the life and safety of people and collect, protect, and preserve evidence, this is the preferred outcome. If it is not possible, the court will accept the fact that damage to evidence occurred prior to life and safety issues being resolved. Once those issues are resolved, the expectation is that a high level of care will be taken. If proper care is not taken, and evidence becomes contaminated, or continuity of possession is lost, the evidence may be ruled inadmissible at a trial. It is important for the investigator to fully grasp the construct that dictates when to transition from Tactical Investigative Response to Strategic Investigative Response.

Topic 8: Response Transition Matrix (RTM)

The RTM is a matrix tool to illustrate the considerations for police response when considering the authorities and issues to escalate or de-escalate from a Tactical Investigative Response to Strategic Investigative Response. Considering the following questions will help an investigator to identify an event as either a Tactical Investigative Response or a Strategic Investigative Response:

1. Is the event active or inactive?
2. What offence(s) is possibly occurring?
3. Do I suspect an implicit or explicit danger to the life or safety of a person?
4. Do I have reasonable grounds to believe evidence of an indictable offence will be lost or destroyed?
5. What immediate actions can be taken to protect the life or safety of persons?
6. What immediate action can be taken to protect evidence, without compromising life or safety?
7. Have life and safety issues been resolved, and should the change be made from Tactical Investigative Response to Strategic Investigative Response?

For example, in the Canadian justice system, both statutory law and case law have evolved to establish a range of authorities and police powers that allow rapid response at the more dangerous end of the matrix, and more time-consuming restrictions to act at the less threatening end of the matrix. The chart below illustrates the duty to act, the authority to act, and the priorities for action to consider.

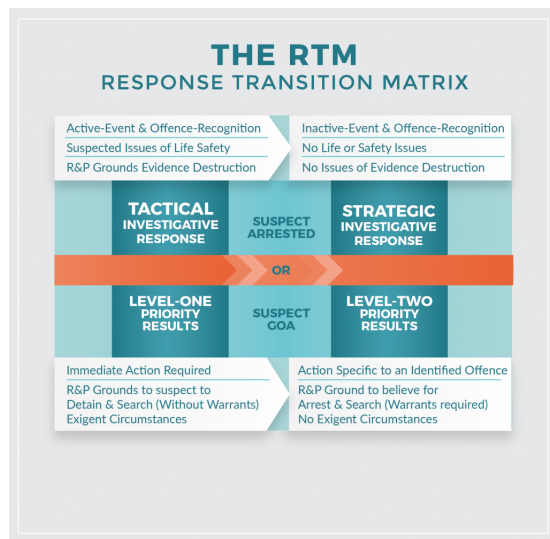


Figure 1.14 The RTM Matrix ^[20]

Summary

In this chapter, we have discussed the progression of the investigative process and the key elements within the progression that must be considered by an investigator. These elements within the investigative process are the signposts on the roadway of a mental map. These signposts of active event or inactive event tell us to either take action within the extended authorities of exigent circumstances or to modify our response for an inactive event and recognize the need to make the transition to a strategic response. An investigator's understanding of the changes in circumstances that define these situations and the change from active to inactive events can make the difference between successful and unsuccessful investigative outcomes.

Study Questions

1. What is the difference between investigative tasks and investigative thinking?
2. What is the difference between Level One Priorities and Level Two Priorities?

3. What is the difference between a Tactical Investigative Response and a Strategic Investigative Response?
 4. What is the difference between an active event and an inactive event?
 5. When would an investigator consider the Threat vs. Action Analysis Dilemma?
 6. When does an investigator have the authority to enter a dwelling house without a warrant?
 7. Why is it important for an investigator to thinking about “offence recognition” at the same time they are thinking about whether a situation should be classified as an active event or an inactive event?
 8. What is the Response Transition Matrix (RTM)?
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