



OFFICE OF THE STATE ATTORNEY
FOURTH JUDICIAL CIRCUIT
311 W. Monroe Street
Jacksonville, Florida 32202

OFFICER-INVOLVED INCIDENT POLICIES AND PROCEDURES
STATE ATTORNEY'S OFFICE, FOURTH JUDICIAL CIRCUIT, FLORIDA

1.010 – Purposes for Written Policies

These written policies and procedures are designed to ensure the appropriate staffing, resources, and independent review of all officer-involved incidents in the Fourth Judicial Circuit. The State Attorney's Office is an independent state agency, and in fulfilling our obligations regarding these matters, we are mindful that "[t]he prosecutor generally serves the public and not any particular government agency, law enforcement officer or unit, witness or victim. When investigating or prosecuting a criminal matter, the prosecutor does not represent law enforcement personnel who have worked on the matter and such law enforcement personnel are not the prosecutor's clients." Am. Bar Ass'n Criminal Justice Standards for the Prosecution Function, Std. 3-1.1 (4th Ed. 2017).

1.011 – Effective Date and Applicability

The effective date of these policies and procedures shall be December 31, 2017. These policies and procedures shall apply to all pending officer-involved incidents, as defined below, for which no formal opinion, letter, or memoranda has been issued by the State Attorney's Office prior to the effective date of these policies and procedures.

1.012 – Officer-Involved Incident

For purposes of these policies and procedures, an "Officer-Involved Incident" means any use of deadly force by a law enforcement or correctional officer within the Fourth Judicial Circuit resulting in actual death or serious bodily injury of another person and includes any in-custody death of persons who are detained, awaiting trial, or sentenced within the Fourth Judicial Circuit. These policies shall also apply to any

review of the attempted use of deadly force when that review is requested by a law enforcement agency.

1.013—Officer-Involved Incident Team

The Chief Assistant overseeing the Homicide Division shall be responsible for recruiting and maintaining a roster of qualified Assistant State Attorneys and State Attorney Investigators who will be responsible for responding to; overseeing this office's response to; providing investigative court warrants, subpoenas, and orders, for; and ultimately reviewing all Officer-Involved Incidents in the Fourth Judicial Circuit. Assistant State Attorneys on the team shall include both Chief Assistant State Attorneys, the Director of the Homicide Division, the Division Chief for the Human Rights Division, and at least five other qualified Assistant State Attorneys. State Attorney Investigators on the team shall include the Chief Investigator and at least seven other qualified State Attorney Investigators. Members of the team generally should have experience in handling homicide cases, civil rights matters, and police corruption and excessive force cases.

1.014—Officer-Involved Incident Rotation

The Chief Assistant overseeing the Homicide Division shall be responsible for maintaining a monthly rotation of an Assistant State Attorney and a State Attorney Investigator from the team who will handle all Officer-Involved incidents during their duty month and who will be the primary attorney and investigator for any incidents that take place during that month.

1.015—Response to Officer-Involved Incidents

With the exception of the Jacksonville Sheriff's Office ("JSO"), all law enforcement agencies within the Circuit currently request the Florida Department of Law Enforcement ("FDLE") to investigate Officer-Involved Incidents resulting in death or likely to result in death. For JSO, the unit that investigates Officer-Involved Incidents is the Homicide Cold Case Unit. Whenever the on-call Assistant State Attorney receives notice of an Officer-Involved Incident, either from FDLE or JSO, the on-call Assistant State Attorney shall respond, in person, to the scene of the investigation to ensure appropriate investigative steps are being taken. At his or her discretion, the on-call Assistant State Attorney may request the on-call State Attorney Investigator to

accompany him or her. While this office does not conduct initial investigations of Officer-Involved Incidents, the on-call Assistant State Attorney shall take all reasonable steps necessary to ensure that the investigation is conducted properly, including securing and documenting the scene, collecting significant physical evidence, obtaining whatever search warrants and court-authorized investigative tools are needed, and obtaining whatever witness statements are necessary.

1.016—Additional Required Notifications

Minimally, the on-duty Assistant State Attorney shall notify a Chief Assistant whenever an Officer-Involved Incident takes place and shall keep a Chief Assistant fully apprised of the status of the on-going investigation. A Chief Assistant may take whatever steps are necessary to notify the FBI of a potential civil rights violation and shall assist in coordinating the parallel investigation of any federal civil rights violation. The policy of this office is to provide timely notification to federal authorities whenever an Officer-Involved Incident appears to be an unjustified use of deadly force.

1.017—Notification and Contact with Family of Deceased Persons

As soon as practicable, but within 72 hours, the on-duty Assistant State Attorney shall meet or offer to meet with family representatives of any person who dies as a result of an Officer-Involved Incident. The purpose of the meeting is to provide a description of the process and the role of this office within that process. The expectation of the office is that the on-duty Assistant State Attorney shall provide regular updates on the status of pending investigations to those family members who have requested to be informed, consistent with the integrity of the investigation.

1.018—Dual Investigations

On occasion, an Officer-Involved Incident includes the use of deadly force against a person suspected of criminal behavior who survives the use of force. When that happens, the on-duty Assistant State Attorney and the on-duty State Attorney Investigator *shall not* be the assigned prosecutor or investigator for the related criminal offense involving the injured person.

1.019—Grants of Immunity

The on-duty Assistant State Attorney *shall not* cause any State Attorney or Grand Jury Subpoena to issue to any subject officer (including officers using deadly force and those officers who might be suspected of collateral offenses like witness or evidence tampering) without the prior written authorization of the State Attorney. All other uses of subpoenas that grant immunity shall be at the discretion of the on-duty Assistant State Attorney, working with his or her supervisors.

1.020—Preparation of Draft Report

Once the assigned law enforcement agency (FDLE or JSO) has completed its investigation and delivered final reports to the assigned Assistant State Attorney, the Assistant State Attorney shall prepare a draft Death Investigation Report summarizing the key facts obtained during the investigation, providing a legal analysis of applicable Florida law, and suggesting a proposed legal opinion about the Officer-Involved Incident. Absent unusual circumstances, draft Death Investigation Reports should be completed within forty-five (45) days of receiving final reports from the assigned law enforcement agency or the completed prosecution of anyone shot, whichever occurs last. When the facts surrounding the use of deadly force are complex, team members are encouraged to use the Office’s Trial Services Department to prepare illustrations and reenactments to assist in understanding and illustrating the reasons that support the proposed Death Investigation Report. Proposed legal opinions in the report shall take one of the following forms:

1. *The particular use of deadly force by an officer was justified.* This opinion means that the known facts and circumstances of the case leave little or no doubt that the officer’s actions, taken in light of all the available evidence, and when considering the totality of the circumstances known to the officer at the time, were “justified” within the meaning of Florida law.
2. *No reasonable probability of conviction exists.* This opinion means that the available evidence does not conclusively show justification or non-justification. When rendering this opinion, the evidence, lack of evidence, or conflicts in the evidence establish reasonable doubt about whether the use of deadly force was justified or not. When reasonable doubt exists about

whether the use of deadly force was justified or not, a reasonable probability of conviction necessarily does not exist, and the likely outcome of any criminal trial would be an acquittal.

3. *The particular use of deadly force was not justified, and we can prove the shooting was not justified beyond a reasonable doubt.* When this happens, we will present the facts of the case to a grand jury and seek an indictment for the appropriate criminal violation.

1.021 – Use of Standard Report Format

An example of the standard Death Investigation Report that shall be used by this office is attached as exhibit A to these policies and procedures. Team members are expected to prepare a professional, thorough, well-documented, well-researched, and well-reasoned report. The public has a right to know why we make the decisions we make on these matters, and a thorough Death Investigation Report serves that right.

1.022 – Legal Resources

The Director of the Legal Division has prepared an overview of Florida laws that address Officer-Involved Incidents. The Director of the Legal Division also shall keep team members updated on any recent legal developments surrounding Officer-Involved Incidents. To ensure sound legal opinions, once the on-duty Assistant State Attorney and on-duty State Attorney Investigator have prepared a draft Death Investigation Report, they shall obtain the review and input of the Director of the Legal Division about the legal analysis portion of the report.

1.023 – Team Review and Presentation to the State Attorney

Once the assigned Assistant State Attorney and State Attorney Investigator have prepared a draft Death Investigation Report and obtained a review of the report from the Director of the Legal Division, the assigned Assistant State Attorney shall provide the draft to the Chief Assistant overseeing the Homicide Division, and a full team review shall be scheduled. The entire team shall then make a recommendation to the State Attorney about the opinion to be issued by this Office. The State Attorney will make all final decisions regarding the opinion issued by this Office.

1.024—Final Report, Notification to Agency, and Public Availability

Once the State Attorney approves a final version of the Death Investigation Report, the assigned Assistant State Attorney shall be responsible for notifying the involved agency head, in writing, of our legal opinion and shall be responsible for meeting with the family of any deceased person and advising them of our decision prior to release of our report. The assigned Assistant State Attorney shall also work with the Communications Director and the Public Records Section to ensure that upon release of our final opinion, the opinion is made public on the Office website, and the Office is able promptly to provide all public records to persons and entities requesting them. The policy of this Office is to provide all records that we lawfully can provide under Florida's public records laws.

1.023—Effect of Noncompliance

While these policies shall guide the handling of Officer-Involved Incidents by this office, any failure to comply with these policies creates no rights for defendants, and any failure to comply with these policies creates no legal claims or defenses for any defendant.