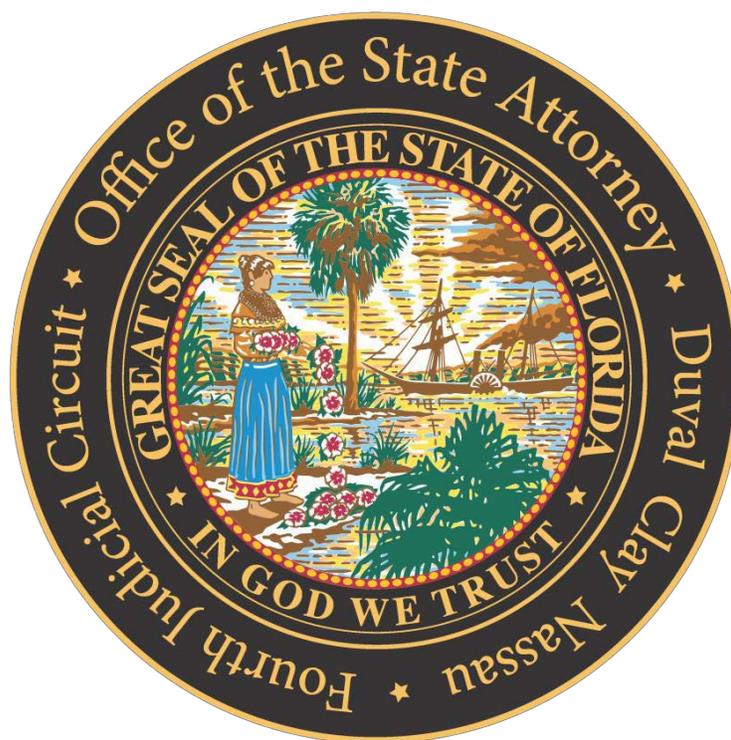


# State Attorney's Office

## Fourth Judicial Circuit



Officer-Involved Critical Incident

Policies and Procedures

August 31, 2020

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## I. Purpose for Policies

These policies and procedures are designed to ensure the appropriate staffing, resources, and independent review of all Officer-Involved Critical Incidents in the Fourth Judicial Circuit. The State Attorney's Office ("SAO") 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." Criminal Justice Standards for the Prosecution Function (ABA, 4th ed.).

## II. Effective Date and Applicability

These policies and procedures shall apply to Officer-Involved Critical Incidents, as defined below, occurring after the effective date or formal implementation by the State Attorney.

## III. Officer-Involved Critical Incident

For purposes of these policies and procedures an "Officer-Involved Critical Incident " or "OICI" means any use of deadly force<sup>1</sup> by a law enforcement or correctional officer within the Fourth Judicial Circuit resulting in actual death or great bodily harm<sup>2</sup> 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.

## IV. Officer-Involved Critical Incident Team

The Chief Assistant State Attorney ("Chief Assistant") shall be responsible for maintaining a roster of Assistant State Attorneys ("ASAs") and State Attorney Investigators ("Investigators") who will be responsible for responding to; providing investigative court warrants, subpoenas, and orders, for; and ultimately participating in the review of all Officer-Involved Critical Incidents in the Fourth Judicial Circuit. Collectively, these ASAs and Investigators will comprise the Officer-Involved Critical Incident Team ("OICI Team"). The State Attorney will appoint an OICI Team Leader who will oversee the operation of the OICI Team, provide investigative guidance, and ensure the timely preparation and release of an independent, final written report of the OICI ("OICI Report").

ASAs on the OICI Team shall include the Chief Assistant, the Directors of the Homicide Division, the Division Chief for the Human Rights Division, and at least six other ASAs with substantial experience handling homicide cases. Investigators on the team shall include the Chief Investigator and at least seven other

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<sup>1</sup> "Deadly Force" is force that is intended to or likely to cause death or great bodily harm.

<sup>2</sup> "Great Bodily Harm" is bodily injury to a person that creates a substantial risk of death, causes serious permanent disfigurement, disability, or results in long-term loss or impairment of an organ or bodily function.

Investigators. The OICI Team Leader and the Chief Assistant, or his designee, shall be responsible for maintaining a monthly rotation of ASAs and Investigators who will assist the OICI Team Leader in responding to incidents and undertaking other activities as directed by the OICI Team Leader during their duty rotation.

## V. Response to Officer-Involved Critical Incidents

Upon notice of an OICI, the OICI Team Leader shall respond, in person, to the scene of the investigation. If the OICI Team Leader is unable to respond to the scene, a duty OICI Team ASA will respond to the scene. The OICI Team Leader or the duty OICI Team ASA will provide assistance to law enforcement to ensure that an independent investigation is thoroughly conducted, including securing and documenting the scene; collecting significant physical evidence; obtaining necessary search warrants and court-authorized investigative tools; and obtaining necessary witness statements.

## VI. Additional Required Notifications

The OICI Team Leader and the Chief Assistant shall take whatever steps are necessary to notify the Federal Bureau of Investigation (“FBI”) of a potential civil rights violation and shall assist in coordinating the parallel investigation of any federal civil rights violation. The policy of the SAO is to provide timely notification to federal authorities whenever an OICI appears to be an unjustified use of deadly-force.

## VII. Notification and Contact with Family of Deceased Person(s)

As soon as practicable, but within 72 hours, the OICI Team Leader shall meet or offer to meet with family representatives of any person who dies as a result of an OICI. The purpose of the meeting is to provide a description of the process and the role of this office within that process. The OICI Team Leader or his designee 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.

## VIII. Dual Investigations

When a person suspected of criminal conduct survives the use of force in an OICI, the incident will be investigated by the OICI Team Leader or his designee. If the related criminal conduct of the injured person involves a homicide, the on-call homicide ASA will handle the homicide prosecution. If the related criminal conduct involving the injured person results in felony prosecution, an ASA in the Targeted Prosecution division will handle the matter. Felony prosecutions involving the injured person in Clay or Nassau County will be handled by either the Director, Deputy Director, or Division Chief in that county. The Chief Assistant, at their discretion, may reassign the prosecution of the injured person to any Assistant State Attorney.

## IX. Grants of Immunity

An ASA 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 ASA, working with his or her supervisors.

## X. Preparation of Draft Report and Presentation to the OICI Team

The OICI Team Leader will provide guidance for the OICI investigation until it is concluded. Within twenty-one (21) days of the incident, the OICI Team Leader will present preliminary investigative findings to the OICI Team. Once the assigned law enforcement agency (FDLE or JSO) has completed its investigation and the SAO has concluded its independent investigation, the OICI Team Leader shall present the finalized investigative findings to the OICI Team. The OICI Team Leader shall prepare a draft OICI Investigation Report summarizing the key facts obtained during the SAO independent investigation, providing a legal analysis of applicable Florida law, and recommending a proposed legal opinion about the OICI. Proposed legal opinions in the report shall take one of the following forms:

- A. *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.
- B. *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.
- C. *The particular use of deadly force was not justified, and we can prove the use of deadly force was not justified beyond a reasonable doubt.* When this happens, we will evaluate the facts of the case and the law to determine whether criminal charges are appropriate.

## XI. Report Format

The OICI Team will prepare an investigative report outlining the relevant legal analysis and conclusions. The public has a right to know why we make the decisions we make on these matters, and a thorough investigative report serves that right.

## XII. Final Report, Notification to Agency, and Public Availability

After final review, the State Attorney will issue a final OICI Investigation Report ("OICI Report"). Prior to the release of the OICI Report, the OICI Team Leader shall meet with the family of any deceased person to advise them of our decision. The SAO will ensure that upon release of the OICI Report, it will be made public on the SAO website, and the SAO will promptly provide all related public records to persons and entities requesting them.