



Iowa County Attorneys Association

Best Practices Working Group

Officer Involved Shooting (OIS) Guide

December 2018

Introduction/Purpose Statement

This Best Practices model policy is offered to guide and assist Iowa County Attorneys in handling officer-involved shooting (OIS) incidents in their jurisdiction. The use of deadly force by a peace officer is a matter of serious consequence warranting careful investigation and thorough review.

It is the duty and responsibility of the County Attorney, as the chief law enforcement official of his or her jurisdiction, to be available for consultation and lend assistance in the investigation and evaluation of OIS incidents in a timely, objective and professional manner. The purpose of this guide is to provide recommendations and guidance to Iowa County Attorneys, so they are better prepared to effectively respond to what are often high-profile and controversial critical events in their jurisdiction.

Best Practices Guide for OIS Incidents

Law enforcement officers are charged with the duty and responsibility to serve and protect the public. In performing their lawful obligations, officers must sometimes use reasonable force, including deadly force, to carry out their essential mission and enforce the law.

The scope of this guide is intended to cover those OIS incidents in which an on-duty peace officer discharges a firearm at another resulting in death, bodily injury or where another person was intended to be the target of the shooting.

This guide is not intended to cover those situations where a suspect is charged with crimes stemming from the OIS incident, instances that involve an accidental discharge of a weapon or investigations involving a death that occurs while in police custody, jail or prison settings.

Initial Investigation

County Attorneys should take proactive steps to encourage their respective local law enforcement agencies to establish written operating procedures for responding to and investigating officer involved shooting incidents. These written guidelines should define the circumstances under which the OIS protocol would be invoked and address the immediate and critical decisions that must be made in the wake of such incidents including the following considerations:

- Identify and define the role and scope of the duties and responsibilities of initial responders to the OIS occurrence including the need to preserve evidence and secure the scene of the incident.
- Identify an independent investigative agency that will be charged with the responsibility of responding to and investigating the OIS incident. Assigning an independent investigating agency will help ensure that an objective and credible investigation is conducted that will promote public confidence in the integrity and fairness of the ultimate conclusions.
- Identify and designate a person within the law enforcement agency to be responsible for initiating contact with the independent investigating agency and coordinate their response to the OIS incident. This person should also be responsible for reporting the incident to the local county attorney who may wish to visit the scene of the incident and be available to provide legal advice or consult regarding the investigation.
- Develop a written protocol for the dissemination of information to the public concerning the fact of the OIS incident and the decision to designate an independent investigative agency to investigate and report their findings to the local county attorney. This protocol should address the importance of timely responding to requests for information concerning the status and progress of the investigation.

Prosecutorial Considerations

The County Attorney is charged with the statutory duty and legal responsibility of enforcing state laws with the objective of seeking and obtaining justice. To fulfill this important role, the County Attorney is called upon to make objective and independent decisions about police conduct on a regular basis.

As a locally elected official directly accountable to the people, it is the responsibility of the County Attorney to provide legal advice and counsel in the investigation of an OIS incident. The county attorney will make the initial decision on whether the county attorney or grand jury will determine if the facts and evidence are sufficient to proceed with criminal charges.

It is advisable that the prosecutor initiate and maintain regular contact with the independent investigating agency to offer guidance and legal advice throughout the course of the OIS investigation. Supervisory oversight is essential to ensure that a thorough investigation is done in a timely fashion and that all the pertinent facts are gathered.

The Charging Decision

Once the OIS investigation is completed, the County Attorney must decide how the charging decision will be made. The county attorney may choose to make the charging decision or convene a grand jury and present the evidence to them for consideration of possible charges. Both methods are accepted practices and offer their own unique benefits and possible disadvantages.

The grand jury is an independent body that has the authority to subpoena witnesses and records. They are permitted to ask questions during the proceedings and bring an objective civilian oversight prospective to the review process. If the county attorney elects to convene a grand jury, it is recommended that all admissible and credible evidence be presented to them for consideration.

On the other hand, grand juries are sometimes criticized for their perceived lack of accountability and transparency. They function and deliberate in secrecy and are not required to make public their findings and conclusions.

Rather than convening a grand jury, the county attorney may consider the evidence and make an “executive decision” concerning whether the facts support the filing of criminal charges. This process puts the judgment in the hands of a locally elected official who must directly account to the electorate for the decision. On the other hand, some believe the county attorney is too closely aligned with local law enforcement to be truly objective in making charging decisions in an OIS case.

Other Considerations for the County Attorney in OIS Cases

Regardless of which procedure is used, if a decision is made not to file charges, the county attorney ought to consider what information should be made public concerning the OIS incident that supports the decision not to pursue charges.

A comprehensive accounting to the public regarding the factual findings and conclusions in an OIS case can promote transparency, avoid claims of bias and support confidence in the fairness of the justice system. In addition, if there is video evidence of the incident, the county attorney should make a timely decision whether the video can be released as a public record in accordance with the public records law under Chapter 22 of the Iowa Code.

In the event that charges are filed in connection with an OIS incident, the county attorney should be circumspect about making public statements concerning the case and should honor and respect the Iowa Rules of Professional Conduct concerning pretrial publicity. The county attorney should then proceed to vigorously advocate for a just result on the charges as they would in any other criminal case.