

SERIOUS AND DEADLY FORCE INVESTIGATION TASKFORCE

Fourth Meeting

July 25, 2018

*Prepared by:
Karen Chung*

*Senior Policy Advisor
Community Police
Commission*

Table of Contents

1

**Non-Independent
Models:
Civilian Oversight**

2

**Non-Independent
Models:
Multiagency**

3

**Another
Independent
Investigation Model**

4

Metrics for Success

5

**Forming
Recommendations**

Civilian Oversight Models

Los Angeles

Hawai'i

Los Angeles: Background

The **Board of Police Commissioners** (Police Commission) is a 5-member civilian panel that serves as the head of the Los Angeles Police Department. The Board sets overall policy while the Chief of Police manages the daily operations of the Department and implements the Board's policies or policy direction and goals.

The Police Commission also oversees the **Office of the Inspector General** (OIG), which functions as the "eyes and ears" of the Commission.

The OIG is separate and independent from the Police Department and reviews investigations of all officer-involved shootings and significant uses of force, as well as complaint investigations of police officer misconduct.

There are approximately 100 officer-involved shootings per year in Los Angeles County.

Los Angeles: At the Scene



“If you’re worried about planting evidence, it’s going to happen before anyone gets there.”

Upon an officer-involved shooting:

- The first supervisor on the scene identifies the shooter(s) and separates the involved officers.
- One representative from the Office of the Inspector General responds within two hours of an office-involved shooting and has full access to the scene. The representative’s role on the scene is to monitor the on-scene investigation.
- Detectives from the Force Investigation Division (much like Seattle’s Force Investigation Team) identify evidence.
- **Criminalists (civilian crime scene staff) arrive and collect the evidence identified by detectives.** Criminalists also identify evidence. Criminalists are part of the LAPD Scientific Division. They produce and provide reports to the detectives.
- Investigators and criminalists do not have to wait for the OIG to process the scene, but typically do because the OIG arrives before the criminalists.

Los Angeles: After the Incident



“The single most important thing is that the Commission is the decision-maker.”

- The OIG stays in touch with detectives as they are investigating to ensure the investigation is happening as it should.
- One week after the incident, the detectives pull together a presentation for the Chief of Police on what they know so far.
- **At the 30-day mark, the detectives meet with the Assistant IG to brief them on what they know about the incident and to go over all of the investigative steps taken. The Assistant IG gives specific input on what is missing, and what they’d like to see done in the investigation.**
- Once the investigation is completed, the OIG receives the full file and goes through every single aspect of the investigation. **They annotate the investigation report, and the annotated report becomes the investigation report, which the Police Commission receives.**
- An administrative hearing is convened by a 5-member board, which includes a peer officer, which makes recommendations to the Chief of Police.
- The Chief prepares a report of the analysis and his or her recommendation for adjudication for the Police Commission.
- **The Police Commission makes a finding** in three areas: 1) the officer’s tactics; 2) the reasonableness of drawing a weapon; and 3) the use of force.

Los Angeles: Summary



Scope of Law: Officer-involved shootings and significant uses of force.



Investigator: LAPD's Force Investigation Division identify evidence at the scene.



Evidence Collection: LAPD's civilian criminalists collect evidence and can also identify evidence. Criminalists are part of LAPD's Scientific Division and produce reports to the detectives.



Oversight: The OIG is separate and independent from the Police Department and reviews investigations of all officer-involved shootings and significant uses of force, as well as complaint investigations of police officer misconduct.

At the scene, the role of the OIG is to monitor the investigation.

30 days after the incident, the OIG meets with the detectives, receives a briefing, and provides input on the investigation.

Once the investigation is complete, the OIG receives the full investigation file and annotates the report.



Decision-making: The Police Commission determines whether or not the use of force falls within policy. The district attorney decides whether or not to file charges.

Hawai'i: Background



“The intent of this bill is to make certain people have trust in the investigatory process and they feel that nothing’s being covered up or swept under the rug.”

- Hawai'i State Senator Will Espero



Scope: When there is an officer-involved death, each law enforcement agency is responsible for conducting a criminal investigation of the law enforcement officer involved in the incident.



Oversight: The Law Enforcement Officer Independent Review Board was created in 2017 and is responsible for reviewing criminal investigations of incidents.



Membership: The Board consists of nine members: a deputy attorney general, four former prosecuting attorneys from Hawaii’s four counties, a retired justice or judge, a former law enforcement leader, and two community members who do not have law enforcement or criminal justice experience. Members are appointed by the Attorney General and Governor.



Investigation: The Board receives the final disposition of the law enforcement agency’s criminal investigation and all related reports, documents, and information. These agencies are required to cooperate with and assist the board in the performance of its duties.



Evidence: The Board does not have access to physical evidence.



Decision-making: The Board makes recommendations on whether to prosecute, decline prosecution, or conduct further investigation.

The Board’s recommendations are not binding upon the prosecuting attorney and has no effect on any determination of probable cause.

The prosecuting attorney is not required to wait for the recommendation of the Board.

Multiagency Models

Snohomish County, WA

San Joaquin County, CA

Snohomish County: Background



“[The suit] further alleges that the SMART team — made up of investigators from various county law-enforcement agencies and the Washington State Patrol — conducted a biased investigation, deliberately steering the outcome to clear Yates of any wrongdoing.”

- [The Seattle Times](#), May 14, 2018



Scope: The Snohomish County Multiple Agency Response Team (SMART) is activated when a Chief of Police or Sheriff requests a consultation from the SMART Commander who determines whether SMART will investigate the incident.



Membership: SMART is a team of investigators, evidence technicians, records specialists, and public information officers from various Snohomish County law enforcement agencies and Washington State Patrol who respond to and investigate police use of force incidents.



Oversight: The team is overseen by a Board of Directors made up of law enforcement leadership across the county including the Snohomish County sheriff, Everett Police Chief, the Snohomish County Commander of the Washington State Patrol, Chiefs of Police from municipalities in the county, and representatives of the county prosecutor’s office and county medical examiners office.



Investigation: The team averages 3 to 4 investigations per year. SMART investigators are selected for their training and expertise in criminal investigations, basic homicide investigations, crime scene investigations, the Reid Technique of Interviewing and Interrogation, officer-involved shooting investigations, and in-custody death investigations. The team meets regularly to train and debrief on active investigations.



Decision-making: The Snohomish County Prosecuting Attorney reviews the investigation and decides whether or not to press charges.

San Joaquin County: Background



Scope: San Joaquin County's Officer-Involved Critical Incident Protocol, established in 1994, applies automatically and immediately upon the occurrence of an officer-involved shootings and fatal incidents.



Investigation: A taskforce comprised of criminal investigators from different agencies conduct the investigation.



Membership:

- The agency with jurisdiction over the incident location (lead agency)
- The agency employing the officer involved in the incident
- The California Highway Patrol, when and if the incident occurs within its jurisdictions
- And the District Attorney's Office (DA) Investigations Division



Evidence: The County relies on DOJ's Regional Criminalistics Laboratory to assist with the collection of physical evidence. Field evidence technicians from the lead agency are involved, and all non-forensically tested physical evidence is collected and/or identified by the Task Force investigators.



Oversight: The District Attorney's Office supervises the investigation. The California Attorney General's Office has the power to take over the investigation if it is dissatisfied with the progress.



Decisionmaking: The District Attorney's Office analyzes the Taskforce's findings and decides whether to pursue legal action.

Another Independent Investigation Model

New York State

New York: Background



“This is a significant executive order that will ensure that communities of color including African Americans, Latinos and other minorities are protected from police misconduct.”

- Dr. Hazel Dukes, President of NAACP New York State Conference



Scope: In July 2015, Governor Andrew Cuomo signed Executive Order 147, which appoints the New York State Attorney General as a special prosecutor in matters relating to the deaths of unarmed civilians caused by law enforcement officers.

The order also allows the special prosecutor to review cases where there is significant question whether the civilian was armed and dangerous at the time of their arrest.



Investigation and Evidence Collection: In such instances, the special prosecutor shall conduct a full, reasoned, and independent investigation including, but not limited to:



- Gathering and analyzing evidence
- Conducting witness interviews
- Reviewing investigative reports, scientific reports, and audio and video recordings

The AG’s Special Investigations and Prosecutions Unit (SIPU) is staffed with experienced prosecutors, investigators, and a community liaison.



Decision-making: The special prosecutor shall bring any and all criminal actions and proceedings which may be taken.

In cases where the special prosecutor declines to present evidence to a grand jury, or if the grand jury declines to indict, the special prosecutor shall provide a report to the Governor.

New York: Outcomes



“Since the establishment of the special prosecutor, we have seen an unprecedented level of transparency regarding the investigations of police killings in New York, in stark contrast to the handling of these cases by local district attorneys.”

- Loyda Colon, Co-Director of Justice Committee

“Even when there wasn’t an indictment, advocates say the attorney general issued a detailed report, communicated with the families, and issued recommendations.”

- Rachel Silberstein, reporter for Gotham Gazette

There have been **17 incidents** investigated by SIPU to date as well as **one investigation of a District Attorney**.

The special prosecutor has:

- Charged 1 police officer;
- Charged 1 District Attorney (later dismissed);
- Is currently investigating seven incidents
- Closed nine investigations.

SIPU’s reports also typically include policy recommendations.

End of Investigation Models Presentation

Metrics for Success

Values

Technical Expectations

Values

What values will guide the Taskforce's recommendations?

- Transparency
- Credibility
- Timeliness
- Quality
- Reliability
- Validity
- Objectivity
- Fairness
- Informative
- Thoroughness

Technical Expectations

What technical expectations must Seattle's investigation process for serious and deadly uses of force meet?

- ❑ Investigators have expertise and experience in conducting high-profile, complex criminal investigations.
- ❑ Investigators have sufficient capacity to carry out high-quality investigations.
- ❑ Investigators have sufficient resources to carry out high-quality investigations.
- ❑ Investigators collect and publish data on key metrics such as timeline and adjudications.
- ❑ Clear definitions and policies govern the investigation process.

Forming recommendations

Questions

Questions

1. What types of uses of force qualify?
 - **Scope of Taskforce:** Type III and Deadly uses of force
2. Are investigations independent and external to the police department of the involved officer?
 - **Current:** Investigations are not independent.
 - Investigations are not independent.
 - Investigations are independent.
3. Who conducts the investigations?
 - **Current:** SPD's Force Investigation Team
 - SPD's Force Investigation Team
 - Another law enforcement agency
 - A multiagency taskforce
 - A state-level law enforcement agency
 - A civilian agency
 - A state-level civilian agency
 - Prosecuting Attorney of King County
 - A special prosecutor
4. Who collects physical evidence?
 - **Current:** SPD's Crime Scene Investigation Division
 - The investigating officers
 - Civilian criminalists

Key

- Current practice in Seattle
 - Potential options for consideration (not exhaustive)

Questions continued

5. Who oversees investigations?
 - **Current:** Office of Police Accountability (OPA), Office of the Inspector General (OIG), the Community Police Commission (CPC)
 - OPA
 - OIG
 - CPC
 - Prosecuting attorney
 - Civilian/community board
 - A state-level oversight entity

6. What does oversight entail?
 - **Current:** The OIG reviews SPD handling of incidents which may include auditing, monitoring, or other review of SPD's administrative investigations or reviews of incidents. The OPA has the authority to observe and review all administrative investigation processes at SPD. The OIG and OPA have access to incident scenes. Representatives may attend and participate in SPD administrative investigation unit interviews and meetings held to review Force Investigation Team information or discuss. OPA may participate in SPD administrative investigation unit interviews and may issue a subpoena at any stage in an investigation. The CPC has the authority to review closed cases.
 - Supervise the investigation.
 - Review the investigation throughout the investigation.
 - Review the investigation once it is complete.
 - Determine whether further investigation is necessary.
 - Provide feedback throughout the investigation.
 - Make recommendations to the prosecuting attorney on whether or not to prosecute.

Questions continued

- 7) What does the decision-making process after an investigation entail?
 - **Current:** The Force Review Board (FRB) analyzes the investigative report and determines whether the officer involved violated SPD policy. If the FRB determines the officer violated policy, it refers the case to OPA, which conducts its own administrative investigation and recommends whether or not to charge the officer to the Office of the Prosecuting Attorney. The prosecuting attorney decides whether or not to charge the officer.
- 8) What does the training for investigators and evidence collectors entail?
- 9) What kinds of requirements related to the investigation are codified?
 - Timeline
 - Requirement to publish investigative reports
 - Requirement to adopt baseline policies and protocol
- 10) How does the process control for bias and conflict of interest?
- 11) How can the process be more helpful and least harmful to the families involved?

Questions continued

Statewide

1. Are there and what are the statewide baseline standards for investigations?
2. Is there be a statewide repository for data and reports related to investigations?
3. Is there a requirement for each law enforcement agency to adopt policy and protocol?

End