The Prosecutor’s Role in Addressing Officer-Involved Fatalities & Critical Incidents

A Toolkit for Prosecutors and Communities, by Prosecutors and Communities

Designed to prevent officer use-of-force and to provide a path to accountability for unjustified force.

February 2019
The Institute for Innovation in Prosecution at John Jay College of Criminal Justice (IIP) partners with prosecutors and the communities they serve to advance a more equitable and effective criminal justice system. Through strategic initiatives that examine the role of the prosecutor, convene diverse stakeholders, and emphasize human dignity, the IIP provides a collaborative national platform for prosecutors, policy experts, and directly-impacted community members to examine the most persistent challenges in the criminal justice system, and to generate actionable solutions that prioritize community-centered standards of safety, equity, and wellness.

There has been no challenge more pressing, and no solution more elusive, than addressing officer-involved fatalities and critical incidents. The death of people, disproportionately people of color, and the lack of accountability for those involved has long been a national crisis. While there have been efforts at cultivating dialogue around these issues, there has been limited work around harnessing the power of the prosecutor to address these tragedies.

We are immensely grateful to members of IIP’s Working Group on Officer-Involved Fatalities for addressing this significant gap in the field. Over the past year, members lent their time, experiences, and expertise to devise tangible steps to prevent police use-of-force, and to provide a path to accountability for unjustified force. We are proud to share the culmination of their collaboration and commitment to this work: A Toolkit for Prosecutors and Communities, by Prosecutors and Communities.

In gratitude and partnership,
Lucy Lang

Executive Director
The Institute for Innovation in Prosecution
John Jay College of Criminal Justice
Working Group Members

1. **Lumumba Akinwole-Bandele**, Senior Community Organizer, NAACP Legal Defense and Education Fund
3. **Roy L. Austin, Jr.**, Partner, Harris, Wiltshire & Grannis, LLP; former Deputy Assistant to President Barack Obama for Urban Affairs, Justice and Opportunity
4. **Iris Baez**, Founder, Anthony Baez Foundation; Mother of Anthony Baez (killed by NYPD in 1994)
5. **Chiraag Bains**, Director of Legal Strategies, Demos
6. **Valerie Bell**, Mother of Sean Bell (killed by NYPD in 2006)
7. **Alvin Bragg**, former Chief Deputy Attorney General, New York
8. **Paul Butler**, Professor, Georgetown Law
10. **Clarence Castile**, St. Paul, MN Reserve Officer; Uncle of Philando Castile (killed by St. Paul PD in 2016)
11. **Valerie Castile**, Founder of Philando Castile Relief Foundation; Mother of Philando Castile (killed by St. Paul PD)
12. **John Chisholm**, District Attorney, Milwaukee, WI
13. **John Choi**, County Attorney, Ramsey County, MN
14. **Ed Chung**, Vice President for Criminal Justice Reform, Center for American Progress
15. **Angela J. Davis**, Professor of Law, American University Washington College of Law
16. **Ronald Davis**, Principal Consultant, 21st Century Policing Solutions, LLC
17. **Victoria Davis**, Sister of Delrawn Small (killed by NYPD in 2016)
18. **Christine DeBerry**, Chief of Staff, Independent Investigations Bureau, San Francisco, CA District Attorney’s Office
19. **Kadiatou Diallo**, President & Founder, The Amadou Diallo Foundation; Mother of Amadou Diallo (killed by NYPD in 1999)
20. **James Doyle**, Fellow, National Institute of Justice
21. **Todd Foglesong**, Professor of Global Practice, University of Toronto Munk School of Global Affairs & Public Policy
22. **Michael Freeman**, County Attorney, Hennepin County, MN
23. **George Gascón**, District Attorney, San Francisco, CA
24. **Lawrence Grandpre**, Director of Research, Leaders for a Beautiful Struggle, Baltimore, MD
25. **Aurie Hall**, Former Acting Director, Criminal & Juvenile Justice Program, Open Society Institute – Baltimore
26. **Crystal C. Hall**, Associate Professor, University of Washington Evans School of Public Policy & Governance
27. **Kristine Hamman**, Executive Director, Prosecutors’ Center for Excellence
28. **Jill Harris**, Head of Policy and Strategy, Kings County, NY District Attorney’s Office
29. **Farhang Heydari**, Deputy Director, Policing Project, New York University School of Law
30. **Kathleen Hill**, Former Director of Policy, Cook County, IL State Attorney’s Office
31. **Robert Himelblau**, Supervising Deputy District Attorney, San Joaquin County, CA District Attorney’s Office
32. **Tara Huffman**, Director of Criminal and Juvenile Justice, Open Society Institute – Baltimore
33. **Wanda Johnson**, Founder, Oscar Grant Foundation; Mother of Oscar Grant (killed by BART police officer in 2009)
34. **Joo-Hyun Kang**, Director, Communities United for Police Reform
35. **Lucy Lang**, Executive Director, The Institute for Innovation in Prosecution at John Jay College of Criminal Justice
36. **Karol Mason**, President, John Jay College of Criminal Justice
37. **Stephanie Morales**, Commonwealth Attorney, Portsmouth County, VA
38. **William Ramirez**, Executive Director, ACLU – Puerto Rico
39. **Meg Reiss**, Chief of Social Justice, Kings County, NY District Attorney’s Office
40. **Dan Satterberg**, Prosecuting Attorney, King County, WA
41. **Paul Schnell**, Police Chief, Inver Grover Heights, MN
42. **Erica Schumacher**, Director of Strategic Initiatives, Ramsey, MN County Attorney’s Office
43. **Jennifer Shaw**, Program Officer, Open Society Foundation
44. **Samuel Sinyangwe**, Policy Analyst & Data Scientist, Campaign Zero
45. **Tarek Tomes**, Chief Information Officer, City of St. Paul, MN
46. **Cyrus Vance, Jr.**, District Attorney, Manhattan, NY
47. **Tori Verber Salazar**, District Attorney, San Joaquin County, CA
48. **Fred Watts**, Executive Director, Police Athletic League
49. **Tali Weinstein**, General Counsel, Kings County, NY District Attorney’s Office
50. **Marny Zimmer**, Director of Policy, Cook County, IL State Attorney’s Office
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The Working Group

To develop this path, the Institute for Innovation in Prosecution at John Jay College of Criminal Justice (IIP) convened a year-long examination of police use-of-force. Comprised of 50 experts from across the country – individuals who have lost loved ones to police violence; prosecutors; police chiefs; policy experts; academics; and advocates – the Working Group on Officer-Involved Fatalities and Critical Incidents (Working Group) convened around the shared goals of preventing use-of-force, and providing a path to accountability for unjustified force.

The Working Group is the first of its kind to bring together stakeholders from all sides of the issue. The diversity of the working group allowed for an honest reckoning of the factors that contribute to use of force and to limited accountability, and a careful examination of previously neglected nuances that can help to reduce and address these tragedies. Since its first convening, held in February 2018, the Working Group has provided a platform for prosecutors, directly impacted family members, and police chiefs to share their stories, learn from each other’s experiences, and work together to build a more just system. Working Group members collaborated over the past year to identify action for prosecutors to take and communities to advocate for in order to reach these shared goals. Their collaboration culminated in a Toolkit for Prosecutors and Communities, by Prosecutors and Communities (the Toolkit).

The Working Group was led by individuals who have lost loved ones to police violence; prosecutors; and police chiefs.

The Toolkit draws on the insight of Working Group members as well as existing data and research in order to provide actionable and adaptable steps for prosecutors and communities to prevent and address officer-involved fatalities and other critical incidents in their local jurisdictions.

While there is no shortage of research or reports about officer-involved critical incidents, there has yet to be a guidebook that offers tangible steps for prosecutors and communities to take. This Toolkit addresses this gap. It aims to:

- Reduce officer use of force
- Ensure thorough, transparent, and timely investigations
- Strengthen state statute language to provide a path to accountability
- Evaluate local policies using data, racial justice, and human dignity as core metrics
- Foster dialogue and partnerships between prosecutors and communities to address use-of-force

How To Use

The Toolkit aims to cultivate dialogue between prosecutors, communities, and other law enforcement partners and local stakeholders. It draws upon prosecutors’ discretion:

- Within the criminal justice system, over charging decisions and investigative protocol;
- As democratically elected officials, to partner with the communities they serve; and
- As the chief local law enforcement official, to influence local policies and priorities.

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Stakeholders

The Toolkit is designed to be used by state and local prosecutors and the communities they serve. The info-graphics on pages 3 and 4 provide a road map for prosecutors to evaluate their existing processes, to compare their policies and protocol with best practices, and to enhance their office's and their jurisdiction's standards regarding officer-involved critical incidents. The checklists and policy documents provide concrete suggestions and examples for prosecutors to do this. In addition to action for prosecutors to implement directly within their offices, the Toolkit also has suggestions for prosecutors to shape local policies beyond their immediate discretion, such as by partnering with their local police department and talking with their state legislature. Prosecutors can also use the Toolkit as a way to engage with and inform family members directly impacted by the critical incident, a priority that is emphasized throughout the Toolkit. Community organizations can also use the Toolkit as a way to guide discussions with their elected prosecutor and prosecutor candidates in order to ensure that local policies and protocol are comprehensive, aligned with best practices, and reflect local priorities.

Implementation

The Toolkit is designed to be actionable and adaptable. It includes tangible steps for prosecutors to take and for communities to advocate for, with sufficient flexibility to be tailored to individual jurisdictions’ unique needs. While each jurisdiction has specific nuances and protocol to consider, the Toolkit provides key questions and principal components that can guide local infrastructure and processes. It includes actions that prosecutors should take before and after an incident occurs in order to prevent officer-involved critical incidents, and to establish pre-defined protocol that can reduce reactivity and set standards of timeliness and transparency. Before beginning to implement the Toolkit, prosecutors should first present it to their communities and their staff for input and discussion. After local and internal review, prosecutors can use the Toolkit to evaluate their existing policies and infrastructure according to the best practices outlined in the Toolkit’s Appendices.

Evaluation

As with any tool or strategy, implementation and impact of the Toolkit should be carefully and continually evaluated and refined. Prosecutors should ensure that it is meeting its aims of preventing use of force, providing a path to appropriate accountability when these tragedies do occur, and fostering local dialogue about use of force policies and protocol. Jurisdictions’ circumstances can change rapidly, and the Toolkit is designed to be dynamic and adaptable in order to address continually-evolving needs.

The IIP invites feedback and questions from prosecutors and communities interested in adopting the Toolkit. Write to IIP_JohnJay@prosecution.org for further information and resources.
Does your office collect and publish case data? 

NO — Collect data and analyze charges driving case load and racial disparities
(See Data Checklist)

YES — Create infrastructure that is, at least, in accordance with state statutes
(See Brady Policy)

NO — Create policy that outlines key investigative components, time frames, and standards of transparency
(See Investigative Checklist)

Discuss office’s data, policies, and protocol with community organizations and local law enforcement partners

Do you have recurring meetings with community groups? 
(i.e., advocacy, faith, service, legal aid coalitions)

NO — Schedule community forum

YES — Invite community suggestions on:
• Charging priorities 
• Standards of transparency 
• UoF Investigative time frame 
• Legislative priorities

Do you have recurring meetings with local law enforcement partners?

YES — Schedule local law enforcement convening

NO — Align prosecutor and law enforcement policies and priorities on:
• Not enforcing or charging low-level offenses 
• Brady-Giglio standards and lines of communication 
• Best practices regarding UoF (See UoF Policy) 
• UoF investigative protocol

Policy Aims

To minimize:
• Racial disparities within criminal justice system
• Enforcement and prosecution of low-level offenses
• Unnecessary interactions between law enforcement and residents

To enhance:
• Transparency of office’s policies, protocol, and impact
• Infrastructure to identify potential police misconduct
• UoF investigation standards, timeliness, and transparency
AFTER AN OFFICER-INVOLVED CRITICAL INCIDENT OCCURS

**Immediately**

- Conduct Investigation
  - Within 24 hours of incident, begin investigation

- Does your office have jurisdiction over UoF investigations?
  - NO
    - Assign prosecutors to monitor investigation
  - YES
    - Activate UoF investigative protocol

- Connect with Family
  - Within 24 hours of incident, reach out to family directly impacted

- Does your office and/or jurisdiction offer services to families?
  - NO
    - Connect family to resources and help navigate potential hurdles
  - YES
    - Provide support before, during, and after investigation

- Communicate with Media
  - Within 48 hours of incident, issue press release

**Intermediary**

- Analyze evidence and complete investigation within 4-6 months of incident. Write and release report to public within 2 weeks of investigation’s conclusion.

- Determine liability and appropriate accountability, citing specific evidence, state statute language, and rationale:
  - Administrative?
    - Provide investigative findings to police department, oversight bodies, and decertification boards
  - Criminal?
    - Charge
  - None?
    - Discuss process and decision with family; if family wishes to pursue civil suit, provide with investigative findings
    - Communicate evidence to public

**Long-Term**

- Advocate for police training to prevent UoF (See UoF Policy)
- Advocate for state statute reform to ensure appropriate mechanisms of accountability (See State Statute Checklist)
- Convene local use-of-force working group to garner suggestions for prevention and accountability
### Action for Prosecutors to Take and Communities to Advocate For

<table>
<thead>
<tr>
<th><strong>WITHIN A PROSECUTOR’S OFFICE</strong></th>
<th><strong>WITHIN A PROSECUTOR’S JURISDICTION</strong></th>
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<tbody>
<tr>
<td>Collect data on case intake and outcomes (See Data Checklist)</td>
<td>Publish data (See Data Checklist)</td>
</tr>
<tr>
<td>• Disaggregate data by race of defendant, officer</td>
<td>• Discuss data, case outcomes, and charging priorities with community organizations</td>
</tr>
<tr>
<td>• Analyze and discuss data with staff</td>
<td>• Discuss data with law enforcement partners and aim to reduce charging and enforcement of low-level offenses</td>
</tr>
<tr>
<td>• Decline to prosecute low-level charges driving disparities and caseloads</td>
<td>• Issue press release about charge declinations, including rationale and impacts of policy</td>
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<table>
<thead>
<tr>
<th>Create infrastructure to monitor allegations of police misconduct (See Brady Policy)</th>
<th>Publish UoF policies (See Investigative Checklist, Brady Policy, and UoF Policy)</th>
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<tbody>
<tr>
<td>• Ensure infrastructure meets, at least, Brady-Giglio standards</td>
<td>• Discuss protocol with community organizations, invite suggestions</td>
</tr>
<tr>
<td>• Decline cases from officers with pattern of allegations against them</td>
<td>• Discuss protocol with law enforcement and work towards aligning policies and priorities</td>
</tr>
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<td>• Pursue formal investigations of officers if evidence to sustain allegations</td>
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<tr>
<th>Codify UoF investigative protocol (See Investigative Checklist)</th>
<th>Advocate for best practices in local UoF policies (See State Statute Checklist and UoF Policy)</th>
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<tbody>
<tr>
<td>• Create independent investigative unit</td>
<td>• Encourage local police department to adopt UoF best practices</td>
</tr>
<tr>
<td>• Assign bureau chief and supervisors to unit; Ensure they do not interact with police on other cases</td>
<td>• Advocate for state statute language that provides a path to accountability for UoF</td>
</tr>
<tr>
<td>• Set concrete time frames and metrics of transparency</td>
<td>• Convene forums on UoF with community groups, law enforcement, other stakeholders to cultivate dialogue</td>
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<table>
<thead>
<tr>
<th>Conduct investigation (See Investigative Checklist)</th>
<th>Inform the family directly impacted (See Investigative Checklist)</th>
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</thead>
<tbody>
<tr>
<td>• Immediately send independent investigative unit to site of incident</td>
<td>• Contact family within 24 hours of incident and at least once month over course of investigation</td>
</tr>
<tr>
<td>• Implement established investigative protocol</td>
<td>• Support family in accessing services</td>
</tr>
<tr>
<td>• Coordinate with local law enforcement partners</td>
<td>• Ensure family has access to evidence as soon as possible and prior to public release</td>
</tr>
<tr>
<td>• Write report on investigative findings immediately following investigation’s conclusion, justifying decisions regarding liability</td>
<td></td>
</tr>
<tr>
<td>• Document and discuss any challenges in investigation, such as obstacles in interviewing involved officer(s) due to union policy, state statute nuances, or department blockades</td>
<td></td>
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</table>

<table>
<thead>
<tr>
<th>Inform the public (See Investigative Checklist)</th>
<th>Communicate path to accountability (See Investigative and State Statute Checklists)</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Issue press release within 48 hours of incident and provide updates to public at least once a month</td>
<td>• If no criminal liability, document reasons why</td>
</tr>
<tr>
<td>• Meet standards of transparency (i.e., release video footage within 10 days)</td>
<td>• If structural obstacles to criminal liability, advocate for reform</td>
</tr>
<tr>
<td>• Complete investigation and publish findings within 6 months of incident</td>
<td>• Provide info to police department and oversight bodies for administrative review</td>
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<tr>
<td></td>
<td>• Provide information to family if they choose to pursue civil suit</td>
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<td></td>
<td>• Convene stakeholders to discuss lessons learned and to prevent future UoF</td>
</tr>
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Data Checklist for Prosecutors

Prosecutors can take immediate steps to reduce the likelihood of use of force and to enhance transparency and trust in the criminal justice system. As the chief local law enforcement official, prosecutors' charging decisions can influence local enforcement priorities. If prosecutors choose not to file low-level offenses, which disproportionately impact people of color, this can reduce the incentive for police to make stops for minor crimes, and can ultimately reduce unnecessary interaction between police and residents. When residents are not stopped for minor issues, they have more faith in the intent and ability of law enforcement. Simple data collection and analysis can guide these decisions. By collecting and analyzing their case data, prosecutors can identify charges that are driving their case load and racial disparities, and can decline to file these charges.

### STEP 1. Develop data infrastructure to collect data on case intake and outcomes, including:

<table>
<thead>
<tr>
<th>Case Intake</th>
<th>Case Outcomes</th>
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</thead>
<tbody>
<tr>
<td>• Quantity / Acceptance Rate</td>
<td>• Pre-Trial Recommendation</td>
</tr>
<tr>
<td>• Arresting Charge(s) / Context (i.e., date / time / location)</td>
<td>• Plea Conditions / Sentence Recommendation</td>
</tr>
<tr>
<td>• Filing Charge(s)</td>
<td>• Acquittal / Dismissal</td>
</tr>
<tr>
<td>• Defendant Demographics (i.e., race / gender / age)</td>
<td>• Time to Resolution / Range of Time</td>
</tr>
<tr>
<td>• Officer Demographics (i.e., race / gender / age)</td>
<td></td>
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<tr>
<td>• Prosecutor / Bureau Assigned</td>
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### STEP 2. Analyze data, considering factors such as:

<table>
<thead>
<tr>
<th>Charges driving caseload</th>
<th>Charges driving disparities</th>
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</thead>
<tbody>
<tr>
<td>• E.g., Low-level offenses</td>
<td>• Racial and/or geographic disparities in arrest, charge, pre-trial recommendations, and/or case outcomes?</td>
</tr>
<tr>
<td>• E.g., Misdemeanors to felonies</td>
<td>• Disparities in case intake or outcomes based on officer demographics and/or prosecutor/bureau assigned?</td>
</tr>
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<table>
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<tr>
<th>Discrepancies between prosecutor priorities and enforcement?</th>
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<tr>
<td>• E.g., Low-level charges monopolizing prosecutor resources?</td>
<td></td>
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<tr>
<td>• E.g., Disproportionate enforcement of people of color?</td>
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</tr>
<tr>
<td>• E.g., Patterns of charge combinations, such as resisting arrest or obstruction of government property, that may signify underlying tension between law enforcement and communities?</td>
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### STEP 3. Use data to inform policy and minimize the criminal justice footprint:

<table>
<thead>
<tr>
<th>Publish data</th>
<th>Develop policies based on data</th>
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<tbody>
<tr>
<td>• Report data analysis publicly</td>
<td>• Work with law enforcement to minimize stops/arrests for low-level offenses</td>
</tr>
<tr>
<td>• Discuss findings with staff, law enforcement partners, community organizations</td>
<td>• Scrutinize all arrest charges</td>
</tr>
<tr>
<td>• Invite insight on data nuances and suggestions for data-driven policies</td>
<td>• Minimize prosecution of low-level cases</td>
</tr>
<tr>
<td></td>
<td>• Investigate charges that are driving disparities</td>
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Why should prosecutors consider using their discretion to minimize unnecessary enforcement? Philando Castile was stopped nearly fifty times for low-level offenses prior to the time of his death. Reducing incentives for police to make stops for low-level or financially-related offenses can help to reduce risk and enhance trust.

To learn more:
- On use of discretion: Manhattan (NY) District Attorney Cyrus Vance, Jr. declined to prosecute marijuana possession and turnstile jumping
- On prosecutor data: Cook County (IL) State's Attorney Kim Foxx released an unprecedented data report on her office's case intake
Investigative Checklist for Prosecutors

After an officer-involved critical incident, there is often an urgent push from the public for answers. Having an established protocol in place prior to a critical incident can ensure thoroughness, transparency, and timeliness, while reducing potential for reactivity. These suggestions aim to “Level Up” and close the chasm between how critical incidents are handled compared with other investigations.

☐ Before an officer-involved critical incident occurs, create an independent investigative bureau

• Assigned prosecutors should work only on officer-involved critical incident cases.
• Assigned prosecutors should not work with local law enforcement on any cases.
• Assigned prosecutors should establish protocol, time frame, and standards of transparency for UoF investigations

☐ Immediately following an officer-involved critical incident, the independent investigative bureau should:

• Respond to and secure the scene within 2 to 4 hours of incident
• Reach out to the victim’s family directly impacted within 24 hours of incident
• Convene local law enforcement agencies – police department, state attorney general, forensics – within 48 hours of incident
• Issue press release about context of incident, next steps, and investigative time frame within 48 hours of incident

☐ Over the course of the investigation, the independent investigative bureau should:

• Document details of the incident, including but not limited to:
  ▫ Date, time, location of incident
  ▫ Time lapse of events
  ▫ Type of force used
  ▫ Name/Rank/Patrol Unit of Officer(s) involved
  ▫ Demographics of officer(s) and individual(s) harmed
• Review all evidence, including but not limited to:
  ▫ Video/audio footage
  ▫ Interviews of officer(s) involved
• Provide transparency, including but not limited to:
  ▫ Conversations with the family directly impacted at least once a month
  ▫ Evidence to family 24 hours prior to public release
  ▫ Interviews of witnesses
  ▫ Forensics
  ▫ Updates to the press at least once a month
  ▫ Release: Audio/video footage to press within 10 days of incident

☐ Within 4-6 months of critical incident, independent investigative bureau should:

• Complete investigation
• Document and publish findings in comprehensive report
• Make decision regarding liability, citing evidence and rationale
• Publish report and liability decisions within two weeks of investigation’s conclusion

☐ Based on investigation, determine liability, provide evidence and rationale, and outline next steps:

• If findings indicate criminal liability, file charges
• If findings indicate administrative violations, inform police department, oversight bodies, certification review boards
• If evidence of wrongdoing but no liability, provide information to family should they seek civil suit
• If evidence of wrongdoing but no liability, document reasons and advocate for reform
• If no wrongdoing, communicate evidence and reasoning publicly
• Discuss lessons learned and opportunities for reform with community and local law enforcement partners to prevent future UoF

To level up, consider the following questions for standard investigations, and compare them with your answers for critical incident investigations:

• How often do I engage with family members who lost a loved one to violent crime?
• How long does it take my office to interview witnesses, run forensics, and indict a suspect of violent crime?
• How long does it take my office to close an investigation of a violent crime?

To learn more:

• “Considerations and Recommendations Regarding State and Local Officer-Involved Use-of-Force Investigations,” from the Bureau of Justice Assistance
• “Independent Investigation Models,” a presentation by Karen Chung, Senior Policy Advisor to the Seattle (WA) Community Police Commission
• “Independent Investigations of Officer-Involved Shootings,” a 2018 report from Major City Chiefs
How does your state statute define Deadly Force?

The US Department of Justice defines deadly force as, “force that a law enforcement officer uses with the purpose of causing, or that the officer knows to create a substantial risk of causing, death, or serious bodily harm.”

Mechanisms of Accountability?

Mechanisms should be formalized and stipulated in state statutes in order to ensure thorough and consistent protocol for any officer-involved critical incident. Specific stipulations may include:

To learn more:
Use-of-Force Policy Guidelines

Rationale: The below checklist, developed by the Policing Project at New York University School of Law, outlines best practices on use of deadly force. Prosecutors can advocate for their local police department to incorporate the below suggestions in their policies, protocol, and training, with the aim of preventing use of deadly force.

### Use of Force Principles, Generally

1. Do the Department’s policies emphasize necessity, de-escalation, and proportionality when using force?
2. Do the Department’s policies require that each of an officer’s decisions leading up to a use of force be reasonable (not just the specific use of force at the particular moment that it was applied)?
3. Do the Department’s policies require that officers consider a person’s specific characteristics, such as mental capacity, developmental disability, the influences of drugs or alcohol, and/or language barriers, when determining whether force is appropriate?
4. Do the Department’s policies prohibit use force to subdue a subject(s) who is not suspected of any criminal conduct, unless necessary to protect an officer’s or another person’s safety?
5. Do the Department’s policies prohibit use of force as retaliation?
6. Do the Department’s policies prohibit use of force against a person who only verbally confront officers and is not involved in criminal conduct?
7. Do the Department’s policies prohibit use of force against a person who is handcuffed or otherwise restrained (because that person does not present a threat)?
8. Do the Department’s policies impose a duty to intervene on officers during improper force?
9. Do the Department’s policies require officers to promptly render aid to injured subjects?
10. Does the Department’s policy require all uses of deadly force, whether intentional or unintentional, to be immediately reported and investigated?

### Firearms Specific Policies

1. Do the Department’s policies consider each firearm discharge as a separate use of force that must be specifically justified?
2. Do the Department’s policies require officers to give a verbal warning and identify themselves as police officers before discharging a firearm, when possible?
3. Do the Department’s policies prohibit officers from firing warning shots?
4. Do the Department’s policies prohibit officers from shooting at or from moving vehicles?
5. Do the Department’s policies consider pointing a firearm at a person to be a use of force?
6. Do the Department’s policies prohibit shooting through a door, window, or in other circumstances in which the target is not clearly in view?

### Policies for Non-Firearms Uses of Force

1. Do the Department’s policies prohibit maneuvers that may cut off blood or oxygen to a subject’s head (e.g., chokeholds, strangleholds) except when lethal force is allowed?
2. Do the Department’s policies prohibit techniques and modes of transport that run a substantial risk of positional asphyxia (e.g., putting a person prone on the ground while restrained)?
3. Do the Department’s ECW (Taser) policies prohibit use against certain “high risk populations,” including those who are pregnant, infirm, elderly, or small in size?
4. Do the Department’s policies limit intentional weapon strikes (such as with a baton) to the head to only those situations when lethal force is permitted?
1) A St. Paul Brady Committee will be formed and will meet monthly. The Committee’s general function will be to coordinate Brady-related efforts specific to the St. Paul Police Department, ensure effective ongoing communication, and address needs and problems as they arise. The Committee will consist of the Brady Prosecutors from each prosecution office, St. Paul Police Department personnel, and others as needed.

2) The City Attorney’s Office and the Ramsey County Attorney’s Office will each name a “Brady Prosecutor” who will be responsible for coordinating Brady compliance within the prosecution office.

3) The St. Paul Police Department will notify the Brady Prosecutors of any potential Brady data regarding an officer. This includes Private data.\(^1\) The Brady Prosecutors will be given “need-to-know” status for review of Private data for Brady purposes.

4) The Brady Prosecutors will review any data received from the St. Paul Police Department at the monthly committee meeting. The Brady Prosecutors will determine if the data is potentially disclosable under Brady and, if so, how the data will be categorized. There are three categories: “Always Disclose – Public,” “Sometimes Disclose – Public,” and “Private.” The Brady Prosecutors will also determine whether the data should be taken into account by prosecutors at the time of charging.

5) The St. Paul City Attorney and the Ramsey County Attorney will each notify officers that they have been identified as having potentially disclosable Brady data by sending a letter to each identified officer. The letters will include any relevant IA complaint numbers for the officer’s reference.

6) The Brady Prosecutor in each prosecution office will create and maintain a Brady tracking document to track Brady compliance. The tracking document will be comprised of: the name each officer with potential Brady data; the identified applicable category; and included data about the disciplined conduct. Only the Brady Prosecutors will have access to this tracking document.

7) The Brady Prosecutors will distribute a Brady Identifying Document (“BID”) comprising all officers with potential Brady data to case prosecutors in each office. This document will also include a separate group of officers whose data should be taken into account at charging rather than waiting to consider the effect of the data after charges have been filed. The BID will go to all case prosecutors with admonitions to maintain confidentiality of the document. The BID will include the names of officers whose relevant data is Private data. For these officers, case prosecutors will be given limited “need-to-know” status permitting them to know only that the officer may have potential Brady data. The Brady Prosecutors will communicate with each other prior to adding anyone to the BID.

8) Each case prosecutor is responsible for checking the BID for officer/witnesses prior to charging and prior to pre-trials.

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\(^1\) The terms “Public” and “Private” data refer to data on individuals as defined in the Minnesota Government Data Practices Act, Minn. Stat. § 13.02, subds. 12, 15 (2012).
City Attorney Office

a) If an officer/witness is on the BID, Assistant St. Paul City Attorneys will notify a Brady Prosecutor in the City Attorney’s Office. The Brady Prosecutor will provide guidance and more details about the disciplined conduct, if necessary, to assist the case prosecutor’s decision on whether to disclose the data as potentially exculpatory.

b) If the case prosecutor decides to disclose data that is “Public,” the Brady Prosecutor will make necessary requests of the St. Paul Police Department. Upon receipt, the case prosecutor will disclose the data to the defense.

c) If the case prosecutor decides to disclose data that is “Private,” the Brady Prosecutor will instruct the case prosecutor to seek in camera review as follows:

i) Upon receipt of Public data, the case prosecutor will disclose the Brady-related Public data and complete and file disclosure notices, motions for in camera review, and proposed orders. The Brady Prosecutor will be responsible for maintaining and updating templates to be used for the data.

ii) The case prosecutor will provide the St. Paul Police Department with an executed judge’s order for production of the data for in camera review.

iii) The St. Paul Police Department will compile the data and deliver it to the judge for review. The case prosecutor will be notified when the data is delivered.

Ramsey County Attorney Office

a) The BID will be separated into Group A and Group B. Group A will include all officers in the “Sometimes Disclose – “Public” and “Private” categories. Group B will include all officers in the “Always Disclose – Public” category.

b) If an officer is on Group A, the case prosecutor will consult with the Brady Prosecutor. The Brady Prosecutor will provide guidance and more details about the disciplined conduct, if necessary, to assist the case prosecutor’s decision on whether to disclose the data as potentially exculpatory.

i) If the case prosecutor decides to disclose data that is “Public,” the case prosecutor will make necessary requests of the St. Paul Police Department. Upon receipt, the case prosecutor will disclose the data to the defense.

ii) If the case prosecutor decides to disclose data that is “Private,” the Brady Prosecutor will instruct the case prosecutor to file disclosure notices, motions for in camera review, and proposed orders. The Brady Prosecutor will be responsible for maintaining and updating templates to be used for the data. The case prosecutor will provide the St. Paul Police Department with an executed judge’s order for production of the data for in camera review. The St. Paul Police Department will compile the data and deliver it to the judge for review. The case prosecutor will be notified when the data is delivered.

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2 All requests for data, Public or Private, require a two week advance notice to gather, prepare, and deliver the data. Additionally, the Saint Paul Police Department requires an executed court order before they will begin to gather and prepare the Private data for an in camera review. The production of Private data involves data review and potential redaction of multiple pages of documents.
iii) If an officer is in Group B, the case prosecutor will contact the appropriate law enforcement agency and ask for all Brady data re: the officer. Upon receipt, the case prosecutor will disclose the data to the defense.

9) All case prosecutors will notify a Brady Prosecutor of any judicial rulings regarding Brady data.

10) In all cases in which there has been disclosure of data, the case prosecutor will be responsible for suppression motions and arguments.

11) Case prosecutors will notify the Brady Prosecutor regarding all hearings, rulings, and consequences specific to the Brady data. Case prosecutors will also notify the Brady Prosecutor regarding any prosecutorial decisions made due to the existence of Brady data (e.g., charging decisions, dismissals, decisions not to use the officer as a witness, etc.).

12) The Brady Prosecutors will maintain ongoing communication with each other and the St. Paul Police Department regarding disclosure of officer-related Brady data and prosecutorial decisions made due to the existence of Brady data.
We, the undersigned, on behalf of the St. Paul City Attorney's Office, the Ramsey County Attorney's Office, and the St. Paul Police Department respectively, hereby adopt the attached "Brady Policy."

Sara Grewing
Saint Paul City Attorney
400 City Hall and Courthouse
15 Kellogg Blvd., West
Saint Paul, MN 55102

John J. Choi
Ramsey County Attorney
50 W. Kellogg Ave., Suite 315
St. Paul, MN 55102

Thomas E. Smith
Chief of Police
St. Paul Police Department
367 Grove St
St Paul, MN 55101
Brady-Giglio
Refers to constitutional rules that were established via two Supreme Court cases, *Brady v. Maryland* (1963) and *Giglio v. United States* (1972). Based on the Supreme Court’s ruling in Brady, prosecutors must disclose evidence that has the potential to benefit the defense. Giglio extends that ruling, mandating that prosecutors disclose any information that may be used to impeach the credibility of a witness, including law enforcement officers. Within prosecution today, Brady-Giglio commonly refers to standards, policies, and infrastructure by which prosecutors can monitor potential misconduct of law enforcement officers.

Community Groups/Community Organizations
Broadly defined, any local cohort of individuals, usually organized around a common set of goals. This includes but is not limited to advocacy organizations, faith groups, service providers, legal aid providers, unions, membership organizations, support groups, and others. This toolkit suggests that prosecutors engage with a wide range of community groups, ensuring that the perspectives and priorities of those most impacted by the criminal justice system and officer-involved critical incidents are taken into consideration.

Officer-Involved Critical Incident
Commonly referred to here as Officer-Involved and Critical Incident – refers to any incident involving a law enforcement officer that results in death or injury to a person. This toolkit takes a broad understanding of critical incidents and does not limit its definition to particular type of force or a particular context, nor does it specify whether force is excessive or appropriate; instead, it offers investigative best practices to make such determinations.

Local Law Enforcement Partners
Broadly defined, any local agency or department with law enforcement duties. This includes but is not limited to a prosecutor’s office, police department, sheriff’s office, attorney general’s office, US Attorney’s Office, forensic department, police commission, and others. This toolkit suggests prosecutors proactively engage with their local law enforcement partners in order to align strategies and priorities.

Use of Force
Commonly referred to here as UoF – this toolkit relies on the definition provided by the U.S. Department of Justice: “Broadly speaking, the use of force by law enforcement officers becomes necessary and is permitted under specific circumstances, such as in self-defense or in defense of another individual or group ... Law enforcement officers should use only the amount of force necessary to mitigate an incident, make an arrest, or protect themselves or others from harm. The levels, or continuum, of force police use include basic verbal and physical restraint, less-lethal force, and lethal force.”
• Burch, J., “CALEA accreditation – a platform for excellence and reform,” Police Foundation.
• Foxx, K.M., “Cook County State’s Attorney Data Report,” 2018.
• Major City Chiefs, “Independent Investigations of Officer-Involved Shootings,” 2018