



SURVEY RESULTS: CURRENT PRACTICES FOR HANDLING OFFICER-INVOLVED SHOOTINGS

Study group materials

ABSTRACT

The S.C. Prosecution Coordination Committee OIS Task Force is examining the practices of prosecutorial and law enforcement agencies across the nation, with the aim of making recommendations for South Carolina investigations of officer-involved shootings. These are the results from a survey of state law enforcement, state prosecutors and U.S. prosecutors.

S.C.
Prosecution
Coordination
Commission
April 2017

Summary of survey of state law enforcement agencies

Officials from 90 law-enforcement agencies in South Carolina responded to a 24-question Survey Monkey questionnaire. They represented 37 of the state's 46 counties, plus one state agency. Responses to all 24 questions are included in a [separate section](#).

Key findings:

- The S.C. State Law Enforcement Division is the go-to agency when police and sheriff's departments seek an outside investigator for allegations involving their officers. According to 92.13% of respondents, SLED is called in whenever there is an allegation of a crime by a law-enforcement officer; 97.78% said SLED handles investigations of officer-involved shootings.
- When an officer is accused of any crime, the agency for which he or she works is involved in the investigation, according to 15.73% of respondents. (In other words, 85% of respondents don't investigate their own.) However, the number drops to for 15.73% to 3.3% when the matters is an officer-involved shooting.
- 80.9% of respondents say their agency has a written policy or set of procedures for handling allegations of criminal activity by their officers.
- 80% said all allegations against their agency's officers are investigated; an additional 17.78% said allegations are investigated if they seem credible.
- Among law-enforcement agencies that handle investigations of their own officers involved in a crime, 36% say their agency decides when the investigation is closed; 42.4% say their Solicitor's Office makes the decision.*
- Among law-enforcement agencies that handle investigations of their own officers involved in a crime, a plurality of 30.4% say they submit their investigative report to the Solicitor's Office but don't make a charging recommendation; 13% say they submit their report to the Solicitor's Office with a recommendation, and an equal number say the agency makes its own decision about filing charges.*
- 60.23% of respondents indicated an officer accused of a crime is interviewed as soon as practical; another 28.41% indicated there is no set time frame.
- When there is a criminal allegation against an officer, 94.38% of respondents indicate their agency secures the crime scene until (another) investigating agency arrives; 3.37% said their agency stays away from the crime scene altogether. 80.9% indicated they've experienced no delay in the arrival of outside, investigating agencies.
- 66.29% of respondents said their agency does not typically conduct criminal investigations of other agencies' officers, which seems consistent with questionnaire results indicating SLED handles the vast majority of criminal allegations against their officers.
- Asked when their Solicitor's Office becomes involved in an investigation of criminal allegations against one of their officers, there was a fairly even distribution between three answers:
 - From the beginning (27.78% of respondents)
 - After the beginning but before the conclusion (22.22%)
 - After the investigation (22.22%)

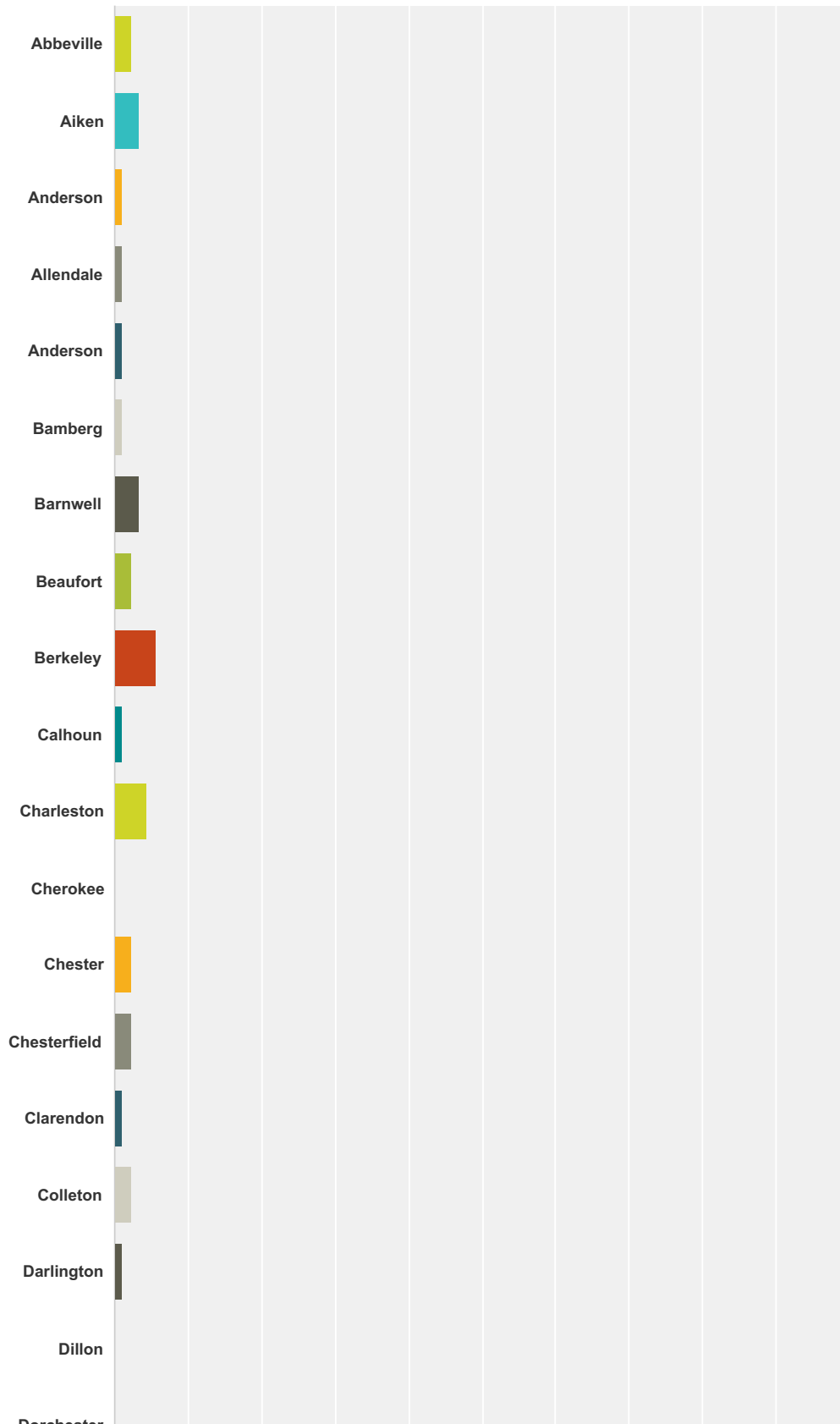
**Although the questions eliciting these responses were ostensibly posed to the an identical group, 66 respondents indicated they don't handle investigations when asked about charging decisions; however, only 56 respondents indicated they don't handle investigations when asked about closing investigations.*

**Q1 Please fill in the name of the agency
completing this survey.**

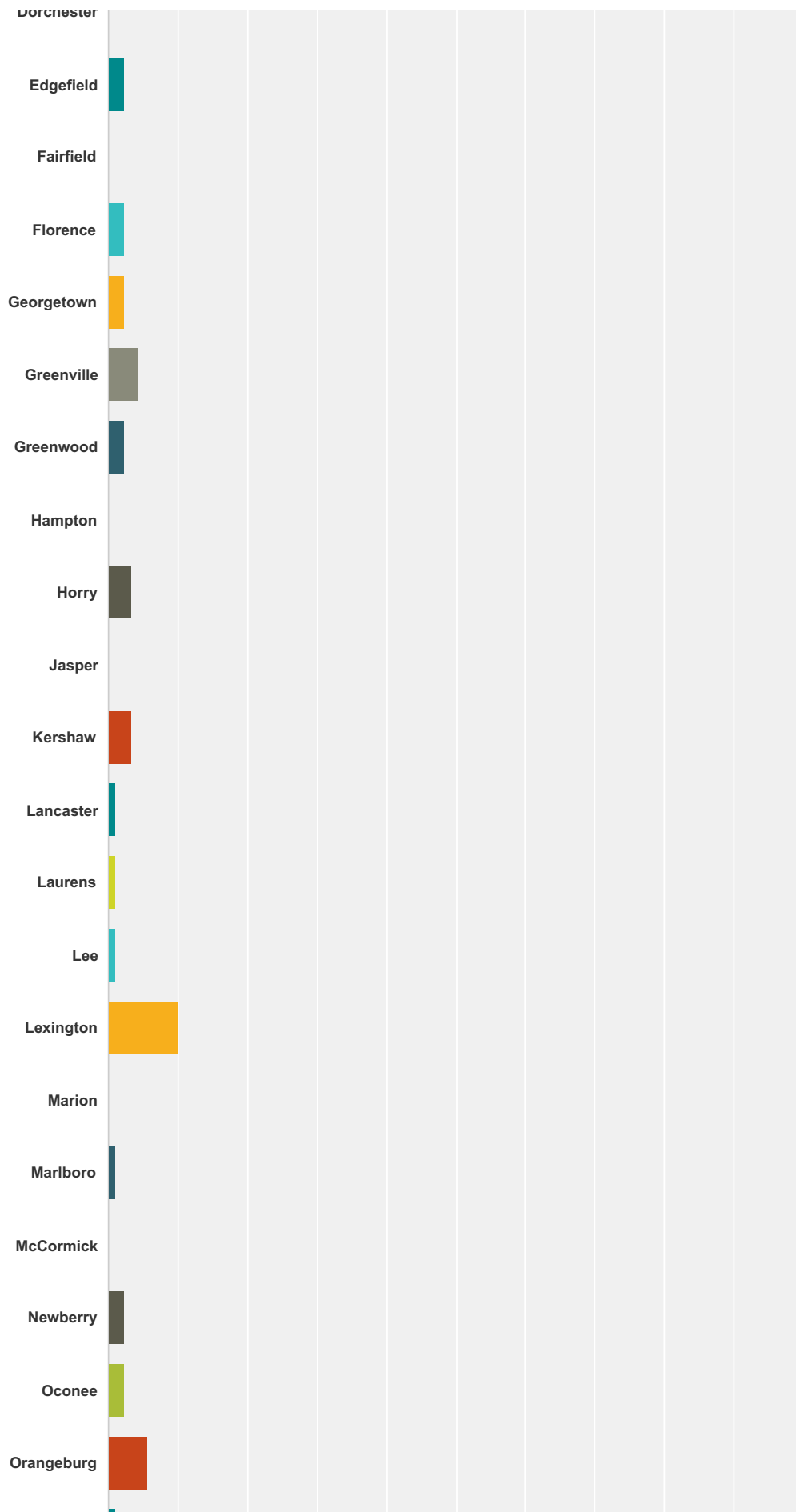
Answered: 90 Skipped: 0

Q2 Please choose which county your agency is located in.

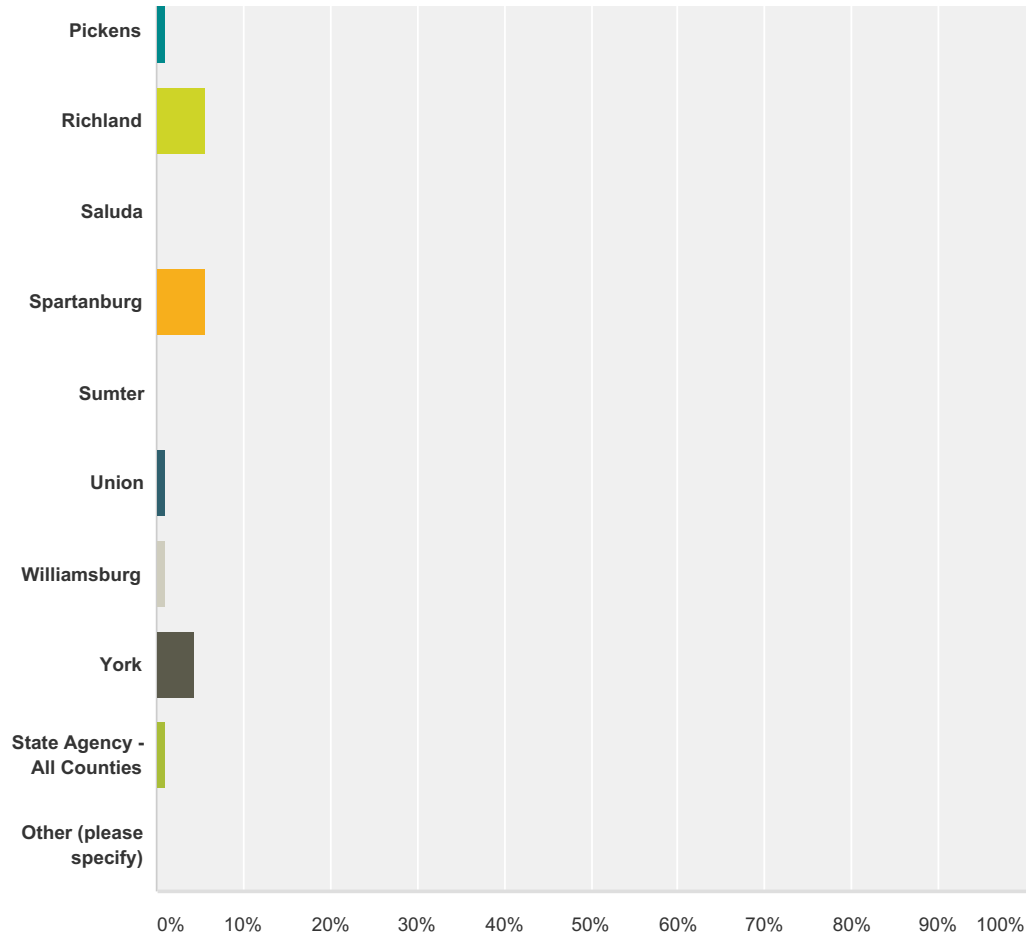
Answered: 90 Skipped: 0



Law Enforcement Officer-Involved Shootings and Criminal Allegations Survey



Law Enforcement Officer-Involved Shootings and Criminal Allegations Survey



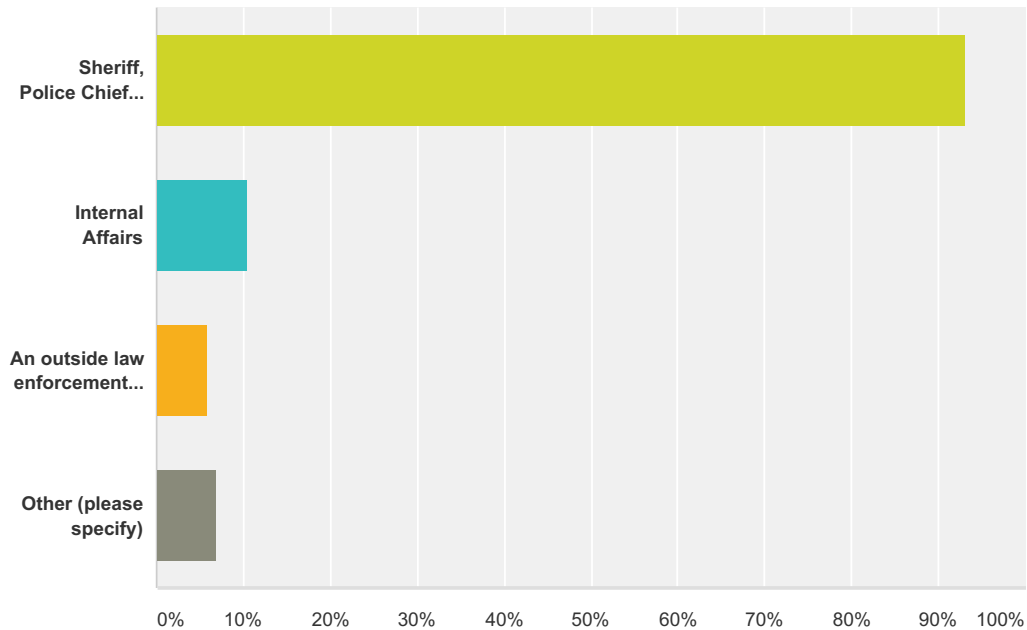
Answer Choices	Responses	
Abbeville	2.22%	2
Aiken	3.33%	3
Anderson	1.11%	1
Allendale	1.11%	1
Anderson	1.11%	1
Bamberg	1.11%	1
Barnwell	3.33%	3
Beaufort	2.22%	2
Berkeley	5.56%	5
Calhoun	1.11%	1
Charleston	4.44%	4
Cherokee	0.00%	0
Chester	2.22%	2
Chesterfield	2.22%	2
Clarendon	1.11%	1

Law Enforcement Officer-Involved Shootings and Criminal Allegations Survey

Colleton	2.22%	2
Darlington	1.11%	1
Dillon	0.00%	0
Dorchester	0.00%	0
Edgefield	2.22%	2
Fairfield	0.00%	0
Florence	2.22%	2
Georgetown	2.22%	2
Greenville	4.44%	4
Greenwood	2.22%	2
Hampton	0.00%	0
Horry	3.33%	3
Jasper	0.00%	0
Kershaw	3.33%	3
Lancaster	1.11%	1
Laurens	1.11%	1
Lee	1.11%	1
Lexington	10.00%	9
Marion	0.00%	0
Marlboro	1.11%	1
McCormick	0.00%	0
Newberry	2.22%	2
Oconee	2.22%	2
Orangeburg	5.56%	5
Pickens	1.11%	1
Richland	5.56%	5
Saluda	0.00%	0
Spartanburg	5.56%	5
Sumter	0.00%	0
Union	1.11%	1
Williamsburg	1.11%	1
York	4.44%	4
State Agency - All Counties	1.11%	1
Other (please specify)	0.00%	0
Total		90

Q3 Who within your agency decides if a criminal allegation against one of your agency's officers is investigated?

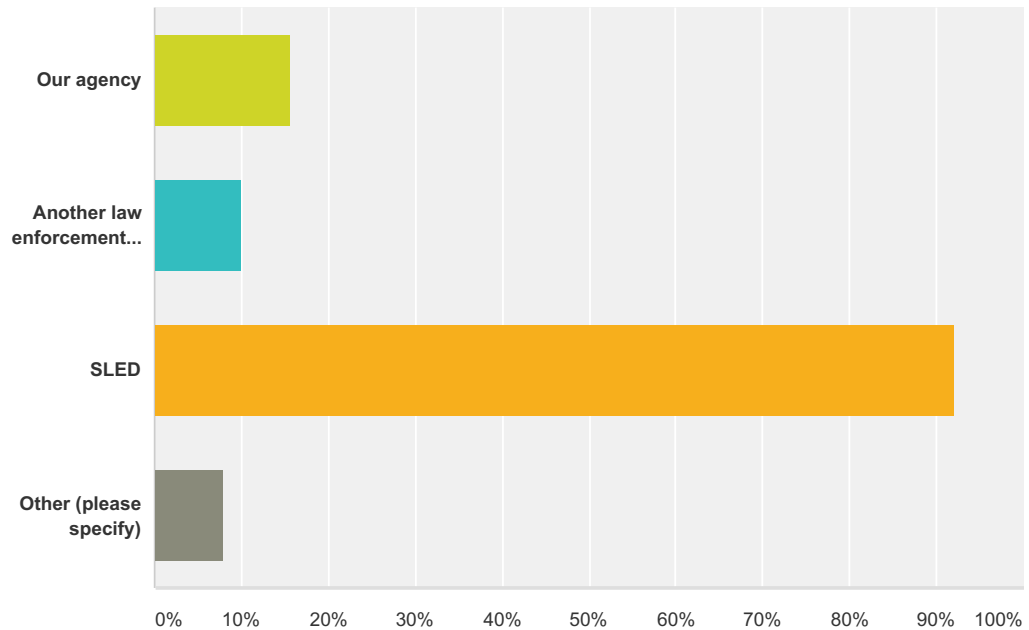
Answered: 87 Skipped: 3



Answer Choices	Responses	
Sheriff, Police Chief, Public Safety Director or Agency Head	93.10%	81
Internal Affairs	10.34%	9
An outside law enforcement agency	5.75%	5
Other (please specify)	6.90%	6
Total Respondents: 87		

Q4 What law enforcement entity investigates the allegations that an officer in your agency has committed a crime?

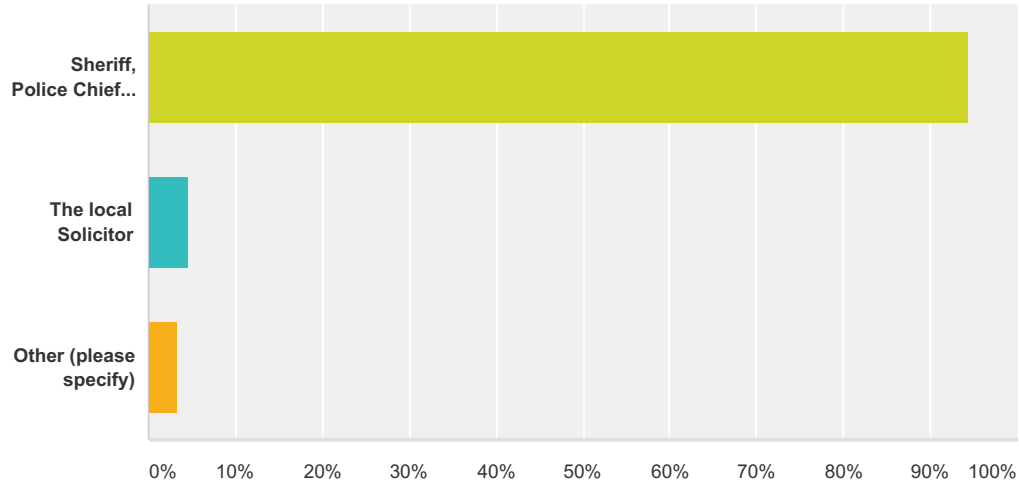
Answered: 89 Skipped: 1



Answer Choices	Responses	
Our agency	15.73%	14
Another law enforcement agency	10.11%	9
SLED	92.13%	82
Other (please specify)	7.87%	7
Total Respondents: 89		

Q5 Who within your agency decides which law enforcement entity will investigate such allegations?

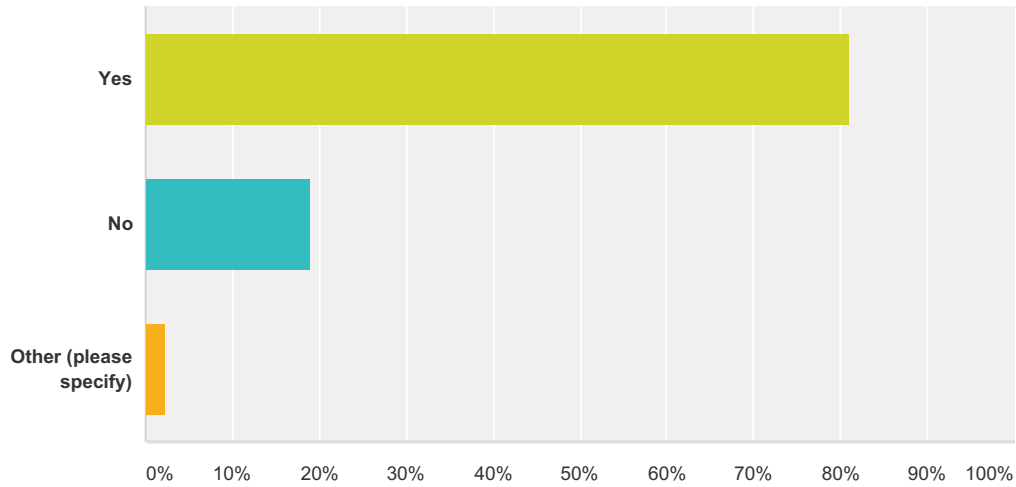
Answered: 89 Skipped: 1



Answer Choices	Responses	
Sheriff, Police Chief, Public Safety Director or Agency Head	94.38%	84
The local Solicitor	4.49%	4
Other (please specify)	3.37%	3
Total Respondents: 89		

Q6 Does your agency have a written policy/procedure outlining how allegations of criminal activity by officers within your agency are handled?

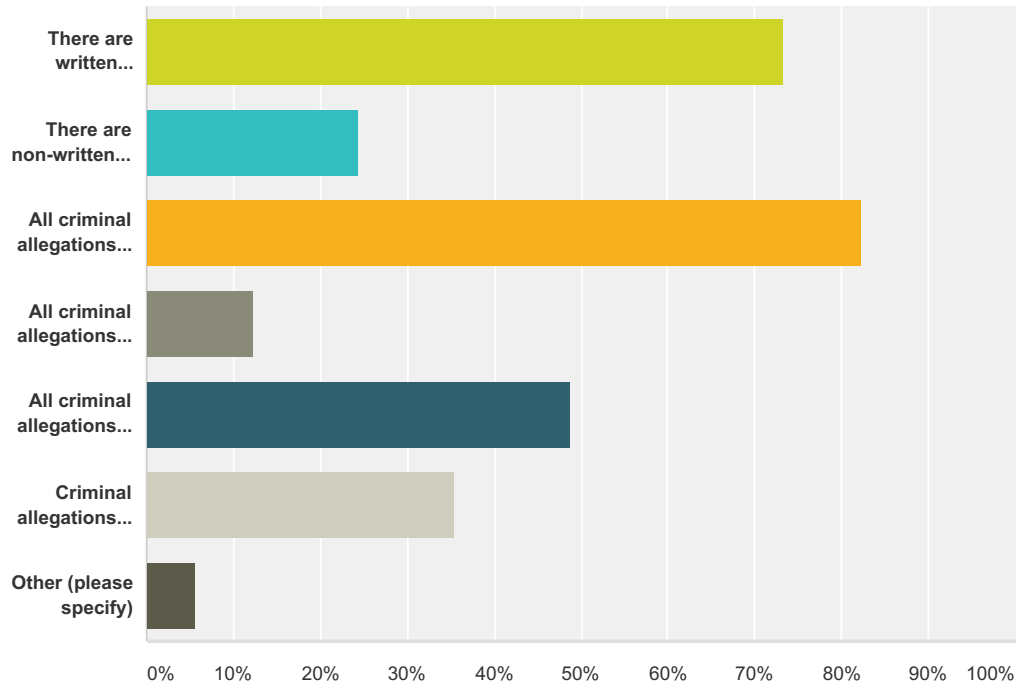
Answered: 89 Skipped: 1



Answer Choices	Responses	
Yes	80.90%	72
No	19.10%	17
Other (please specify)	2.25%	2
Total Respondents: 89		

Q7 What procedures are in place to determine whether a criminal allegation against one of your agency's officers is investigated? (check all that apply)

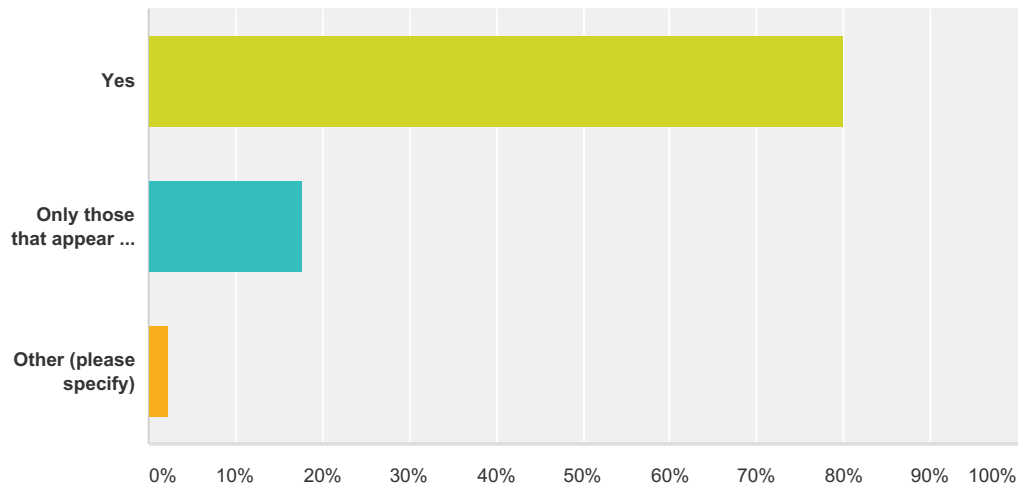
Answered: 90 Skipped: 0



Answer Choices	Responses	
There are written procedures that outline how all criminal allegations against agency officers are handled.	73.33%	66
There are non-written procedures that establish how all criminal allegations against agency officers are handled.	24.44%	22
All criminal allegations against agency officers are documented.	82.22%	74
All criminal allegations against agency officers are made public.	12.22%	11
All criminal allegations against agency officers are shared with the local Solicitor.	48.89%	44
Criminal allegations against agency officers are judged on a case-by-case basis to determine the necessity of an investigation.	35.56%	32
Other (please specify)	5.56%	5
Total Respondents: 90		

Q8 Are all criminal allegations against your agency's officers investigated?

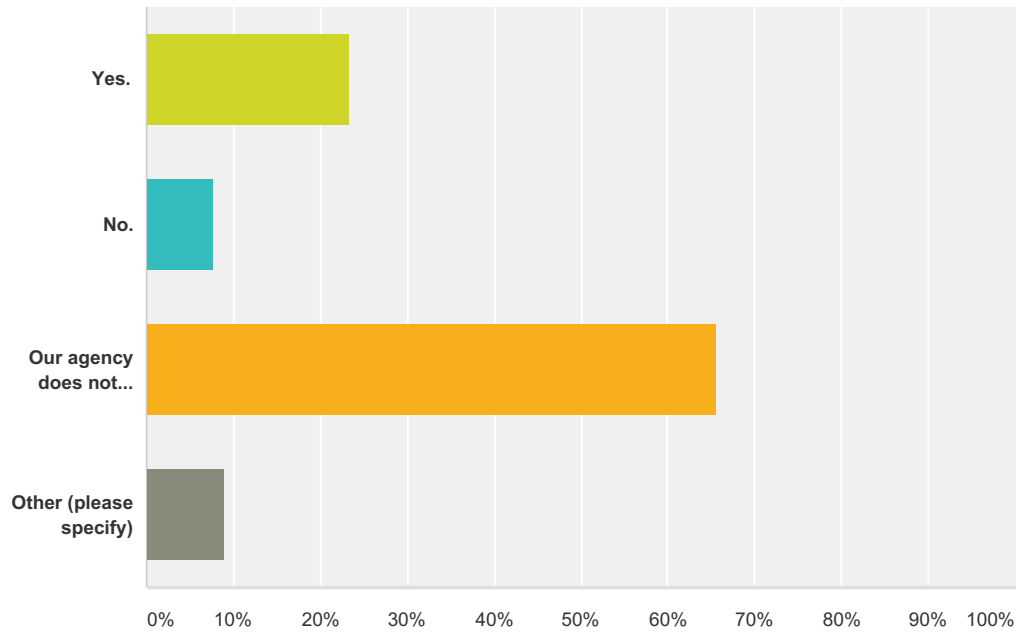
Answered: 90 Skipped: 0



Answer Choices	Responses	
Yes	80.00%	72
Only those that appear to be credible.	17.78%	16
Other (please specify)	2.22%	2
Total		90

Q9 If your agency is the entity that investigates criminal allegations against one of your agency's officers, does your agency conduct a critical analysis (determining and discussing witness credibility, the consistency of evidence, crime scene examination, context of witness statements, etc.)?

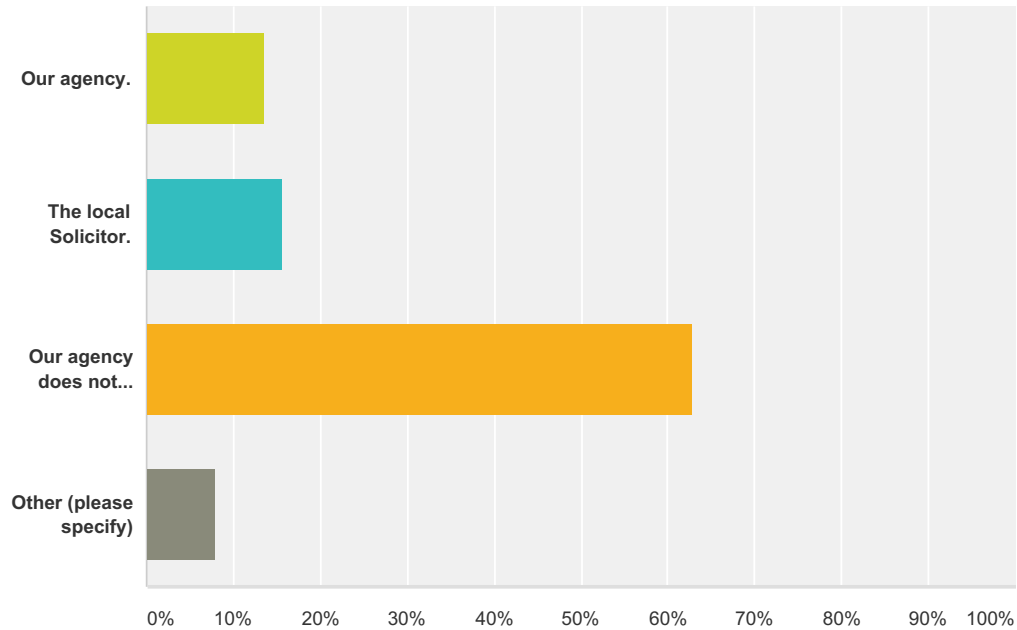
Answered: 90 Skipped: 0



Answer Choices	Responses	
Yes.	23.33%	21
No.	7.78%	7
Our agency does not conduct such investigations.	65.56%	59
Other (please specify)	8.89%	8
Total Respondents: 90		

Q10 If your agency is the entity that investigates criminal allegations against one of your agency's officers, who determines when the investigation is closed?

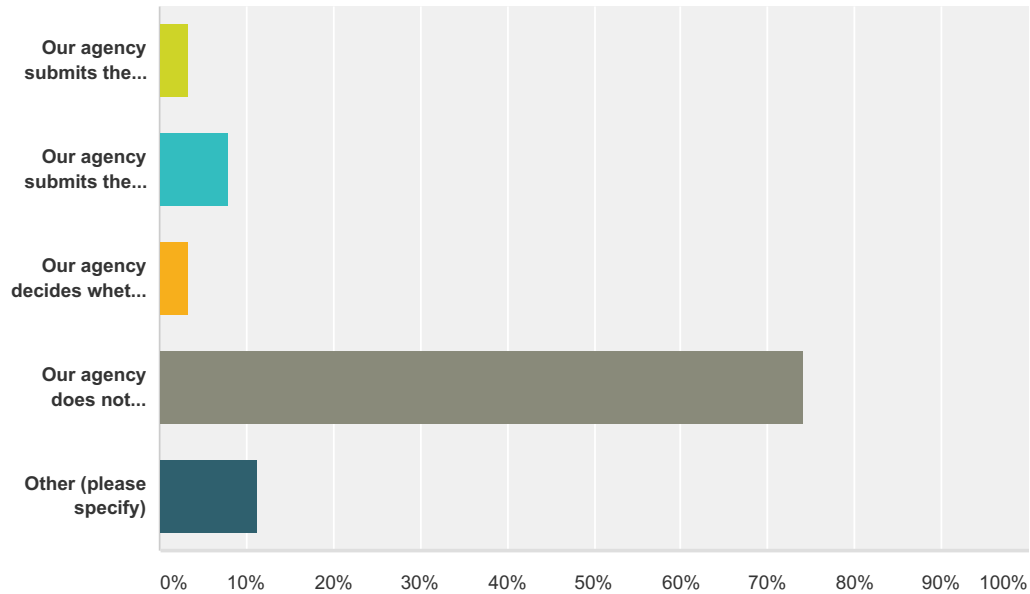
Answered: 89 Skipped: 1



Answer Choices	Responses	
Our agency.	13.48%	12
The local Solicitor.	15.73%	14
Our agency does not conduct such investigations.	62.92%	56
Other (please specify)	7.87%	7
Total		89

Q11 If your agency investigates criminal allegations made against one of your officers, choose the answer below that most closely fits your practice.

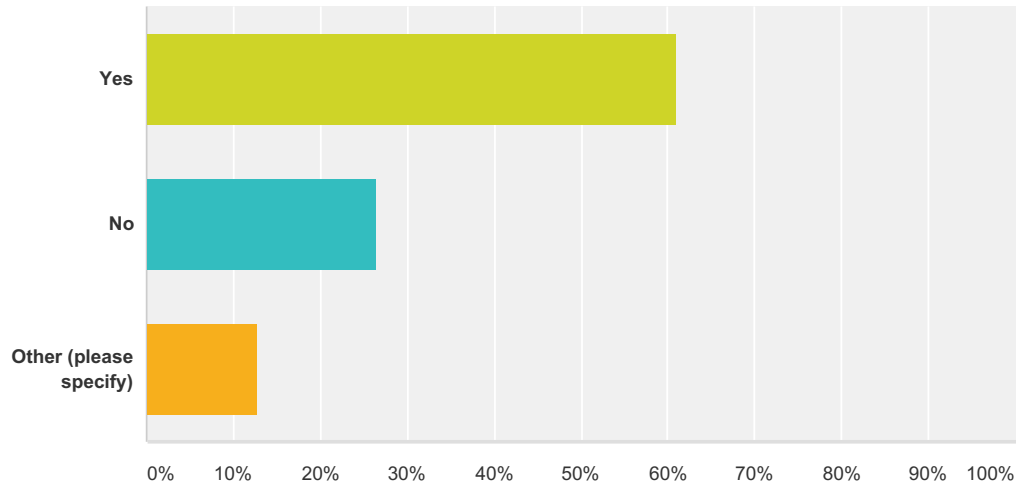
Answered: 89 Skipped: 1



Answer Choices	Responses
Our agency submits the investigative report to the local Solicitor and our agency makes a recommendation on whether to charge.	3.37% 3
Our agency submits the investigative report to the local Solicitor but our agency does not make a recommendation on whether to charge.	7.87% 7
Our agency decides whether to seek a warrant without local Solicitor input and our agency turns over the investigative report once a warrant is served.	3.37% 3
Our agency does not conduct such investigations.	74.16% 66
Other (please specify)	11.24% 10
Total	89

Q12 Does your agency conduct a simultaneous Internal Affairs investigation when an allegation of criminal activity is made against an officer in your agency?

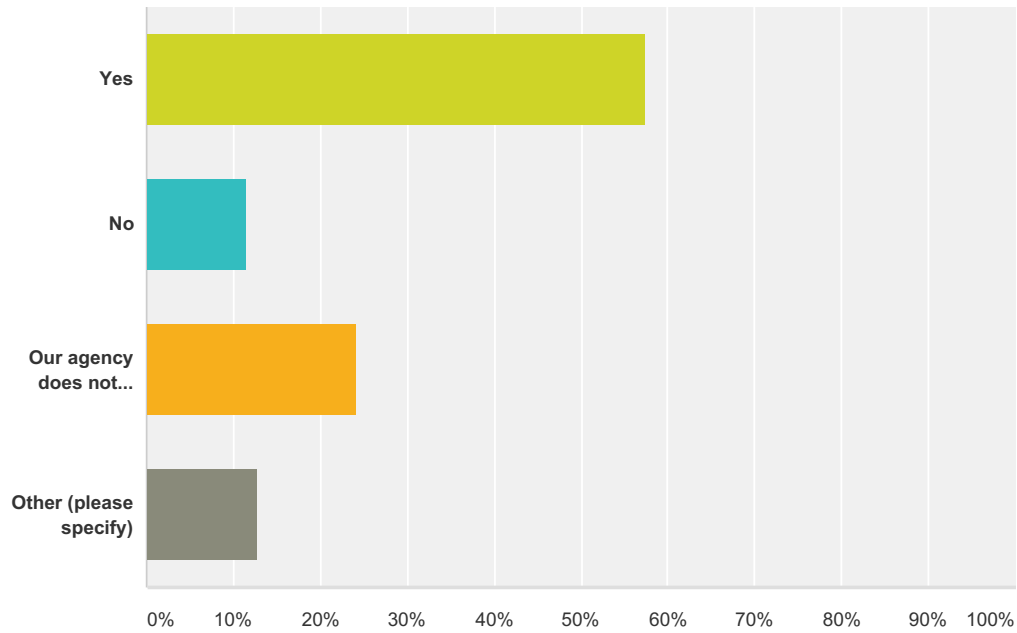
Answered: 87 Skipped: 3



Answer Choices	Responses	
Yes	60.92%	53
No	26.44%	23
Other (please specify)	12.64%	11
Total		87

Q13 If your agency conducts a simultaneous Internal Affairs investigation when allegations of criminal activity by an officer in your agency are being investigated by an outside entity, are internal interviews of non-suspect, "non-Garrity involved" officers and employees shared with the outside investigating agency?

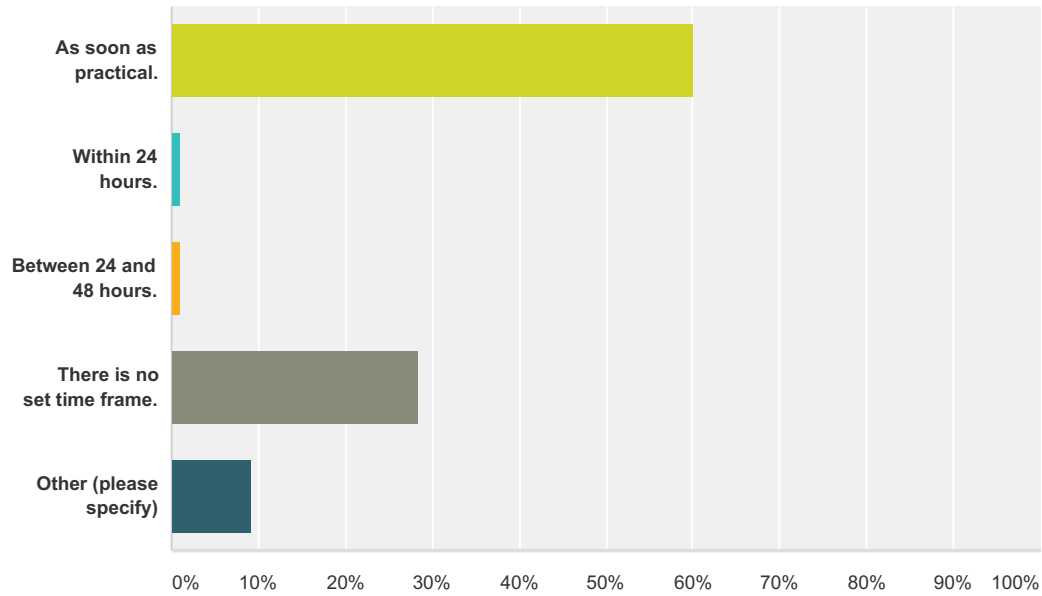
Answered: 87 Skipped: 3



Answer Choices	Responses	
Yes	57.47%	50
No	11.49%	10
Our agency does not conduct such investigations.	24.14%	21
Other (please specify)	12.64%	11
Total Respondents: 87		

Q14 When is an officer questioned after a criminal allegation against the officer has been made, or possible criminal activity has surfaced?

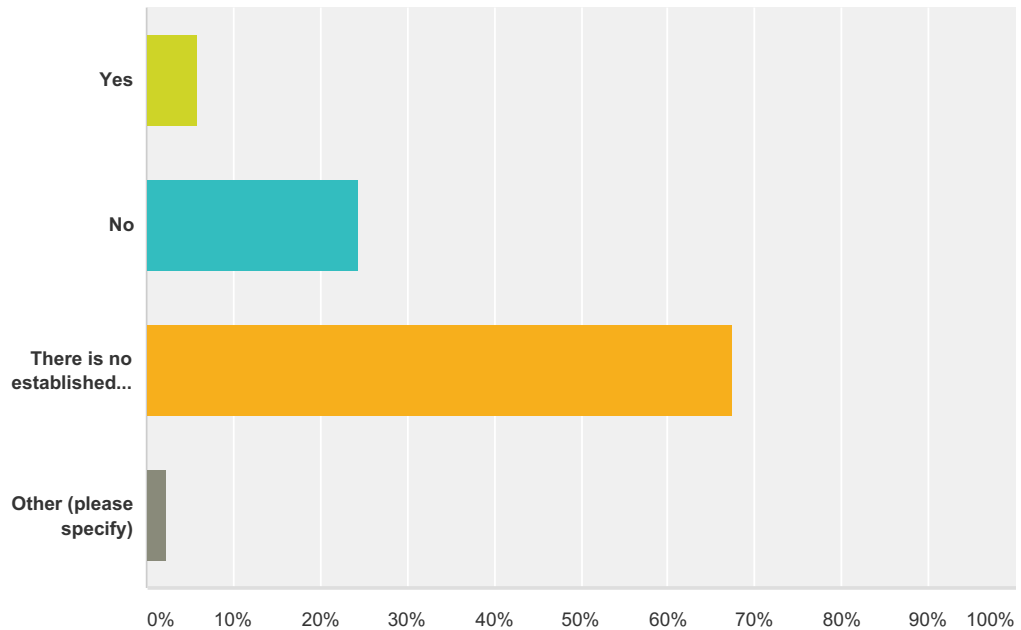
Answered: 88 Skipped: 2



Answer Choices	Responses	
As soon as practical.	60.23%	53
Within 24 hours.	1.14%	1
Between 24 and 48 hours.	1.14%	1
There is no set time frame.	28.41%	25
Other (please specify)	9.09%	8
Total		88

Q15 If there is an established time frame for officer questioning, is that time frame dictated by a written policy?

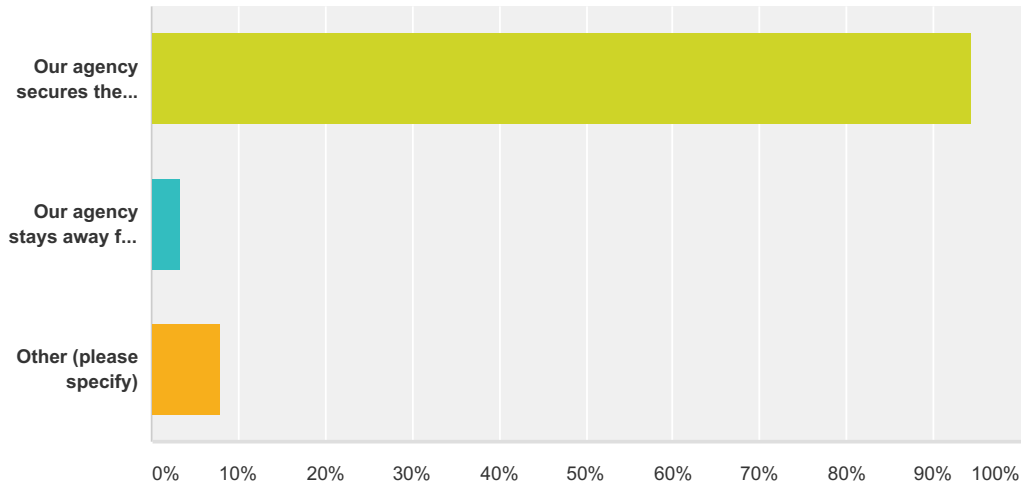
Answered: 86 Skipped: 4



Answer Choices	Responses	
Yes	5.81%	5
No	24.42%	21
There is no established time frame.	67.44%	58
Other (please specify)	2.33%	2
Total Respondents: 86		

Q16 If criminal allegations against an officer in your agency involve a crime scene, and the investigation is handled by an outside enforcement agency, how is the crime scene handled?

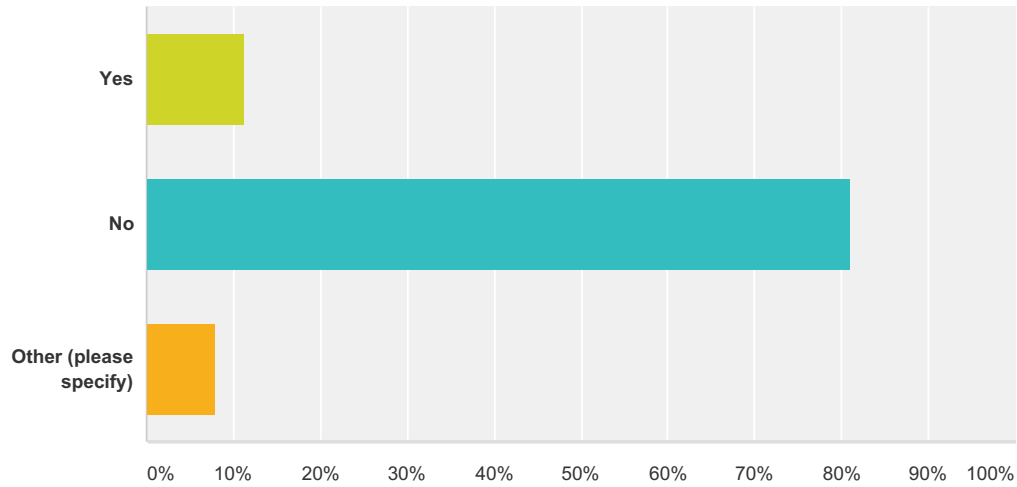
Answered: 89 Skipped: 1



Answer Choices	Responses	
Our agency secures the crime scene until the other agency arrives.	94.38%	84
Our agency stays away from the crime scene until the other agency arrives.	3.37%	3
Other (please specify)	7.87%	7
Total Respondents: 89		

Q17 If an outside agency handles criminal allegations made against your officers, have you experienced delays for crime scene processing by the outside entity?

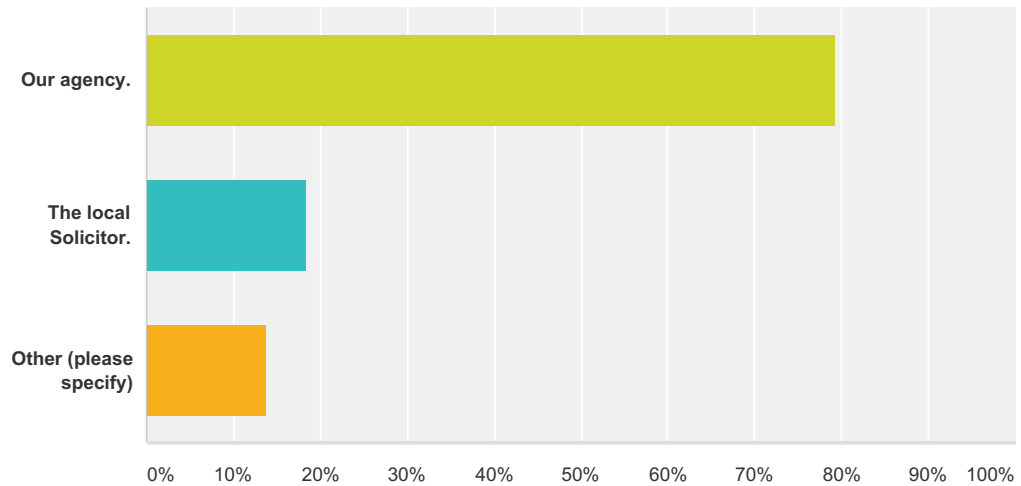
Answered: 89 Skipped: 1



Answer Choices	Responses	
Yes	11.24%	10
No	80.90%	72
Other (please specify)	7.87%	7
Total Respondents: 89		

Q18 Who determines when an officer who has had a criminal allegation made against him/her may return to active duty?

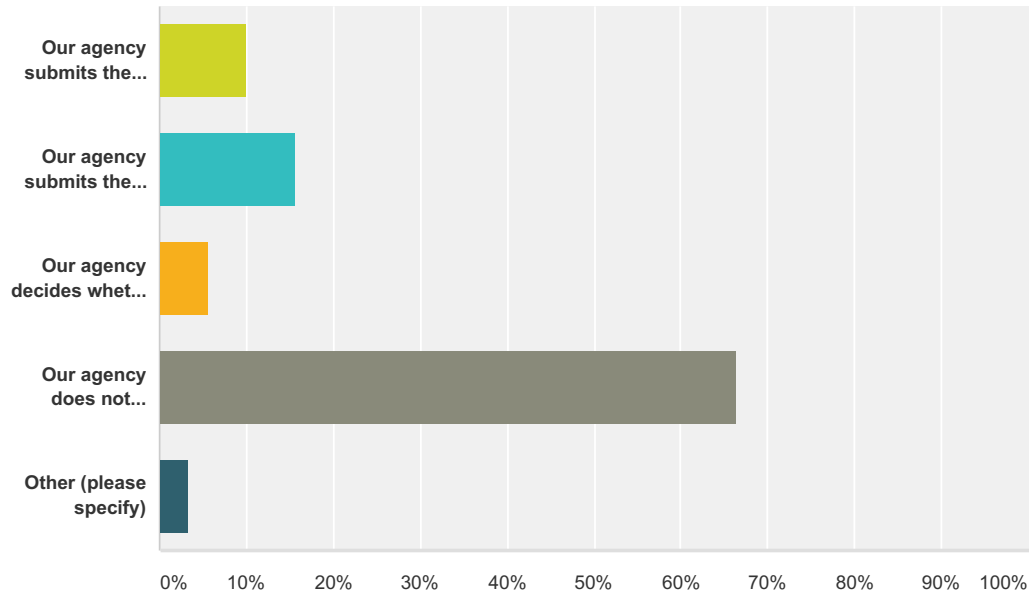
Answered: 87 Skipped: 3



Answer Choices	Responses	
Our agency.	79.31%	69
The local Solicitor.	18.39%	16
Other (please specify)	13.79%	12
Total Respondents: 87		

Q19 If your agency has been called in to investigate criminal allegations made against another agency's officer(s), choose the answer below that most closely fits your practice.

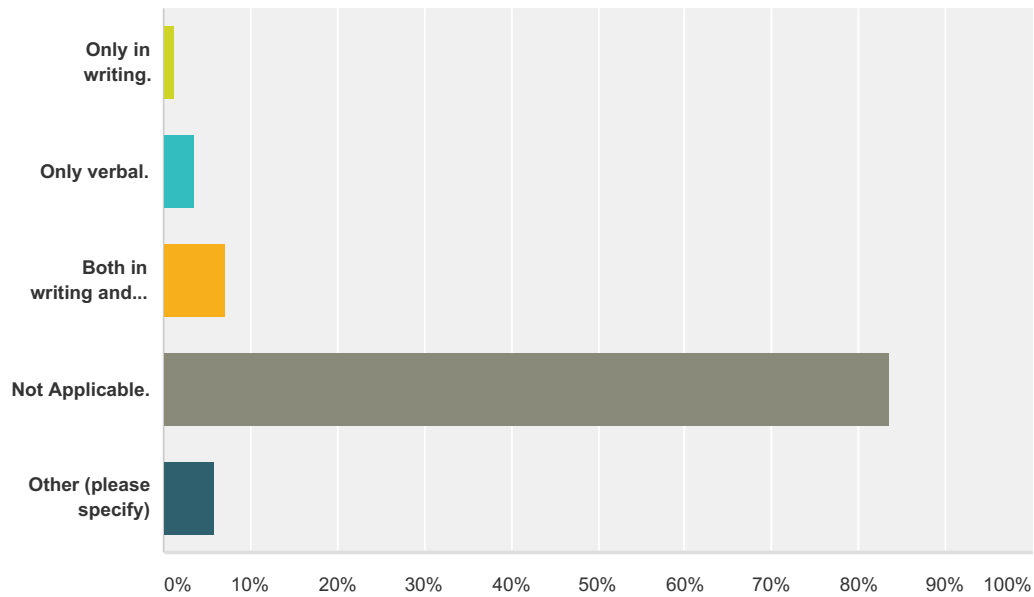
Answered: 89 Skipped: 1



Answer Choices	Responses
Our agency submits the investigative report to the local Solicitor, and our agency makes a recommendation on whether to charge.	10.11% 9
Our agency submits the investigative report to the local Solicitor, but our agency does not make a recommendation on whether to charge.	15.73% 14
Our agency decides whether to seek a warrant without local Solicitor input, and our agency turns over the investigative report once a warrant is served.	5.62% 5
Our agency does not conduct criminal investigations of other agencies' officers.	66.29% 59
Other (please specify)	3.37% 3
Total Respondents: 89	

Q20 If, in Question 19, you answered that your agency submits the investigative report to the local Solicitor, and your agency makes a recommendation on whether to charge, how is the recommendation made?

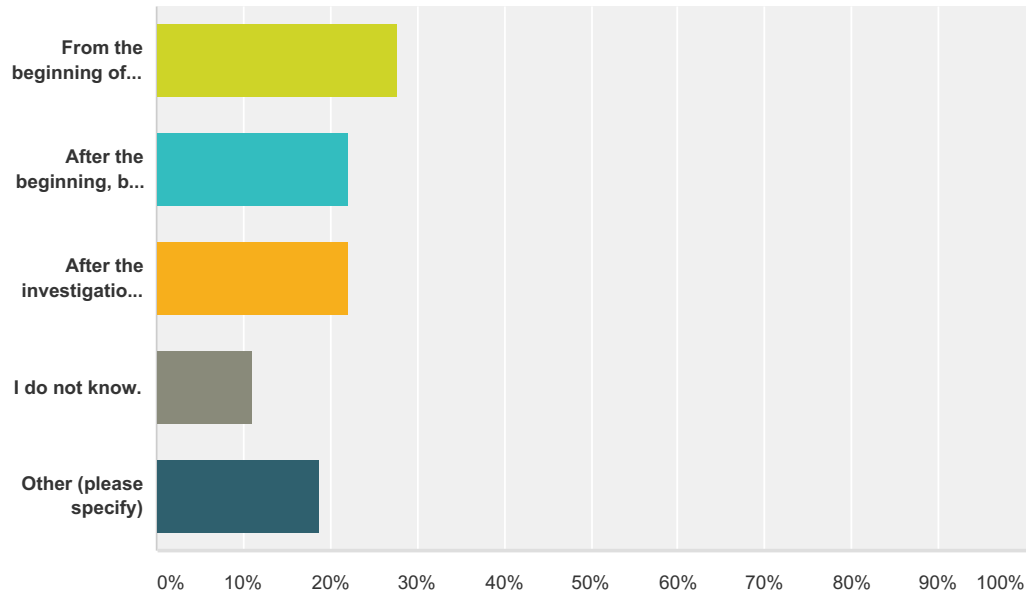
Answered: 85 Skipped: 5



Answer Choices	Responses	
Only in writing.	1.18%	1
Only verbal.	3.53%	3
Both in writing and verbal.	7.06%	6
Not Applicable.	83.53%	71
Other (please specify)	5.88%	5
Total Respondents: 85		

Q21 When does your local Solicitor's Office become involved in an investigation of criminal allegations made against one of your agency's officers?

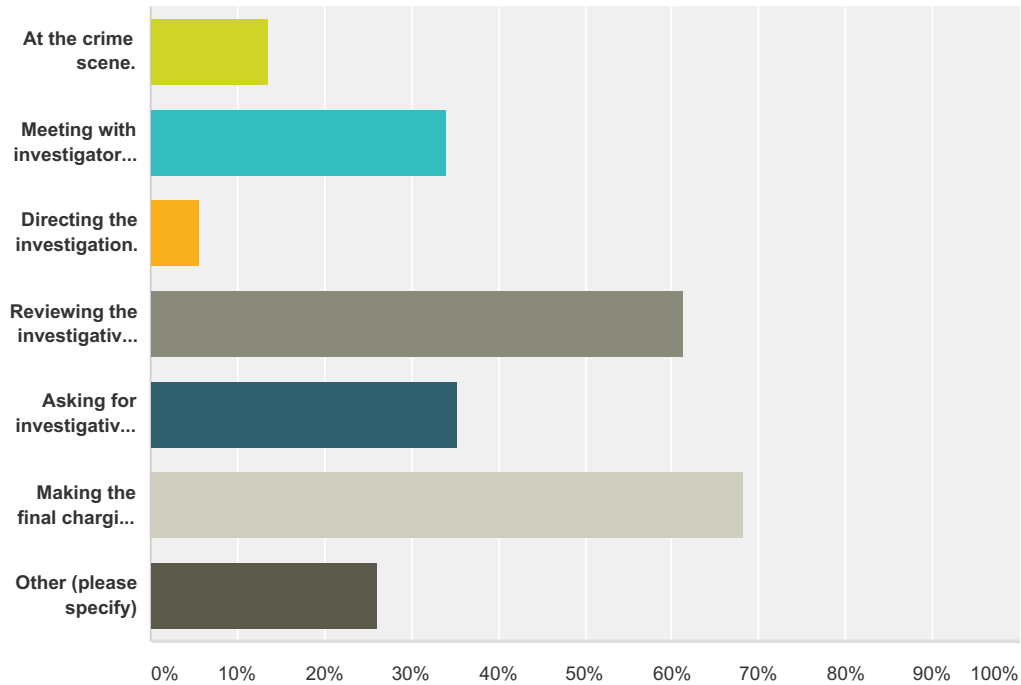
Answered: 90 Skipped: 0



Answer Choices	Responses	
From the beginning of the investigation.	27.78%	25
After the beginning, but before the conclusion of the investigation.	22.22%	20
After the investigation is concluded.	22.22%	20
I do not know.	11.11%	10
Other (please specify)	18.89%	17
Total Respondents: 90		

Q22 How involved is your local Solicitor's Office in the investigation of a criminal allegation made against one of your agency's officers? Check all that apply:

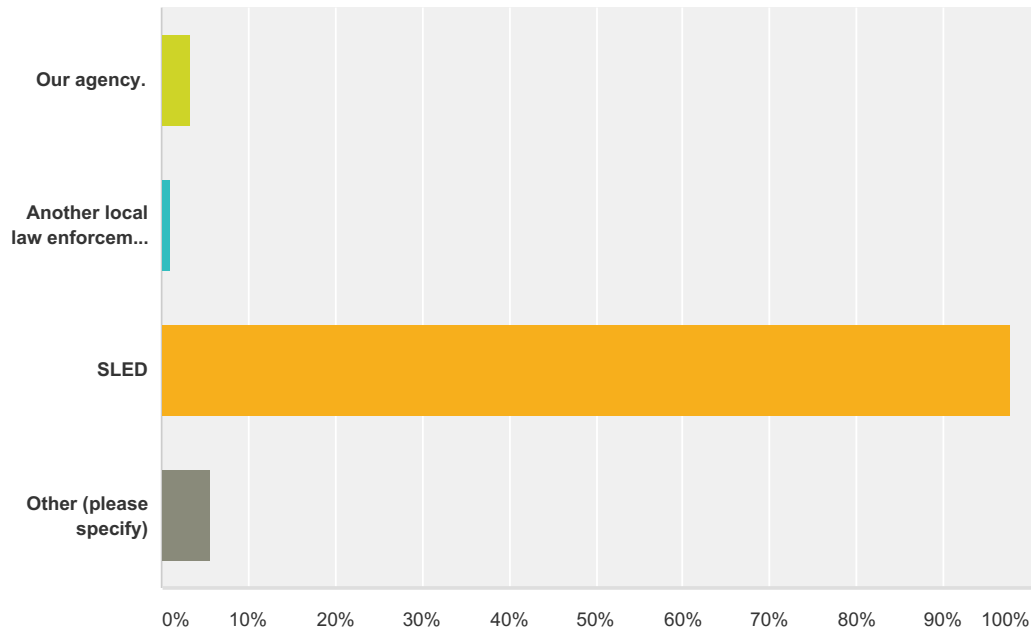
Answered: 88 Skipped: 2



Answer Choices	Responses	
At the crime scene.	13.64%	12
Meeting with investigators within a few days after a criminal allegation is made.	34.09%	30
Directing the investigation.	5.68%	5
Reviewing the investigative report.	61.36%	54
Asking for investigative follow-up.	35.23%	31
Making the final charging decision.	68.18%	60
Other (please specify)	26.14%	23
Total Respondents: 88		

Q23 If an officer-involved shooting occurs within your agency, what entity investigates?

Answered: 90 Skipped: 0



Answer Choices	Responses	
Our agency.	3.33%	3
Another local law enforcement agency.	1.11%	1
SLED	97.78%	88
Other (please specify)	5.56%	5
Total Respondents: 90		

Q24 Please add any additional comments that you believe need to be passed on but were not captured by this survey.

Answered: 11 Skipped: 79

Summary of survey of state Solicitor's Offices

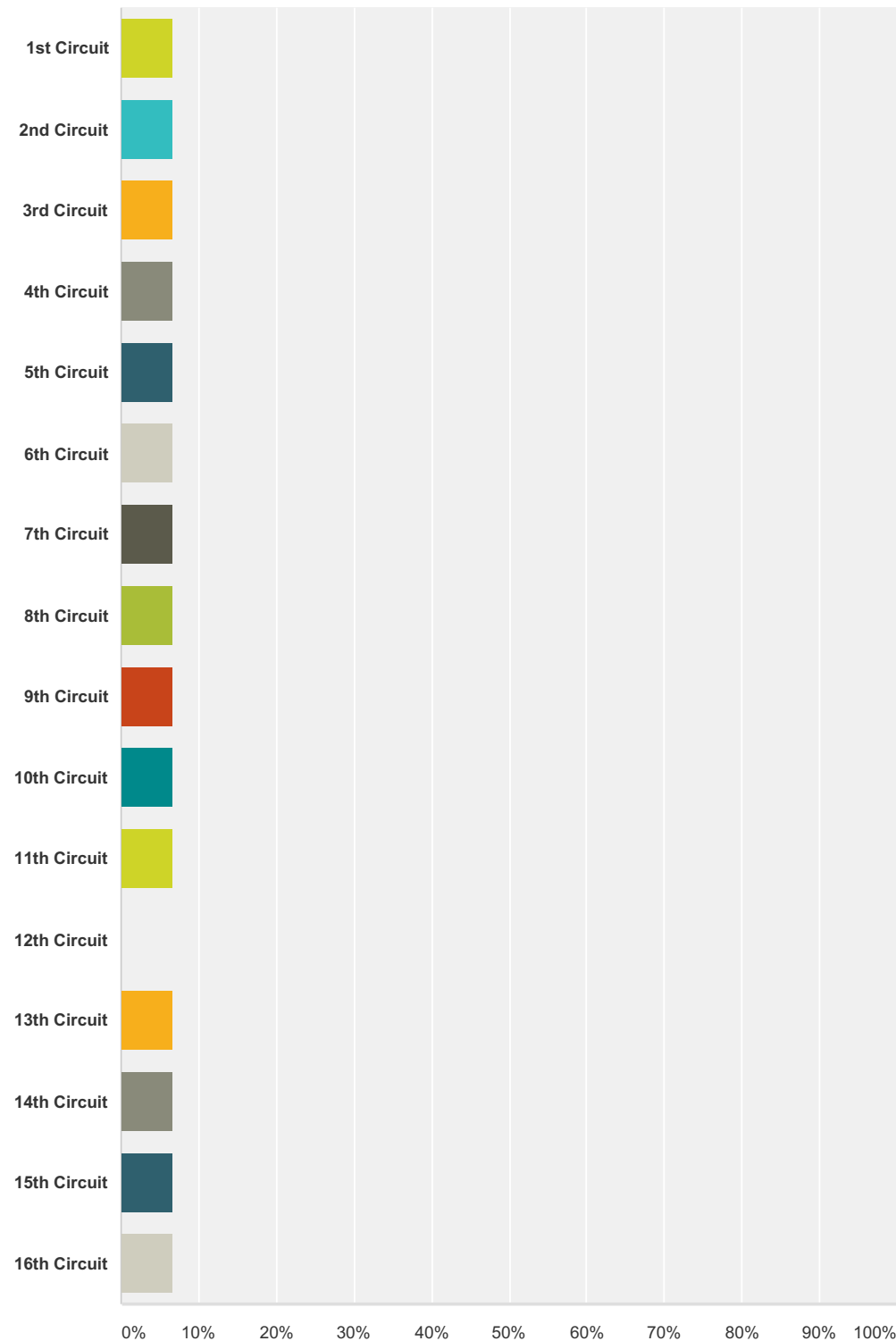
Solicitors from 15 of the state's 16 judicial circuits responded to a 12-question survey. Responses to all 12 questions are included in a [separate section](#).

Key findings:

- All responding solicitors indicated SLED investigates officer-involved shootings in their circuits, presumably on its own in most cases – a lone respondent indicated the agency employing the officer also participates, and a lone respondent indicated an agency within the circuit not involved in the shooting also participates.
- SLED also investigates all other criminal allegations against officers, although they are more likely to get an assist when the incident is not an officer-involved shooting. Three respondents indicated the agency employing the officer also participates, and two indicated another agency within the circuit participates.
- Eleven solicitors (78.57% of respondents) indicated their office handles prosecutions in officer-involved shootings unless a conflict is identified. One indicated all such cases are sent to the Attorney General's Office. When conflicts arise, 76.9% of respondents indicated their office forwards the case to either the Attorney General or another solicitor. No one said they employ a special prosecutor.
- Ten of the 15 responding solicitors said their office makes the decision on whether to bring charges in an officer-involved shooting; the remaining five indicated the investigating agency makes the decision.
- Although 13% of responding law-enforcement officials indicated their solicitor's office begins participating in the investigation at the crime scene when one of their officers is accused of a crime, none of the solicitors indicated they are involved at that point. By way of comparison, 28.57% of respondents in the national survey indicated prosecutors are involved at the crime scene when an officer is accused of a crime, and the number vaults to 73.17% of respondents for officer-involved shootings.

Q1 Please pick your Circuit from the Dropdown below.

Answered: 15 Skipped: 0



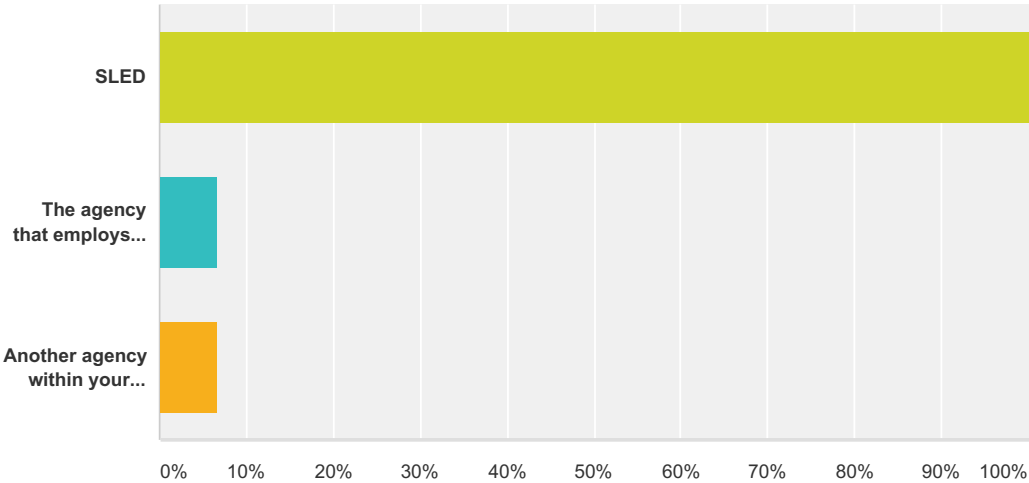
Answer Choices	Responses
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Officer Involved Shootings and Officer Involved Criminal Allegations

1st Circuit	6.67%	1
2nd Circuit	6.67%	1
3rd Circuit	6.67%	1
4th Circuit	6.67%	1
5th Circuit	6.67%	1
6th Circuit	6.67%	1
7th Circuit	6.67%	1
8th Circuit	6.67%	1
9th Circuit	6.67%	1
10th Circuit	6.67%	1
11th Circuit	6.67%	1
12th Circuit	0.00%	0
13th Circuit	6.67%	1
14th Circuit	6.67%	1
15th Circuit	6.67%	1
16th Circuit	6.67%	1
Total		15

Q2 Who investigates Officer Involved Shootings in your Circuit?Choose all that apply:

Answered: 15 Skipped: 0



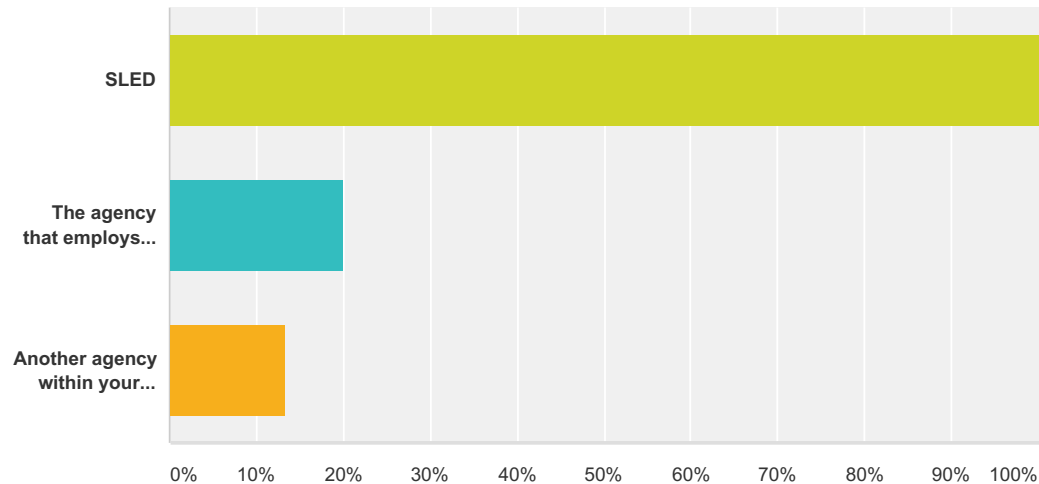
Answer Choices	Responses	
SLED	100.00%	15
The agency that employs the officer	6.67%	1
Another agency within your circuit that does not employ the officer	6.67%	1
Total Respondents: 15		

Q3 If there are agencies in your circuit that do not use SLED to investigate Officer Involved Shootings, please fill in the agency's name below:

Answered: 1 Skipped: 14

Q4 Who investigates allegations that an officer has committed a crime in your Circuit?Choose all that apply:

Answered: 15 Skipped: 0



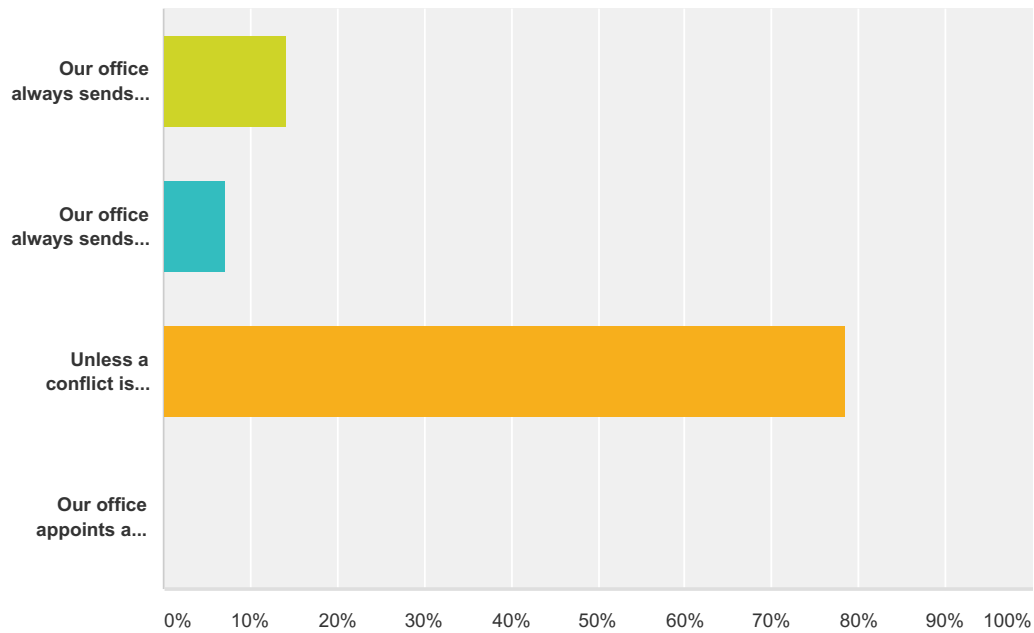
Answer Choices	Responses	
SLED	100.00%	15
The agency that employs the officer	20.00%	3
Another agency within your circuit that does not employ the officer	13.33%	2
Total Respondents: 15		

Q5 If there are agencies in your circuit that DO NOT use SLED to investigate allegations that an officer has committed a crime, please fill in the agency's name below:

Answered: 1 Skipped: 14

Q6 How does your office handle Officer Involved Shooting Investigations?

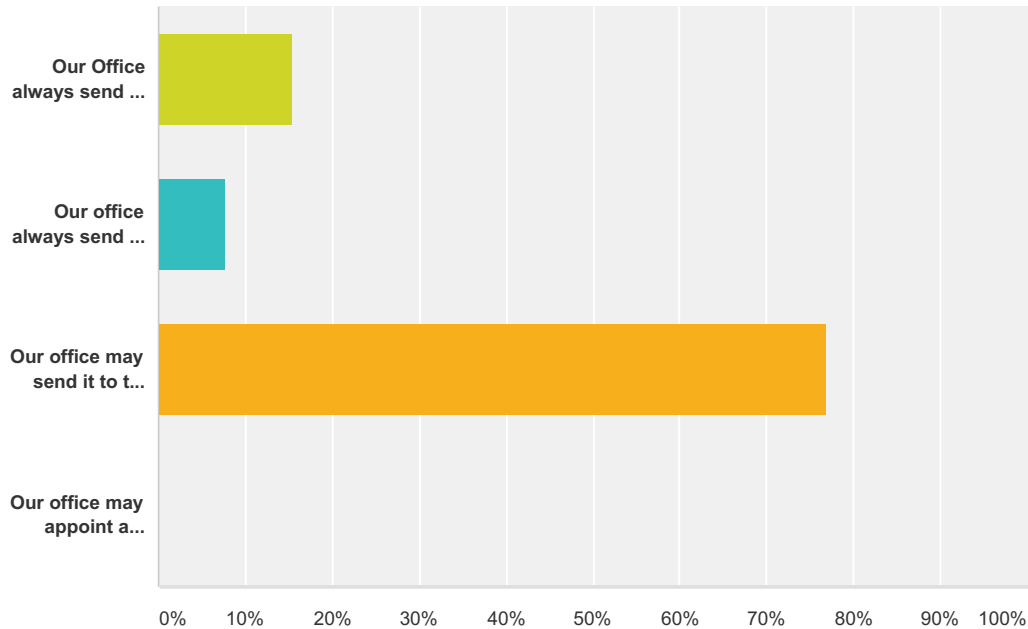
Answered: 14 Skipped: 1



Answer Choices	Responses	
Our office always sends the investigation to the AG for review regardless of whether there is a conflict.	14.29%	2
Our office always sends the investigation to another Solicitor's Office for review regardless of whether there is a conflict.	7.14%	1
Unless a conflict is identified, our office always reviews the investigation.	78.57%	11
Our office appoints a Special Prosecutor to review Officer Involved Investigations	0.00%	0
Total		14

Q7 If your office usually reviews Officer Involved Shooting cases unless there is a conflict, who do you send it to for review when there is a conflict?

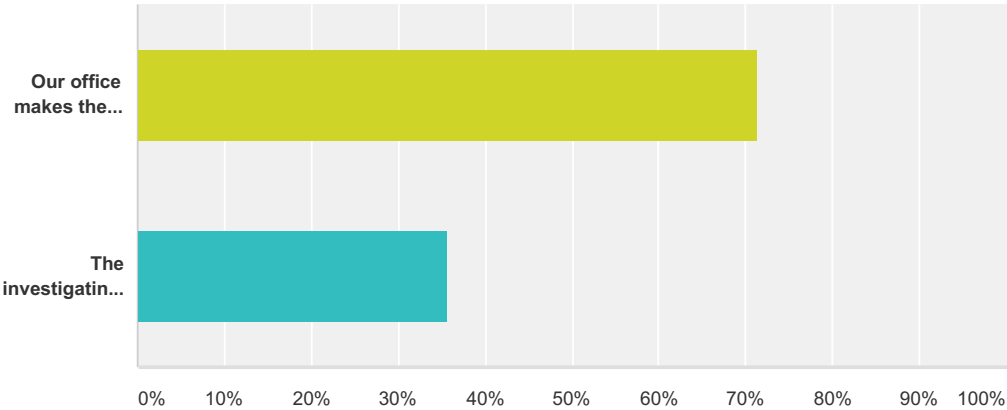
Answered: 13 Skipped: 2



Answer Choices	Responses	
Our Office always send it to the Attorney General's Office	15.38%	2
Our office always send it to another Solicitor's Office	7.69%	1
Our office may send it to the Attorney General's Office or another Solicitor's Office (depends on the case).	76.92%	10
Our office may appoint a Special Prosecutor	0.00%	0
Total Respondents: 13		

Q8 In Officer Involved Shooting Investigations, who makes the final decision of whether the officer gets charged?

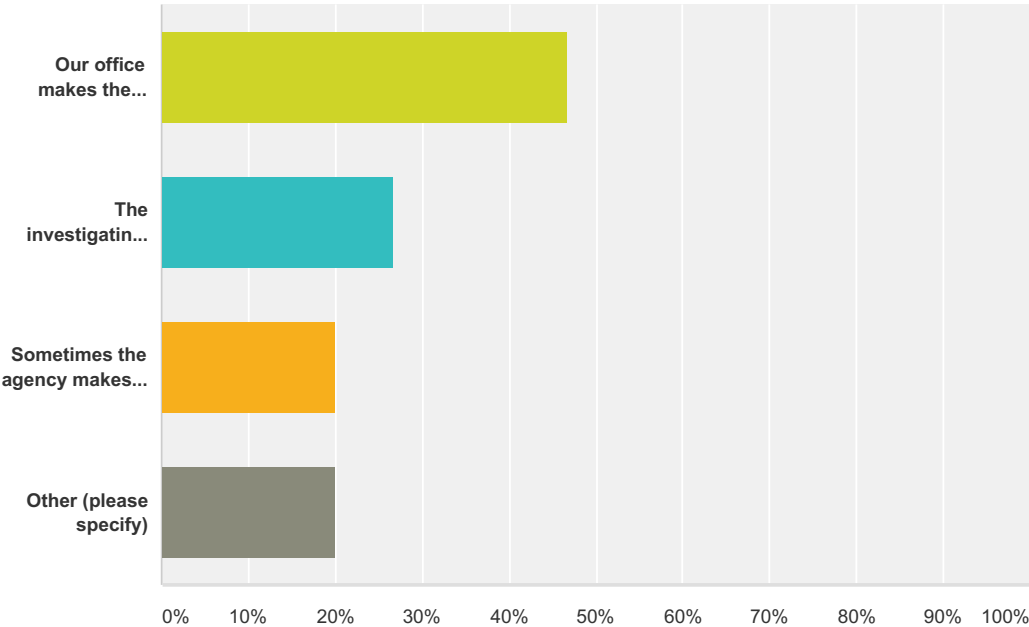
Answered: 14 Skipped: 1



Answer Choices	Responses	
Our office makes the decision on whether to bring charges	71.43%	10
The investigating agency makes the decision on whether to bring charges	35.71%	5
Total Respondents: 14		

Q9 In investigations of Officer Involved Criminal Activity, who makes the final decision on whether the officer gets charged?

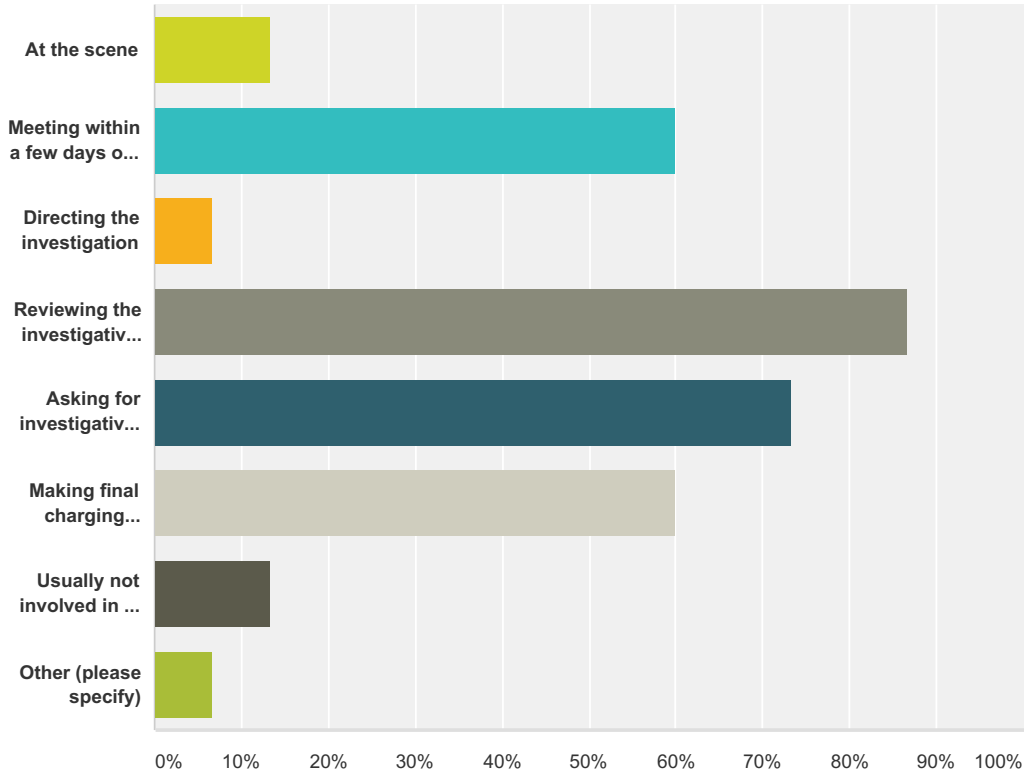
Answered: 15 Skipped: 0



Answer Choices	Responses	
Our office makes the decision on whether to bring charges	46.67%	7
The investigating agency makes the decision on whether to bring charges	26.67%	4
Sometimes the agency makes the decision, sometimes our office makes the decision. Depends on which agency or depends on the case.	20.00%	3
Other (please specify)	20.00%	3
Total Respondents: 15		

Q10 How involved are you in investigations of Officer Involved Shootings? Check all that apply.

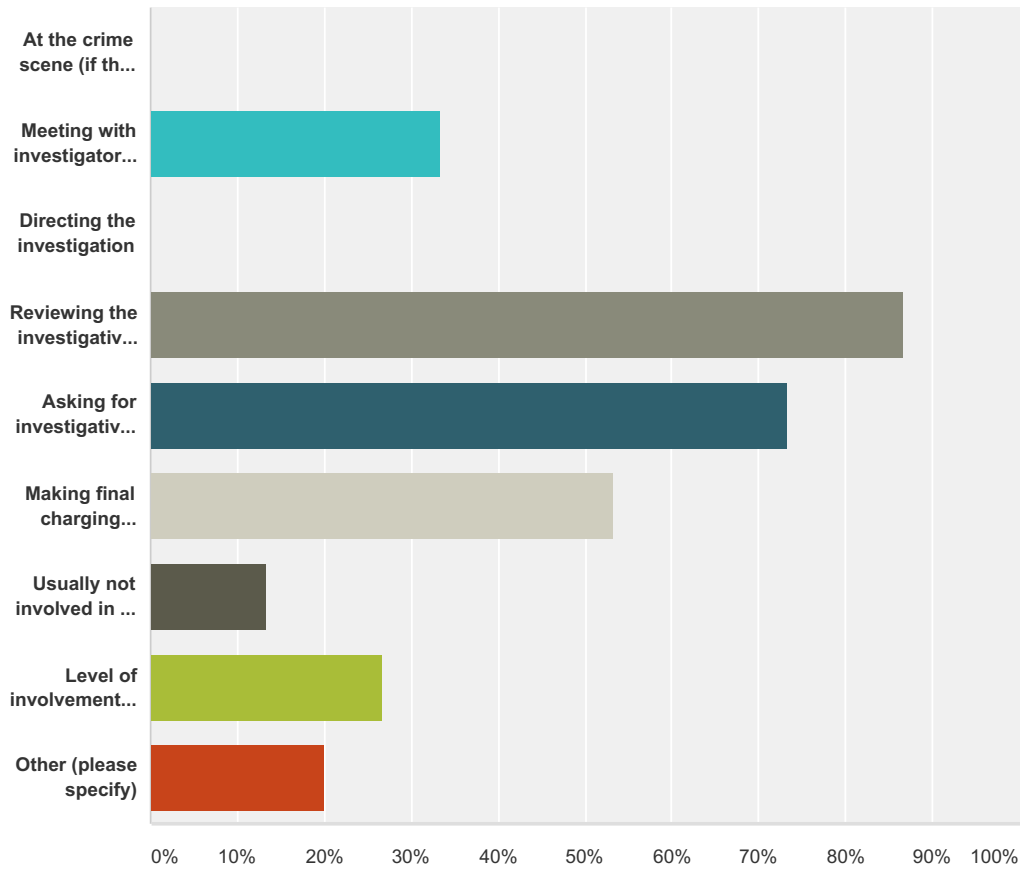
Answered: 15 Skipped: 0



Answer Choices	Responses
At the scene	13.33% 2
Meeting within a few days of the shooting with investigators	60.00% 9
Directing the investigation	6.67% 1
Reviewing the investigative report	86.67% 13
Asking for investigative follow-up	73.33% 11
Making final charging decision	60.00% 9
Usually not involved in the investigations of Officer Involved Shootings	13.33% 2
Other (please specify)	6.67% 1
Total Respondents: 15	

Q11 How involved are you in investigations of Officer Involved Criminal Activity?
Check all that apply.

Answered: 15 Skipped: 0



Answer Choices	Responses
At the crime scene (if there is one)	0.00% 0
Meeting with investigators within a few days after the allegation is made	33.33% 5
Directing the investigation	0.00% 0
Reviewing the investigative report	86.67% 13
Asking for investigative follow-up	73.33% 11
Making final charging decision	53.33% 8
Usually not involved in an investigation of Officer Involved Criminal Activity	13.33% 2
Level of involvement depends on which agency it is or on what type of case it is	26.67% 4
Other (please specify)	20.00% 3
Total Respondents: 15	

Q12 What mechanisms are in place to ensure that all complaints made about law enforcement are investigated?

Answered: 13 Skipped: 2

Summary of survey of national prosecutors

Officials from 42 prosecutors offices from around the country responded to a 22-question survey. They represented 42 states. Responses to all 22 questions are included in a [separate section](#).

Key findings:

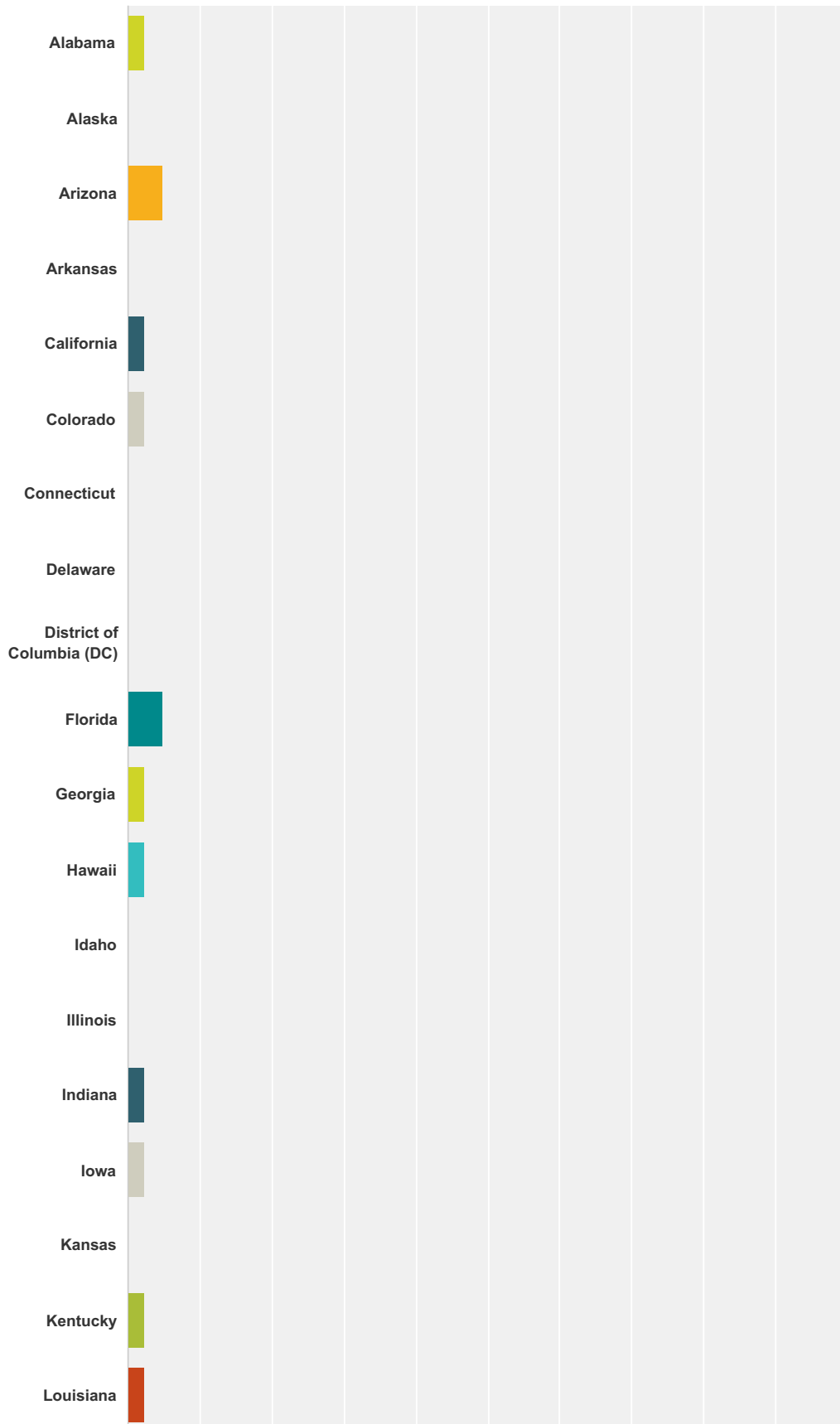
- 59.52% of respondents indicated a state-level investigative agency investigates officer-involved shootings. This was the most-selected reply to a question that asked respondents to click all answers that apply, however, it was far less than the nearly unanimous selection of SLED in the two surveys of South Carolina officials.
- By the same token, “the agency where the officer is employed” was selected by 52.38% of respondents, a much higher number than the corresponding answer on South Carolina surveys.
- The breakdown among national respondents was similar when asked who investigates any crime allegation involving an officer.
- 83.33% of respondents indicated their office reviews the results of officer-involved shooting investigations; none said they always send the investigation to another prosecutor’s office for review, whether there is a conflict or not.
- 22.5% indicated that when a conflict arises, prosecution in officer-involved shootings is handled by a special prosecutor. No one in South Carolina indicated special prosecutors are used in these cases.
- Only 4.76% of respondents indicated the agency investigating officer-involved shootings makes the decision about whether to make a charge. By comparison, that number was 35.7% among South Carolina respondents.
- Only 12.2% of respondents indicated their office uses an investigative grand jury to make a decision about whether to prosecute in an officer-involved shooting case, and only 26.83% indicated they used a screening grand jury.
- 85.71% of respondents indicated their office handles the prosecution of officer-involved shootings if charges are made; 16.67% indicated a prosecutor from their state Attorney General handles the case, and 23.81% indicated a prosecutor from another jurisdiction handles the case. There could be some overlap in prosecutorial responsibility, however, as 40.48% selected “other.”)
- Only 24.39% of respondents said their office follows written procedural guidelines in officer-involved shooting cases. The number dropped to 7.14% when asked about following written guidelines for general criminal allegations against an officer.
- Only 7.14% of respondents indicated their state has procedures to dictate how they handle officer-involved shootings.

**Q1 Please enter the name of your
Office/Agency:**

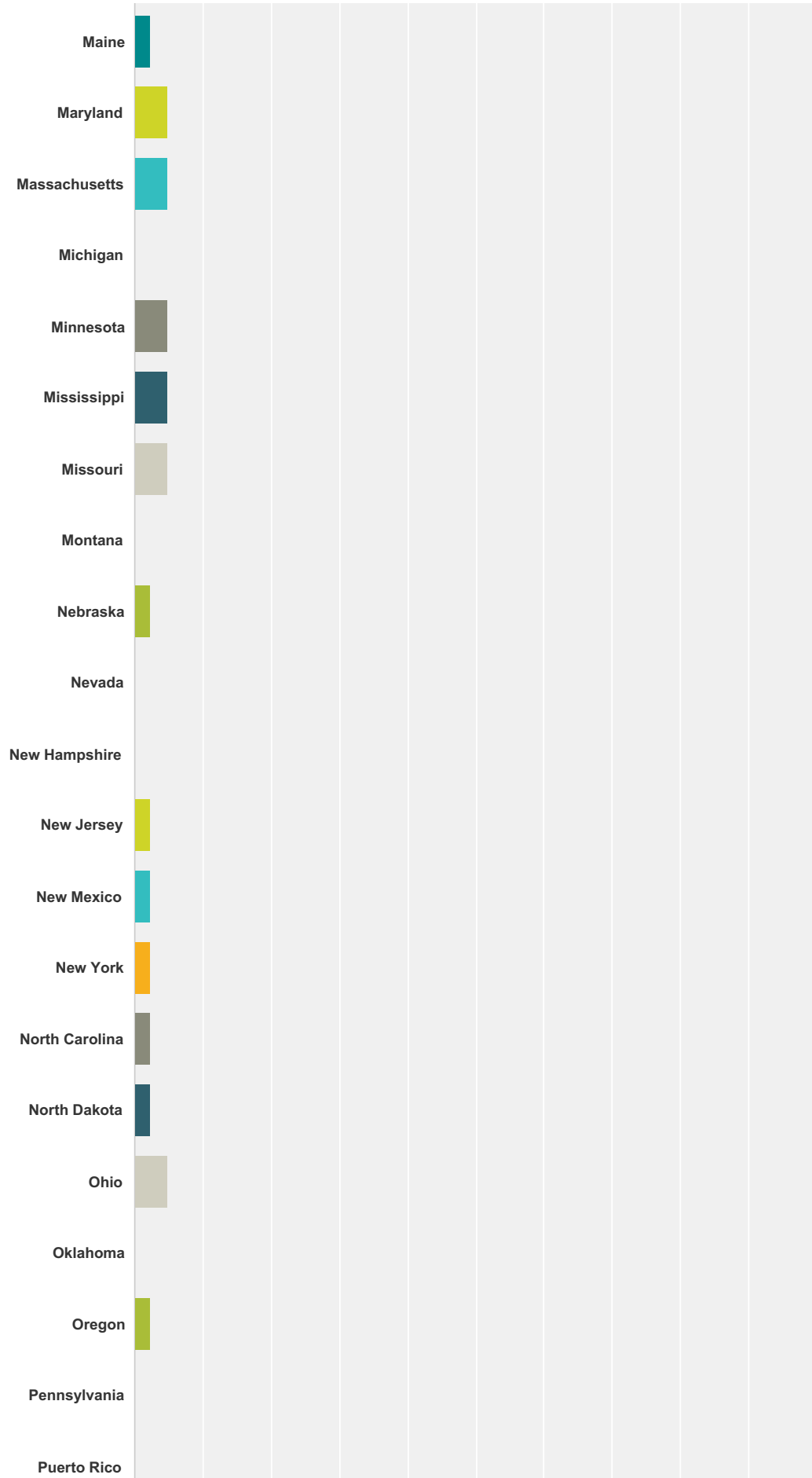
Answered: 42 Skipped: 0

Q2 Please pick which state you are in:

Answered: 42 Skipped: 0



Officer Involved Shootings-U.S. Survey



Officer Involved Shootings-U.S. Survey



Answer Choices	Responses
Alabama	2.38% 1
Alaska	0.00% 0
Arizona	4.76% 2
Arkansas	0.00% 0
California	2.38% 1
Colorado	2.38% 1
Connecticut	0.00% 0
Delaware	0.00% 0
District of Columbia (DC)	0.00% 0
Florida	4.76% 2
Georgia	2.38% 1

Officer Involved Shootings-U.S. Survey

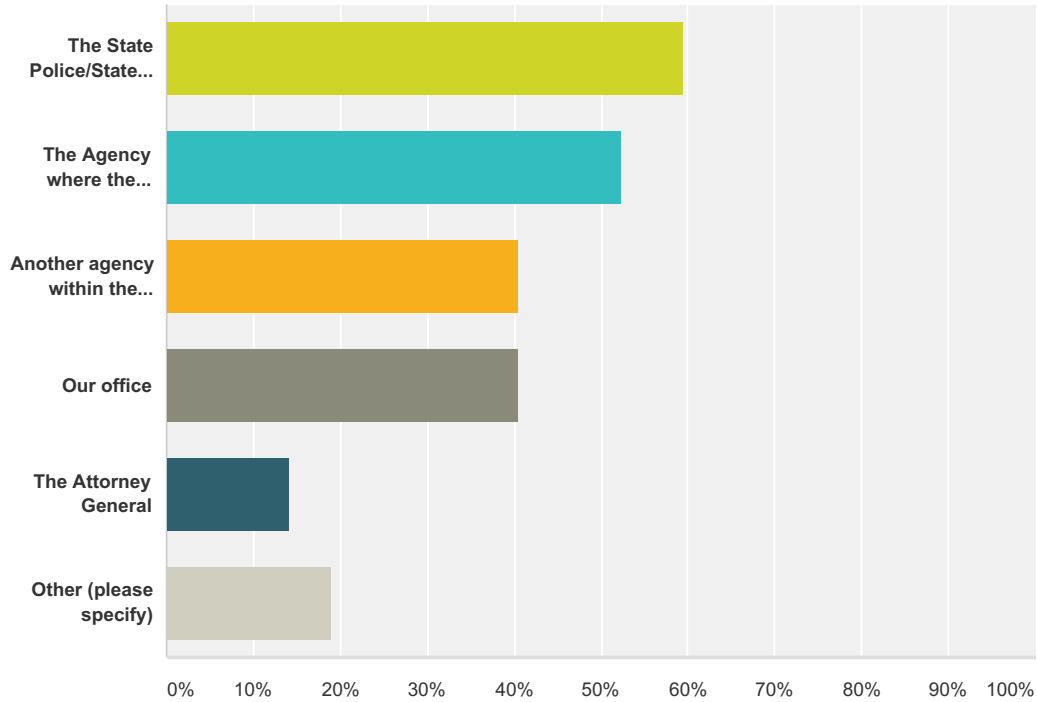
Hawaii	2.38%	1
Idaho	0.00%	0
Illinois	0.00%	0
Indiana	2.38%	1
Iowa	2.38%	1
Kansas	0.00%	0
Kentucky	2.38%	1
Louisiana	2.38%	1
Maine	2.38%	1
Maryland	4.76%	2
Massachusetts	4.76%	2
Michigan	0.00%	0
Minnesota	4.76%	2
Mississippi	4.76%	2
Missouri	4.76%	2
Montana	0.00%	0
Nebraska	2.38%	1
Nevada	0.00%	0
New Hampshire	0.00%	0
New Jersey	2.38%	1
New Mexico	2.38%	1
New York	2.38%	1
North Carolina	2.38%	1
North Dakota	2.38%	1
Ohio	4.76%	2
Oklahoma	0.00%	0
Oregon	2.38%	1
Pennsylvania	0.00%	0
Puerto Rico	0.00%	0
Rhode Island	0.00%	0
South Carolina	2.38%	1
South Dakota	2.38%	1
Tennessee	2.38%	1
Texas	2.38%	1
Utah	0.00%	0

Officer Involved Shootings-U.S. Survey

Vermont	0.00%	0
Virginia	4.76%	2
Washington	2.38%	1
West Virginia	2.38%	1
Wisconsin	0.00%	0
Wyoming	2.38%	1
Total		42

Q3 In your jurisdiction, who investigates Law Enforcement Officer Involved Shootings? Choose all that apply:

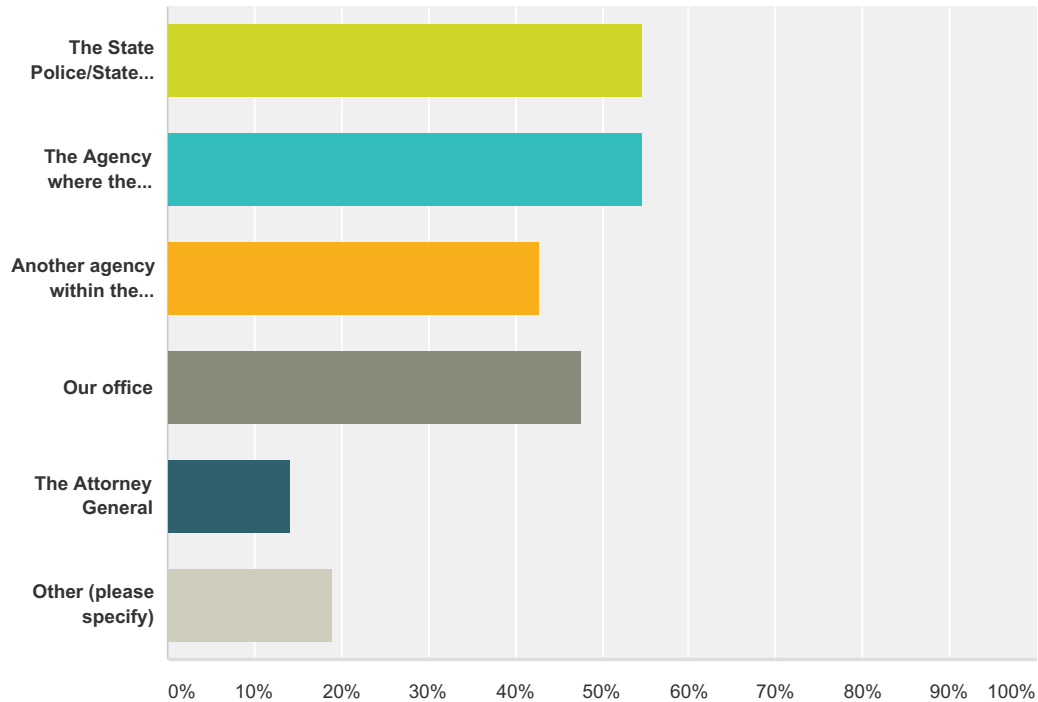
Answered: 42 Skipped: 0



Answer Choices	Responses	
The State Police/State Investigative Agency	59.52%	25
The Agency where the officer is employed	52.38%	22
Another agency within the jurisdiction that does not employ the officer	40.48%	17
Our office	40.48%	17
The Attorney General	14.29%	6
Other (please specify)	19.05%	8
Total Respondents: 42		

Q4 In your jurisdiction, who investigates allegations that a law enforcement officer has committed a crime? Choose all that apply:

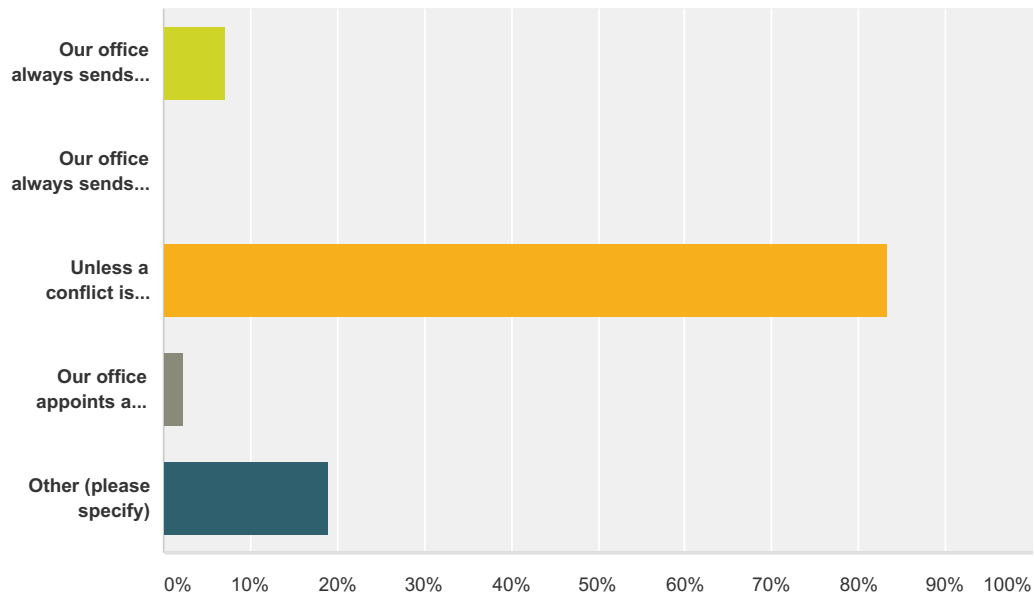
Answered: 42 Skipped: 0



Answer Choices	Responses	
The State Police/State Investigative Agency	54.76%	23
The Agency where the officer is employed	54.76%	23
Another agency within the jurisdiction that does not employ the officer	42.86%	18
Our office	47.62%	20
The Attorney General	14.29%	6
Other (please specify)	19.05%	8
Total Respondents: 42		

Q5 How does your office handle Officer Involved Shooting Investigations?

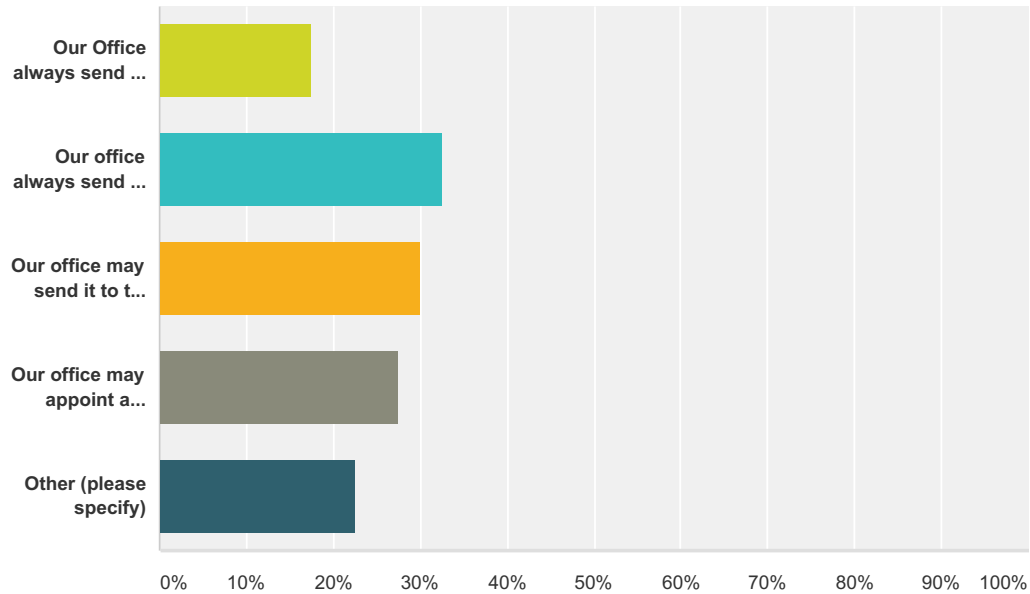
Answered: 42 Skipped: 0



Answer Choices	Responses	
Our office always sends the investigation to the Attorney General for review regardless of whether there is a conflict.	7.14%	3
Our office always sends the investigation to another District Attorney/Prosecuting Attorney for review regardless of whether there is a conflict.	0.00%	0
Unless a conflict is identified, our office always reviews the investigation.	83.33%	35
Our office appoints a Special Prosecutor to review Officer Involved Shooting Investigations	2.38%	1
Other (please specify)	19.05%	8
Total Respondents: 42		

Q6 If your office usually reviews Officer Involved Shooting cases unless there is a conflict, who do you send it to for review when there is a conflict?

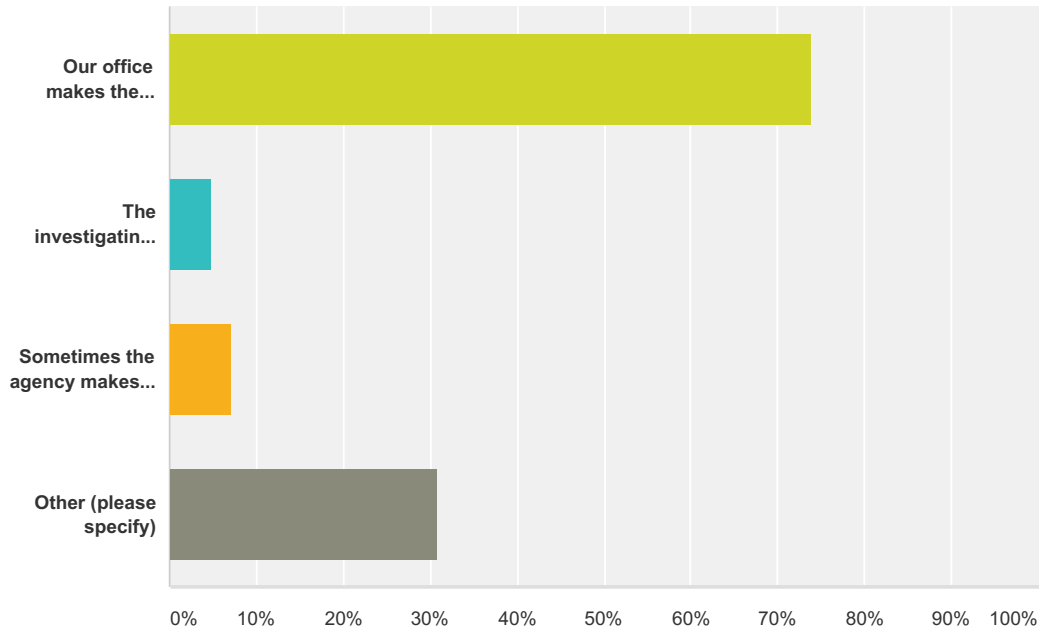
Answered: 40 Skipped: 2



Answer Choices	Responses	
Our Office always send it to the Attorney General's Office	17.50%	7
Our office always send it to another District Attorney/Prosecuting Attorney	32.50%	13
Our office may send it to the Attorney General's Office or another District Attorney/Prosecuting Attorney (depends on the case).	30.00%	12
Our office may appoint a Special Prosecutor	27.50%	11
Other (please specify)	22.50%	9
Total Respondents: 40		

Q7 In Officer Involved Shooting Investigations, who makes the final decision of whether the officer gets charged?

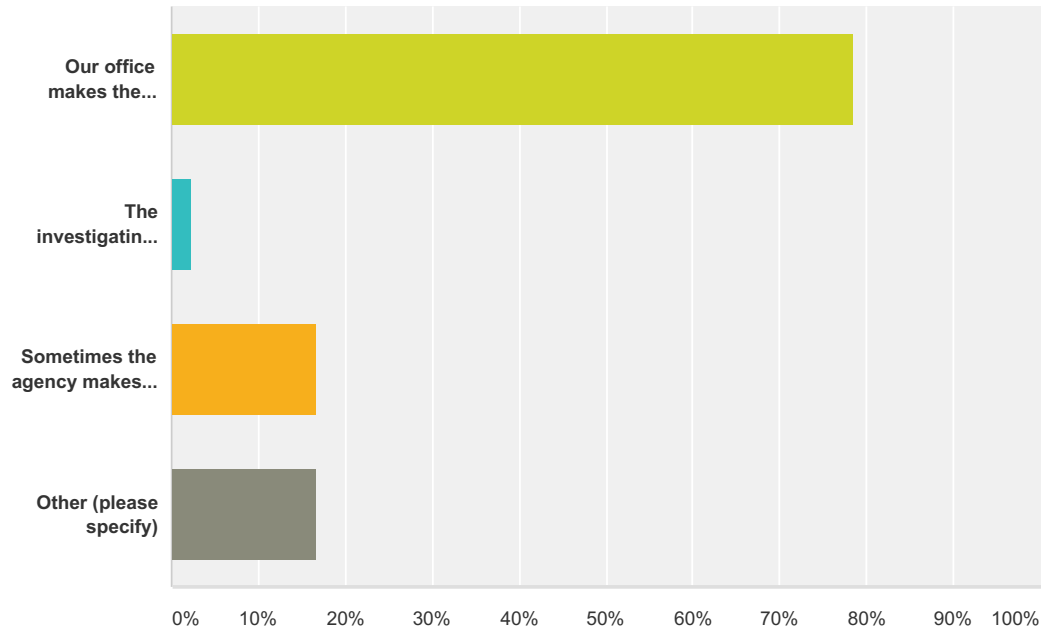
Answered: 42 Skipped: 0



Answer Choices	Responses	
Our office makes the decision on whether to bring charges	73.81%	31
The investigating agency makes the decision on whether to bring charges	4.76%	2
Sometimes the agency makes the decision, sometimes our office makes the decision. Depends on which agency or depends on the case	7.14%	3
Other (please specify)	30.95%	13
Total Respondents: 42		

Q8 In investigations of Officer Involved Criminal Activity, who makes the final decision on whether the officer gets charged?

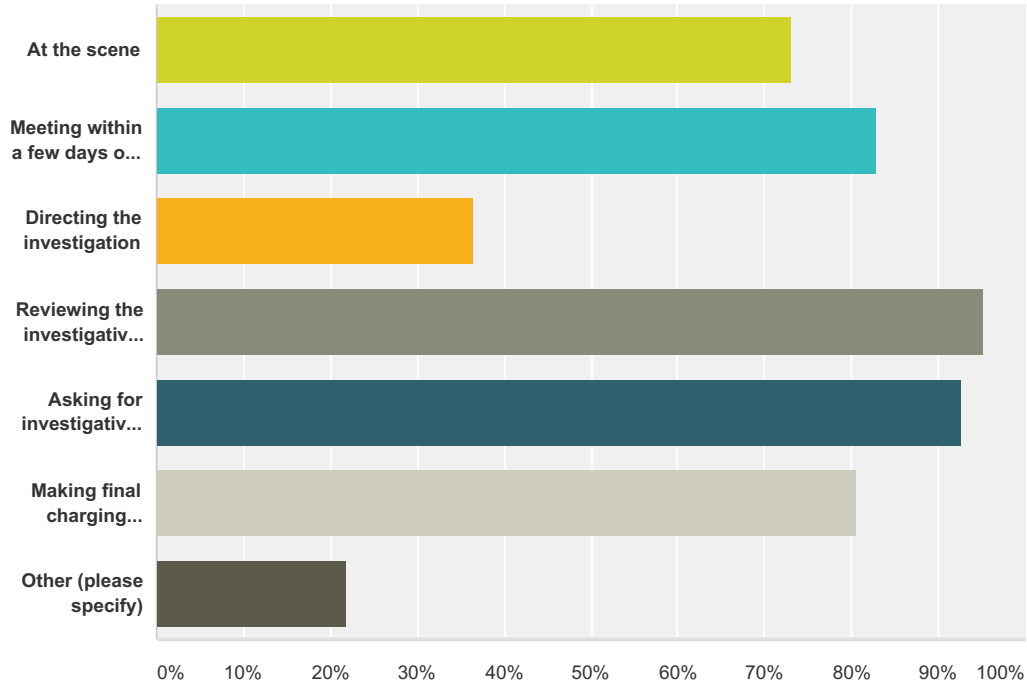
Answered: 42 Skipped: 0



Answer Choices	Responses	
Our office makes the decision on whether to bring charges	78.57%	33
The investigating agency makes the decision on whether to bring charges	2.38%	1
Sometimes the agency makes the decision, sometimes our office makes the decision. Depends which agency or depends on the case	16.67%	7
Other (please specify)	16.67%	7
Total Respondents: 42		

Q9 How involved are you in investigations of Officer Involved Shootings? Check all that apply.

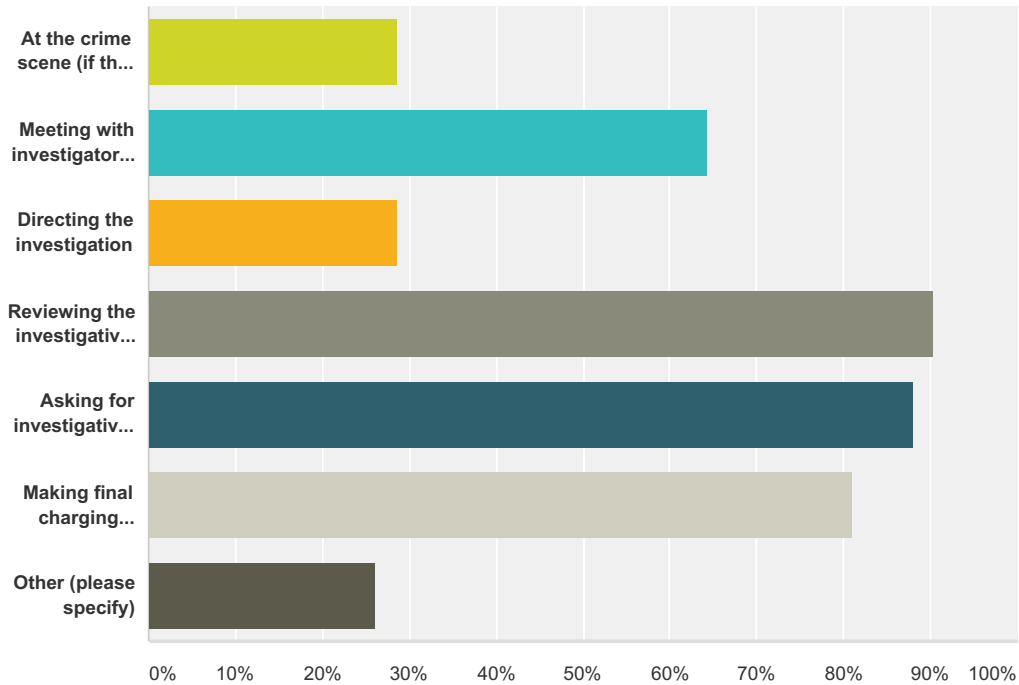
Answered: 41 Skipped: 1



Answer Choices	Responses	
At the scene	73.17%	30
Meeting within a few days of the shooting with investigators	82.93%	34
Directing the investigation	36.59%	15
Reviewing the investigative report	95.12%	39
Asking for investigative follow-up	92.68%	38
Making final charging decision	80.49%	33
Other (please specify)	21.95%	9
Total Respondents: 41		

Q10 How involved are you in investigations of allegations that a law enforcement officer engaged in criminal activity? Check all that apply.

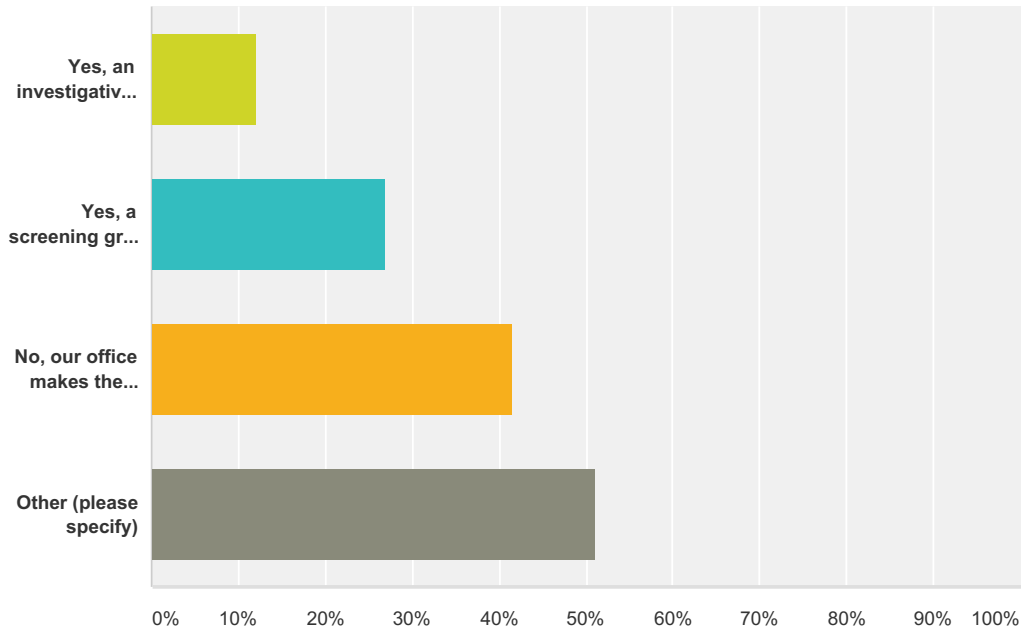
Answered: 42 Skipped: 0



Answer Choices	Responses	
At the crime scene (if there is one)	28.57%	12
Meeting with investigators within a few days after the allegation is made	64.29%	27
Directing the investigation	28.57%	12
Reviewing the investigative report	90.48%	38
Asking for investigative follow-up	88.10%	37
Making final charging decision	80.95%	34
Other (please specify)	26.19%	11
Total Respondents: 42		

Q11 If your offices handles an Officer Involved Shooting, do you use a grand jury to make the decision of whether to prosecute?

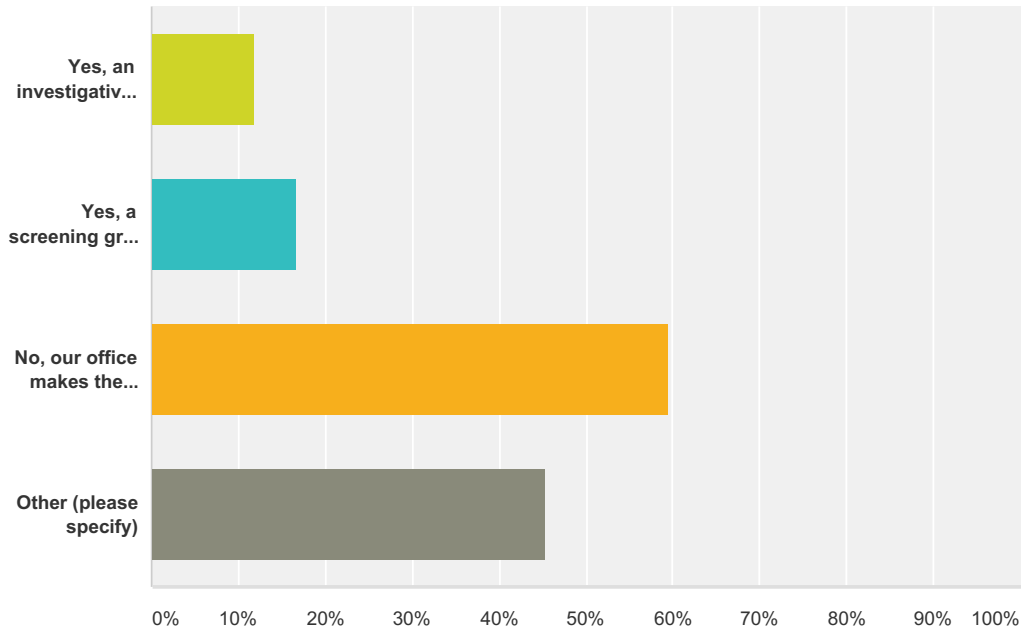
Answered: 41 Skipped: 1



Answer Choices	Responses	
Yes, an investigative grand jury	12.20%	5
Yes, a screening grand jury that only reviews the completed investigation	26.83%	11
No, our office makes the decision without a grand jury.	41.46%	17
Other (please specify)	51.22%	21
Total Respondents: 41		

Q12 If your offices handles allegations that a law enforcement officer engaged in criminal activity, do you use a grand jury to make the decision of whether to prosecute?

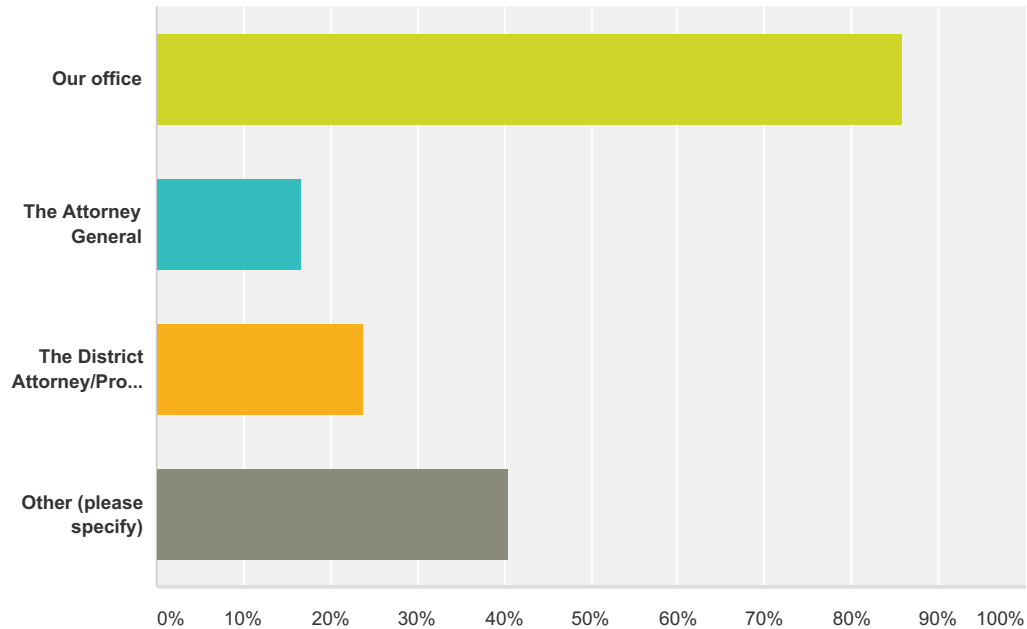
Answered: 42 Skipped: 0



Answer Choices	Responses	
Yes, an investigative grand jury	11.90%	5
Yes, a screening grand jury that only reviews the completed investigation	16.67%	7
No, our office makes the decision without a grand jury.	59.52%	25
Other (please specify)	45.24%	19
Total Respondents: 42		

Q13 If charges are brought, who prosecutes Law Enforcement Officer Involved Shooting cases that occurred within your jurisdiction?

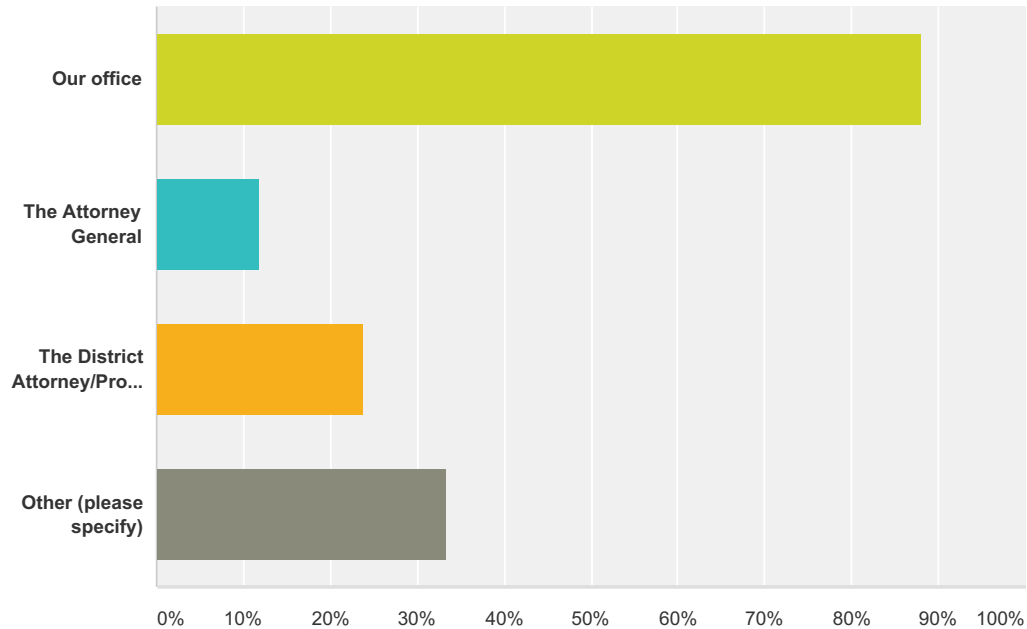
Answered: 42 Skipped: 0



Answer Choices	Responses	
Our office	85.71%	36
The Attorney General	16.67%	7
The District Attorney/Prosecuting Attorney from another jurisdiction	23.81%	10
Other (please specify)	40.48%	17
Total Respondents: 42		

Q14 If charges are brought, who prosecutes crimes alleged to have been committed by a Law Enforcement Officer employed within your jurisdiction?

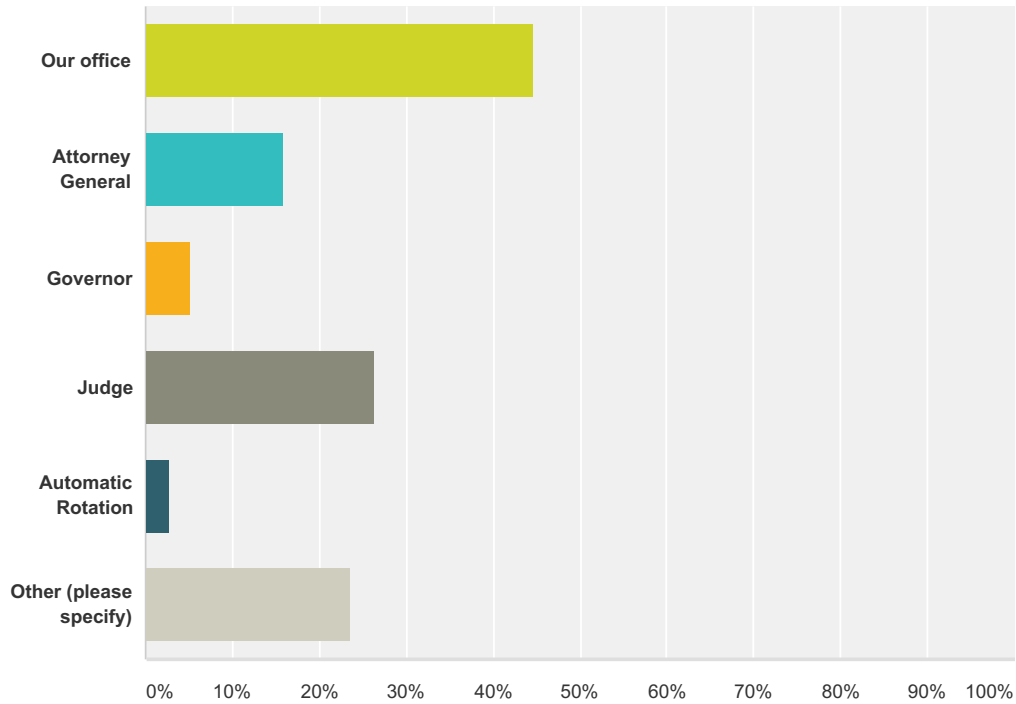
Answered: 42 Skipped: 0



Answer Choices	Responses	
Our office	88.10%	37
The Attorney General	11.90%	5
The District Attorney/Prosecuting Attorney from another jurisdiction	23.81%	10
Other (please specify)	33.33%	14
Total Respondents: 42		

Q15 If the District Attorney/Prosecuting Attorney from another jurisdiction or a Special Prosecutor is used in either Officer Involved Shooting cases or crimes committed by an Officer, who chooses?

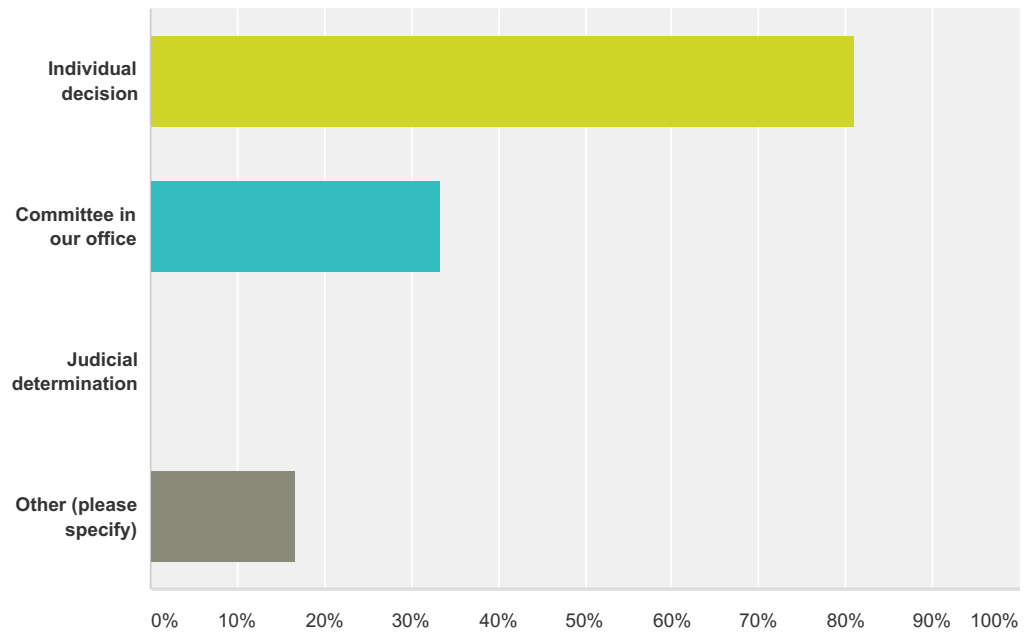
Answered: 38 Skipped: 4



Answer Choices	Responses	
Our office	44.74%	17
Attorney General	15.79%	6
Governor	5.26%	2
Judge	26.32%	10
Automatic Rotation	2.63%	1
Other (please specify)	23.68%	9
Total Respondents: 38		

Q16 How do you determine if your office has a conflict?

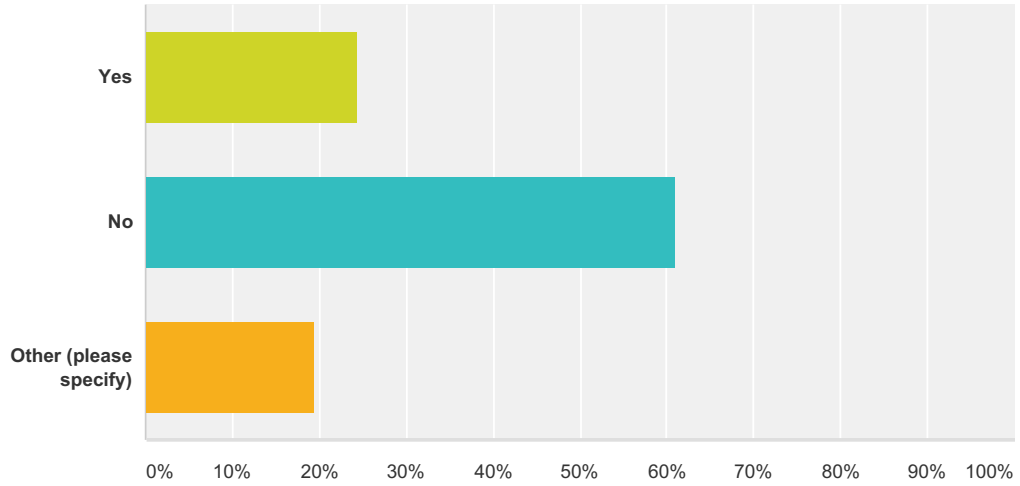
Answered: 42 Skipped: 0



Answer Choices	Responses	
Individual decision	80.95%	34
Committee in our office	33.33%	14
Judicial determination	0.00%	0
Other (please specify)	16.67%	7
Total Respondents: 42		

Q17 Do you follow written procedural guidelines in Officer Involved Shooting cases?

Answered: 41 Skipped: 1



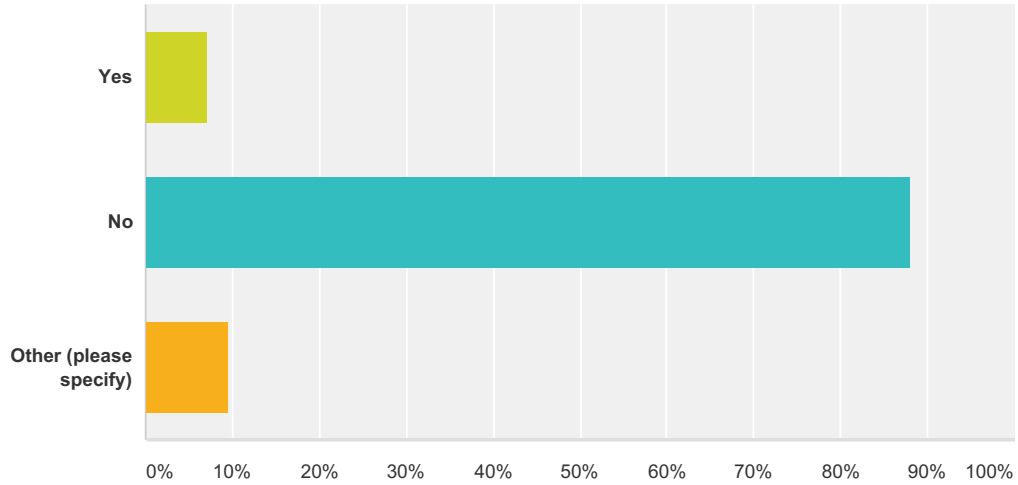
Answer Choices	Responses	
Yes	24.39%	10
No	60.98%	25
Other (please specify)	19.51%	8
Total Respondents: 41		

**Q18 If you follow written guidelines in
Officer Involved Shooting cases, where did
the written guidelines originate?**

Answered: 15 Skipped: 27

Q19 Do you follow written procedural guidelines in cases where a criminal allegation has been made against an officer?

Answered: 42 Skipped: 0



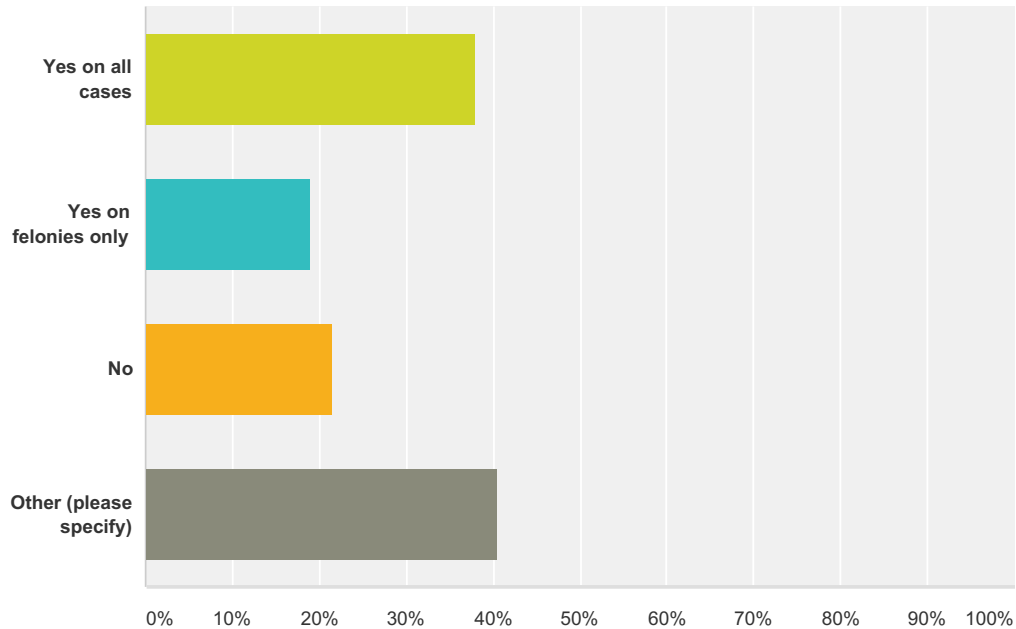
Answer Choices	Responses	
Yes	7.14%	3
No	88.10%	37
Other (please specify)	9.52%	4
Total Respondents: 42		

Q20 If you follow written guidelines in cases where a criminal allegation has been made against an officer, where did the written guidelines originate?

Answered: 9 Skipped: 33

Q21 Do you normally authorize warrants or give permission to seek warrants for ordinary crimes where officers are not involved?

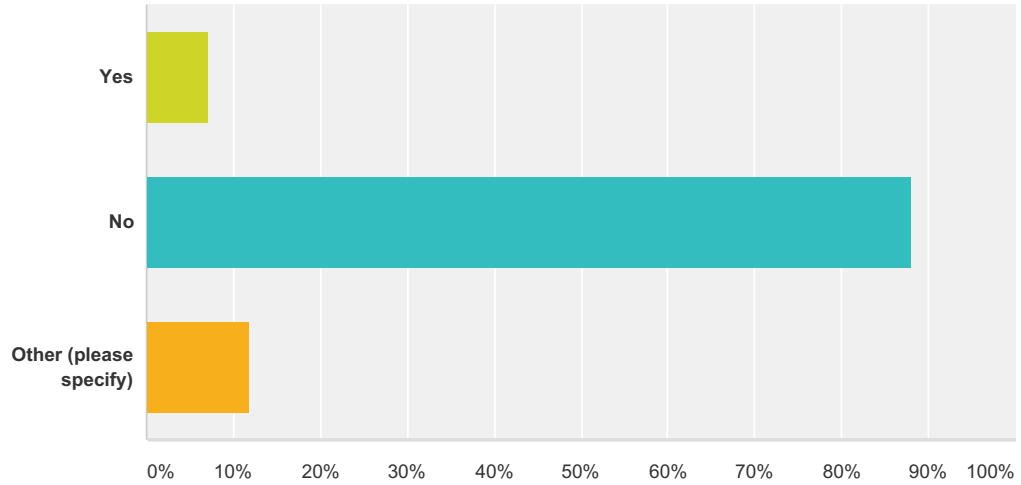
Answered: 42 Skipped: 0



Answer Choices	Responses	
Yes on all cases	38.10%	16
Yes on felonies only	19.05%	8
No	21.43%	9
Other (please specify)	40.48%	17
Total Respondents: 42		

Q22 Does your state have a set procedure that dictates how every District Attorney/Prosecuting Attorney handles Officer Involved Shooting Cases?

Answered: 42 Skipped: 0



Answer Choices	Responses	
Yes	7.14%	3
No	88.10%	37
Other (please specify)	11.90%	5
Total Respondents: 42		

The Boston model

Who secures the crime scene?: The Boston PD, under supervision of the district attorney. (Can work a bit differently in less-populous areas of Massachusetts.)

Who processes the crime scene?: The Boston PD, under supervision of the district attorney. (Can work a bit differently in less-populous areas of Massachusetts.)

Who leads the investigation?: The District Attorney oversees *all* death investigations in Massachusetts, including officer-involved shootings, as District Attorney Daniel P. Conley notes in [an article](#) in the first-quarter 2015 edition of *The Prosecutor*. Typically, the investigation is conducted by state police under the DA's direction.

Investigative grand jury?: Available. Can be empaneled at the discretion of the district attorney. However, Conley argues it is not particularly useful in officer-involved shootings. That is because officers usually speak willingly to investigators and hand over notes, dispatch and transmission records, recordings, and other information without a subpoena. Facts of the case are seldom in dispute; rather, these cases more often hinge on whether the officer's actions were justified as a matter of law, Conley writes. In fact, because grand jury proceedings are secret, empaneling one can actually harm efforts to keep the public informed.

Who handles the prosecution?: The district attorney.

Transparency measures: DA meets with family of deceased before announcement of charging decision, usually with their civil counsel present. They are provided a complete copy of the investigative file. A meeting with a panel of community leaders follows, often including representatives of groups such as the ACLU and NAACP. A detailed, analytical report is posted to the DA's website for public viewing. The entire investigative file is opened up to the media.

Notes: Because most of the state's cities and towns are small to mid-sized, the state's district attorneys typically designate teams of state-police detectives to work with senior-level prosecutors to conduct death investigations. Only three cities have police departments large and sophisticated enough for a district attorney to designate their detectives for homicide investigations. The largest, Boston, is among them.

Boston has its own unit for OIS shootings. When a Boston officer uses lethal force, the unit works with a senior prosecutor to process the scene, gather evidence, interview witnesses, and document each step taken or not taken.

Statistically, most Boston officers involved in a shooting are patrol officers out of district stations on the anti-gang unit. Seldom will they know one of the high-ranking members of the homicide unit, so there's little personal incentive to hedge on an investigation. What's more, because investigators document not only the evidence but the procedures they use to collect it, it's unlikely the unit could soft pedal its findings.

Boston model, primary sources

(From "Prosecutor, Journal of the National District Attorneys Association"; January 1, 2015;
Daniel F. Conely)

Investigating Police-Involved Fatalities: *The Boston Model*

BY DANIEL F. CONLEY

THE TURMOIL THAT GRIPPED Ferguson, Missouri, and so many other cities last year after the fatal shooting of an African-American teenager by a white police officer, and again after a grand jury declined to return indictments in the case, brought unprecedented national attention to police-involved fatalities and the prosecutor's role in investigating them. In the weeks and months that followed, events in other cities across the country that might once have been considered isolated incidents instead became sequential flashpoints in an ongoing examination of racial disparities in the criminal justice system.

For big-city prosecutors, these cases do not reflect a new phenomenon. More than ever, though, the question is being raised as to whether we can investigate them fairly and impartially when we work closely with the police departments in question. Of course there exists a close working relationship between many police departments and prosecuting offices. Police and prosecutors both occupy one end of the criminal justice system, while judges, defense attorneys, and others occupy their own places on the spectrum. But our roles are nonetheless distinct, and many prosecutors are rightly offended at the notion that they lack independence, knowing all too well the ongoing and underlying tensions that exist between prosecutors and police, with each zealously guarding their own prerogatives and authority. Rather than simply dismiss questions of prosecutorial independence, however, it's up to the leaders of our profession to answer them openly and to demonstrate to the communities we serve that there is one system of justice for all of us, sworn or civilian, and that we approach every case openly, honestly, and impartially. In Boston, we've

striven to accomplish this by creating a true culture of transparency.

THE BOSTON MODEL

Under Massachusetts law, the district attorney directs and controls all death investigations. The law makes no distinction between deaths that arise from the police use of force and those that don't. Because instances of police use of force invite so much attention and can have a major impact on the relationship between law enforcement agencies and the communities they serve, the manner in which we undertake these investigations is designed to stress the impartial and independent nature of our investigation. First and foremost, at the very outset I assign them to one of only a handful of the most proven, experienced, homicide-qualified prosecutors in my office. These prosecutors answer directly to me and act as my personal representatives with the investigators on the ground.

Because most of Massachusetts' cities and towns are small to mid-sized, in most instances the state's DAs will designate teams of state police detectives to work with senior-level prosecutors to conduct death investigations. Only three cities have police departments large and sophisticated enough that the DA can also designate their detectives for homicide investigations. The largest of these cities is Boston, home to more than 85 percent of Suffolk County's residents and the great majority of my office's prosecutions.

The Boston Police Department is the largest municipal



DANIEL F.
CONLEY

Daniel F. Conley is the district attorney for Suffolk County, Boston, Massachusetts.

police department in New England, has the only ASCLD-LAB accredited crime laboratory in Massachusetts outside of the state police, and has an outstanding team of homicide detectives who can work closely and effectively with prosecutors who demand the best. They also have a group of investigators drawn from the command staff, homicide unit, and other specialized units called the Firearms Discharge Investigation Team (FDIT), which is specifically trained and experienced in investigating officer-involved shootings. When a Boston police officer uses lethal force, I designate the FDIT to work with a senior prosecutor to process the scene, gather evidence, interview witnesses, and document every step they take or don't take.

This leads to two common questions: First, can the Boston Police FDIT detectives properly investigate a Boston police officer? And second, can I make an impartial charging decision when my office works so closely with the Boston Police Department in other cases? These are fair questions that deserve thoughtful answers.

Statistically, most police shootings in Boston involve officers on patrol out of district stations or the department's anti-gang unit. Given that the Boston Police Department employs about 2,000 sworn officers, it's extremely unlikely that these street-level officers will have any relationship with the high-ranking members of the homicide unit and command staff who comprise FDIT. There's no personal incentive to cut corners for a friend as there might be in a much smaller department. More to the point, there's simply no way to do so: the methodology we employ in these cases calls for strict documentation of every investigative step. Most importantly, because of policies and practices we adopted more than a decade ago, investigators also know that their work will be reviewed not only by me and my senior staff but will also be made available for review by civil attorneys, the public, and the media. In this respect, transparency isn't just a core value of our office, it's a critically important and powerfully effective management tool that forces everyone involved to operate at the very highest level.

As the chief law enforcement officer in a large, diverse, sophisticated urban area, I know full well the attention that each police-involved fatality generates, and I know the scrutiny that every charging decision will receive. So when someone questions my ability to charge a police officer, I point to my record — I've prosecuted some two dozen officers for various forms of criminal conduct over the past decade alone. I also point to the fact that no outside agency or independent commission has ever found that criminal charges were warranted in a police-involved shooting that I declined to charge. There is indeed a close working relationship between my office and the Boston Police

Department, but that's never overshadowed my obligation to find the facts and apply the law, no matter what the case may be.

At the end of the day, perception matters — but quality matters more. Under this set of practices, I have a highly trusted, highly experienced, personal representative of my independent office at the scene almost immediately after a police shooting. I can have dozens of uniformed officers performing a line search for evidence or a canvass for video and witnesses anywhere in the city of Boston within half an hour. I also have some of the best homicide detectives, criminalists, and ballisticians in the country working seamlessly with some of the most experienced homicide prosecutors to gather the evidence I need to make a fair and just charging decision. While I'm always open to new and better practices, no one has yet presented an alternate protocol that would maintain the rapid response, independence and total professionalism that are currently in place in Boston.

THE GRAND JURY

The grand jury is a powerful investigative tool. It can compel testimony from reluctant witnesses, order the production of documents, and allow us to sort through multiple conflicting accounts of an event. And a grand jury indictment is necessary to proceed to trial on any homicide charge. Under Massachusetts law, however, grand jury proceedings are secret. Although there are mechanisms for lifting that requirement, they would delay our ability to explain the evidence in the case — allowing rumor, speculation, and innuendo to fill the vacuum left by the absence of timely facts. Rumor, speculation, and innuendo are precisely what I try to avoid when dealing with an issue as important and sensitive as police use of deadly force.

Moreover, in most police-involved shootings, the facts are not even in dispute. Throughout my tenure, Boston officers have given voluntary interviews even though they have the right not to under *Garrity v. New Jersey*. They are Mirandized and tape-recorded, just as a civilian would be under the same circumstances. Police administrators make their dispatch and transmission records available without a subpoena. The key issue often centers not so much on what happened or who is responsible, but whether the officer's actions were justified as a matter of law. Unless there is an indication that the officer's conduct may lead to charges, presenting the case to a grand jury offers no investigative benefit — and can actually interfere with my ability to inform the public as fully and completely as possible about the facts and law behind my decision.

The investigative file compiled by Boston Police FDIT and my lead prosecutor generally runs to more than 1,000

pages of reports and interview transcripts, hours of audio and video recordings, and dozens of charts, maps, and diagrams. These are as valuable to me as any set of grand jury minutes, and they carry no legal requirement that I withhold them from public view. So again, transparency only helps us as we make our charging decision public.

THE CHARGING DECISION AND ANNOUNCEMENT

Over the course of the past decade, I've overseen investigations into 10 fatal shootings by Boston police officers. Three investigations are still ongoing, but the evidence in the remainder established that the officers were confronted by armed gunmen who pointed firearms at them. In five of those cases, the gunman fired at them, and in three of those cases the gunman actually shot and wounded an officer during the encounter. The lone exception involved a man armed with a realistic replica handgun who refused to drop it, stole a police cruiser, crashed it, and then aimed it at police as they approached him. As a result, I found each of these cases to be a lawful exercise of self-defense or defense of others, and I declined to charge any of them.

Some critics have reduced this series of case-by-case decisions to a meaningless statistic, suggesting that the absence of any charges against the officers represents a bias in favor of police. This is nonsense.

First, these decisions follow quite clearly the Massachusetts laws on self-defense and decades of Supreme Court decisions on the use of force. As *Graham v. Connor* spells out, "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." And just last year, the high court affirmed that standard with *Plumhoff, et al., v. Rickard, et al.*, writing that "if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended."

Second, I don't believe that any percentage of fact patterns should be charged against the weight of the evidence simply to meet a quota. After all, as the American Bar Association's prosecution standards state, "A prosecutor should not institute, cause to be instituted, or permit the continued pendency of criminal charges in the absence of sufficient admissible evidence to support a conviction." Against this same backdrop, consider that over the past decade I've also declined to charge five civilians who used lethal force in self-defense. But whether the case involves a police officer or a civilian, I make the decision based on the specific facts, evidence, and law — nothing more and nothing less.

In the event that I determined that an officer's actions

were criminal, I would put the case to the grand jury, seek an indictment, and charge it as I would any other. But because public confidence in our work requires as much an understanding of why we don't charge certain cases as why we do charge certain others, I take several steps toward community outreach when I decline a case for prosecution.

First and foremost, I meet personally with the family of the deceased, usually accompanied by their civil counsel. With my point prosecutor, we walk them through the facts, the evidence, our findings, and our legal analysis. We answer every question put to us, bar none, during a meeting that often lasts hours. When it's complete, we provide them with a copy of our entire investigative file for their personal review.

That meeting is followed by one I host for a panel of community leaders that includes members of Boston's clergy; civil rights organizations like the ACLU, NAACP, and the Urban League; community leaders such as youth and street workers; and other stakeholders, again laying out the case and taking any questions they may have. While we have excellent working relationships with many of these individuals and organizations, everyone in the room is nonetheless highly independent of each other and of my office. Because this is not a collection of "yes" people, they often have credibility in the community that we in law enforcement can't match, and they're in a key position to knock down bad information, street by street and block by block.

In a step modeled after the practice of former Denver DA Bill Ritter, I draft a detailed report that memorializes my findings and legal analysis that is distributed with a summary press release to all of Boston's news media. This report is posted to my office's website so that anyone can read, often in painstaking detail, the evidence and the law undergirding my decision.

We then take the final step of opening up the entire investigative file to any media interested in reviewing it for themselves: we scan the entire file and affirmatively provide them with a digital copy on a flash drive. I began the practice of opening the file to media review over a decade ago, just a few years after taking office, and it is one of the best decisions I ever made. It demonstrates a level of confidence in the thoroughness, professionalism, and independence of the investigation and the investigators that is unsurpassed.

MOVING THE BALL FORWARD

When I first took office in 2002, the decision not to charge a police officer for a fatal shooting was announced in a two-sentence letter from the office's chief homicide prosecutor to his counterpart at the Boston Police Department. We've come a long way since then, but there's always room for improvement.

Earlier this year, at the conclusion of one of these investigations, I met with the family of a man who was fatally shot by Boston police after he pulled a gun during a street interaction and began firing, injuring one of the officers. The incident was captured by a nearby surveillance camera, and the family viewed the clip during our meeting. Aside from their grief and anger over losing a loved one, they explained to me that they were also frustrated that they had to wait until the investigation was over to view this footage.

As it happened, surveillance video captured another police-involved shooting just a few months later. In that case, the evidence suggests, officers pulled over a car in the course of an investigation and the driver fired point-blank at the officer who approached his door. The officer was struck in the face and miraculously survived; the gunman was killed when he pointed his weapon at the other officers during his attempted escape on foot. Although the video footage showed the deadly threat faced by officers at the scene, rumor and misinformation immediately began to spread, and officers preserving and processing the scene were subjected to vicious and unwarranted verbal attacks by individuals who suggested the gunman had been executed without any justification.

Knowing that the perception of a cover-up had played a large role in unrest over police-involved shootings in other jurisdictions, and bearing in mind the input from that earlier family meeting, I approved the release of the video evidence even though the investigation was still very active.

We undertook this release in stages with the specific intention of offering the family of the deceased to view it first. They weren't immediately available, so the video was screened for members of Boston's clergy and civil rights leaders the very next morning. Their public comments afterward very effectively refuted the conspiracy theories and other distortions that had been percolating for hours on the street. Despite our efforts to schedule a meeting with the family of the deceased, they opted not to join us and the video was released to the media within a few days.

Also out of respect for the family, we made a conscious effort not to comment on the man's criminal history. Some of his prior convictions had previously been covered in the media, and we acknowledged that those reports related to the same individual, but we referred reporters to court filings or other public records for details rather than release them ourselves. In this way, we reaffirmed our commitment not to prejudge the case or decide it on anything but the facts and evidence.

This sequence of events repeated itself several weeks later after another fatal shooting. As with the first one, inaccurate rumors spread within minutes of its occurrence, and as with the first one, video evidence refuted those rumors. Another screening was scheduled for the following day with reli-

gious and civil rights leaders. Once again, the voices of informed but independent leaders drowned out the inflammatory statements. We withheld the video from public release until after the man's burial, respected his family's wishes to view it before the public at large, and then provided it to the media for broadcast and analysis afterward.

"As expected, the video seemed to serve to quell, rather than inflame, controversy," wrote one Boston Globe columnist. And the New York Times noted that "There have been no demonstrations of violence in response to the shooting, as there were in other cities after recent police shootings, partly because the police contacted clergy and civic leaders immediately and showed them the video. Most of the leaders, even some who were skeptical of the police account, assured the community that [the deceased] had not been shot in the back."

TOWARD BEST PRACTICES

As prosecutors, the burden is always on us — to prove our case beyond a reasonable doubt, and to prove we're exercising sound, impartial judgment. At a time of extraordinary public interest in our work, we have the opportunity to set the bar high and build confidence in what we do and how we do it.

District attorneys make tough choices about police investigations each day — if the evidence doesn't support charges, we reduce or dismiss them. We bring that same independence and impartiality to our investigations of police-involved shootings. If additional questions need to be asked or additional steps need to be taken, we have to insist that they are. Likewise, if there are improvements to be made to the status quo, let's make them. If there are alternative strategies that might work better, we owe it to our constituents to consider them. And if there's a new way to help the public understand how we do this important work, let's try it.

By applying our ethical and investigative principles to these cases, we can ensure that they're fully, fairly, and properly examined. And by applying the values of openness, transparency, and accountability, we can ensure that our findings are credible and trustworthy. A first-rate investigation and ironclad legal analysis will defuse almost any criticism — but only if the public can see it for themselves. After all, the facts may change from case to case, but our mission never does: We find the facts, apply the law, and serve the interests of justice.

Hennepin County, Minn. Model (jurisdiction in which 2015 Jamar Clark shooting took place)

Who secures the crime scene?: In the Clark case, the Minneapolis PD, the agency that employed the two officers involved in the shooting.

Who processes the crime scene?: Initially, the Minneapolis PD in the Clark case.

Who leads the investigation?: Minnesota Bureau of Criminal Apprehension (BCA) took over the investigation, per the Minneapolis PD policy on independent investigation of officer-involved shootings. Attorneys from the DOJ Office of Civil Rights, agents from the FBI and United States Attorney Andrew Luger worked jointly with agents from the BCA.

Investigative grand jury?: Available, at the discretion of the district attorney handling the case. In the Clark shooting, Freeman [decided not to empanel a grand jury](#). Subsequently, his office reviewed the BCA's investigation report and [decided not to press charges](#) against either of two officers implicated in Clark's shooting death.

Who handles the prosecution?: District attorney.

Transparency measures: One reason Freeman did not use a grand jury in the Clark case is that its proceedings are secret, and he believes that as such, it is a deterrent to transparency.

When he decided not to prosecute, he held a news conference and claimed sole responsibility for the decision. At the news conference to make that announcement, he detailed the events of that night, and played video from a bystander and cameras in two different ambulances.

He also posted a massive investigative file to the DA website, which can be viewed at http://bit.ly/Freeman_Decision.

Notes: Freeman has written that he had planned a news conference to announce the formation of a hybrid grand jury that "retained the values of the grand jury process but made it more transparent." That news conference never took place because Clark was killed about two weeks before it could be held.

Freeman does not believe departments should be allowed to investigate allegations against its own officers. He advocates investigation by an independent law enforcement agency, with prosecutors' involvement. In the Clark case, he assigned a veteran prosecutor to assist in the police investigation from the onset.

Hennepin County Attorney Mike Freeman's Statement about decision not to use a grand jury in Jamar Clark case

(From <http://www.hennepinattorney.org/news/news/2016/March/jamarclark-nograndjury-statement>)

The question of whether to use a grand jury in Hennepin County in the tragic Jamar Clark case has been richly debated both in the Hennepin County Attorney's Office and throughout the community. In Minnesota, state statutes require use of grand juries in cases of first-degree premeditated homicide and several other very serious crimes for which the potential sentence may be life in prison. The use of the grand jury in all other cases is up to the discretion of each individual county attorney.

In Hennepin County, and throughout Minnesota, in virtually every previous police shooting case resulting in death, a grand jury has been convened. Moreover, in most jurisdictions throughout the U.S., grand juries have also served in these cases, although there is a growing discussion that grand juries may no longer serve the present evolving standards of justice, accountability and transparency.

So, what is a grand jury and what does it do? At least in Minnesota, a grand jury consists of 23 randomly selected, diverse adults who are chosen to decide in private whether or not, in a particular case, there exists probable cause to indict, or charge, an individual for a crime.

In essence, the grand jury is a fact finder. It meets in private with evidence presented to it through witnesses questioned both by the prosecutor and then independently by grand jury members. The grand jury also reviews documents and videos. Rules of law are presented to the grand jury by the prosecutor who provides a summary of what legal elements must be present to indict a person for a crime.

Then the grand jury deliberates in private without the prosecutor present to decide whether the evidence presented is sufficient to indict someone for a crime. If the grand jury decides yes, then the grand jury will issue an indictment and the case will thereafter be prosecuted in public, by the county attorney, as in any other case. If the grand jury decides there is insufficient evidence to warrant an indictment, it will issue a no bill and the case is over.

By tradition, this office has used the grand jury in a belief that 23 diverse opinions from the community will more accurately evaluate what the evidence really shows and whether charges should be brought. Supporters maintain that grand jurors might be less impacted by non-legal considerations in making this most difficult charging decision: whether or not to charge a police officer for criminal misuse of force.

Others dislike the grand jury process because under law and practice, its proceedings are essentially private and the basis for the grand jury's decision is confidential. Also, names of the grand jury members are not made public and, therefore, there is a perceived lack of

accountability. Secrecy, lack of transparency and no direct accountability strikes us as very problematic in a democratic society.

To use or not use a grand jury in police shooting cases is a hard decision for me. We have used grand juries in Hennepin County for at least the last 40 years in police shooting cases. On one hand, to have 23 people make a factual decision versus just the prosecutor and his team has appeal. After all, the law that applies is exactly the same whether the facts are applied to that law by a grand jury or a prosecutor. On the other hand, our society, and this prosecutor, believes accountability and transparency are critical concepts for a just and healthy democracy.

I began my personal review of whether or not to continue using grand juries in police shooting cases some 16 months ago. Along with prosecutors here in Minnesota, and throughout America, I have sought to closely examine the historical roots of grand juries and whether its procedures could be modified to resolve some of the limitations in its use.

In addition, I have reviewed every step and procedure used in investigating and evaluating the evidence in police shooting cases. First, I believe community confidence is enhanced in police shooting cases by insisting that police departments not investigate police shootings by their own officers. After a long struggle and with the help of many, including the chiefs of police in both Minneapolis and St. Paul, we have ended that unwise practice here in Minnesota. Police use of deadly force in the Jamar Clark case was investigated by the Minnesota Bureau of Criminal Apprehension (BCA), an independent law enforcement organization. I believe, and strongly support, that in all future cases where police use deadly force, it will be investigated by an independent law enforcement agency.

Second, I strengthened the prosecutor's involvement in police shooting investigations. Normally, prosecutors wait for the police to present a case before getting involved. In these most sensitive cases, I decided to assign a veteran prosecutor to assist in the police investigation in the Clark case from day one. This should enhance the quality of the entire process and include a lawyer's perspective from the beginning of the investigation.

I have also spent many hours trying to develop a hybrid grand jury system where we could retain the values of the grand jury process but make it more transparent so at least what happens is better understood and the facts presented to the grand jury can be more readily made available in a form useful to the public. We had tentatively set a news conference to announce the new hybrid system for the Monday after Thanksgiving. As you know, the fatal shooting of Jamar Clark occurred on November 15 and it seemed inappropriate to talk about changes to the grand jury system at that point.

The ensuing months have given me more time to think about the grand jury. As an elected official, I also took that time to meet with more people and listen to their concerns. I concluded that the accountability and transparency limitations of a grand jury are too high a hurdle to overcome. So, at this point in time, and in a democracy where we continually strive to make our

systems fairer, more just and more accountable, we in Hennepin County will not use the grand jury in the Jamar Clark case.

I will make the factual determination whether there is sufficient evidence to support a criminal charge against the police officers in the tragic death of Jamar Clark. I will make that determination with the excellent assistance of senior attorneys in our office and the fine work of law enforcement, most notably, the BCA and FBI.

This is my job and I will do it as fairly as I can. To repeat, there will not be grand jury proceedings in the Jamar Clark case.

I am making this decision only for Hennepin County. As I mentioned earlier, there are strong reasons to use a grand jury in some cases. And other communities may feel the use of the grand jury in police shooting cases is appropriate. The authority to make those decisions lies with each elected county attorney. For me, grand juries should no longer be used in police shooting cases in Hennepin County.

In conclusion, everyone insists, and I agree, that this investigation and review of all evidence be as thorough and professional as possible. This process, undertaken with the help of the U.S. Attorney, is not yet complete. Accordingly, no charging decision in the Clark case will be announced today. We hope to reach this decision in the near future and I will share it with you soon thereafter.

As this process is ongoing, it is premature and inappropriate for me to answer any questions on the Jamar Clark case at this time.

Thank you.

Dakota County, Minn. model

Who secures the crime scene?: The scene is to be left undisturbed until the lead investigative agency arrives. Until then, the head of the law enforcement agency where the incident occurred is responsible for preserving the scene or designating another law enforcement agency to do the same.

Who processes the crime scene?: The designated investigating agency.

Who leads the investigation?: Investigation conducted by an agency other than the one employing the officer who used deadly force. That could include the Minnesota Bureau of Criminal Apprehension. The agency is in charge of all aspects of the investigation, which is conducted in consultation with the Dakota County Attorney's Office.

Investigative grand jury?: No.

Who handles the prosecution?: A Dakota County prosecutor or a special prosecutor.

Transparency measures: Until the case is turned over to the prosecutor, the lead investigative agency handles media responses but does so in consultation with the county attorney and the agency that employs the officer involved. Thereafter, the prosecutor handles media inquiries, in consultation with the other parties. The employing agency is advised to limit media responses to departmental policy, departmental response, identity of the officer involved and the officer's medical condition.

Notes: The county's attorney, James C. Backstrom, first prepared guidelines for the investigation of cases involving use of deadly force by Dakota County law enforcement at the request of the Dakota County Police Chiefs Association in 1990. [The policy was updated](#) by Backstrom and approved by the association in 2015.

*"Law Enforcement Officer Shootings and Related Investigations."
(Made available by County Attorney James C. Backstrom)*

DATE: January 9, 2015

TO: Dakota County Sheriff and Chiefs of Police

FROM: James C. Backstrom, Dakota County Attorney

SUBJECT: Law Enforcement Officer Shootings and Related Investigations

In 1990, at the request of the Dakota County Police Chiefs Association, my Office created guidelines for investigation of use of deadly force by a Dakota County law enforcement officer. The guidelines were intended to be applicable to situations in which an officer during the course of duty kills or seriously injures another person by shooting or any other means. Set forth below is an updated copy of these guidelines incorporating reference to Dakota County's current Medical Examiner and making several other changes.

The changes to these guidelines were reviewed and approved at the Dakota County Police Chiefs Association meeting on January 9, 2015.

GUIDELINES

1. Where a Dakota County law enforcement officer during the course of duty discharges a firearm and seriously injures or kills another person or where another person is killed or seriously injured by a law enforcement officer during the course of duty by means other than shooting, the law enforcement agency supervising the officer involved in the incident shall notify the following parties of the incident as soon as possible: The Chief of Police of the law enforcement agency employing the officer(s) involved in the incident, the Chief of Police of the jurisdiction where the incident occurred (assuming the incident occurs outside of the involved officer's jurisdiction), the County Sheriff or independent law enforcement agency designated to conduct the investigation, the County Attorney, and, in the event a death occurs, the Hennepin County Medical Examiner's Office¹ (hereafter Medical Examiner).
2. To insure public confidence that the incident is investigated thoroughly, fairly and impartially, the investigation shall be done by a law enforcement agency other than the agency or agencies involved in the incident, such as the Dakota County Sheriff's Office or the Minnesota Bureau of Criminal Apprehension. The decision as to what investigative agency is to be in charge of the investigation shall be made as soon as possible by the head of the law enforcement agency where the incident occurred. Notification of this decision shall be forwarded as soon as possible to the County Attorney, the County Sheriff, any other affected Chief of Police, and the Medical Examiner (in the event a death occurs). The designated investigative agency (hereinafter referred to as the lead investigative agency) shall be in charge of all aspects of the investigation and shall conduct the investigation in consultation with the Dakota County Attorney's Office (or a special prosecutor, if one is appointed).

3. The scene of the incident shall be preserved undisturbed and secured until the lead investigative agency arrives and processes the scene. Until such time as the lead investigative agency arrives at the scene, the head of the law enforcement agency where the incident occurred shall be in charge of preserving the scene or shall designate another law enforcement agency to do the same. All law enforcement officers at the scene shall be instructed to:

- a. Request necessary medical aid;
- b. Render first aid to any injured party;
- c. Notify their dispatch of the existing circumstances;
- d. Remain at the scene until released by a supervisor of their agency, unless their continued presence is unsafe or their departure is necessary to pursue or apprehend additional perpetrators; and
- e. Not discuss the incident with anyone except the lead investigative agency, a supervisor within their law enforcement agency, the County Attorney (or special prosecutor), their city attorney, the Medical Examiner, a psychologist, psychiatrist or other medical consultant, their clergy, their immediate family, their private attorney or others authorized by their commanding officer.*

4. The lead investigative agency shall make reasonable efforts to obtain a statement as soon as possible from any officer who discharged his/her firearm or otherwise caused the death or injury. Prior to taking the statement the officer should be advised of the following: "YOU ARE NOT OBLIGATED TO GIVE A STATEMENT CONCERNING YOUR INVOLVEMENT IN THIS INCIDENT. IF YOU ELECT TO DO SO, SUCH STATEMENT CAN BE USED AGAINST YOU IN EITHER DISCIPLINARY OR CRIMINAL PROCEEDINGS OR BOTH."*

5. The firearm discharged by the officer(s) in question shall be submitted to the lead investigative agency for evidentiary purposes as soon as possible. Such weapon(s) will be returned upon completion of all aspects of the investigation and court proceedings.

6. The Medical Examiner having jurisdiction over the situation shall notify the next-of-kin of any deceased individual(s) as soon as possible. The lead investigative agency shall verify that this has occurred and also notify the immediate family or appropriate relatives of any injured individual(s) as soon as possible.

7. The County Sheriff and the affected Chief of Police shall render reasonable assistance to the lead investigative agency and County Attorney (or special prosecutor) in all phases of the investigation and court proceedings upon request.

8. The lead investigative agency, after consultation with the County Attorney (or special prosecutor), and the head of the law enforcement agency employing the officer involved in the incident, shall respond to all media requests for information concerning the incident until the case is submitted to the County

Attorney (or special prosecutor). After a case has been submitted to the County Attorney (or special prosecutor), it is recommended that the law enforcement agency employing the officer(s) involved in the incident limit public comments to departmental policy, departmental response, and the identity of personnel involved and their medical condition. It is recommended that all other media requests for information concerning the incident be referred to the County Attorney (or special prosecutor). The head of the law enforcement agency employing the officer(s) involved in the incident shall be consulted prior to issuance of all news releases and invited to attend all news conferences convened by the County Attorney (or special prosecutor). Should the law enforcement agency employing the officer(s) involved in the incident or lead investigative agency believe there is a need to disclose additional information or make additional public comments, the agency should make reasonable efforts to consult with the County Attorney (or special prosecutor) and the agency's attorney prior to providing additional information or public comment.

9. The lead investigative agency and County Attorney (or special prosecutor) shall keep the head of the law enforcement agency employing the officer(s) involved in the incident fully informed of all developments in the case as they occur. Completed investigation files shall be forwarded to the County Attorney (or special prosecutor) as soon as possible, with a copy to the affected law enforcement agency head.

10. The County Attorney (or a special prosecutor) will present all cases involving shootings by law enforcement officers in the course of duty which result in death to the Dakota County Grand Jury as soon as possible following completion of the investigation. The County Attorney (or special prosecutor) will review all cases involving shootings by law enforcement officers in the course of duty resulting in injury and all cases involving death or serious injury caused by a law enforcement officer in the course of duty by means other than shooting to determine an appropriate disposition. Such cases may be presented to the Grand Jury if deemed appropriate by the County Attorney (or special prosecutor).

11. The County Attorney may appoint a special prosecutor to handle the types of cases referred to in these guidelines if deemed appropriate.

I believe that conforming to these guidelines will lead to public trust and confidence that matters of this nature are investigated thoroughly, fairly and impartially.

JCB/gk

c: Hennepin County Medical Examiner

1 The Hennepin County Medical Examiner's Office serves Dakota County under contractual agreement.

*In accordance with the decisions of the U.S. Supreme Court found in *Garrity v. New Jersey*, 385 U.S. 493, 17 L. Ed 2d 562, 87 S. Ct. 616 (1967) and *Gardner v. Broderick Police Department*, 392 U.S. 273, 20 L. Ed 2d 1082, 88 S. Ct. 1913 (1968), an officer may not be forced to choose between forfeiting his/her job or self-incrimination. Therefore, any statement compelled as a condition of employment, or the fruits of the statement, cannot be used in any criminal proceedings against the employee, except in cases of alleged perjury where the criminal charge is based on the falsity of the given statement. Consequently, only a voluntary statement shall be requested from such officer.

Connecticut model

Who secures the crime scene?: The law-enforcement agency of primary jurisdiction where any use-of-force incident took place is responsible for securing the scene. It must do so without removing or relocating evidence, including motor vehicles, unless they must be removed or relocated to preserve their evidential value. Also, medical needs of the victim are given priority.

Who processes the crime scene?: Until relieved, the department having jurisdiction of the geographical area should keep the scene secure, identify potential witnesses, note vehicle registrations, conduct interviews, etc. Several specific steps, such as securing the officers' weapons, are included in the protocol. The scene is turned over to the State Police upon its officers' arrival.

Who leads the investigation?: The Connecticut Division of Criminal Justice investigates all use-of-force incidents to determine whether the action was appropriate under the statute. The investigation is directed by the State Attorney's Office. Once the case has been assigned by the State Attorney to a prosecutor, that prosecutor assumes all responsibility for the conduct of the investigation. The Chief State Attorney can also assign prosecutorial officials to investigate and prosecute any ancillary matters relating to the incident.

Investigative grand jury?: It is a possibility. In Connecticut, [the grand jury is only an investigative body](#). Also, it is convened only for a few specific crimes. Among them are felonies punishable by more than five years imprisonment for which the prosecutor can show that he or she has no other means of obtaining sufficient information as to whether a crime has been committed or the perpetrator's identity.

Who handles the prosecution?: State Attorney's Office, or its designee.

Transparency measures: News releases will be authorized by the prosecutorial official in charge after consultation with the chief of police in the involved jurisdiction and commanding officer of the involved major crime squad. Someone should be assigned to serve as the media liaison, conduct interviews and provide news releases. All media requests should be referred to that individual by all involved agencies.

Connecticut's 509 Guidelines for investigation of the use of physical force pursuant to General Statutes 51-277A

(Excerpted from: <http://law.justia.com/codes/connecticut/2012/title-51/chapter-886/section-51-277a>)

According to the guidelines:

- The law-enforcement agency of primary jurisdiction where the use-of-force incident took place is responsible for securing the scene. It must do so without removing or relocating evidence, including motor vehicles, unless they must be removed or relocated to preserve their evidential value. Also, medical needs of the victim are given priority.
- The State Attorney's Office must be immediately notified, and the office must promptly respond to the scene and/or the incident command center.
- Search and seizure issues should be addressed promptly by the agencies involved and the State Attorney's Office.
- Other police agencies having a direct interest in the law enforcement officers involved must be notified. The Chief Medical Examiner must also be notified when a death has occurred.
- Until relieved, the department having jurisdiction of the geographical area should keep the scene secure, identify potential witnesses, note vehicle registrations, conduct interviews, etc. This would include:
 - Assignment of an officer to establish a scene log recording arrivals and departures;
 - Assignment of an officer to accompany any injured parties to the hospital and remain there until relieved.
 - Seizure of the involved officer or officers' weapons, ammunition, clothing and other equipment. These items should be secured without altering their condition unless alteration is required for the safety of the seizing officer;
 - Assignment of a ranking officer to liaison with other involved agencies;
 - Relieving the involved officer or officers and having them return to the department. They should remain there unless medical attention is required;
 - Preserving and preparing to provide records of telephone calls, data terminal information and radio calls concerning the incident, roll call sheets for the date of the incident, and any recordings of the incident captured by body or dash-mounted cameras;
 - Preserving and preparing to provide any internal intelligence or department case files concerning the party injured or deceased.
- A ranking officer of the designated law-enforcement agency shall notify the next of kin of the death and the availability of resources and services for a decedent's family.
- The involved officers should be interviewed separately, as soon as possible. The prosecutorial officer to conduct the investigation shall be in charge of the interview.
- The State Attorney in the judicial district in which the incident occurred or the prosecutorial official in charge of the investigation will typically request the assistance of the Connecticut State Police when reviewing the conduct of a municipal or other law enforcement agency. The State Police would be expected to:

- Respond to and assume command of the scene;
- Prepare appropriate search and seizure warrants;
- Assume overall responsibility for processing the scene and preserving evidence;
- Assign a trooper or detective to relieve any officer who has accompanied an injured party to the hospital;
- Attend any post-mortem and seize any evidence it produces;
- Coordinate the investigation with the assigned prosecutor.
- In cases in which concurrent investigations are conducted by more than one law enforcement agency, investigative activities shall be coordinated under the direction of the prosecutorial official designated to conduct the investigation.
- News releases will be authorized by the prosecutorial official in charge after consultation with the chief of police in the involved jurisdiction and commanding officer of the involved major crime squad. Someone should be assigned to serve as the media liaison, conduct interviews and provide news releases. All media requests should be referred to that individual by all involved agencies.

The prosecutor in charge must file a report with the Chief State Attorney, who shall submit a copy to the head of the police agency and the chief executive officer of the location where the death occurred. It should be compiled and provided expeditiously. Every effort should be made to conduct the investigation to accommodate the needs of the involved department, however the primary objective is the statutory duty imposed by the General Statutes.

Once the case has been assigned by the State Attorney to a prosecutor, that prosecutor assumes all responsibility for the conduct of the investigation. The Chief State Attorney can also assign prosecutorial officials to investigate and prosecute any ancillary matters relating to the incident.

The statute

Sec. 51-277a. Investigation of the use of deadly physical force by peace officers. (a)

Whenever a peace officer, in the performance of his duties, uses deadly physical force upon another person and such person dies as a result thereof, the Division of Criminal Justice shall cause an investigation to be made and shall have the responsibility of determining whether the use of deadly physical force by the peace officer was appropriate under section 53a-22. The division shall request the appropriate law enforcement agency to provide such assistance as is necessary to determine the circumstances of the incident.

(b) In causing such an investigation to be made, the Chief State's Attorney may, as provided in section 51-281, designate a prosecutorial official from a judicial district other than the judicial district in which the incident occurred to conduct the investigation or may, as provided in subsection (a) of section 51-285, appoint a special assistant state's attorney or special deputy assistant state's attorney to conduct the investigation. If the Chief State's Attorney designates a prosecutorial official from another judicial district or appoints a special prosecutor to conduct the investigation, the Chief State's Attorney shall, upon the request of such prosecutorial official or special prosecutor, appoint a special inspector or special inspectors to assist in such investigation. Any person may make a written request to the Chief State's Attorney or the Criminal Justice

Commission requesting that the Chief State's Attorney so designate a prosecutorial official from another judicial district or appoint a special prosecutor to conduct the investigation.

(c) Upon the conclusion of the investigation of the incident, the division shall file a report with the Chief State's Attorney which shall contain the following: (1) The circumstances of the incident, (2) a determination of whether the use of deadly physical force by the peace officer was appropriate under section 53a-22, and (3) any future action to be taken by the Division of Criminal Justice as a result of the incident. The Chief State's Attorney shall provide a copy of the report to the chief executive officer of the municipality in which the incident occurred and to the Commissioner of Emergency Services and Public Protection or the chief of police of such municipality, as the case may be.

(P.A. 88-199; P.A. 90-230, S. 66, 101; P.A. 98-48, S. 1; P.A. 11-51, S. 134.)

History: P.A. 90-230 corrected the reference to "deadly physical force" in Subsec. (a); P.A. 98-48 added Subsec. (b) authorizing the designation of a prosecutorial official from another judicial district or the appointment of a special prosecutor to conduct the investigation, requiring the appointment of special inspectors when requested and authorizing any person to make a written request for the designation of a prosecutorial official from another judicial district or the appointment of a special prosecutor to conduct the investigation and relettered former Subsec. (b) as Subsec. (c); pursuant to P.A. 11-51, "Commissioner of Public Safety" was changed editorially by the Revisors to "Commissioner of Emergency Services and Public Protection" in Subsec. (c), effective July 1, 2011.

South Dakota model

Who secures the crime scene?: Case agents or supervisors of the officer's department should decide if an independent investigative agency is needed. If so, a director should arrange for one. In the meantime, the case agent or supervisor assume a command post; provides separate, secure locations for involved officers and citizen witnesses; and ensures officers at the scene refrain from making evaluative or judgmental comments about the principal officer's actions. They should also get the involved officer some distance from the scene and ensure evidences is collected and secured.

Who processes the crime scene?: See above. There is a checklist of duties that should be performed for whoever processes the scene.

Who leads the investigation?: The State Attorney's Office, working with the Division of Criminal Investigation and the local law enforcement agency. And if there is a conflict, the Bureau of Criminal Investigation from North Dakota to take over the matter, [according to State Attorney Marty Jackley](#). (South Dakota's DCI provides reciprocal service for North Dakota.)

Investigative grand jury?: Yes.

Who handles the prosecution?: State Attorney's Office.

Transparency measures: State Attorney General [Marty Jackley says his office's policy](#) is to provide as much information as possible within 30 days of any incident, working in conjunction with other investigating agencies.

Notes: A complete copy of an investigative report is forwarded by the case agent or lead investigator to the Law Enforcement Training Administrator for review and determination if any remedial training issues need to be addressed.

Date: October 21, 2015

To: SD Law Enforcement

**From: Bryan Gortmaker, Director
South Dakota Division of Criminal Investigation**

Re: Officer-Involved Shooting Protocol

In an effort to better define our role when requested to investigate these matters, the DCI has prepared a checklist of basic procedures and investigative considerations for our Agents to follow. This is not an exhaustive list of items as every investigation is unique unto itself. This is meant to provide a familiar template for statewide application. Law enforcement agencies are requested to take action in preserving known items of evidence.

Officer-Involved Shooting Checklist of Procedures

Definitions:

Principal Officer – Any law enforcement officer who, under color of the law, has used deadly force by discharging a firearm which has resulted in death or great bodily harm.

Involved Officer – Any law enforcement officer who is present during a use of force incident in which a firearm was discharged and involved with or directly assisted the Principal Officer who used deadly force or whose law enforcement actions resulted in the death of a citizen/arrestee.

Witness Officer – Any law enforcement officer who witnessed a deadly force incident involving another law enforcement officer whether before, during, or immediately following the event.

First Responder Procedures:

1. Any Agent who is first to arrive on scene shall:
 - a. Evaluate injuries and render medical aid as deemed necessary and appropriate while attempting to avoid the destruction or contamination of evidence.
 - b. Search the area for additional suspects/victims and secure the scene.
 - c. Allow opportunity for the Principal Officer to move away from the immediate scene keeping the Principal Officer and their weapon secure.
 - d. Identify any witnesses at the scene and secure them separately in a police vehicle or with another Officer/Agent to maintain credibility.

- e. In large-scale incidents involving multiple jurisdictions and/or active threats, make contact with the Chief and/or Sheriff of the jurisdiction and coordinate with Incident Command.
- f. Start a crime scene log.
- g. Remain on scene until relieved by the Case Agent, Lead Investigator, or Supervisor.
- h. Ensure that the Director and Assistant Director have been notified.
- i. Complete the appropriate reports and provide a copy to the Case Agent or Lead Investigator.

Case Agent/Supervisor Procedures:

1. The Case Agent and/or Supervisor shall:

Administrative Tasks

- a. Determine if an outside investigator is needed to assist in the criminal investigation. If so, the Director/Assistant Director will coordinate the request for an investigator from a neutral investigative agency not involved with the shooting incident. The outside investigator may be designated as lead in the case if DCI was involved with the shooting incident.
- b. Assume a Command Post for duty assignments and lead management.
- c. Continue with Incident Command Structure.
- d. Establish an open line of communication with the Principal Officer's chain of command.
- e. Provide separate secure locations for Involved and Witness Officers and citizen witnesses.
- f. Ensure officers at the scene refrain from making evaluative or judgmental comments about the Principal Officer's actions.
- g. Communicate to all investigators that conversations among all involved law enforcement should be considered evidentiary and shall be disclosed to the Case Agent/Lead Investigator.
- h. Communicate to all investigative agency personnel assigned a request to refrain from discussing the investigation outside of the investigative effort.
- i. Keep the Director and Assistant Director updated on the status of the investigation and provide a complete copy of the investigative report.
- j. Ensure that the officers involved are afforded an early opportunity to communicate with family members and/or any other person whom the officer wishes to speak with for counsel, advice, or support.
- k. Provide, if possible, a supportive peer or chaplain for emotional support to the Principal and Involved Officers.

- l. Determine if a search warrant is needed for the location to collect evidence and process the scene.

Scene Processing

- m. Remove the Principal Officer some distance from the immediate scene to await the arrival of the crime scene technicians.
- n. Ensure physical evidence pertaining to the incident remains at the scene, is secured, and is undisturbed. The evidence may include, but is not limited to, the crime scene(s) itself, in-car camera video recordings, audio recordings, film, and weapons. Collection of all audio and video recordings from officers and their vehicles will be conducted with notification to the officer's chain of command.
- o. Ensure that all involved law enforcement officers remain in the same attire, and they do not dispose of any items which were in their possession at the time of the incident until authorized to do so by the Case Agent or Supervisor unless the attire contains infectious fluids and poses a health risk to the officer. Photograph officers in their same attire prior to any clothing or equipment change.
- p. Document the firearm(s) used by recording the make, model, and serial number of that firearm in the report. If a weapon was taken into evidentiary custody from a Principal or Involved Officer, a temporary replacement should be issued to them as soon as possible.
- q. Obtain voluntary UA and blood draw from all Principal and Involved Officers (gray top tubes).
- r. Ensure toxicology and BAC is conducted at the autopsy on the deceased subject.
- s. Obtain UA and blood draw for toxicology and BAC (gray top tubes) on subjects who survive and utilize the State Health Lab for testing and deliver to the State Health Lab within 48 hours of OIS.
- t. Case Agent will notify DCI Forensic Lab within first 24 hours of OIS and finalize an evidence submission plan.

Interviews

- u. Allow the Principal Officer, who used deadly force, legal representation if the Principal Officer requests.
- v. Allow the Principal Officer an opportunity to visit with the in-house police psychologist if requested. This would be a privileged communication.
- w. Utilize proper judgment and discretion in determining the type of constitutional advisement to provide the Principal Officer. This decision is dependent upon the nature and circumstances of the incident and the available information at hand. Ideally, the Principal/Involved Officer should be provided some recovery time before detailed interviewing begins. This can range from a few hours to overnight. One to

two normal sleep cycles are recommended as this will likely lead to a more coherent and accurate statement.

- x. At a minimum, explain to the Principal Officer that a criminal investigation is being conducted of the incident and that the Principal Officer's cooperation and statements are voluntary and not compelled as they would be in an administrative investigation. This advisement is appropriate at all phases of the criminal investigation.
- y. Ensure that Internal Affairs/Administrative investigators are not present during interviews of law enforcement while they are giving statements during the criminal investigation. These interviews may be reviewed by Internal Affairs/Administrators when completed.

Review of Officer-Involved Shooting:

1. Review for criminal liability is conducted by the local State's Attorney's Office and the Office of Attorney General.
2. Administrative review is conducted by the law enforcement officer's department.

Law Enforcement Training Administrator Procedures:

1. A complete copy of the report shall be forwarded by the Case Agent or Lead Investigator to the Law Enforcement Training Administrator for review and determination if any remedial training issues need to be addressed.

New Jersey model

Who secures the crime scene?: Unclear.

Who processes the crime scene?: Investigators, forensic examiners and other experts from the same agency as the officer employing the force are generally excluded from the investigative process, though they can be authorized for “good and sufficient cause.” Those with specialized crime-scene skills can collect and process evidence but must do so under the supervision of the on-scene assistant prosecutor or assistant/deputy attorney general overseeing the investigation. In other words, they operate independent of their ordinary chain of command.

Who leads the investigation?: Incidents involving municipal or county police forces are investigated by county prosecutors. The state’s Division of Criminal Justice can supersede the investigation where there is a conflict or if the matter would be better handled at the state level. When a conflict arises, or a case involves a prosecutors investigator, assistant prosecutor or prosecutor, the investigation will be conducted by the Division of Criminal Justice. If the incident involves state police, the director of criminal justice will determine whether it is appropriate for the SRT to conduct the investigation.

Division of Criminal Justice investigations are conducted by the Attorney General’s Shooting Response Team, which is staffed by Division of Criminal Justice investigators and members of the Major Crimes Unit of the State Police, under the direction of an assistant or deputy attorney general.

Investigative grand jury?: No.

Who handles the prosecution?: Typically, the county prosecutor.

Transparency measures: Critical decisions are subject to multiple levels of independent review. If a prosecutor decides not to present to a grand jury, that decisions is subject to review by the director of the Division of Criminal Justice.

Additionally, the Division of Criminal Justice director should form an advisory citizens group to suggest improvements in use-of-force investigations. The director shall also confer with county prosecutors to discuss efforts that have been and are being undertaken across the state to establish community trust.

Notes: There are three legal justifications in OIS/SRT cases: self defense, defense of others and use of force in law enforcement. Once justification is asserted as a defense, the prosecution must disprove the justification beyond a reasonable doubt.

New Jersey Uniform Statewide Procedures and Best Practices for Conducting Police-Use-of-Force Investigations, Supplemental Law Enforcement Directive Amending Attorney General Law Enforcement Directive No. 2006-5

(Summarized from http://www.nj.gov/oag/dcj/agguide/directives/2006-5_SRT_OIS.pdf, memo from New Jersey's acting Attorney General on July 28, 2015.)

This directive was sent July 28., 2015, as a reminder to New Jersey law enforcement officials in the wake of several high-profile officer-involved-shooting incidents. It also takes additional steps to ensure independent investigations and review. It noted the state Attorney General has wide latitude in setting statewide standards, including those for the investigation of use-of-force incidents. Directive No. 2006-5 marks the Attorney General's assertion of this authority.

Investigations to determine the lawfulness of police use of force is not conducted by police agencies, but by and under the direct supervision of county prosecutors or the Division of Criminal Justice. Critical decisions are subject to multiple levels of independent review. For instance, circumstances of the incident must be presented to the grand jury unless undisputed facts indicate the use of force was justified. A prosecutor's decision not to present to a grand jury is itself subject to review by the director of the Division of Criminal Justice.

The county prosecutor must report within three days any actual or potential conflicts of interest within his or her office. This would include ascertaining whether the officer(s) involved are to testify on behalf of the state in any pending matters and whether they've been assigned to a task force operating under the direct supervision of the prosecutor's office within the past five years. The responsibility to report to the Division of Criminal Justice is ongoing, and if a conflict is reported, the director of that agency will decide the appropriate action to preserve the impartiality of the investigation.

To avoid contaminating witnesses' recollections, express, prior authorization from the assistant prosecutor or assistant/deputy attorney general is required before revealing any information learned from the investigation. That includes, but is not limited to, police videos or other recordings. The prosecutor has the discretion to present violations to the grand jury as a potential crime or assigning the investigation to another county prosecutor. Any law enforcement officer or civilian employee who knowingly violates this provision is subject to discipline.

Investigators, forensic examiners and other experts from the same agency as the officer employing the force are generally excluded from the process, though they can be authorized for "good and sufficient cause." Those with specialized crime-scene skills can collect and process evidence but must do so under the supervision of the on-scene assistant prosecutor or assistant/deputy attorney general overseeing the investigation. In other words, they operate independent of their ordinary chain of command.

The Attorney General Shooting Response Team shall operate under the supervision of an assistant or deputy attorney general designated by the director and staffed by the Division of Criminal Justice and New Jersey State Police Major Crimes detectives.

When presenting cases to the grand jury, it is considered a best practice to consult continuing education courses on police use of force. Separate grand juries should decide on use-of-force issues and any underlying criminal activity that precipitated the police force.

Whenever the decision is made not to prosecute – either because the case is not presented to the grand jury or because the grand jury returns a “no bill” – the Attorney General Shooting Response Team should prepare a media statement. It should include specific findings of fact and lawfulness, an explanation of the efforts to avoid conflicts and a demonstration that proper procedures have been followed. The statement should comply with all rules of grand jury secrecy but provide enough detail to explain why the matters is not being prosecuted as a criminal offense.

Matters that don’t result in a prosecution are still subject to administrative review.

Additionally, the Division of Criminal Justice director should form an advisory citizens group to suggest improvements in use-of-force investigations. The director shall also confer with county prosecutors to discuss efforts that have been and are being undertaken across the state to establish community trust.

New Jersey Uniform Statewide Procedures and Practices for Investigating and Reviewing Police Use-of-Force Incidents

(Summarized from PowerPoint presentation on the New Jersey state website available here: <http://www.state.nj.us/oag/dcj/njpdresources/pdfs/SRT-OIS.pdf>)

The supplemental directive was drafted after extensive study and community feedback, according to [a PowerPoint presentation summarizing the state’s process](#). Seven core principals underlie both the original directive and the update:

1. Comprehensive, rigorous, impartial investigation;
2. Maintenance and protection of the integrity of ongoing investigations and the rights of the accused;
3. Mandatory review of all actual and potential conflicts of interest;
4. Multi-tiered independent review;
5. Uniformity in statewide investigations, including the grand jury practice;
6. Transparency of the process and findings;
7. Ongoing outreach and study.

Every use-of-force case is investigated under one of two designations: an officer-involved shooting (municipal police); or Shooting Response Team (county-, state- or federal-level officer.)

There are three legal justifications in OIS/SRT cases: self defense, defense of others and use of force in law enforcement. Once justification is asserted as a defense, the prosecution must disprove the justification beyond a reasonable doubt.

Pennsylvania proposal

The Pennsylvania District Attorneys Association recommended in November 2016 that officer-involved shootings be investigated by an independent agency and that the local District Attorney provide the public with a written report after the investigation is complete. The recommendations are part of 16 guidelines established by association's Best Practices Committee dealing with processing, investigating and communicating determinations made in officer-involved shootings.

Highlights of the PDAA Officer-Involved Shooting Investigation Best Practices and the 16 recommendations include:

- **Investigations should be independent:** To ensure the integrity of the investigation of an officer-involved shooting, investigations should be conducted by an agency separate and independent from the law enforcement agency involved in the shooting.
- **District attorneys should direct investigations:** Just as the DA must adjudicate and determine charges related to other shootings and violent crimes in their communities, their practical experience and professional responsibilities are vital components in the interviews and evidence-gathering that must take place following an officer-involved shooting. Accordingly, the recommendation is that the DA's office directs officer-involved shooting investigations.
- **On-site safety and security is essential:** The first issue at every officer-involved shooting scene is the safety and security of all those involved and the community. Once the threat is neutralized, officers at the scene must render aid immediately to any and all injured parties. If a person is deceased at the scene, the police should shield the body from public view.
- **Use the best available technology to process the crime scene:** Officer-involved shooting scenes are often large and confusing. Detailed evidentiary review and documentation of the scene is the first and essential step to determining the facts, including the use of 3-D mapping of the entire scene.
- **Communicate with the public:** The District Attorney may give a preliminary report on the status of the event after it happens, understanding that the detailed investigation may uncover more evidence. Once the full investigation has been completed, the District Attorney should report the findings to the public.

PA District Attorneys Recommend Independent Investigations of Officer Involved Shootings PDAA Issues First in the Nation Best Practices Guidelines for Police Shootings

Nov 29, 2016

HARRISBURG, PA — The Pennsylvania District Attorneys Association (PDAA) today recommended that officer-involved shootings should be investigated by an independent agency and that the local District Attorney should provide the public with a written report following the completion of the investigation. The recommendations are part of 16 guidelines established by association's Best Practices Committee dealing with processing, investigating and communicating determinations made in officer-involved shootings.

The Best Practices for Officer-Involved Shootings will provide prosecutors with recommendations to ensure investigations are conducted with independence and objectively. The guidelines are believed to be the first statewide guidelines for prosecutors produced in the United States.

"Officer-involved shootings are traumatic, complex, and highly publicized events," said PDAA President and Lebanon County District Attorney David Arnold. "As prosecutors, it is our duty to ensure that any police-related shooting is thoroughly reviewed in a manner that is objective and fair for everyone involved. In making these recommendations, our goals are to help law enforcement use best practices to make good decisions, even under incredibly difficult circumstances, and help the public better understand and have greater confidence in the process."

The guidelines announced today are the culmination of many months of work by the PDAA's Best Practices Committee. Chaired by Chester County District Attorney Tom Hogan, the committee collected and reviewed the responses to police-involved shootings by law enforcement and prosecutors nationwide. The committee also sought the input of community groups, police organizations, and prosecutors in making 16 recommendations.

"As we reviewed the responses to officer-involved shootings across the United States, we saw wide disparities in responses by prosecutors," said Hogan. "Pennsylvania's law enforcement agencies have the skills and ethics to do these investigations, but engaging an independent agency in the investigation removes any questions or negative perceptions that may come from the community. Having clear procedures

based on best practices will not only improve investigations, but enhance community relationships.”

Hogan stressed that Pennsylvania’s 67 counties vary widely, with sparsely populated rural areas, suburban counties, and densely populated urban centers. Therefore, each District Attorney must use their discretion to customize the recommended guidelines to fit the needs and resources of individual counties.

The 16 recommendations and guidelines cover the broad spectrum of responses required following an officer-involved shooting, ranging from which agency should investigate and processing the scene to interview best practices and communication with the public. There are also specific measures related to the injured parties.

“We are very pleased with the initiative that the District Attorneys are undertaking here,” said Deacon Gary Wattie of St. Paul’s Baptist Church in Chester County. “This opens the curtains to the process which hopefully will get better buy-in to the outcome, regardless of what it is.” Highlights of the PDAA Officer-Involved Shooting Investigation Best Practices and the 16 recommendations include:

1. **Investigations Should Be Independent:** To ensure the integrity of the investigation of an officer-involved shooting, investigations should be conducted by an agency separate and independent from the law enforcement agency involved in the shooting. Officer-involved shooting investigations deal with complex and difficult facts that must be dispassionately examined. Utilizing an agency not affiliated with the incident (for example, county detectives, the Pennsylvania State Police, or a neighboring jurisdiction) will reassure the public that the investigation was conducted without bias or direct connection to the officer(s) involved.
2. **District Attorneys Should Direct Investigations:** Under the Commonwealth Attorneys Act, the District Attorney is charged with determining if any shooting is justified or if charges should be filed. Just as the DA must adjudicate and determine charges related to other shootings and violent crimes in their communities, their practical experience and professional responsibilities are vital components in the interviews and evidence-gathering that must take place following an officer-involved shooting. Accordingly, the recommendation is that the DA’s office directs officer-involved shooting investigations.
3. **On-Site Safety and Security Is Essential:** The first issue at every officer-involved shooting scene is the safety and security of all those involved and the community. Once the threat is neutralized, officers at the scene must render aid immediately to any and all injured parties. If a person is deceased at the scene, the police should shield the body from public view.

4. Utilize Best-Available Technology to Process the Scene: Officer-involved shooting scenes are often large and confusing. Detailed evidentiary review and documentation of the scene is the first and essential step to determining the facts, including the use of 3-D mapping of the entire scene. It also is important to capture and review all possible video recordings of the incident, including police recordings, recordings from nearby businesses or homes, and civilian recordings.

5. Communicate with the Public: The District Attorney may give a preliminary report on the status of the event after it happens, understanding that the detailed investigation may uncover more evidence. Once the full investigation has been completed, the District Attorney should report the findings to the public.

These guidelines do not address use-of-force policies for law enforcement. The use of force laws already have been addressed in detail by Pennsylvania statutes (18 Pa. Cons. Stat. Ann. §501 et seq.) and the United States Supreme Court (*Graham v. Connor*, 490 U.S. 386 (1989)).

Cambria County District Attorney Kelly Callihan stated, “The PDAA guidelines for officer-involved shootings reflect a straightforward, common sense, and balanced approach to these difficult events. Fortunately, many of the counties in Pennsylvania already have adopted these guidelines, so they have been tested and reviewed under the glare of real-life situations, and have been used successfully to reach fair and just outcomes.”

The PDAA’s Best Practices Committee serves as a collaborative, non-partisan network to identify best practices, research, and legal methods to assist in the proper and just evolution of the criminal justice system. Created in 2014, the committee formalized the Association’s long history of identifying and promoting reforms and efficiencies in order to protect the innocent, convict the guilty, and ensure justice for the victims of crime.

The Best Practices Committee will periodically release other proposed best practices addressing important issues. Last spring, it released guidelines regarding eyewitness identification. Other issues currently being reviewed by the Committee are body-worn cameras and recorded interviews.

Pending legislation related to OIS investigations

H. 3352

Summary

This bill would amend several provisions of the S.C. Freedom of Information Act. The provisions pertinent to officer-involved

- Language to include video and audio recordings made by a law-enforcement vehicle mounted camera that involves an officer-involved incident resulting in death, injury, property damage or use of deadly force.
- An allowance for law-enforcement or public-safety agencies to appeal to the circuit court to prevent disclosure of video on grounds it is exempt from other disclosures specified in FOIA. The court will make its determination in an in-camera hearing, and could rule that all, none or portions of the recordings must be disclosed.
- Language requiring the court to specify a “definite time period” for any withholding.
- A rewriting of exemptions for law-enforcement and public-safety records that includes materials that would deprive a person of a right to a fair trial or impartial adjudication, among other grounds

Bill language

South Carolina General Assembly 122nd Session, 2017-2018

H. 3352

STATUS INFORMATION

General Bill

Sponsors: Reps. W. Newton, Taylor, Norrell and Erickson

Document Path: I:\council\bill\agm\19009wab17.docx

Companion/Similar bill(s): 99, 481, 3482

Introduced in the House on January 10, 2017

Currently residing in the House

Summary: Office of Freedom of Information Act Review

HISTORY OF LEGISLATIVE ACTIONS

<u>Date</u>	<u>Body</u>	<u>Action, description with journal page number</u>
12/15/2016	House	Prefiled
12/15/2016	House	Referred to Committee on Judiciary
1/10/2017	House	Introduced and read first time (House Journal-page 171)
1/10/2017	House	Referred to Committee on Judiciary (House Journal-page 171)
2/8/2017	House	Committee report: Favorable with amendment Judiciary (House Journal-page 16)
2/9/2017	House	Member(s) request name added as sponsor: Norrell
2/9/2017		Scrivener's error corrected
2/14/2017	House	Debate adjourned until Wed., 3-8-17 (House Journal-page 7)
2/16/2017	House	Member(s) request name added as sponsor: Erickson
3/8/2017	House	Debate adjourned until Wed., 3-22-17 (House Journal-page 8)

A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 1-23-665 SO AS TO CREATE THE OFFICE OF FREEDOM OF INFORMATION ACT REVIEW WITHIN THE ADMINISTRATIVE LAW COURT, AND TO PROVIDE FOR THE DUTIES AND FUNCTIONS OF THE OFFICE; TO AMEND SECTION 1-23-500, AS AMENDED, RELATING TO THE ADMINISTRATIVE LAW COURT, SO AS TO PROVIDE THE COURT, INCLUDING THE OFFICE OF FREEDOM OF INFORMATION ACT, IS CONSIDERED PART OF THE UNIFIED JUDICIAL SYSTEM FOR THE PURPOSES OF CERTAIN ETHICS, GOVERNMENT ACCOUNTABILITY, AND CAMPAIGN REFORM STATUTES; TO AMEND SECTION 30-4-30, RELATING TO RIGHTS TO INSPECT PUBLIC RECORDS UNDER THE FREEDOM OF INFORMATION ACT, SO AS TO INCLUDE ELECTRONIC TRANSMISSIONS AMONG THE RECORD FORMATS AVAILABLE FOR INSPECTION, TO PROVIDE CERTAIN LIMITATIONS APPLICABLE TO PRISONERS, TO PROVIDE PUBLIC BODIES ARE NOT REQUIRED TO CREATE ELECTRONIC VERSIONS OF PUBLIC RECORDS TO FULFILL RECORDS REQUESTS, TO REVISE REQUIREMENTS CONCERNING FEES TO FULFILL RECORDS REQUESTS, AND TO REVISE THE MANNER FOR RESPONDING TO RECORDS REQUESTS; TO AMEND SECTION 30-4-40, AS AMENDED, RELATING TO MATTERS EXEMPT FROM DISCLOSURE IN THE FREEDOM OF INFORMATION ACT, SO AS TO INCLUDE CERTAIN LAW ENFORCEMENT RECORDINGS; TO AMEND SECTION 30-4-50, RELATING TO CATEGORIES OF MATTERS DECLARED TO BE PUBLIC INFORMATION IN THE FREEDOM OF INFORMATION ACT, SO AS TO INCLUDE LAW ENFORCEMENT VEHICLE MOUNTED VIDEO AND AUDIO RECORDINGS, AND TO PROVIDE THAT LAW ENFORCEMENT MAY APPLY FOR INJUNCTIVE RELIEF FROM THE CIRCUIT COURT IF THERE IS CLEAR AND CONVINCING EVIDENCE OF SPECIFIC HARM FROM THE RELEASE OF THE RECORDING; TO AMEND SECTION 30-4-100, RELATING TO EQUITABLE REMEDIES AVAILABLE UNDER THE FREEDOM OF INFORMATION ACT, SO AS TO REVISE THE AVAILABLE REMEDIES; TO AMEND SECTION 30-4-110, RELATING TO PENALTIES FOR VIOLATIONS OF THE FREEDOM OF INFORMATION ACT, SO AS TO REMOVE CRIMINAL PENALTIES, TO VEST EXCLUSIVE JURISDICTION OVER CASES ARISING FROM REQUESTS FOR RECORDS AND EXEMPTIONS FROM DISCLOSURE, TO PROVIDE EXCEPTIONS TO THIS JURISDICTION, TO PROVIDE RELATED PROCEDURES FOR PERSONS ALLEGING VIOLATIONS, TO PROVIDE REVISED REMEDIES AND RELIEF AVAILABLE FOR VIOLATIONS, AND TO PROVIDE A PROCESS FOR APPEALS; TO AMEND SECTION 30-2-50, RELATING TO THE PROHIBITION ON OBTAINING PERSONAL INFORMATION FROM A STATE AGENCY FOR COMMERCIAL SOLICITATION, SO AS TO EXTEND THE PROHIBITION TO INFORMATION OBTAINED FROM LOCAL GOVERNMENTS AND POLITICAL SUBDIVISIONS OF THE STATE; AND TO PROVIDE THAT THESE MEASURES TAKE EFFECT OCTOBER 1, 2017.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 5, Chapter 23, Title 1 of the 1976 Code is amended by adding:

“Section 1-23-665. (A) There is created within the Administrative Law Court the Office of Freedom of Information Act Review. The Chief Judge of the Administrative Law Court shall serve as the Director of the Office of Freedom of Information Act Review. The hearing officers and staff must be appointed, hired, contracted, and supervised by the chief judge of the court, shall exercise their adjudicatory functions, duties, and responsibilities under the auspices of the Administrative Law Court as directed by the chief judge, and shall perform other functions and duties prescribed by the chief judge of the court. All employees of the office shall serve at the discretion of the chief judge. The chief judge is solely responsible for the administration of the office, the assignment of cases, and the administrative duties and responsibilities of the hearing officers and staff. Notwithstanding another provision of law, the chief judge also has the authority to promulgate rules governing practice and procedures before the Office of Freedom of

Information Act Review. These rules are subject to review as are the rules of procedure promulgated by the Supreme Court pursuant to Article V of the South Carolina Constitution, 1895.

(B) Notwithstanding another provision of law, the hearing officers shall conduct hearings in accordance with Chapter 23, Title 1, the Administrative Procedures Act, and the rules of procedure for the Office of Freedom of Information Act Review, at suitable locations as determined by the chief judge.

(C) The hearing officers are bound by the Code of Judicial Conduct, as contained in Rule 501 of the South Carolina Appellate Court Rules. The sole grounds for discipline and sanctions for hearing officers are those contained in the Code of Judicial Conduct in Rule 502, Rule 7 of the South Carolina Appellate Court Rules. The Commission on Judicial Conduct, under the authority of the Supreme Court, shall handle complaints against hearing officers for possible violations of the Code of Judicial Conduct in the same manner as complaints against other judges. Notwithstanding another provision of law, an administrative law judge or hearing officer, and the judge's or hearing officer's spouse or guest, may accept an invitation to, and attend, a judicial-related or bar-related function, or an activity devoted to the improvement of the law, the legal system, or the administration of justice.

(D) Appeals from decisions of the hearing officers must be filed with the Administrative Law Court pursuant to the court's appellate rules of procedure. Recordings of all hearings must be made part of the record on appeal, along with all evidence introduced at hearings, and copies will be provided to parties to those appeals at no charge. The chief judge may not hear appeals from these decisions.

(E) A hearing officer shall issue an order containing findings of fact and conclusions of law. If a hearing officer determines that records are not subject to disclosure, the determination constitutes a finding of good faith on the part of the public body or public official, and acts as a complete bar against the award of attorney's fees or other costs to the prevailing party should the hearing officer's determination be reversed on appeal. If a hearing officer determines that a record is subject to disclosure, the order must set forth in writing what information must be disclosed and when that disclosure must occur. If the decision of the hearing officer is not timely appealed to the Administrative Law Court, a prevailing party may apply to the Administrative Law Court to enforce the determination. If the decision is appealed to the Administrative Law Court, and the administrative law judge upholds a decision ordering disclosure of information, the administrative law judge may enforce the hearing officer's determination as the court considers appropriate. If the administrative law judge rules that the determination must be enforced, the court may hold a person, the responsible officer, or the public official of a public body in civil contempt for failing to comply with the provisions of Section 30-4-30 or an order of the court relating to Section 30-4-30. The administrative law judge also may award attorney's fees pursuant to Section 30-4-110.

(F) This section does not apply to data from a video or audio recording made by a law enforcement vehicle mounted recording device or dashboard camera."

SECTION 2. Section 1-23-500 of the 1976 Code, as last amended by Act 202 of 2004, is further amended to read:

"Section 1-23-500. There is created the South Carolina Administrative Law Court, which is an agency and a court of record within the executive branch of the government of this State. The court shall consist of a total of six administrative law judges. The administrative law judges shall be part of the state employees retirement system. For purposes of Chapter 13, Title 8, the Administrative Law Court, including the Office of Freedom of Information Act, is considered part of the unified judicial system."

SECTION 3. Section 30-4-30 of the 1976 Code is amended to read:

"Section 30-4-30. ~~(a)(A)(1) Any~~ A person has a right to inspect ~~or~~ a copy, or receive an electronic transmission of any public record of a public body, except as otherwise provided by Section 30-4-40, in accordance with reasonable rules concerning time and place of access. This right does not extend to individuals serving a sentence of imprisonment in a state or county correctional facility in this State, in another state, or in a federal correctional facility; however, this may not be construed to prevent those individuals from exercising their constitutionally protected rights, including, but not limited to, their right

to call for evidence in their favor in a criminal prosecution under the South Carolina Rules of Criminal Procedure.

(2) A public body is not required to create an electronic version of a public record when one does not exist to fulfill a records request.

(b)(B) The public body may establish and collect fees not to exceed the actual cost of searching for or making copies of records as provided for in this section. The public body may establish and collect reasonable fees not to exceed the actual cost of the search, retrieval, and redaction of records. The public body shall develop a fee schedule to be posted online. The fee for the search, retrieval, or redaction of records shall not exceed the prorated hourly salary of the lowest paid employee who, in the reasonable discretion of the custodian of the records, has the necessary skill and training to perform the request. Fees charged by a public body must be uniform for copies of the same record or document and may not exceed the prevailing commercial rate for the producing of copies. Copy charges may not apply to records that are transmitted in an electronic format. If records are not in electronic format and the public body agrees to produce them in electronic format, the public body may charge for the staff time required to transfer the documents to electronic format. However, members of the General Assembly may receive copies of records or documents at no charge from public bodies when their request relates to their legislative duties. The records must be furnished at the lowest possible cost to the person requesting the records. Records must be provided in a form that is both convenient and practical for use by the person requesting copies of the records concerned, if it is equally convenient for the public body to provide the records in this form. Documents may be furnished when appropriate without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Fees may not be charged for examination and review to determine if the documents are subject to disclosure. Nothing in this chapter prevents the custodian of the public records from charging a reasonable hourly rate for making records available to the public nor requiring a reasonable deposit of these costs before searching for or making copies of the records. A deposit not to exceed twenty-five percent of the total reasonably anticipated cost for reproduction of the records may be required prior to the public body searching for or making copies of records.

(c)(C) Each public body, upon written request for records made under this chapter, shall within fifteen ten days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of any such the request, notify the person making such the request of its determination and the reasons therefor. for it; provided, however, that if the record is more than twenty-four months old at the date the request is made, the public body has twenty days (excepting Saturdays, Sundays, and legal public holidays) of the receipt to make this notification. Such a This determination shall must constitute the final opinion of the public body as to the public availability of the requested public record and, if, however, the determination is not required to include a final decision or express an opinion as to whether specific portions of the documents or information may be subject to redaction according to exemptions provided for by Section 30-4-40 or other state or federal laws. If the request is granted, the record must be furnished or made available for inspection or copying no later than thirty calendar days from the date on which the final determination was provided, unless the records are more than twenty-four months old, in which case the public body has no later than thirty-five calendar days from the date on which the final determination was provided. If a deposit as provided in subsection (B) is required by the public body, the record must be furnished or made available for inspection or copying no later than thirty calendar days from the date on which the deposit is received, unless the records are more than twenty-four months old, in which case the public body has no later than thirty-five calendar days from the date on which the deposit was received to fulfill the request. If written notification of the determination of the public body as to the availability of the requested public record is neither mailed, electronically transmitted, nor personally delivered to the person requesting the document within the fifteen days allowed herein, time set forth by this section, the request must be considered approved as to non-exempt records or information. Exemptions from disclosure as set forth in Section 30-4-40 or by other state or federal laws are not waived by the public body's failure to respond as set forth in this subsection. The various response, determination, and production deadlines provided by this subsection are subject to extension by written mutual agreement of the public body and the requesting party at issue, and this agreement shall not be unreasonably withheld.

~~(d)~~(D) The following records of a public body must be made available for public inspection and copying during the hours of operations of the public body, unless the record is exempt pursuant to Section 30-4-40 or other state or federal laws, without the requestor being required to make a written request to inspect or copy the records when the requestor appears in person:

- (1) minutes of the meetings of the public body for the preceding six months;
- (2) all reports identified in Section 30-4-50(A)(8) for at least the fourteen-day period before the current day; ~~and~~
- (3) documents identifying persons confined in ~~any~~ a jail, detention center, or prison for the preceding three months; ~~and~~
- (4) all documents produced by the public body or its agent that were distributed to or reviewed by a member of the public body during a public meeting for the preceding six-month period.

(E) A public body that places the records in a form that is both convenient and practical for use on a publicly available Internet website is deemed to be in compliance with the provisions of subsection (D), provided that the public body also shall produce documents pursuant to this section upon request.”

SECTION 4. Section 30-4-40(a)(2) and (3) of the 1976 Code is amended to read:

“(2) Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy. Information of a personal nature shall include, but not be limited to, information as to gross receipts contained in applications for business licenses ~~and~~, information relating to public records which include the name, address, and telephone number or other such information of an individual or individuals who are handicapped or disabled when the information is requested for person-to-person commercial solicitation of handicapped persons solely by virtue of their handicap, and any audio recording of the final statements of a dying victim in a call to 911 emergency services. Any audio of the victim’s statements must be redacted prior to the release of the recording unless the privacy interest is waived by the victim’s next of kin. This provision must not be interpreted to restrict access by the public and press to information contained in public records.

~~(3) Records of law enforcement and public safety agencies not otherwise available by state and federal law that were compiled in the process of detecting and investigating crime if the disclosure of the information would harm the agency by:~~

- ~~(A) disclosing identity of informants not otherwise known;~~
- ~~(B) the premature release of information to be used in a prospective law enforcement action;~~
- ~~(C) disclosing investigatory techniques not otherwise known outside the government;~~
- ~~(D) by endangering the life, health, or property of any person; or~~
- ~~(E) disclosing any contents of intercepted wire, oral, or electronic communications not otherwise disclosed during a trial.~~ Records, video or audio recordings, or other information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

- (A) would interfere with a prospective law enforcement proceeding;
- (B) would deprive a person of a right to a fair trial or an impartial adjudication;
- (C) would constitute an unreasonable invasion of personal privacy;
- (D) would disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation, by an agency conducting a lawful security intelligence investigation, or information furnished by a confidential source;

(E) would disclose current techniques and procedures for law enforcement investigations or prosecutions, or would disclose current guidelines for law enforcement investigations or prosecutions if such disclosure would risk circumvention of the law;

- (F) would endanger the life or physical safety of any individual;
- (G) would disclose any contents of intercepted wire, oral, or electronic communications not otherwise disclosed during a trial.”

SECTION 5. Section 30-4-50 of the 1976 Code is amended to read:

“Section 30-4-50. (A) Without limiting the meaning of other sections of this chapter, the following categories of information are specifically made public information subject to the restrictions and limitations of Sections 30-4-20, 30-4-40, and 30-4-70 of this chapter:

- (1) the names, sex, race, title, and dates of employment of all employees and officers of public bodies;
- (2) administrative staff manuals and instructions to staff that affect a member of the public;
- (3) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;
- (4) those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the public body;
- (5) written planning policies and goals and final planning decisions;
- (6) information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies;
- (7) the minutes of all proceedings of all public bodies and all votes at such proceedings, with the exception of all such minutes and votes taken at meetings closed to the public pursuant to Section 30-4-70;
- (8) reports which disclose the nature, substance, and location of any crime or alleged crime reported as having been committed. Where a report contains information exempt as otherwise provided by law, the law enforcement agency may delete that information from the report.

(9) notwithstanding any other provision of the law, data from a video or audio recording made by a law enforcement vehicle mounted recording device or dashboard camera that involves an officer involved incident resulting in death, injury, property damage, or the use of deadly force.

(a) A law enforcement or public safety agency may apply to the circuit court for an order to prevent the disclosure of the video or audio recording data. Notice of the request and of the hearing must be provided to the person seeking the record. A hearing must be requested within fifteen days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of the request for disclosure and the hearing shall be held in camera.

(b) The court may order the recording data not be disclosed upon a showing by clear and convincing evidence that the recording is exempt from disclosure as specified in Section 30-4-40(a)(3) and that the reason for the exemption outweighs the public interest in disclosure. A court may order the recording data be edited to redact specific portions of the data and then released, upon a showing by clear and convincing evidence that portions of the recording are not exempt from disclosure as specified in Section 30-4-40(a)(3).

(c) A court order to withhold the release of recording data under this section must specify a definite time period for the withholding of the release of the recording data and must include the court's findings.

(d) A copy of the order shall be made available to the person requesting the release of the recording data.

(10) statistical and other empirical findings considered by the Legislative Audit Council in the development of an audit report.

(B) No information contained in a police incident report or in an employee salary schedule revealed in response to a request pursuant to this chapter may be utilized for commercial solicitation. Also, the home addresses and home telephone numbers of employees and officers of public bodies revealed in response to a request pursuant to this chapter may not be utilized for commercial solicitation. However, this provision must not be interpreted to restrict access by the public and press to information contained in public records.”

SECTION 6. Section 30-4-100 of the 1976 Code is amended to read:

“Section 30-4-100. ~~(a)(A) Any~~ Except for violations arising from Section 30-4-30 or challenges to exemption under Section 30-4-40, a citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief, or both, to enforce the provisions of this chapter in appropriate cases as long as such if the application is made no later than one year following after the date on which the of the alleged violation occurs or one year after a public vote in public session, whichever comes later. The circuit court shall also have exclusive jurisdiction to hear a challenge to (1) a determination that an

organization is not a public body as defined by Section 30-4-20(a), and (2) data from a video or audio recording made by a law enforcement vehicle mounted recording device or dashboard camera. The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.

(b)(B) If a person or entity seeking such relief under this section prevails, he or it may be awarded reasonable attorney's fees and other costs of litigation specific to the request. If such the person or entity prevails in part, the court may in its discretion award him or it reasonable attorney's fees or an appropriate portion thereof of those attorney's fees."

SECTION 7. Section 30-4-110 of the 1976 Code is amended to read:

"Section 30-4-110. Any person or group of persons who willfully violates the provisions of this chapter shall be deemed guilty of a misdemeanor and, upon conviction shall be fined not more than one hundred dollars or imprisoned for not more than thirty days for the first offense, shall be fined not more than two hundred dollars or imprisoned for not more than sixty days for the second offense and shall be fined three hundred dollars or imprisoned for not more than ninety days for the third or subsequent offense.

(A) The Office of Freedom of Information Act Review has exclusive jurisdiction over all cases, except determinations that an organization is not a public body as defined in Section 30-4-20(a) and cases involving data from a video or audio recording made by a law enforcement vehicle mounted recording device or dashboard camera where the circuit court has exclusive jurisdiction, arising from Section 30-4-30 or challenges to exemptions under Section 30-4-40 subject only to appellate review consistent with Section 1-23-380. A person aggrieved by a violation of Section 30-4-30 or challenges to exemptions under Section 30-4-40 may file a request for a hearing before the Office of Freedom of Information Act Review within one year after the occurrence of the alleged violation.

(B) A citizen of this State may file a request for a hearing with the Office of Freedom of Information Act Review pursuant to Section 1-23-665 in the following instances:

(1) to seek specific enforcement of a request made pursuant to Section 30-4-30, when the public body from which the records are requested fails to comply with the time limits provided in Section 30-4-30(C),

(2) to challenge the reasonableness of a fee assessed pursuant to Section 30-4-30, and

(3) to challenge a public body's determination that the requested information is not a public record under Section 30-4-20(c), or that the requested information is exempt from disclosure under Section 30-4-40.

(C) A public body may file a request for hearing with the Office of Freedom of Information Act Review pursuant to Section 1-23-665 to seek relief from unduly burdensome, overly broad, vague, repetitive, or otherwise improper requests, or where it has received a request but it is unable to make a good faith determination as to whether the information is exempt from disclosure.

(D) If a request for disclosure may result in the release of records or information exempt from disclosure under Section 30-4-40(a)(1), (2), (4), (5), (9), (14), (15), or (19), a person or entity with a specific interest in the underlying records or information shall have the right to request a hearing with the Office of Freedom of Information Act Review or to intervene in an action previously filed.

(E) If a person or entity seeking relief under this section prevails, the hearing officer may order:

(1) equitable relief as he considers appropriate,

(2) actual or compensatory damages, or

(3) reasonable attorney's fees and other costs of litigation specific to the request, unless otherwise barred by a finding of good faith pursuant to Section 1-23-665(E).

(F) If the person or entity prevails in part, he may be awarded reasonable attorney's fees or other costs of litigation specific to the request, or an appropriate portion thereof, unless otherwise barred.

(G) If the hearing officer finds that the public body has arbitrarily and capriciously violated the provisions of this chapter by refusal or delay in disclosing or providing copies of a public record, it may, in addition to actual or compensatory damages or equitable relief, impose a civil fine of five hundred dollars.

(H) A determination of the Office of Freedom of Information Act Review may be appealed to the Administrative Law Court or enforced by an administrative law judge pursuant to Section 1-23-665. The service of a notice of appeal to the Administrative Law Court acts to automatically stay matters decided in

the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect until the final judgement or decision of the Administrative Law Court or unless otherwise ordered by the administrative law judge. Further appeals to the Court of Appeals are subject to Section 1-23-610 and the South Carolina Appellate Court Rules.”

SECTION 8. Section 30-2-50 of the 1976 Code is amended to read:

“Section 30-2-50. (A) A person or private entity shall not knowingly obtain or use personal information obtained from a state agency, a local government, or other political subdivision of the State for commercial solicitation directed to any person in this State.

(B) Each state agency, local government, and political subdivision of the State shall provide a notice to all requestors of records pursuant to this chapter and to all persons who obtain records pursuant to this chapter that obtaining or using public records for commercial solicitation directed to any person in this State is prohibited.

(C) All state agencies, local governments, and political subdivisions of the State shall take reasonable measures to ensure that no person or private entity obtains or distributes personal information obtained from a public record for commercial solicitation.

(D) A person knowingly violating the provisions of subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined an amount not to exceed five hundred dollars or imprisoned for a term not to exceed one year, or both.

~~(E) This chapter does not apply to a local governmental entity of a subdivision of this state or local government.”~~

SECTION 9. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 10. This act takes effect on October 1, 2017.

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S. 154

Summary

This bill would amend chapter 1, Title 23 of the 1976 code relating to general provisions concerning law enforcement, to provide that these agencies are required to have a written policy regarding investigation of officer-involved deaths. The bill would also require:

- Policies to include a requirement that investigations be conducted by at least two investigators, one of which is the lead and neither of which is employed by a law enforcement agency employing the officer involved in the death.
- A complete investigation report be sent to the solicitor of the county in which the death occurred.
- Language that says the investigators “may” release the report pursuant to the Freedom of Information Act. (It is unclear if the intent is to require that the report be released pursuant to a FOIA request.)

Bill language

South Carolina General Assembly 122nd Session, 2017-2018

S. 154

STATUS INFORMATION

General Bill

Sponsors: Senator Malloy

Document Path: I:\s-res\gm\024law .dmr.gm.docx

Introduced in the Senate on January 10, 2017

Currently residing in the Senate Committee on **Judiciary**

Summary: Officer involved deaths

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
12/13/2016	Senate	Prefiled
12/13/2016	Senate	Referred to Committee on Judiciary
1/10/2017	Senate	Introduced and read first time
1/10/2017	Senate	Referred to Committee on Judiciary

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VERSIONS OF THIS BILL

[12/13/2016](#)

A BILL

TO AMEND CHAPTER 1, TITLE 23 OF THE 1976 CODE, RELATING TO GENERAL PROVISIONS CONCERNING LAW ENFORCEMENT, TO PROVIDE THAT EACH LAW ENFORCEMENT AGENCY SHALL HAVE A WRITTEN POLICY REGARDING THE INVESTIGATION OF OFFICER-INVOLVED DEATHS; TO PROVIDE FOR THE CONTENTS OF THE POLICY; TO PROVIDE FOR INVESTIGATIONS; TO PROVIDE FOR REPORTS; TO PROVIDE FOR THE RELEASE OF A REPORT IF PROSECUTION IS NOT PURSUED; TO PROVIDE FOR NOTICES OF VICTIM'S RIGHTS; AND TO DEFINE NECESSARY TERMS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 1, Title 23 of the 1976 Code is amended by adding:

“Section 23-1-250. (A) For purposes of this section:

- (1) ‘Law enforcement agency’ means a state, county, municipal, or local law enforcement authority.
- (2) ‘Law enforcement officer’ means an appointed officer or employee hired by and regularly on the payroll of the State or the State’s political subdivisions, who is granted statutory authority to enforce all or some of the criminal, traffic, and penal laws of the State and who possesses, with respect to those laws, the power to effect arrests for offenses committed or alleged to have been committed.
- (3) ‘Officer-involved death’ means the death of a person that results directly from an action or an omission of a law enforcement officer while the law enforcement officer is on duty or while the law enforcement officer is off duty but performing activities that are within the scope of the officer’s law enforcement duties.
- (4) ‘Victim’ means a person’s spouse, parent, child, or the lawful representative of a victim who is:
 - (a) deceased;
 - (b) a minor;
 - (c) incompetent; or
 - (d) physically or psychologically incapacitated.

(B)(1) A law enforcement agency shall have a written policy regarding the investigation of officer-involved deaths. The policy must require an investigation conducted by at least two investigators, one of whom is the lead investigator and neither of whom is employed by a law enforcement agency that employs a law enforcement officer involved in the officer-involved death;

(2) The policy may allow an internal investigation into the officer-involved death if the internal investigation does not interfere with the investigation conducted pursuant to subitem (B)(1).

(C) The investigators conducting the investigation pursuant to subsection (B) shall, in an expeditious manner, provide a complete report to the solicitor of the county in which the officer-involved death occurred.

(D) If the solicitor determines that no basis exists to prosecute the law enforcement officer involved in the officer-involved death, the investigators conducting the investigation may release the report pursuant to the Freedom of Information Act.

(E) A victim of an officer-involved death must be notified of the victim’s rights pursuant to Article 1, Section 24 of the South Carolina Constitution.

(F) When a motor vehicle or motorcycle of a law enforcement agency is involved in a traffic collision, Section 56-5-765 shall govern the investigation and disposition of the matter rather than this section.”

SECTION 2. This act takes effect upon approval by the Governor.

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H. 3020

Summary

This bill would add Section 23-3-90 so as to grant the S.C. State Law Enforcement Division exclusive authority to investigate officer-involved shootings that result or could have resulted in bodily injury or death. The bill would also:

- Require the investigation report to be submitted to the state Attorney General, who would determine whether charges are warranted.
- If a SLED officer is involved in the shooting, the sheriff of the county in which the incident occurred would investigate, even if the incident took place in an incorporated area.
- If a SLED officer and a sheriff's deputy are each involved in the shooting, the solicitor of the county must defer the investigation to an agency that employs a unit that regularly processes crime scenes and conducts forensic criminal investigations.
- If a SLED officer is involved in the shooting, evidence collected at the scene must be submitted to an analyzed by an accredited state law enforcement laboratory outside South Carolina.

Bill language

South Carolina General Assembly 122nd Session, 2017-2018

H. 3020

STATUS INFORMATION

General Bill

Sponsors: Reps. Rutherford and Robinson-Simpson

Document Path: I:\council\bill\nbd\11030cz17.docx

Companion/Similar bill(s): 3478

Introduced in the House on January 10, 2017

Currently residing in the House Committee on **Judiciary**

Summary: Officer involved shootings

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
12/15/2016	House	Prefiled
12/15/2016	House	Referred to Committee on Judiciary
1/10/2017	House	Introduced and read first time (House Journal-page 42)
1/10/2017	House	Referred to Committee on Judiciary (House Journal-page 42)
1/12/2017	House	Member(s) request name added as sponsor: Robinson-Simpson

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VERSIONS OF THIS BILL

[12/15/2016](#)

A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 23-3-90 SO AS TO GRANT THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION SPECIFIC AND EXCLUSIVE JURISDICTION AND AUTHORITY TO CONDUCT AN INVESTIGATION OF ALL OFFICER-INVOLVED SHOOTINGS THAT RESULT, OR COULD HAVE RESULTED, IN BODILY INJURY OR DEATH, TO ALLOW FOR AN INVESTIGATION OF AN OFFICER-INVOLVED SHOOTING TO BE COMPLETED BY A SEPARATE LAW ENFORCEMENT AGENCY IN CERTAIN CIRCUMSTANCES, TO ESTABLISH A PROTOCOL FOR EVIDENCE COLLECTION AND PROCESSING IN CERTAIN CIRCUMSTANCES, TO GRANT AN INVESTIGATING OFFICER THE SAME AUTHORITY AS HE WOULD HAVE IN HIS HOME JURISDICTION FOR THE DURATION OF THE INVESTIGATION, TO ESTABLISH A PROCEDURE FOR THE FORWARDING OF THE EVIDENCE TO THE ATTORNEY GENERAL UPON COMPLETION OF THE INVESTIGATION, AND TO ESTABLISH PENALTIES FOR THE FAILURE TO COMPLETE AN INDEPENDENT INVESTIGATION PURSUANT TO THE PROVISIONS OF THIS SECTION.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 1, Chapter 3, Title 23 of the 1976 Code is amended by adding:

“Section 23-3-90. (A) The South Carolina Law Enforcement Division shall have specific and exclusive jurisdiction and authority in the investigation of all officer-involved shootings that result, or could have resulted, in bodily injury or death. However, if the officer is employed by the South Carolina Law Enforcement Division, the sheriff of the county in which the officer-involved shooting occurred must investigate the officer-involved shooting, regardless of whether the shooting occurred within an incorporated jurisdiction. If the sheriff of the county in which the officer-involved shooting occurred does not employ a full-time unit that regularly processes crime scenes and conducts forensic and criminal investigations, the sheriff must defer the investigation to a law enforcement agency that does employ a full-time unit that regularly processes crime scenes and conducts forensic and criminal investigations and that possesses the expertise to conduct a proper death investigation.

(B) In the event an officer-involved shooting occurs that includes both an employee of the South Carolina Law Enforcement division and the sheriff, or one of his deputies, of the county in which the officer-involved shooting occurred, the solicitor of the county in which the officer-involved shooting occurred must defer the investigation to a law enforcement agency that employs a unit that regularly processes crime scenes and conducts forensic and criminal investigations and that possesses the expertise to conduct a proper death investigation.

(C) When an officer-involved shooting occurs that involves an officer who is employed by the South Carolina Law Enforcement Division all forensic evidence collected at the scene of the shooting must be submitted to and analyzed by an accredited state law enforcement laboratory outside the State of South Carolina.

(D) An officer, or officers, investigating an officer-involved shooting pursuant to this section shall have the same authority as he has in his home jurisdiction, for the duration of such investigation.

(E) Upon completion, all investigations of officer-involved shootings shall be forwarded to the Office of the Attorney General prior to the initiation or declination of any formal criminal action.

(F) A person who knowingly and wilfully violates the provisions of subsection (A) or (B) is subject to punishment as provided for in Section 8-1-80, even if the person’s authority extends beyond a single election or judicial district.”

SECTION 2. This act takes effect upon approval by the Governor.

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H. 3478

Summary

This bill would add Section 23-1-250 so as to prohibit officers from using excessive restraint when detaining a person or using excessive force while making an arrest. Violation would be a felony punishable by a prison sentence of two to 30 years. The bill would also:

- Stipulate that this provision not be considered a lesser-included charge, but be in addition to any other penalties imposed.
- Give SLED exclusive jurisdiction over officer-involved use-of-force cases, unless its own officer(s) is involved, in which case, the sheriff of the county where the incident took place leads the investigation, even if it occurred in an incorporated area.
- Require that in such cases, if the sheriff does not have a full-time unit that regularly processes crime scenes and conducts forensic criminal investigations, the sheriff must defer to a law-enforcement agency that does.
- Require that if both a SLED agent and sheriff's deputy are involved in the incident, the solicitor must defer to the investigation to a law enforcement agency that regularly processes crime scenes and conducts forensic criminal investigations.
- Require that if a SLED officer is involved in the shooting, evidence collected at the scene must be submitted to an analyzed by an accredited state law enforcement laboratory outside South Carolina.
- Require that an investigation of the incident be forwarded to the state Attorney General "prior to the initiation or declination of any formal criminal action."

Bill language

South Carolina General Assembly 122nd Session, 2017-2018

H. 3478

STATUS INFORMATION

General Bill

Sponsors: Rep. Rutherford

Document Path: I:\council\bill\ncd\11065cz17.docx

Companion/Similar bill(s): 3020

Introduced in the House on January 17, 2017

Currently residing in the House Committee on **Judiciary**

Summary: Law enforcement

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
1/17/2017	House	Introduced and read first time (House Journal-page 7)
1/17/2017	House	Referred to Committee on Judiciary (House Journal-page 7)

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VERSIONS OF THIS BILL

[1/17/20](#)

A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 23-1-250 SO AS TO PROHIBIT A LAW ENFORCEMENT OFFICER FROM USING EXCESSIVE RESTRAINT WHEN DETAINING A PERSON OR EXCESSIVE FORCE WHILE MAKING AN ARREST AND TO PROVIDE PENALTIES FOR AN OFFICER WHO USES EXCESSIVE RESTRAINT OR FORCE; AND BY ADDING SECTION 23-1-255, SO AS TO GRANT THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION SPECIFIC AND EXCLUSIVE JURISDICTION AND AUTHORITY TO CONDUCT AN INVESTIGATION OF ALL OFFICER-INVOLVED USES OF FORCE THAT RESULT, OR COULD HAVE RESULTED, IN SEVERE BODILY INJURY OR DEATH, TO ALLOW FOR AN INVESTIGATION OF AN OFFICER-INVOLVED USE OF FORCE TO BE COMPLETED BY A SEPARATE LAW ENFORCEMENT AGENCY IN CERTAIN CIRCUMSTANCES, TO ESTABLISH A PROTOCOL FOR EVIDENCE COLLECTION AND PROCESSING IN CERTAIN CIRCUMSTANCES, TO GRANT AN INVESTIGATING OFFICER THE SAME AUTHORITY AS HE WOULD HAVE IN HIS HOME JURISDICTION FOR THE DURATION OF THE INVESTIGATION, TO ESTABLISH A PROCEDURE FOR THE FORWARDING OF THE EVIDENCE TO THE ATTORNEY GENERAL UPON COMPLETION OF THE INVESTIGATION, AND TO ESTABLISH PENALTIES FOR THE FAILURE TO COMPLETE AN INDEPENDENT INVESTIGATION PURSUANT TO THE PROVISIONS OF THIS SECTION.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 1, Title 23 of the 1976 Code is amended by adding:

“Section 23-1-250. (A) A law enforcement officer may not use greater restraint than is necessary when detaining a person or unreasonable force when making an arrest.

(B) Investigations into officer-involved uses of force are subject to the provisions of Section 23-1-255.

(C) A person who violates this section is guilty of a felony and, upon conviction, must be imprisoned for not less than a mandatory minimum of two years and not more than thirty years. A violation of the provisions of this section is not considered a lesser-included offense of another offense, and the penalties provided in this section are in addition to the penalties provided for any other offense and any sentence imposed pursuant to the provisions of this section must be served consecutively.”

SECTION 2. Chapter 1, Title 23 of the 1976 Code is amended by adding:

“Section 23-1-255. (A) The South Carolina Law Enforcement Division shall have specific and exclusive jurisdiction and authority in the investigation of all officer-involved uses of force that result, or could have resulted, in severe bodily injury or death. However, if the officer is employed by the South Carolina Law Enforcement Division, the sheriff of the county in which the incident occurred must investigate the officer-involved use of force, regardless of whether the use of force occurred within an incorporated jurisdiction. If the sheriff of the county in which the incident occurred does not employ a full-time unit that regularly processes crime scenes and conducts forensic and criminal investigations, the sheriff must defer the investigation to a law enforcement agency that does employ a full-time unit that regularly processes crime scenes and conducts forensic and criminal investigations and that possesses the expertise to conduct a proper death investigation.

(B) In the event an officer-involved use of force occurs that includes both an employee of the South Carolina Law Enforcement division and the sheriff, or one of his deputies, of the county in which the officer-involved use of force occurred, the solicitor of the county in which the incident occurred must defer the investigation to a law enforcement agency that employs a unit that regularly processes crime scenes and conducts forensic and criminal investigations and that possesses the expertise to conduct a proper death investigation.

(C) When an officer-involved use of force occurs that involves an officer who is employed by the South Carolina Law Enforcement Division all forensic evidence collected at the scene must be submitted to and analyzed by an accredited state law enforcement laboratory outside of the State of South Carolina.

(D) An officer, or officers, investigating an officer-involved use of force pursuant to this section has the same authority as he has in his home jurisdiction, for the duration of the investigation.

(E) Upon completion, the investigation must be forwarded to the Office of Attorney General prior to the initiation or declination of any formal criminal action.

(F) A person who knowingly and wilfully violates the provisions of subsection (A) or (B) is subject to punishment as provided for in Section 8-1-80, even if the person's authority extends beyond a single election or judicial district."

SECTION 3. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 4. This act takes effect upon approval by the Governor.

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S. 481

Summary

This bill would add amend the S.C. Freedom of Information Act to add certain data from law enforcement's vehicle-mounted recording devices to the list of specific categories of public information and to provide that law enforcement may apply to obtain from a circuit court an order preventing disclosure of this information under certain circumstances. The bill would also:

- Not require public bodies to disclose any audio recording of the final statements of a dying victim in a 9-1-1 call unless the privacy interest is waived by the victim's next of kin.
- Allow the court to order, in presence of clear and convincing evidence, that a record be withheld in whole, in part or not at all. The court is required, should it issue an order to withhold release, to specify a definite time period for the withholding.
- A rewriting of exemptions for law-enforcement and public-safety records that includes materials that would deprive a person of a right to a fair trial or impartial adjudication, among other grounds.

Bill language

South Carolina General Assembly 122nd Session, 2017-2018

S. 481

STATUS INFORMATION

General Bill

Sponsors: Senator Hembree

Document Path: I:\council\bill\agm\19120wab17.docx

Companion/Similar bill(s): 99, 3352, 3482

[3352-16]

Introduced in the Senate on February 28, 2017
Currently residing in the Senate Committee on **Judiciary**

Summary: FOIA exemptions

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
2/28/2017	Senate	Introduced and read first time (Senate Journal-page 13)
2/28/2017	Senate	Referred to Committee on Judiciary (Senate Journal-page 13)

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VERSIONS OF THIS BILL

[2/28/2017](#)

A BILL

TO AMEND SECTION 30-4-50, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE FREEDOM OF INFORMATION ACT, SO AS TO INCLUDE CERTAIN DATA FROM LAW ENFORCEMENT VEHICLE MOUNTED VIDEO AND AUDIO RECORDINGS IN THE LIST OF SPECIFIC CATEGORIES OF PUBLIC INFORMATION, AND TO PROVIDE THAT LAW ENFORCEMENT MAY APPLY TO OBTAIN A COURT ORDER PREVENTING DISCLOSURE OF THIS INFORMATION IN CERTAIN CIRCUMSTANCES; AND TO AMEND SECTION 30-4-40, AS AMENDED, RELATING TO PUBLIC RECORDS EXEMPT FROM DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT, SO AS TO PROVIDE PUBLIC BODIES ARE NOT REQUIRED TO DISCLOSE ANY AUDIO RECORDING OF THE FINAL STATEMENTS OF A DYING VICTIM IN A CALL TO 911 EMERGENCY SERVICES, TO PROVIDE ANY SUCH STATEMENTS MUST BE REDACTED PRIOR TO RELEASE UNLESS THE PRIVACY INTEREST IS WAIVED BY THE VICTIM'S NEXT OF KIN, AND TO REVISE EXEMPTIONS FOR CERTAIN LAW ENFORCEMENT AND PUBLIC SAFETY AGENCY RECORDS ALSO TO EXEMPT RECORDS, VIDEO OR AUDIO RECORDINGS, OR OTHER INFORMATION COMPILED FOR LAW ENFORCEMENT PURPOSES EXCEPT IN CERTAIN CIRCUMSTANCES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 30-4-50 of the 1976 Code is amended to read:

“Section 30-4-50. (A) Without limiting the meaning of other sections of this chapter, the following categories of information are specifically made public information subject to the restrictions and limitations of Sections 30-4-20, 30-4-40, and 30-4-70 of this chapter:

- (1) the names, sex, race, title, and dates of employment of all employees and officers of public bodies;
- (2) administrative staff manuals and instructions to staff that affect a member of the public;
- (3) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;
- (4) those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the public body;
- (5) written planning policies and goals and final planning decisions;
- (6) information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies;
- (7) the minutes of all proceedings of all public bodies and all votes at such proceedings, with the exception of all such minutes and votes taken at meetings closed to the public pursuant to Section 30-4-70;
- (8) reports which disclose the nature, substance, and location of any crime or alleged crime reported as having been committed. Where a report contains information exempt as otherwise provided by law, the law enforcement agency may delete that information from the report.

(9) notwithstanding any other provision of the law, data from a video or audio recording made by a law enforcement vehicle mounted recording device or dashboard camera that involves an officer involved incident resulting in death, injury, property damage, or the use of deadly force.

(a) A law enforcement or public safety agency may apply to the Circuit Court for an order to prevent the disclosure of the video or audio recording data. Notice of the request and of the hearing must be provided to the person seeking the record. A hearing must be requested within fifteen days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of the request for disclosure and the hearing shall be held in camera.

(b) The court may order the recording data not be disclosed upon a showing by clear and convincing evidence that the recording is exempt from disclosure as specified in Section 30-4-40(a)(3) and that the reason for the exemption outweighs the public interest in disclosure. A court may order the

recording data be edited to redact specific portions of the data and then released, upon a showing by clear and convincing evidence that portions of the recording are not exempt from disclosure as specified in Section 30-4-40(a)(3).

(c) A court order to withhold the release of recording data under this section must specify a definite time period for the withholding of the release of the recording data and must include the court's findings.

(d) A copy of the order shall be made available to the person requesting the release of the recording data.

(10) statistical and other empirical findings considered by the Legislative Audit Council in the development of an audit report.

(B) No information contained in a police incident report or in an employee salary schedule revealed in response to a request pursuant to this chapter may be utilized for commercial solicitation. Also, the home addresses and home telephone numbers of employees and officers of public bodies revealed in response to a request pursuant to this chapter may not be utilized for commercial solicitation. However, this provision must not be interpreted to restrict access by the public and press to information contained in public records.”

SECTION 2. Section 30-4-40(a) of the 1976 Code is amended to read:

“Section 30-4-40. (a) A public body may but is not required to exempt from disclosure the following information:

(1) Trade secrets, which are defined as unpatented, secret, commercially valuable plans, appliances, formulas, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person and which are generally recognized as confidential and work products, in whole or in part collected or produced for sale or resale, and paid subscriber information. Trade secrets also include, for those public bodies who market services or products in competition with others, feasibility, planning, and marketing studies, marine terminal service and nontariff agreements, and evaluations and other materials which contain references to potential customers, competitive information, or evaluation.

(2) Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy. Information of a personal nature shall include, but not be limited to, information as to gross receipts contained in applications for business licenses ~~and~~, information relating to public records which include the name, address, and telephone number or other such information of an individual or individuals who are handicapped or disabled when the information is requested for person-to-person commercial solicitation of handicapped persons solely by virtue of their handicap, and any audio recording of the final statements of a dying victim in a call to 911 emergency services. Any audio of the victim's statements must be redacted prior to the release of the recording unless the privacy interest is waived by the victim's next of kin. This provision must not be interpreted to restrict access by the public and press to information contained in public records.

(3) ~~Records of law enforcement and public safety agencies not otherwise available by state and federal law that were compiled in the process of detecting and investigating crime if the disclosure of the information would harm the agency by:~~

~~(A) disclosing identity of informants not otherwise known;~~
~~(B) the premature release of information to be used in a prospective law enforcement action;~~
~~(C) disclosing investigatory techniques not otherwise known outside the government;~~
~~(D) by endangering the life, health, or property of any person; or~~
~~(E) disclosing any contents of intercepted wire, oral, or electronic communications not otherwise disclosed during a trial~~ Records, video or audio recordings, or other information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(A) would interfere with a prospective law enforcement proceeding;
(B) would deprive a person of a right to a fair trial or an impartial adjudication;
(C) would constitute an unreasonable invasion of personal privacy;
(D) would disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case

of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, by an agency conducting a lawful security intelligence investigation, or information furnished by a confidential source;

(E) would disclose current techniques and procedures for law enforcement investigations or prosecutions, or would disclose current guidelines for law enforcement investigations or prosecutions if such disclosure would risk circumvention of the law;

(F) would endanger the life or physical safety of any individual;

(G) would disclose any contents of intercepted wire, oral, or electronic communications not otherwise disclosed during a trial.

(4) Matters specifically exempted from disclosure by statute or law.

(5) Documents of and documents incidental to proposed contractual arrangements and documents of and documents incidental to proposed sales or purchases of property; however:

(aA) these documents are not exempt from disclosure once a contract is entered into or the property is sold or purchased except as otherwise provided in this section;

(bB) a contract for the sale or purchase of real estate shall remain exempt from disclosure until the deed is executed, but this exemption applies only to those contracts of sale or purchase where the execution of the deed occurs within twelve months from the date of sale or purchase;

(cC) confidential proprietary information provided to a public body for economic development or contract negotiations purposes is not required to be disclosed.

(6) All compensation paid by public bodies except as follows:

(A) For those persons receiving compensation of fifty thousand dollars or more annually, for all part-time employees, for any other persons who are paid honoraria or other compensation for special appearances, performances, or the like, and for employees at the level of agency or department head, the exact compensation of each person or employee;

(B) For classified and unclassified employees, including contract instructional employees, not subject to item (A) above who receive compensation between, but not including, thirty thousand dollars and fifty thousand dollars annually, the compensation level within a range of four thousand dollars, such ranges to commence at thirty thousand dollars and increase in increments of four thousand dollars;

(C) For classified employees not subject to item (A) above who receive compensation of thirty thousand dollars or less annually, the salary schedule showing the compensation range for that classification including longevity steps, where applicable;

(D) For unclassified employees, including contract instructional employees, not subject to item (A) above who receive compensation of thirty thousand dollars or less annually, the compensation level within a range of four thousand dollars, such ranges to commence at two thousand dollars and increase in increments of four thousand dollars;

(E) For purposes of this subsection (6), 'agency head' or 'department head' means any person who has authority and responsibility for any department of any institution, board, commission, council, division, bureau, center, school, hospital, or other facility that is a unit of a public body.

(7) Correspondence or work products of legal counsel for a public body and any other material that would violate attorney-client relationships.

(8) Memoranda, correspondence, and working papers in the possession of individual members of the General Assembly or their immediate staffs; however, nothing herein may be construed as limiting or restricting public access to source documents or records, factual data or summaries of factual data, papers, minutes, or reports otherwise considered to be public information under the provisions of this chapter and not specifically exempted by any other provisions of this chapter.

(9) Memoranda, correspondence, documents, and working papers relative to efforts or activities of a public body and of a person or entity employed by or authorized to act for or on behalf of a public body to attract business or industry to invest within South Carolina; however, an incentive agreement made with an industry or business: (1) requiring the expenditure of public funds or the transfer of anything of value, (2) reducing the rate or altering the method of taxation of the business or industry, or (3) otherwise impacting the offeror fiscally, is not exempt from disclosure after:

(aA) the offer to attract an industry or business to invest or locate in the offeror's jurisdiction is accepted by the industry or business to whom the offer was made; and

~~(bB)~~ the public announcement of the project or finalization of any incentive agreement, whichever occurs later.

(10) Any standards used or to be used by the South Carolina Department of Revenue for the selection of returns for examination, or data used or to be used for determining such standards, if the commission determines that such disclosure would seriously impair assessment, collection, or enforcement under the tax laws of this State.

(11) Information relative to the identity of the maker of a gift to a public body if the maker specifies that his making of the gift must be anonymous and that his identity must not be revealed as a condition of making the gift. For the purposes of this item, 'gift to a public body' includes, but is not limited to, gifts to any of the state-supported colleges or universities and museums. With respect to the gifts, only information which identifies the maker may be exempt from disclosure. If the maker of any gift or any member of his immediate family has any business transaction with the recipient of the gift within three years before or after the gift is made, the identity of the maker is not exempt from disclosure.

(12) Records exempt pursuant to Section 9-16-80(B) and 9-16-320(D).

(13) All materials, regardless of form, gathered by a public body during a search to fill an employment position, except that materials relating to not fewer than the final three applicants under consideration for a position must be made available for public inspection and copying. In addition to making available for public inspection and copying the materials described in this item, the public body must disclose, upon request, the number of applicants considered for a position. For the purpose of this item 'materials relating to not fewer than the final three applicants' do not include an applicant's income tax returns, medical records, social security number, or information otherwise exempt from disclosure by this section.

(14)(A) Data, records, or information of a proprietary nature, produced or collected by or for faculty or staff of state institutions of higher education in the conduct of or as a result of study or research on commercial, scientific, technical, or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or private concern, where the data, records, or information has not been publicly released, published, copyrighted, or patented.

(B) Any data, records, or information developed, collected, or received by or on behalf of faculty, staff, employees, or students of a state institution of higher education or any public or private entity supporting or participating in the activities of a state institution of higher education in the conduct of or as a result of study or research on medical, scientific, technical, scholarly, or artistic issues, whether sponsored by the institution alone or in conjunction with a governmental body or private entity until the information is published, patented, otherwise publicly disseminated, or released to an agency whereupon the request must be made to the agency. This item applies to, but is not limited to, information provided by participants in research, research notes and data, discoveries, research projects, proposals, methodologies, protocols, and creative works.

(C) The exemptions in this item do not extend to the institution's financial or administrative records.

(15) The identity, or information tending to reveal the identity, of any individual who in good faith makes a complaint or otherwise discloses information, which alleges a violation or potential violation of law or regulation, to a state regulatory agency.

(16) Records exempt pursuant to Sections 59-153-80(B) and 59-153-320(D).

(17) Structural bridge plans or designs unless: (a) the release is necessary for procurement purposes; or (b) the plans or designs are the subject of a negligence action, an action set forth in Section 15-3-530, or an action brought pursuant to Chapter 78 of Title 15, and the request is made pursuant to a judicial order.

(18) Photographs, videos, and other visual images, and audio recordings of and related to the performance of an autopsy, except that the photographs, videos, images, or recordings may be viewed and used by the persons identified in Section 17-5-535 for the purposes contemplated or provided for in that section.

(19) Private investment and other proprietary financial data provided to the Venture Capital Authority by a designated investor group or an investor as those terms are defined by Section 11-45-30."

SECTION 3. This act takes effect upon approval by the Governor.

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S. 612

Summary

This bill would add Section 23-1-242 to prohibit deletion or destruction of body-worn cameras with the intent to alter or influence a criminal action, internal police investigation, or a civil action or a “reasonably anticipated” civil action. The bill would also:

- Make violation of the provision a misdemeanor, punishable by fine and/or imprisonment of up to a year.
- Protect employees making a good-faith effort to follow written policies and procedures of their department.
- Require state and local law-enforcement agencies to develop policies and procedures for the use of body-worn cameras pursuant to the guidelines established by the Law Enforcement Training Council.
- Stipulate that the policies and procedures must require that body-worn cameras be activated in a reasonable timeframe when a uniformed officer arrives at a call for service or initiates any other law enforcement or investigative encounter between the officer and the public.

Bill language

South Carolina General Assembly 122nd Session, 2017-2018

S. 612

STATUS INFORMATION

General Bill

Sponsors: Senator Kimpson

Document Path: I:\s-jud\bill\kimpson\jud0035.rem.docx

Introduced in the Senate on April 4, 2017

Currently residing in the Senate Committee on **Judiciary**

Summary: Not yet available

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
4/4/2017	Senate	Introduced and read first time (Senate Journal-page 4)
4/4/2017	Senate	Referred to Committee on Judiciary (Senate Journal-page 4)

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VERSIONS OF THIS BILL

[4/4/2017](#)

A BILL

TO AMEND CHAPTER 1, TITLE 23, SOUTH CAROLINA CODE OF LAWS, 1976, BY ADDING SECTION 23-1-242 RELATING TO LAW ENFORCEMENT BODY WORN CAMERAS, TO PROHIBIT THE DELETION OR DESTRUCTION OF THE DATA FROM A BODY-WORN CAMERA WITH THE INTENT TO ALTER OR INFLUENCE A CRIMINAL ACTION, CRIMINAL INVESTIGATION, AN INTERNAL POLICE INVESTIGATION, A CIVIL ACTION OR POTENTIAL CIVIL ACTION IF NOTICE IS PROVIDED BY THE ADVERSE PARTY, OR IF LITIGATION IS REASONABLY ANTICIPATED, AND TO PROVIDE PENALTIES; TO PROVIDE THAT THE PROVISIONS OF THIS SECTION DO NOT APPLY TO PERSONS FOLLOWING THE POLICIES AND PROCEDURES ESTABLISHED BY THE AGENCY OR THE LAW ENFORCEMENT TRAINING COUNCIL; AND TO AMEND SECTION 23-1-240(D) TO PROVIDE FOR THE CIRCUMSTANCES IN WHICH THE POLICY AND PROCEDURES ESTABLISHED BY THE AGENCIES MUST INCLUDE FOR THE ACTIVATION OF THE RECORDINGS, TO INCLUDE ACTIVATION AT THE SCENE OF VIOLENT CRIMES, TRAFFIC STOPS, ACCIDENT INVESTIGATIONS, PUBLIC DRUNKENNESS, PERSONS COMMITTING DISORDERLY CONDUCT, ARRESTS, CONTACT WITH EMOTIONALLY DISTURBED PERSONS, OR INCIDENTS WITH WEAPONS, THE USE OF FORCE, OR ADVERSARIAL CONTACT.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 1, Title 23 of the 1976 Code is amended by adding:

“Section 23-1-242 (A) It is unlawful for a person to delete, destroy, fail to preserve, or alter in a way that would compromise its evidentiary value, the data from a body-worn camera as required by Section 23-1-240 with the intent to alter or influence the outcome of a criminal action, a criminal investigation, an internal police investigation, a civil proceeding, or a potential civil proceeding if notice is provided by the adverse party or if an investigation or litigation is reasonably anticipated.

(B) A person who violates a provision of this section is guilty of a misdemeanor and upon conviction must be fined in the discretion of the court, or imprisoned for not more than one year, or both.

(C) The provisions of this section do not apply to any individual who reasonably follows the policies and procedures for body worn camera data established by the law enforcement agency or the South Carolina Law Enforcement Training Council, or the deletion or destruction occurs after the conclusion of the related criminal or civil actions.”

SECTION 2. Section 23-1-240(D) of the 1976 Code, last amended by Act 71 of 2015, is amended to read:

“(D) State and local law enforcement agencies shall develop policies and procedures for the use of body-worn cameras pursuant to the guidelines established by the Law Enforcement Training Council. The agencies shall submit the policies and procedures to the Law Enforcement Training Council within two hundred seventy days of the effective date of this act. The Law Enforcement Training Council shall review and approve or disapprove of the policies and procedures. If the Law Enforcement Training Council disapproves of the policies and procedures, the law enforcement agency shall modify and resubmit the policies and procedures. The Law Enforcement Training Council, by three hundred sixty days from the effective date of this section, shall submit a report to the General Assembly which must include recommendations for statutory provisions necessary to ensure the provisions of this section are appropriately and efficiently managed and carried out and the fiscal impact associated with the use of body-worn cameras as required by this section, updated continuously as necessary. The policies and procedures must include the requirement that body-worn cameras must be activated in a reasonable timeframe when a

uniformed officer arrives at a call for service or initiates any other law enforcement or investigative encounter between an officer and a member of the public, including, but not limited to: on the scene of all violent crimes; traffic stops; motor vehicle accident investigations when the parties to the motor vehicle accident are present; contact with suspicious persons; public drunkenness; persons committing public disorderly conduct; field contacts; arrests; contact with emotionally disturbed persons; incidents where weapons are present or alleged to be present; incidents that could involve the use of force; or an adversarial contact or a potentially adversarial contact.”

SECTION 3. This act takes effect upon approval by the Governor.

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Ethical and civil-liability considerations

Federal

Memorandum

To: Solicitor Stone

From: Matt Adkins

Date: 19 April 2017

RE: Prosecutorial immunity (Federal)

Issue: Prosecutorial immunity from a Federal perspective.

Synopsis: Prosecutorial immunity takes two forms: Absolute and Qualified. The distinction is determined by a “function test,” asks if the actions taken by prosecutors are functions of their role as advocates and entitled to absolute immunity, or are functions of their role as investigators/administrators. Specific questions remain in applying this standard to particular situations that have split the Federal circuits. The 4th Circuit provides some guidance with respect to what is considered advocacy and what is considered investigation/administration.

ANALYSIS: The distinguishing factor used to determine whether prosecutorial immunity is absolute or qualified depends on the function the prosecutor is performing at the time of the conduct.

Acting as advocates: Absolute immunity applies and survives, even a showing of intentional bad conduct, bad faith or malice.

Acting as investigators or administrators: Qualified immunity applies and their misconduct must violate “clearly established law of which a reasonable prosecutor would have known.” Therefore, even when not afforded absolute immunity, a prosecutor may still assert immunity for his actions if there is not a violation of a clearly established law.

Seminal Supreme Court Cases: *Imbler, Burns, and Buckley*.¹

Imbler:² A prosecutor, when acting within the scope of his duties in initiating and pursuing a criminal prosecution, and in presenting the State’s case, was absolutely immune from liability under Section 1983. A prosecutor is immune when “activities are intimately associated with the judicial phase of the criminal process.” The reasoning, in part, is that “the public trust of the prosecutor’s office would suffer if he were constrained in making every decision by the consequences in terms of his own potential liability in a suit for damages.”

¹ *Imbler v. Pachtman*, 424 U.S. 409, 96 S. Ct. 984 (1976); *Burns v. Reed*, 500 U.S. 478, 111 S. Ct. 1934 (1991); and *Buckley v. Fitzsimmons*, 509 U.S. 259, 113 S. Ct. 2606 (1993).

² The allegations that gave rise to a defense of prosecutorial immunity were eight separate instances of misconduct including allowing a witness to give false testimony, suppressing an expert’s evidence, proceeding with prosecution despite a lie detector test that had cleared Imbler, and an altering of the police artist’s sketch of the killer that was subsequently used in trial.

Burns: Prosecutors are absolutely immune for participating in a probable cause hearing, but NOT for giving legal advice to the police prior to an arrest. The prosecutor told police they could question the suspect under hypnosis, and after the police had done so advised them that they “probably had probable cause.” The Supreme Court granted absolute immunity to the prosecutor for participating in a probable cause hearing but not for giving legal advice to police because it was not “closely associated with the judicial process.” The court reasoned, “Absolute immunity is designed to free the judicial process from the harassment and intimidation associated with litigation.”

Buckley: A prosecutor is NOT entitled to absolute immunity for manufacturing false evidence or for defaming the defendant in a press conference. “When a prosecutor performs the investigative functions normally performed by a detective or a police officer, it is not appropriate or justifiable that immunity should protect one and not the other.” The Court noted the difference in the advocate’s role of “evaluating evidence and interviewing witnesses in preparation for trial” and the investigator’s role of “searching for the clues and corroboration that might give him probable cause to recommend that a suspect be arrested.”

Circuit splits in other applications of **absolute immunity**:

- 1) Whether the defendant’s due process rights are violated when a prosecutor coerces a witness to testify falsely.
 - a. 3rd circuit and 7th circuit – coercion does not violate a defendant’s right to due process, *Michaels v. New Jersey*, 222 F. 3d 118 (2008), and *Buckley v. Fitzsimmons*, 20 F. 3d 789 (1994);
 - b. 2d Circuit holding the opposite in *Zahrey v. Coffey*, 221 F. 3d 342 (2000);
- 2) Whether a prosecutor is entitled to absolute immunity when fabricating evidence and using that tainted evidence in a trial or proceeding.
 - a. 3rd circuit, *Michaels* – absolute immunity applies;
 - b. 9th circuit, *Milstein v. Cooley*, 257 F. 3d 1004 (2001), and *Zahrey* – Only qualified immunity applies
- 3) What probable cause requirements are necessary for absolute immunity in accordance with *Buckley v. Fitzsimmons*.
 - a. 6th DC Cir, 8th, 2nd circuits³: absolute immunity is applied despite absence of probable cause.
 - b. *Milstein*, 9th Circuit: applying qualified immunity where the finding of probable cause was based on false evidence.
- 4) How to determine whether a prosecutor is acting as an investigator or an advocate when engaging in misconduct after probable cause has been met.
 - a. Circuit splits based on whether to apply an objective analysis or subjective state of mind.

Note: The Fourth Circuit has not yet decided any cases relating to the four common questions presented above that have resulted in the most significant circuit splits.

³ *Spurlock v. Thompson*, 330 F. 3d 791 (2003); *Moore v. Valder*, 65 F. 3d 189 (1995); *Kohl v. Casson*, 5 F. 3d 1141 (1993); and *Hill v. City of New York*, 45 F. 3d 653 (1995).

4th Circuit cases

1. *Dbabnah v. Keller-Burnside*, 208 F. 3d 467 (2000)

Absolute immunity extends to extradition proceedings as a prosecutorial function “intimately associated with the judicial phase of the criminal process.”

2. *Washington v. Wilson*, (2014) United States District Court for the District of South Carolina

This matter was heard by the District Court on the issuance of a report and recommendation by a United States magistrate judge. Substantively, the court agreed with the reasoning and analysis of the findings of the magistrate judge, and only reversed insofar as to grant leave to amend a complaint.

This matter is significant because the magistrate judge specifically reviews the three key U.S. Supreme Court cases regarding prosecutorial immunity: *Imbler*, *Buckley*, and *Burns*. It should be noted that the Court of Appeals denied reconsideration based on a failure to show an adequate basis for relief under Rule 59.

- Whether the actions to be considered are in the role of advocate and entitled to absolute immunity, or the actions are considered an investigatory function and entitled to only qualified immunity, are threshold questions for the court not the jury.

The Court applied the “functional approach” of *Buckley* in considering each allegation giving rise to the defense of prosecutorial immunity.

Charging and indicting: In accordance with *Imbler*, these are entitled to absolute immunity in deciding whether and when to prosecute. The immunity remains intact even when additional charges are brought between trials.

Withholding evidence: This falls within the prosecutorial roles as advocates for the state, therefore entitling prosecutors to absolute immunity.

Investigatory/administrative roles and civil conspiracy: The plaintiff cannot side-step absolute immunity by coloring the claims as a civil conspiracy cause of action. “Defendants at all times acted as advocates of the State during the judicial stage of the criminal process.”

Supervisory role of SCAG defendants: The plaintiff asserted that supervisory liability under Section 1983 applied against the collective defendants. Supervisory prosecutors are also entitled to absolute immunity.

The court further stated that the defendants enjoyed absolute immunity as applied to state-law claims under the South Carolina Tort Claims Act (SCTCA). The absolute immunity does not arise from SCTCA, but from the common law that guided decisions such as *Imbler*, *Buckley*, and *Burns*.

3. *Lyles v. Sparks*, 79 F.3d 372 (4th Cir. 1996)

Extends absolute immunity as described in *Imbler* to an attorney presenting testimony to a grand jury.

4. *Field v. McMaster*, 2010 U.S. District Court for the District of South Carolina

Agency officials performing functions analogous to those of a prosecutor should be able to claim absolute immunity with respect to such acts. A prosecutor is not entitled to absolute immunity for his acts prior to a probable cause determination because he is not yet acting as an advocate. The dividing line can be accurately stated as whether the prosecutor's actions was "more akin to that of a police officer or of a prosecutor's quasi-judicial role."

5. *Springmen v. Williams*, 122 F.3d 211, 4th Circuit Court of Appeals (1997)

Criminal defendants are free to argue that the prosecutor had improperly charged him of a crime. Even if successful, to allow this defense to serve as the basis of a Section 1983 suit would only serve to weaken the ultimate fairness of the operation of the judicial system.

6. *Hooper v. Sachs*, 1985 U.S. Dist. Ct, Maryland

Grand Jury, arrest, indictment, plea bargaining are so closely related to the "initiation and presentation of a criminal prosecution" that it qualifies for absolute immunity. Protection from actions based on prosecutorial conduct in those areas, no matter how outrageous the conduct may have been, have enjoyed absolute immunity. When the challenged conduct involves searches/seizures, it is considered investigative, and therefore qualified immunity applies. (Also considered investigative: participation in an interrogation, making an arrest.)

CONCLUSION

Absolute immunity will justify a 12(b)(6) motion to dismiss a prosecutor from civil liability. The test used, derived from three Supreme Court cases, to determine whether absolute immunity applies to *certain factual situations* varies slightly from circuit to circuit. However, in the Fourth Circuit, it seems that absolute immunity is applied more broadly than in some circuits. **The line between participating in an investigation, as a police officer would, and initiating and presenting a criminal prosecution, as a prosecutor's quasi-judicial role dictates, is what ultimately determines whether to apply absolute or qualified immunity. The circuits agree generally on how to draw the line (In accordance with the trilogy of Supreme Court precedent). The remaining question is what side of the line specific actions lie on.**

Additionally, even when the actions are deemed to be administrative or investigative, the standard for qualified immunity, applies to violations of "clearly established law" that a prosecutor "reasonably should have known." The courts seem hesitant to remove the absolute immunity granted to protect prosecutors from civil liability in the execution of any duties that can be colored as within their quasi-judicial role as advocates. Instead of opening up prosecutors to personal liability, the court chooses to rely on other means of deterrence from reprehensible prosecutorial conduct, such as public sanctions, or other disciplinary steps taken by the bar association.

State

TO: Duffie Stone, Solicitor

From: Kevin M. Phillips

Date: 4/24/2017

Re: Prosecutorial Immunity; A State Perspective

A South Carolina Overview of Prosecutorial Immunity

Under the South Carolina Tort Claims Act, all existing common law immunities are expressly preserved. This includes prosecutorial immunity. S.C. Code Ann. § 15-78-20(b) (Supp. 1997).

Williams v. Condon is referenced in the South Carolina Torts Claim Act as the case on point for prosecutorial immunity. “We hold a prosecutor in the employ of this state is immune from personal liability under § 1983 or the South Carolina Tort Claims Act for actions relating to the prosecution of an individual as a criminal defendant — regardless of the prosecutor’s motivation — provided the actions complained of were committed while **the prosecutor was acting as an “advocate”⁴**,” as defined by *Imbler v. Pachtman* and its progeny.” *Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496 (S.C. Ct. App. 2001) (emphasis added).

The South Carolina Court of Appeals acknowledged that immunity, as it is applied to judges, is in the same way applied to attorneys. *Id.* It is this immunity that, if removed, would “deprive the judges of the protection which is regarded as essential to judicial independence.” *Id.* 235. Since official authority imposes a duty to the public, a failure to perform it, or an erroneous performance, is regarded as an injury to the public, and not as one to the individual. *Cooley on Torts* (3rd Ed.) Vol. 2, p. 756.

The court acknowledges that an official should not escape liability if that official is abusing his power. However, it is impossible to confine such complaints to the guilty and ultimately, “it has been thought in the end better to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation.” *Williams*, 347 S.C. 227 (S.C. Ct. App. 2001). Pure motives are not required for a prosecutor to enjoy the shield of immunity. *Id.*, 239. However, a prosecutor is required to be acting in his or her role as an advocate, and the acts prompting the complaint must be “judicial” or “quasi-judicial.” *Id.*, 250.

While the court in *Williams* recognized that a prosecutor becomes an advocate for the state once probable cause to initiate an arrest has been established, the court understood that a prosecutor may be involved in the establishing probable cause and would require immunity to

⁴ The line between qualified and absolute immunity hinges on when a prosecutor begins acting as an “advocate.” This is a case-by-case analysis that has not been heavily litigated under state law. The Court references US Supreme Court precedence as the guidepost for defining advocacy. Advocacy, in this sense, is defined by the purpose of the Prosecutor’s actions rather than a definite procedural point in time.

operate properly. *Id.*, 227. “The prosecutor's actions at issue here – appearing before a judge [at a probable cause hearing] and presenting evidence in support of a motion for a search warrant – clearly involve the prosecutor's "role as advocate for the State," rather than his role as "administrator or investigative officer," the protection for which we reserved judgment in *Imbler*. *Id.*

Using the U.S. Supreme Court decision in *Yaselli v. Goff* as a guide, the South Carolina Court of Appeals in *Williams* determined state prosecutors enjoyed absolute immunity, and that by only granting prosecutors qualified immunity, the threat of §1983 (Civil Actions for the Deprivation of Rights) suits would undermine performance of his duties. *Id.*, 241. However, that absolute immunity is not infinite and applies to “initiating a prosecution and in presenting the State’s case, the prosecutor is immune from a civil suit for damages under §1983.” *Id.*, 243.

The South Carolina Court of Appeals stated an example of this restriction by writing, “A prosecutor providing legal advice to police regarding proper investigative tactics, however, was not recognized by the Court as prosecutorial in nature.” *Id.*, 244. The court continues, “A prosecutor is not, nor should consider himself to be, an advocate before he has probable cause to have anyone arrested.” *Id.*, 245. While the court does not go as far as to list every act that enjoys absolute immunity and acts that do not, the line seems to appear once the investigative phase has ended and the prosecutorial phase begins.

“We do not believe that advising the police in the investigation phase of a criminal case is so “intimately associated with the judicial phase of the criminal process,” *Imbler*, 424 U.S. at 430, 96 S. Ct. at 995, that it qualifies for absolute immunity.” *Id.*, 250. When prosecutors and detectives are the same, the immunity that protects them is also the same. *Id.* “A prosecutor may not shield his investigative work with the aegis of absolute immunity merely because, after a suspect is eventually arrested, indicted, and tried, that work may be retrospectively described as ‘preparation’ for a possible trial: every prosecutor might then shield himself from liability for any constitutional wrong against innocent citizens by ensuring that they go to trial.” *Id.*

In conclusion, a prosecutor enjoys absolute immunity from all civil claims arising under §1983 (Civil Actions for the Deprivation of Rights) or the South Carolina Tort Claims Act regardless of the prosecutor’s motivations. *Williams*, 347 S.C. 227, (S.C. Ct. App. 2001). Absolute immunity will be granted to a prosecutor who is performing duties that facilitate his or her “role as advocate for the State.” *Id.* Probable Cause and the moment it has been established is a major factor in determining what role a prosecutor is playing in the process. While a prosecutor has absolute immunity when presenting evidence at a probable cause hearing, that prosecutor will lose absolute immunity once he or she begins to perform duties that align with a detective or an investigating officer. *Id.*

Appendix

National Attorneys General seminar

The following is a synopsis of PowerPoint presentation by Multnomah County, Oregon District Attorney Rod Underhill, delivered at the National Attorneys General Training and Research Institute Officer-Involved Shooting seminar, June 16, 2016.

- [Tennessee v. Garner](#) declared the state's statute regarding use of deadly force to apprehend a suspect was unconstitutional because the use of deadly force to prevent the escape of all felony suspect is constitutionally unreasonable. It is not better that all felony suspects die than that they escape. However, it is not constitutionally unreasonable to use deadly force if the suspect poses a threat of serious physical harm to the officer or others.
- [Graham v. Conner](#) established the standard by which an officer's actions are to be judged: What would a reasonable officer do?
- [The President's Task Force on 21st Century Policing](#), released in May 2015, encourages jurisdictions to make external and independent investigations mandatory. Many states begin adopting special prosecutors for this purpose. Connecticut and New York are examples of states adopting special-prosecutor mandates; Wisconsin adopted an outside-investigator law a little more than a year before the task force report.
- Nine states have no statute on use of lethal force; nine allow lethal force to suppress a riot; eight require verbal warning before use of lethal force.
- There are 3,143 separate federal, state and local jurisdictions within the United States. They vary widely on policy. The presentation provides examples:
 - In Oregon, a bill to require all deadly force incidents be taken to the grand jury was defeated in 2015. The bill also contained provisions to ensure the grand jury proceedings are recorded by a stenographer and that the investigation be conducted by a person not employed by the involved agency.
 - [California changed its code in August 2015](#) to prevent the grand jury from inquiring into shootings or excessive force cases involving a peace officer, or that led to the death of a person being detained or arrested by an officer. The change was designed to make these judicial proceedings more transparent.
 - Georgia requires accused officers receive a copy of the proposed bill of indictment 15 days before a case is presented to a grand jury. The accused may make a sworn statement at the conclusion of state's evidence and will not be subjected to cross examination.
 - Nebraska requires that a grand jury be called when a coroner certifies that a person has died in custody or while being apprehended. A 2010 legislative change deleted a provision that a special prosecutor be appointed.
- In a Nov. 25, 2015, [article in the the Yale Law and Policy Review](#), Paul McMahon argues that inquests build "the ecology of transparency." Inquests have significant advantages over litigation in that the information gathered can be used for multiple purpose.
- Clark County, Nev. Has such an inquest procedure, although the state Supreme Court struck down a provision that put a Justice of the Peace in charge of the inquest because that exceeded the scope of that office's authority, vested by the legislature. However,

introduces into the process an ombudsman, who can represent the public and the family of the deceased.

The matter of the grand jury investigation of the incident of August 9, 2014

This presentation was authored by St. Louis County Prosecuting Attorney Robert P. McCullough and concerned the grand jury investigation of an officer-involved shooting in Ferguson, Mo., that drew national media attention.

McCullough notes Rule 3.6, which limits extrajudicial statements in order to avoid prejudicing any adjudicative proceeding. He also emphasizes the prosecutor's obligation to disclose mitigating or exculpatory evidence. Moreover, the prosecutor must serve as a minister of justice, not merely an advocate for the state.

In dealings with the grand jury, a prosecutor may explain the law and express a legal opinion on the significance of the evidence, but he or she should give deference to the grand jury's status as an independent legal body.

So for example, if an officer has killed someone in the line of duty, prosecutors often present all available information and witnesses to the grand jury so that an evaluation of probable cause can be made by an entity independent of the prosecutor. This should enhance public confidence in the ultimate decision.

The process includes joint investigation between local law enforcement and the FBI, sharing of all witness statements and witnesses, all evidence, all photos, and all medical records.