

INVESTIGATION MODELS

*A survey of
jurisdictions across the
country using
independent and other
investigation models
for serious and deadly
uses of force by law
enforcement*

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Wisconsin



Background

Outcomes

Pros & Cons

*Community Reception
and Proposed Reforms*

Background



Origin

In April 2014, Wisconsin enacted a law requiring independent investigations of officer-involved deaths. Wisconsin was the first state in the country to pass a law requiring independent investigations of officer-involved deaths.



Investigator: At least two independent investigators are required to conduct the investigation of any officer-involved death. Investigators may not be employed by the same agency as the officer involved in the incident.



Designator: The department of the officer involved in the incident chooses the agency that investigates the incident.



Timeline: The Wisconsin Department of Justice's Division of Criminal Investigations (DCI) has led most investigations since January 2015 and DCI-led investigations generally take between one and four months to complete.



Charging: After an investigation is complete, investigators present a report of their findings to the jurisdiction's District Attorney (DA) who then determines whether there is a basis to prosecute.



Public Report: If the DA chooses not to file charges against the officer, the investigators release the report to the public.



Scope of Law: Deaths involving officers.

- Wisconsin Statute § 175.47: <https://docs.legis.wisconsin.gov/statutes/statutes/175/47>
- Milwaukee Police Department, "Officer Involved Critical Incidents/Milwaukee Area Investigative Team (MAIT)," <http://city.milwaukee.gov/police/Officer-Involved-Critical-Incidents.htm>
- Thank you to Seattle Office of Police Accountability for providing their research on Wisconsin's independent investigation model reflected in these slides.

Pros & Cons



Pros

Investigator Expertise: DCI investigators deal solely with high-profile and complex criminal investigations. As a result, their capacity and resources to manage complicated officer-involved death investigation may exceed that of local law enforcement.

Popular and Law Enforcement Support: Wisconsin's model, at its inception, had widespread public support and support from Wisconsin's largest police union.

Transparency: Investigators are required by statute to release the report submitted to the district attorney to the public if the district attorney declines to prosecute, allowing the public to track incidents.

Some Local Flexibility Retained: Wisconsin law's only requirement is that two independent investigators conduct the investigation, allowing for flexibility in who throughout the state investigates a particular incident.

Investigations Completed Promptly: DCI-led investigations generally take between one and four months to complete, potentially due to DCI's capacity and resources.

Pros & Cons



Cons

Logistical Challenges: Transferring investigative control likely results in delayed evidence gathering. It may also take several hours just for an investigator to get to a scene.

Potential for Bias or Conflict: Investigators still have ties to the law enforcement field. There is still a belief that law enforcement is incapable of objectively and independently investigating one another, which may undermine public trust in an investigation.

District Attorneys, who ultimately decide whether to take action, work closely with officers on a daily basis.

Investigators could have direct ties to the department they investigate.

- Case of Dontre Hamilton: DCI investigators were formerly part of the Milwaukee Police Department

Statewide Consultancy Market: A multiagency model allows for departments to pick and choose investigators, creating a potential to shop for a potentially favorable inquiry.

No Statewide Standards: There are no statewide standards for how to investigate an incident, or to protect against conflicts of interest. An investigation conducted by DCI may differ drastically from an investigation conducted by a local law enforcement agency due the differences in capacity, resources, skills, and expertise.

Community Reception & Proposed Reforms



“It’s like me killing someone and my family gets to determine what the consequences of that are. The [state] DOJ represents the same system.”

- Brandi Grayson, Young Gifted and Black Coalition

“They may still be working on the same playing field and working on things through the same lens [as local law enforcement would].”

- David Owens, Attorney for Tony Robinson family

Proposed Reforms to Law

- Set up a citizen board, a panel made up of law enforcement and community members, to review cases.
- Require those investigating officer-involved shooting deaths to not have recently worked with the force they’re investigating.
- Hand the decision of whether or not to indict police officers who fatally shoot civilians to special prosecutors, rather than district attorneys.

Connecticut



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Investigator: A special prosecutor or a prosecutor from a different judicial district is required to investigate. The investigating state's attorney works with the Connecticut State Police to process the scene and conduct an investigation.



Report: Upon the conclusion of an investigation of the incident, the prosecutor files a report with the Chief State's Attorney. The Chief State's Attorney must provide a copy of the report of the executive of the municipality where the incident occurred and to the Commissioners of Emergency Services and Public Protection or the chief of police.

Origin

In June 2015, Connecticut enacted legislation mandating prosecutorial reassignment in officer-involved deaths.



Designator: The Chief State's Attorney, who is appointed, designates a prosecutorial official to conduct the investigation.



Charging: The Division of Criminal Justice (DCJ), which is the office of the Chief State's Attorney, decides whether to take action and charge an officer.



Timeline: Investigations take average of nine to 12 months to complete. Investigations can take as long as two years.



Scope of Law: Use of physical force by a peace officer that results in death of another person.

- General Statutes of Connecticut, Sec. 51-277a: http://search.cga.state.ct.us/r/statute/dtsearch_form.asp
- Connecticut Conference of Municipalities, "National Unrest Sharpens CT's Focus on Police-Community Trust": <https://www.ccm-ct.org/policecommunityrelations>
- CT Post, "Expert: police use of force investigations can take year or more": <https://www.ctpost.com/local/article/Expert-police-use-of-force-investigations-can-12509068.php>
- <http://wnpr.org/post/police-excessive-force-bill-passes-state-legislature-special-session>

Pros & Cons



Pros

Prosecutor-Led Investigations: Investigations are not led by another law enforcement agency, but a special prosecutor or a prosecutor from a different jurisdiction, which may foster impartiality.

Designation Authority: The Chief State's Attorney chooses the prosecutorial official to conduct the investigation, which prevents departments from being able to pick and choose investigators and shop for a potentially favorable inquiry.

Community Confidence in DCJ and Process: After the enactment of legislation to require independent investigations, reformists proposed requiring all uses of force to be investigated via the same process as uses of force resulting in death.

Community Engagement: The Chief State's Attorney has held public meetings with community members to answer question about investigation processes.

Law Enforcement Support: The Connecticut Chiefs of Police Association supported the bill.

- Hartford Courant, "Top Prosecutor Changes Policy On Police Use-of-Force Investigations": <http://www.courant.com/politics/hc-new-use-of-force-investigation-policy-20150320-story.html>
- CT Post, "Expert: police use of force investigations can take year or more": <https://www.ctpost.com/local/article/Expert-police-use-of-force-investigations-can-12509068.php>
- Hartford Courant, "Lawmakers, Organizations Push For Police Reform After Fatal Bridgeport Officer-Involved Shooting": <http://www.courant.com/breaking-news/hc-police-reform-press-conference-0517-20170516-story.html>

Pros & Cons



Cons

Lengthy Investigation Periods: Investigations take an average of nine to 12 months. One investigation took 19 months between the incident and the release of a report.

Lack of Transparency: The long timeline and limited communications by the investigating prosecutor during this timeline breeds mistrust in community in the process, creating tension. Although the DCJ posts reports on its website, the law does not require DCJ to publish the investigation reports.

No Statewide Standards: There are no statewide standards for how to investigate an incident across state's attorney's offices, although each state's attorney works with the Connecticut State Police.

Limited Scope: The law only applies to uses of force that result in the death of another person.

Community Reception & Proposed Reforms



"This investigation by the state police... this has been a sham from the start.. We know the police can't investigate the police."

- Jeannia Fu, Justice for Jayson

"Prosecutors and police should not expect the benefit of the doubt regarding their investigations into police uses of force when all signs point to a system that does not hold police accountable."

- ACLU of Connecticut

Proposed Reforms to Law

- Require that a state's attorney, outside the judicial district of the incident, investigate all use of force that results in serious injury, not just if there was a death.
- Create tight deadlines (15-day) to complete initial police use of force investigations and require the DCJ to publicly release its findings.

- State of Connecticut, General Assembly, House Bill 6663 (2017): <https://www.cga.ct.gov/2017/FC/pdf/2017HB-06663-R000221-FC.pdf>
- Hartford Courant, "Lawmakers, Organizations Push For Police Reform After Fatal Bridgeport Officer-Involved Shooting": <http://www.courant.com/breaking-news/hc-police-reform-press-conference-0517-20170516-story.html>
- CBS News, "Protests after Conn. Officer cleared in unarmed teen's killing": <https://www.cbsnews.com/news/protests-after-conn-officer-cleared-in-unarmed-teens-killing/>
- ACLU of Connecticut, "No Charges in Jayson Negrón's Death Shows Need For Police Accountability": <https://www.acluct.org/en/press-releases/no-charges-jayson-negróns-death-shows-need-police-accountability>

Utah



Background

Outcomes

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Independent Investigator: The investigating agency must not be the employer of the officer involved in the incident. The investigating team seems to typically consist of law enforcement personnel from many different agencies and investigators from the district attorney's office.



Charging: The District or County Attorney receives the investigation report and decides whether to file a criminal charge.

Origin

In March 2015, Utah enacted legislation (HB 361 – Investigation Protocols for Peace Officer Use of Force) requiring independent investigations of officer-involved critical incidents.



Designator: The chief executive of a law enforcement agency jointly designates an investigating agency with the district or county attorney.



Policy and Protocol Requirements: The law also requires each law enforcement agency in the state to adopt and post policies and procedures it has adopted to select the investigating agency if an officer-involved critical incident occurred in its jurisdiction, and protocols to ensure that investigations are conducted professionally, thoroughly, and impartially.



Timeline: Unknown



Scope of Law: Deaths involving officers and the use of a dangerous weapon by an officer against a person that causes injury to any person.

Pros & Cons



Pros

Requires Adoption of Policy and Protocol: The law requires that each law enforcement agency adopt and post its policies and procedures for selecting the investigating agency for an officer-involved critical incident.

Wider Scope: The law not only applies to deaths involving officers, but incidents in which an officer uses a dangerous weapon against a person that causes injury to any person.

Pros & Cons



Cons

Lack of Clarity in Law: Although the law requires that law enforcement agencies adopt protocols to ensure that investigations are conducted “professionally, thoroughly, and impartially,” it does not define these words in the context of investigating officer-involved critical incidents.

No Baseline Policy and Protocol: Each law enforcement agency may adopt different policies and protocols, which potentially creates inconsistencies for how incidents are investigated throughout the state.

Potential for Bias or Conflict: The Chief of Police selects the law enforcement agency to conduct the investigation, creating a potential for agencies to select favorable investigators.

It seems that investigative teams typically consist of law enforcement personnel from many different agencies. Also, cross-agency collaboration is a common law enforcement strategy in Utah. Despite the law that requires that investigators not be employed by the same agency as the involved the officer, there still may be an inherent conflict of interest due to the prevalence of collaborations among law enforcement agencies.

No Single Repository for Data and Information: Because investigations are conducted by law enforcement agencies statewide, and are not overseen by a statewide agency, it is difficult for the public to access aggregate data and information about investigations.

- ACLU Utah, “Criminal Justice Re-cap of 2015 Session: Part 2!”: <http://www.acluutah.org/blog/item/983-criminal-justice-re-cap-of-2015-session-part-2>
- Salt Lake Tribune, “A team effort by law enforcement is putting bad Utahns in prison”: <https://www.sltrib.com/news/2018/02/01/a-team-effort-by-law-enforcement-is-putting-bad-utahns-in-prison/>

Community Reception & Proposed Reforms



"We're sick of police policing the police. Why are police policing the police? It makes no sense. It is completely absurd that we would have them investigate themselves."

- Carly Haldeman, demonstrator

"Investigations of law enforcement, by law enforcement, are not meeting the expressed needs of the public to which law enforcement is accountable."

- ACLU of Utah, after the shooting of Patrick Harmon was found to be justified.

Proposed Reforms to Law

- Timely and fair release of public information related to critical incidents involving violence between police and community members.
- Independent investigations of critical incidents by investigators who will not be engaged in possible future criminal prosecutions of community members injured by police.

- Salt Lake Tribune, "'How many names?' – With seven police shootings this year, Salt Lake County is on pace for a record high in use of lethal force": <https://www.sltrib.com/news/2018/04/22/how-many-names-with-seven-police-shootings-this-year-salt-lake-county-is-on-pace-to-have-highest-number-in-recent-history/>
- ACLU Utah, "Lack of Transparency Compounds Tragedy of Shooting Death of Patrick Harmon": <http://www.acluutah.org/newsroom/item/1373-statement-patrick-harmon>
- ACLU Utah, "ACLU of Utah Response to Recent Developments in Abdi Mohamed Shooting Investigation": <http://www.acluutah.org/newsroom/item/1194-aclu-of-utah-response-to-recent-developments-in-abdi-mohamed-shooting-investigation>

New York



Background

Outcomes

New York: Background



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

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



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

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



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



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

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



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

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

New York: Outcomes



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

SIPU's reports also typically include policy recommendations.



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

- Loyda Colon, Co-Director of Justice Committee

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

- Rachel Silberstein, reporter for Gotham Gazette

Civilian Oversight Models

Los Angeles

Hawai'i

Los Angeles: Background

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

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

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

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

Los Angeles: At the Scene



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

Upon an officer-involved shooting:

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

Los Angeles: After the Incident



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

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

Los Angeles: Summary



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



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



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



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

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

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

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



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

Hawai'i: Background



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

- Hawai'i State Senator Will Espero



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



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



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



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



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



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

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

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

Multiagency Models

Snohomish County, WA

San Joaquin County, CA

Snohomish County: Background



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

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



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



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



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



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



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

San Joaquin County: Background



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



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



Membership:

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



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



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



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

San Joaquin County

Problems

- Employer agency investigations lack independence.
- District attorney involvement in investigations presents similar conflicts of interest.
- Non-law enforcement entities, while more independent, lack comparable levels of investigative expertise.

Recommendations

- Prohibit employer agency from serving as the lead investigator.
- Employer agency involvement should be minimal.
- Employer agency involvement should not include participation in criminal investigation interviews.

Summaries of Other Models

Colorado (§§ 16-2.5-301, 20-1-114): Requires all police departments to have policies in place that prescribe investigative protocols for incidents where an officer discharges a weapon that causes injury or death. Places discretion to release the report to the public in the hands of the district attorney.

Hawaii (§§ 28-151 through 153): Created a board responsible for reviewing criminal investigations of incidents of officer-involved death conducted by law enforcement agencies and issuing recommendations to the prosecuting attorney of the county in which the incident occurred.

Illinois (50 § 727/ 1–10): At least two investigators, or an entity of agency comprised of at least two investigators, are required to investigate officer-involved deaths and they must not be employed by the same agency that employs the officer involved in the incident. There are certification and training requirements for lead investigators. Each law enforcement agency is required to have a written policy regarding the investigation of officer-involved deaths.

New York (Executive Order 147): Requires state agencies to investigate all use of force by police officers or any death of an unarmed civilian. If investigators determine that there is no probable cause to file charges against an officer, a report detailing their findings will be provided to the Governor.

Snohomish County

End