

OFFICER-INVOLVED SHOOTINGS: AN OVERVIEW OF THE PROCESS

The Winnebago County State's Attorney's Office's review of officer-involved shooting cases where a death has occurred or where an individual has been injured is an involved process. Consistent with all criminal investigations, law enforcement is tasked with conducting the investigation. The Winnebago-Boone County Integrity Task Force is the investigative agency that conducts these investigations. The review of officer-involved shooting cases and the legal analysis undertaken in determining whether the filing of criminal charges is appropriate depend on the facts and circumstances of a particular case. This is an overview of the evidentiary and legal issues that impact these cases and an overview of the investigatory process and the applicable laws used to determine whether criminal conduct has occurred and whether criminal charges are appropriate.

The Winnebago-Boone County Integrity Task Force (WBITF) investigates all police shootings that occur in Winnebago and Boone County. The WBITF is comprised of all law enforcement agencies in Winnebago and Boone County. The WBITF is headed by a commander from the Illinois State Police. The sheriffs and police chiefs maintain authority to activate the WBITF when an officer shooting occurs. If the law enforcement agency has an officer that is the subject of the investigation, that agency's officers are excluded from participating in the investigation. As with all criminal cases, it is the primary responsibility of the investigating agency to collect all available evidence of a potential crime so that a determination of the facts can be made. Once the evidence is collected, it is submitted to the State's Attorney who reviews the evidence to determine which facts may be proved beyond a reasonable doubt. Sometimes physical evidence may be submitted to the Illinois State Police Forensic Science center for testing and analysis. After reviewing all of the evidence, the State's Attorney then reviews the applicable laws, including laws which may make some evidence inadmissible at trial, to determine if the admissible evidence will establish all of the elements of a criminal offense beyond a reasonable doubt. This analysis also includes a determination of whether the evidence also refutes beyond a reasonable doubt any available affirmative defense which is likely to be raised by the involved officer.

Effective January 1, 2016, whenever an officer-involved death occurs in Illinois, the distinct roles of investigators and prosecutors are governed by statute. [Pursuant to the Police and Community Relations Improvement Act "PCRIA" \(50 ILCS 727\)](#), the investigation of any officer-involved death must be conducted by a team of investigators, at least one of whom is certified by the Illinois Law Enforcement Training Standards Board as a Lead Homicide Investigator, who are independent of the law enforcement agency that employs the officer(s) involved in the officer-involved death. The Police Community Relations Improvement Act states (PCRIA):

(b) Each officer-involved death investigation shall be conducted by at least 2 investigators, or an entity or agency comprised of at least 2 investigators, one of whom is the lead investigator. The lead investigator shall be a person certified by the Illinois Law Enforcement Training Standards Board as a Lead Homicide Investigator, or similar training approved by the Illinois Law Enforcement Training Standards Board or the Department of State Police, or similar training provided at an Illinois Law Enforcement Training Standards Board certified school. No

investigator involved in the investigation may be employed by the law enforcement agency that employs the officer-involved in the officer-involved death, unless the investigator is employed by the Department of State Police and is assigned to a different division or unit of the Illinois State Police. [50 ILCS 727/1-10\(b\)](#).

Although PCRIA did not take effect until January 1, 2016, for many years it has been the practice of the Winnebago County State's Attorney's Office to utilize independent agencies to investigate the officer's conduct in officer-involved deaths since 2009. In June of 2010, the Winnebago County Integrity Task Force was established to investigate an officer involved shooting which includes members of the Illinois State Police and all law enforcement agencies within Winnebago County. Following its formation, the Task Force was expanded to include all law enforcement agencies in Boone County and was renamed the Winnebago-Boone County Integrity Task Force (WBITF). The Winnebago-Boone County Integrity Task Force also investigates all in custody deaths and deaths related to fleeing and eluding police officers.

In addition to mandating independence for the investigative team, PCRIA recognizes and codifies the distinct and separate roles of the team of investigators and the prosecutors. Specifically, the Act provides:

(d) The investigators conducting the investigation shall, in an expeditious manner, provide a complete report to the State's Attorney of the county in which the officer-involved death occurred.

As with other criminal investigations, the prosecutor assists the investigative team by procuring search warrants, subpoenas and other court orders, and providing legal advice and guidance. However, pursuant to the Act, the primary responsibility for conducting the investigation lies with the independent investigative team. The length of these investigations can vary depending on the circumstances surrounding the event. However, it is imperative that there be a thorough and comprehensive investigation prior to review by the State's Attorney's Office.

The public has a strong interest in learning the facts surrounding an officer-involved shooting or death. As with any investigation that may lead to a criminal prosecution, the Illinois Rules of Professional Conduct and the Illinois Code of Criminal Procedure place restrictions on the information that the Winnebago County State's Attorney's Office may release to the public. [Illinois Rule of Professional Conduct 3.6 \(a\)](#) prohibits an attorney from making "an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and would pose a serious and imminent threat to the fairness of an adjudicative proceeding in the matter." Further, [Illinois Rule of Professional Conduct 3.8 \(f\)](#) applies specifically to prosecutors and provides: The prosecutor in a criminal case shall:

(f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that pose a serious and imminent threat of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in

a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

These rules are designed to protect an accused person's constitutional right to a fair trial. [Rule 3.6 \(b\)](#) explicitly sets forth certain types of subjects which create a "serious and imminent threat to the fairness" of an adjudicative proceeding in the matter.

There may also be other factors which restrict or prohibit the release of information to the public. The Illinois Code of Criminal Procedure mandates the secrecy of grand jury proceedings ([725 ILCS 5/112-6](#)). As a result, evidence and witnesses' testimony presented before the grand jury cannot be publicly disclosed. However, during the criminal process, this evidence may be presented in open court during public proceedings being litigated before the court such as bond hearings, pre-trial hearings and trials.

Once the State's Attorney has made a determination as to whether criminal charges are warranted, the results of the findings may be presented to the grand jury to determine whether the grand jury concurs with the State's Attorney's decision. However, the decision to file criminal charges rests solely with the State's Attorney. Also, if charges are warranted based upon the evidence, the State's Attorney will file charges against the individual or individuals and the case would also be presented to a grand jury for indictment. The State's Attorney's decision will be released to the public in a press conference or by issuance of a press release.