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WINNEBAGO COUNTY STATE'S ATTORNEY

Winnebago County State's Attorney Statement Regarding Transparency in Officer Involved Shootings

As the State's Attorney of Winnebago County, one of my most serious responsibilities is reviewing officer-involved shootings and deaths of civilians. In these situations, the public is understandably concerned and wants information about the facts and circumstances involved in the incident. The public has an interest in holding law enforcement accountable for their actions and a need to be kept informed of key decisions as the incident is being investigated. My office recognizes these needs and is committed to public transparency to the extent permitted by legal ethics rules.

In Winnebago County, we are fortunate to have the Winnebago Boone Integrity Task Force, which is a multi-agency task force specifically tasked with investigating instances of use of deadly force, in-custody deaths, or serious bodily harm. As the State's Attorney, my office will coordinate with the Task Force regarding legal advice, case review, and the ultimate decision on filing criminal charges for prosecution.

The job of a prosecutor is to seek justice. This includes justice for individuals who have been unjustifiably harmed by law enforcement. Part of seeking justice is to carefully review all potential cases to determine if there should be criminal consequences as a result of the action. This office takes great care to make sure our charging analysis follows the law, is independent, objective, and thorough.

Use of deadly force by law enforcement is a serious responsibility that must be carried out legally and with respect for every person's life. Under the law, an officer may use deadly force when, based on the totality of the circumstances, the officer reasonably believes that deadly force is necessary to defend against an imminent threat of death or serious injury to the officer or others. When this office reviews law enforcement action we are mindful that police officers are often forced to make split second decisions in circumstances that are tense and uncertain and may be rapidly changing in terms of the level of force necessary in a particular situation.

This State's Attorney's Office (SAO) strives to be as open as possible about the review process for these cases and our ultimate decision. However, we are also required to follow our legal and ethical duties to not disclose information or evidence until our review is complete. Once the review is complete, if my office will not be filing charges, there will be a public statement to that



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effect that details the reasons charges were not authorized. Additionally, and unless a civilian is charged criminally related to the incident, the investigation completed by the Integrity Task Force will be released to the public.

Should this office approve criminal charges, there will be a public statement as to the person charged, the nature of the offense, and the charges authorized. Once charges are approved, however, this office may be prohibited by legal ethics rules from disclosing additional information the public would like to have. As prosecutors, there is a duty to ensure a fair trial for all persons charged with a criminal offense. Part of that duty is to not disclose to the public information that might heighten public condemnation of the accused. We understand this can be frustrating to the public. This office is committed to providing updated information to the public as the case progresses through the court system.

FREQUENTLY ASKED QUESTIONS

What role does the State's Attorney's Office play in investigating officer-involved shootings and in-custody deaths?

The State's Attorney's Office (SAO) does not directly investigate crimes. In cases of officer involved shootings or in-custody deaths, the investigation will be conducted by the Winnebago Boone Integrity Task Force. They collect all available evidence to present to the State's Attorney's Office so a decision can be made whether to approve criminal charges. The State's Attorney's Office has a prosecutor on call 24 hours, 365 days a year to respond to officer-involved death cases and the prosecutor may assist in the investigation by providing legal advice, obtaining search warrants, subpoenas, or other court orders. The SAO's review of the case provides an independent analysis of the question of whether a crime was committed. The SAO review does not look into issues such as compliance with police department policies and procedures.

What does the State's Attorney's Office consider when making a charging decision?

In making a charging decision, the prosecutor reviewing the case will review all evidence and applicable law. The prosecutor will consider whether the evidence is likely to be admissible at trial or barred for some reason. After considering all admissible evidence, the prosecutor then determines whether the evidence can establish all elements of a criminal offense beyond a reasonable doubt and that the decision to charge is in the interests of justice. This would include evaluating the viability of potential defenses, such as self-defense.



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What is the Winnebago Boone Integrity Task Force?

The Winnebago Boone Integrity Task Force is a multi-agency task force specifically tasked with investigating instances of use of deadly force, in-custody deaths, or serious bodily harm. This Task Force is drawn from 15 departments across the two counties so there can be an independent investigation into allegations of wrongdoing by officers that results in death or serious harm to an individual. No Task Force member from the agency involved is allowed to participate in the investigation. In 2016, the Police and Community Relations Improvement Act "PCRIA" (50 ILCS 727) required the investigation of any officer-involved death to be conducted by a team of investigators, independent from the agency involved, and specially trained.

How long does it take to conduct a review?

While this office recognizes the public's desire to have a swift decision, the investigation of any potential homicide, including those alleging officer misconduct, can be lengthy. It may take multiple months to process evidence, receive forensic or laboratory reports, and conduct follow-up interviews. For example, the official cause of death from the medical examiner or coroner's inquest would be critical to any charging decision, but that cannot occur until the medical examiner has received lab reports such as toxicology results. This office is committed to expedite these cases to the extent possible and strives to complete the state's attorney's review within 30 days of receiving the investigation from the Integrity Task Force.

What is a Grand Jury and what does it do?

<http://www.illinoiscourts.gov/circuitcourt/jury/grandjuror.asp>

The grand jury is made up of 16 citizens of Winnebago Co. The purpose of the grand jury is to be an independent evaluator of the prosecutor's decision to seek charges against a defendant. The prosecutor will present evidence to the grand jury and the grand jury determines whether there is probable cause to believe the person charged committed the offense for which they are charged. The grand jury may determine there is probable cause the defendant is indicted and the case moves forward in court. If the grand jury determines there is not probable cause, the case is either dismissed or not filed. Grand jury proceedings are secret. Therefore, evidence, witnesses and testimony before the grand jury cannot be publicly disclosed.

Will a video of the incident be released?

Most likely, no. In today's age of technology, there is often video evidence associated with these incidents. These videos may be from body worn cameras, police squad videos, surveillance



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video, and cell phone videos from private citizens. The SAO does not have control over what private individuals post but cannot release any video until the investigation is complete. We understand that the public has an interest in viewing these videos so they can form their own opinions regarding whether the police action was justified. To that end, the SAO, in consultation with the affected law enforcement agency, will carefully consider whether video evidence may be released during the pendency of the investigation. Nevertheless, in cases of an officer involved death where no charges will be filed, the SAO will strongly recommend to the relevant law enforcement agency that the video be released. The release of the video may be accompanied by a statement to provide important context to the video so the public can have a more complete picture of what occurred. If charges have been approved, the State's Attorney's Office cannot release any video in order to protect a defendant's right to a fair trial.

Why was the video not released sooner?

Generally, video is not released until the SAO review is complete because it could become evidence in a criminal proceeding. If charges have been approved, the video will not be released because it is evidence to be used at trial and could taint potential jurors and might impact the defendant's right to a fair trial. Criminal proceedings are open to the public and interested persons can be present in the courtroom when the video evidence is played during trial.

What legal ethics rules impact what a prosecutor can say or disclose to the public?

The public has a strong interest in learning the facts surrounding an officer-involved 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 any SAO may release to the public.

Specifically, [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 that, other than statements necessary to inform the public of the nature and extent of the prosecutor's action or statements that serve a legitimate law enforcement purpose, prosecutors are to 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



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making any such statement. 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. These subjects include:

- (1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;
- (2) in a criminal case, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's failure to make a statement;
- (3) the performance or results of any examination or test or the failure of a person to submit to an examination or test, or the nature of physical evidence expected to be presented;
- (4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case;
- (5) information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial; or
- (6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent unless proven guilty.

In addition to the Rules of Professional Conduct, there may be other factors which restrict or prohibit the release of information to the public. For example, the Illinois Code of Criminal Procedure mandates the secrecy of grand jury proceedings ([725 ILCS 5/112-6](#)). As a result, evidence, witnesses and testimony before the grand jury cannot be publicly disclosed.

What happens when the State's Attorney's review is complete?

If the prosecutor reviewing the case determines there is sufficient evidence to support a criminal charge, then charges will be filed against the officer involved. Once charges are filed, there may be limitations on what the SAO is permitted to disclose to the public. Regardless, the SAO will issue a statement detailing the person or persons charges, the nature of the offense, and the



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specific charges filed. The SAO will keep the public apprised of developments as the case progresses through the court system.

If charges are not approved, the SAO will issue a public statement detailing the facts, evidence, and available statements of those involved. Once the decision is made to not charge a case, the investigation by the Integrity Task Force will be available for public review.

How can I find out information about an officer-involved death?

The State's Attorney's Office will post information on its website regarding officer-involved deaths. The preliminary information will list the date of incident, law enforcement agency involved, the investigative agency, and the date the investigative agency completed its investigation. Further, during the pendency of the investigation, the Integrity Task Force and SAO will have regular (i.e. bi-weekly) press briefings.

How do I find out about a charging decision?

At the conclusion of the investigation, if no criminal charges are brought, the SAO will post a memorandum on its website explaining the facts of the case, the legal principles involved, and the reasons for the decision. If criminal charges are filed, the SAO will post a copy of the proffer of facts filed with the court at the defendant's bond hearing.