



# USE OF FORCE PROTOCOL

THE MJDA'S PROTOCOL FOR THE REVIEW OF INCIDENTS INVOLVING USE OF  
DEADLY FORCE, EXCESSIVE FORCE AND CUSTODIAL DEATHS

OFFICE OF THE DISTRICT ATTORNEY

MIDDLE JUDICIAL CIRCUIT OF GEORGIA

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## **PREAMBLE**

Police officers perform a vital and often dangerous job in our community. Situations will occur where officers must use force, including, at times, deadly force. A police officer’s use of deadly force, alleged use of excessive force and the death of a person in police custody are some of the most sensitive matters that law enforcement agencies investigate. These investigations frequently pose complex factual and legal issues and are closely followed by the public we serve. It is critical that the public have confidence that when police use force, and deadly force in particular, that the use of force was reasonable and lawful.

The District Attorney recognizes that he cannot force the law enforcement agencies to follow the protocol. Thus, from the standpoint of law enforcement, this protocol should be considered best practices. The District Attorney’s Office shall follow this protocol.

## PURPOSE

This Protocol is designed to promote greater transparency, uniformity, accountability and impartiality in the investigation of police use-of-force incidents. It sets forth the policies and practices regarding the investigation of officer-involved shootings and incidents where deadly force was employed, where the use of force resulted in serious bodily injury, and where a custodial death occurred.

Law enforcement agencies investigating a use of force incident have the responsibility to address various legally distinct issues. Three different investigations, with distinct goals and at times, different investigators, all follow from a use of force incident. These investigations are **(1)** the incident investigation, to determine whether the actions of the officer(s) constitute criminal acts under Georgia law, **(2)** the ancillary criminal investigation, to determine whether the actions of any non-law enforcement person(s) involved in the events preceding the use of force constitute criminal acts under Georgia law, and **(3)** the administrative investigation, to determine whether an officer acted in a manner offensive to professional and departmental standards. To be clear, the District Attorney's Office prosecutes violations of the law. It does not prosecute violations of departmental policy unless that violation is also a violation of the law.

The law enforcement agencies which protect and serve the Middle Judicial Circuit typically lack the resources to support an independent internal affairs bureau exclusively dedicated to the investigation of use of force incidents. Rather, our law enforcement agencies enjoy a much greater degree of synergy and co-worker contact than larger departments which may be found in urban areas.

Consequently, an agency needing an investigation into a serious use of force incident will typically require an outside agency to conduct the incident investigation in order to avoid an actual or perceived conflict of interest. In our circuit, the Georgia Bureau of Investigation may be requested as an outside agency to conduct the incident investigation. (O.C.G.A. § 35-3-8.1).

## DEFINITIONS

- A. **Administrative Investigation** means an investigation conducted by the employing Law Enforcement Agency (LEA) to examine whether its officer(s) violated any general order, regulation, policy or other workplace rule during the covered incident. An administrative investigation of an officer's actions

may not precede completion of the incident investigation because to do so may adversely impact the integrity of the incident investigation.

- B. **Covered incident** means an incident where a law enforcement officer is acting under color of law or color of authority and one of the following events occurs:
- a. **Officer-Involved Shooting:** An officer's discharge of a firearm, with or without physical injury or death to a person. For purposes of this protocol, covered incidents do NOT include an officer's discharge of a firearm (i) that is intended to kill an imminently dangerous or mortality wounded animal; (ii) that is intended to signal help for an urgent purpose; (iii) that is unintended and does not cause injury or death to a person; or (iv) that occurs as a training, sporting or recreational activity.
  - b. **Uses of Force Resulting in Serious Bodily Injury:** An officer's use of force resulting in serious bodily injury, defined below.
  - c. **Use of Deadly Force:** An officer's use of force for the purpose of causing, or that the officer knows to create a substantial risk of causing, death or serious bodily injury.
  - d. **In-Custody Death:** Any death that occurs when a person is restrained by an on-duty law enforcement officer by means of (i) physical restraints and/or any use of force; (ii) detention or confinement in a law enforcement vehicle; or (iii) detention or confinement in a jail or detention facility while in the custody of a law enforcement officer.
- C. **Incident Investigation** means the investigation of the covered incident to determine whether an officer committed a criminal offense. This investigation is conducted by the Investigative Law Enforcement Agency (ILEA) and its goal is to determine whether a law enforcement officer broke any criminal laws. This investigation is typically conflicted out to an independent agency – in our case the GBI – because of the potential for actual or perceived conflicts of interest between the officer involved in the covered incident and his/her employing agency (LEA).

- D. **Investigative Agency (ILEA)** means the law enforcement entity that conducts the investigation of the covered incident to determine whether an officer committed a criminal offense.
- E. **Law Enforcement Agency (LEA)** means the sheriff's office, police department or other law enforcement entity that employs the officer(s) directly involved in the covered incident.
- F. **Serious Bodily Injury** means physical injury that: (1) creates a substantial risk of death; (2) causes protracted loss or impairment of the function of any bodily part, member, or organ; or (3) causes serious permanent disfigurement. Such impairment or injury includes but is not limited to loss of consciousness, concussion, bone breaks or fractures or a breach of skin requiring extensive suturing. Temporary impairment from the appropriate application of OC spray or an ECW does not constitute serious bodily injury.

#### USE OF THE PROTOCOL

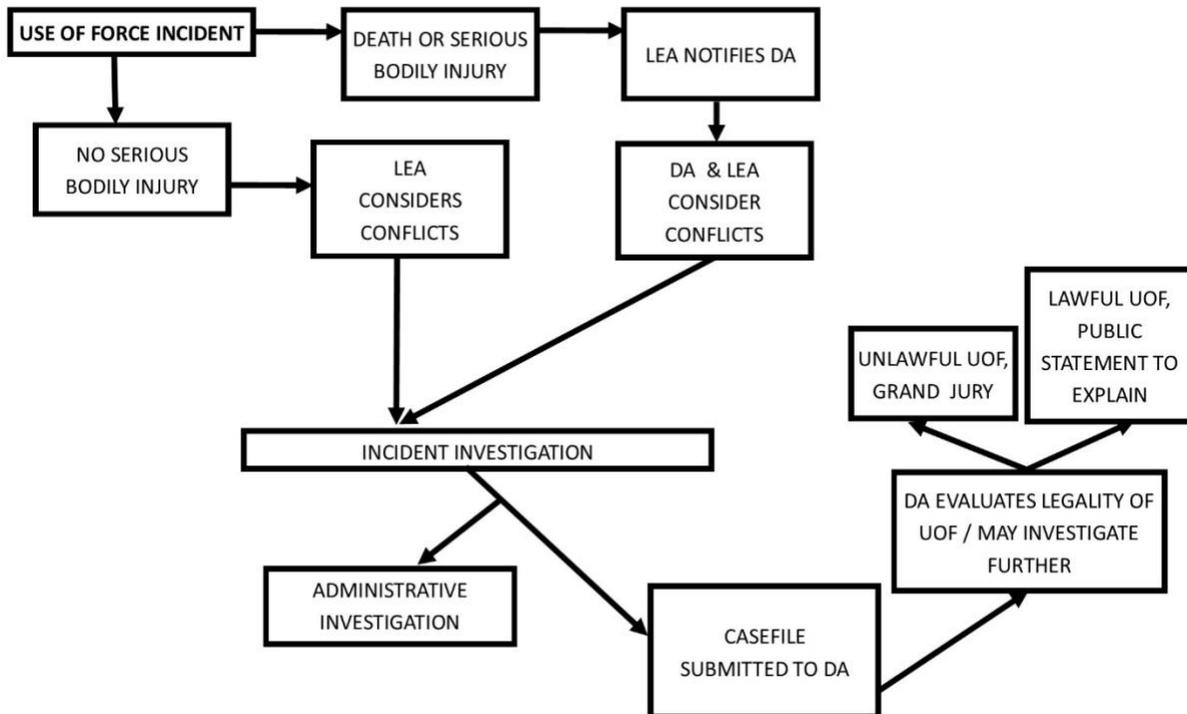
- A. The Protocol *shall* be followed whenever a covered incident occurs and which shall include events where:
  - a. An LEA officer uses deadly force, whether or not death or injury of any person results. If there is no serious bodily injury, the LEA will decide whether GBI assistance is appropriate. (See **Appendix: Conflicts of Interest**).
  - b. A person dies while in LEA custody or dies during the apprehension or attempted apprehension of a person. The LEA shall notify the DA in this instance. The DA and the chief officer of the LEA will determine whether GBI assistance is appropriate. (See **Appendix: Conflicts of Interest**).
  - c. An LEA officer uses less than deadly force that results in serious bodily injury to any person. The LEA shall notify the DA in this instance. The DA and the chief officer of the LEA will determine whether GBI assistance is appropriate. (See **Appendix: Conflicts of Interest**).
  - d. An LEA receives a complaint alleging that an LEA officer used excessive force during his/her interaction with a person, and there is evidence, including but not limited to video or other electronic evidence, to warrant

additional investigation. If there is no serious bodily injury, the LEA will decide whether GBI assistance is appropriate. However, the LEA shall notify the DA of the incident if a felony case is made against the complaining party, because this information will be necessary for prosecution case evaluation.

B. This Protocol may also be followed:

- a. Whenever a person dies or is injured as a result of a police interaction even if the police did not intentionally use force or deadly force. For example, motor vehicle accidents involving the police where there is a fatality or serious injury.
- b. In any situation, not explicitly addressed above, where the LEA and District Attorney’s Office jointly agree that review by the District Attorney would be in the public interest.

**OVERVIEW OF CASE TIMELINE**



## CASE TIMELINE

### IMMEDIATELY AFTER THE INCIDENT

- A. Upon the occurrence of a covered incident, the Law Enforcement Agency (LEA) shall:
- a. Ensure the safety of all persons on scene, which may include rendering medical aid.
  - b. Identify and secure a scene perimeter.
  - c. Identify a supporting colleague for each officer involved.
  - d. Summons a sufficient number of officers to the scene to maintain scene security and integrity throughout the incident investigation.
  - e. Any officer on scene shall activate his or her body worn camera and provide that footage to the ILEA upon request. This will assist with eyewitness identification at a later date.
  - f. Sequester any officer involved in the use of force incident with a designated support person. These officers should be taken away from the scene for sequestration, if possible. Where there are multiple involved officers, each must be sequestered separately from one another and with a separate supporting colleague.
  - g. The duties and expectations of the supporting colleague are as follows:
    - i. S/he shall provide emotional support to the involved officer(s).
    - ii. S/he shall assist the involved officer in practical matters, such as contacting legal counsel and notifying the officer's family of the situation.
    - iii. S/he shall not ask questions of the involved officer concerning the incident.
    - iv. S/he shall not engage in any conversation with the involved officer concerning the incident.
    - v. S/he shall ensure the involved officer does not discuss the case with any other person prior to being interviewed by the ILEA.

### IN THE EVENT OF DEATH OR SERIOUS BODILY INJURY

- B. In the event of a death, the LEA shall immediately notify the District Attorney (DA) or his designee. The DA and the chief officer of the LEA will determine whether GBI assistance is appropriate. (See **Appendix: Conflicts of Interest**).

- C. Absent death, the LEA shall determine whether the recipient of the use of force sustained serious bodily injury. (See **Definitions**).
  - i. If serious bodily injury is found, the LEA shall immediately notify the District Attorney (DA) or his designee. The DA and the chief officer of the LEA will determine whether GBI assistance is appropriate.
  - ii. If no serious bodily injury is found, the LEA shall determine if an in-house investigation is appropriate or if the LEA should request the GBI to investigate. (See **Appendix: Conflicts of Interest**).
  
- D. In the event of a death, the LEA shall provide the DA or his designee with decedent ID data.
  - a. Crime victims in Georgia enjoy the protections of the codified Crime Victims' Bill of Rights (Official Code of Georgia Annotated Title 17 Chapter 17).
  - b. Because a person injured in a use of force covered incident is neither a victim nor defendant at the outset of the investigation, the DA's office must be diligent about identifying stakeholders entitled to notifications at the appropriate time.
  - c. If an arrest or a decision to indict has been made, the DA's office shall make all stakeholder notifications in accordance with the Crime Victim's Bill of Rights.

#### **UPON COMMENCEMENT OF AN INDEPENDENT INVESTIGATION**

- E. If the decision is made to request an independent Investigative Agency (ILEA) – typically the GBI, the LEA shall:
  - a. Designate an LEA personnel member who was not a witness to the covered incident to serve as a liaison with the GBI case agent.
  - b. The LEA liaison will make immediate contact with the GBI case agent and brief said agent on scene dynamics, including status of injured persons, presence of a crowd and whether there is an active need to apprehend a suspect.
  - c. The LEA liaison will communicate to officers on scene any instructions from the ILEA agent regarding actions to ensure scene integrity.

- d. LEA officers on scene shall identify all eyewitnesses for subsequent interview by the ILEA and provide a list of witness names, addresses and phone numbers to the LEA liaison.
    - i. To the extent possible, all identified witnesses will be separated from one another until the ILEA arrives.
    - ii. Such witnesses are not to be questioned by LEA officers or investigators unless otherwise directed by the ILEA.
    - iii. Any LEA officers who are witnesses shall be interviewed by the ILEA before any administrative statements are given.
  - e. The LEA liaison shall coordinate with the ILEA for collection of any materials requested, including documentation of the ancillary criminal investigation, departmental policies, personnel files and digital evidence from the LEA, such as BWC footage or patrol car footage.
  - f. Within 48 hours of the incident, the ILEA should release a press statement identifying the context of the incident and investigative timeframe. Upon request of and/or with express approval of content by the ILEA, the DA and/or the LEA may issue this initial statement to the media.
  - g. All public requests for information during the pendency of the ILEA investigation shall be managed by the ILEA. (See **Appendix: Media**).
- F. Upon notification by the LEA, the District Attorney (DA) shall:
- a. Discuss with the chief officer of the LEA the need for GBI assistance.
    - i. If it is determined that GBI assistance is warranted, a joint request for GBI assistance will be made.
    - ii. If it is determined that GBI assistance is NOT warranted, the LEA will conduct the incident investigation to determine the lawfulness of officer action. Said investigation shall be conducted with the standards set forth in this protocol.
    - iii. If there is a disagreement about whether GBI assistance is warranted, either party may exercise their authority to make a unilateral request for GBI assistance over the objection of the other party. When there is disagreement, the parties are encouraged to affirmatively engage the conflict of interest

analysis and air on the side of requesting an independent agency to investigate the matter. (See **Appendix: Conflicts of Interest**).

- b. The DA will engage the conflict of interest analysis to decide if a conflict prosecutor is warranted. If so decided, the DA will make a request with the Attorney General pursuant to O.C.G.A. § 15-18-5. The appointed conflict DA and designees shall not be bound by this protocol.
- c. The DA or his designee may respond to the scene, when appropriate.
- d. The DA or his designee will be available to the ILEA to consult on questions of law.
- e. The DA shall receive a briefing from the ILEA no later than the third business day after the covered incident.

#### **DURING THE INCIDENT INVESTIGATION**

- G. Once the ILEA begins the incident investigation, the ILEA shall:
  - a. Conduct the investigation in accordance with ILEA best practices. LEAs are encouraged to compare any investigative protocols in place with the standards and guidelines set forth in the GBI Law Enforcement Use of Force and Custodial Death Investigations Manual.
  - b. Manage all media inquiries until the investigation is complete, unless otherwise agreed upon by the ILEA and DA. (See **Appendix: Media**).

#### **IN THE EVENT OF OFFICER ARREST**

- H. If the ILEA determines an arrest of an officer is appropriate, the ILEA shall:
  - a. Notify the LEA and the DA of its decision.
    - i. The DA, in turn, shall notify the Decedent/Victim stakeholders to explain that the officer will be given an opportunity to submit voluntarily to arrest within 24 hours of the issuance of the arrest warrant and to further explain that said officer, absent extraordinary circumstances, will be allowed bond by the Magistrate Court and may be released on bond shortly after arrest.
    - ii. The DA shall contact the Magistrate Court or Superior Court to ensure any Decedent/Victim stakeholder interests which should be reflected as a bond condition are included.
  - b. Obtain an arrest warrant from a Superior Court Judge.

- c. Provide the subject officer an opportunity to submit voluntarily to arrest within 24 hours of the issuance of the arrest warrant. Where the subject officer has legal counsel, this opportunity should be communicated through said counsel.
- d. Provide all necessary information to the Magistrate Judge or Superior Court Judge for the purpose of a first appearance and setting of bond.
- e. Notify POST of the arrest for a determination in accordance with O.C.G.A. § 35-8-7.1(d). (See **Appendix: Applicable Statutes**).
- f. The LEA, ILEA or DA shall not engage any extraordinary procedures solely because of the defendant's status as a law enforcement officer.
  - i. This provision contemplates no special considerations – such as bypassing arrest and booking or influencing the Magistrate to set an inappropriately low bond.
  - ii. This provision also includes no special burdens – such as encouraging a Magistrate or Superior Court's refusal of bond or notifying the media in order to create a photo opportunity designed to embarrass the indicted officer.
- g. The ILEA, after consultation with the DA, has the discretion to forgo making an arrest and instead, may submit its casefile to the DA for a determination on criminal culpability.

#### **AFTER THE INCIDENT INVESTIGATION**

- I. Once the ILEA has completed its incident investigation:
  - a. The ILEA shall remit its findings and casefile to the DA for review, regardless of whether an arrest was made. Case complexity will impact the timeframe required for a proper investigation. As such, deadlines are not practical. However, the ILEA shall conduct its investigation with diligence and shall communicate its progress with the DA or his designee regularly.
  - b. After the ILEA completes its initial incident investigation, the LEA may commence any administrative investigation it wishes to pursue.

#### **DA'S REVIEW OF THE INCIDENT INVESTIGATION**

- J. Once the DA receives the findings and casefile of the ILEA, the DA shall:
  - a. Notify the Sheriff and/or Chief of Police for the subject LEA of commencement of DA case review.

- b. Release a press statement identifying the context of the incident and investigative timeframe. No factual specifics or party identities shall be included.
- c. Designate a senior DA Investigator and a senior Assistant District Attorney, after ensuring no conflicts of interest with either designee, to independently review the findings of the ILEA within three weeks of receipt of the ILEA's casefile and to report to the DA on any perceived need for further evidentiary development, consultation with outside professionals and recommended action on the case.
- d. If the DA decides further investigative steps are necessary, the DA and the ILEA will coordinate the diligent collection of additional evidence.
- e. Because use of force cases often involve unique and complex legal and factual considerations, the DA will consider in every case the benefits of employing outside experts to consult on matters within their professional expertise, such as use of force, cause of death, or the mechanics of weaponry.
  - i. If the DA decides such consultation is warranted, he shall employ said expert at the expense of the DA's office.
  - ii. If an expert is employed by the DA, the DA shall notify all stakeholders (ILEA, LEA and the Media) in order to keep the parties apprised of any delay incident to such review.
- f. After consulting the recommendations of any experts and his designees with regard to the existence of criminal culpability, the DA will determine if criminal charges are warranted.
- g. If criminal charges are not warrant, the DA or his designee shall:
  - i. Meet with the injured party and/or decedent's family in person to explain the DA's decision and to answer any questions.
  - ii. Meet with the Sheriff and/or Chief of Police for the subject LEA to discuss findings and conclusions and coordinate on a joint press release which shall outline key points for public understanding. (See **Appendix: Media**).
  - iii. Prepare a written analysis of facts and law to be made available to the public. (See **Appendix: Media**).
  - iv. The DA, in his discretion, shall make any digital evidence of the incident publically available.

- v. Submit in writing to the ILEA correspondence documenting the DA's decision not to prosecute for case closure purposes.
- vi. Submit in writing to the LEA correspondence documenting the DA's decision not to prosecute for purposes of any administrative investigation.

#### **IN THE EVENT OF GRAND JURY PRESENTMENT**

- K. If the DA concludes criminal charges are warranted and chooses to present an indictment to a Grand Jury pursuant to O.C.G.A. § 15-12-74, the DA shall:
  - a. Notify the injured party or family of the decedent of its decision.
  - b. Meet with the Sheriff and/or Chief of Police for the subject LEA to discuss findings and conclusions.
  - c. Prepare proposed charges for Grand Jury consideration.
  - d. No less than twenty days prior to the Grand Jury, the DA shall notify the officer(s) facing prosecution in writing of the contemplated action by the prosecuting attorney, including a copy of the proposed bill of indictment, in accordance with O.C.G.A. § 17-7-52. (See **Appendix: Applicable Statutes**).
  - e. Notify the public via press release and in a manner that will not compromise case integrity or the privacy of any involved party.
  - f. Coordinate for the appearance of a court reporter at Grand Jury proceedings in accordance with O.C.G.A. § 15-12-83. (See **Appendix: Applicable Statutes**).
  - g. Subpoena all material witnesses for the Grand Jury presentment.
  - h. Conduct Grand Jury proceedings in accordance with O.C.G.A. § 17-7-52. (See **Appendix: Applicable Statutes**).
  
- L. If the DA concludes criminal charges may be warranted but are appropriately considered by Special Grand Jury pursuant to O.C.G.A. § 15-12-100, the DA shall:
  - a. Notify the injured party or family of the decedent of its decision.
  - b. Meet with the Sheriff and/or Chief of Police for the subject LEA to discuss findings and conclusions.
  - c. Petition the Superior Court to empanel a Special Grand Jury.
  - d. Prepare a special presentment for investigation by the Special Grand Jury.

- e. No less than twenty days prior to the Grand Jury, the DA shall notify the officer(s) facing prosecution in writing of the contemplated action by the prosecuting attorney, including a copy of the special presentment, in accordance with O.C.G.A. § 17-7-52. (See **Appendix: Applicable Statutes**).
  - f. Notify the public via press release and in a manner that will not compromise case integrity or the privacy of any involved party.
  - g. Coordinate for the appearance of a court reporter at Grand Jury proceedings in accordance with O.C.G.A. § 15-12-83. (See **Appendix: Applicable Statutes**).
  - h. Assist the Special Grand Jury with subpoena requests in service to its investigation.
  - i. Conduct Grand Jury proceedings in accordance with O.C.G.A. §§ 15-12-100 through 15-12-102. (See **Appendix: Applicable Statutes**).
- M. If the Grand Jury returns a NO BILL or otherwise declines to pursue a criminal prosecution, the DA shall:
- a. Prepare a written notice of the Grand Jury's decision along with an analysis of facts and law to be made available to the public.
  - b. Make transcripts of the Grand Jury proceedings publically available upon request, subject to redaction of any identifying information of an individual Grand Juror.
  - c. Notify POST of the NO BILL for a determination in accordance with O.C.G.A. § 35-8-7.1(d). (See **Appendix: Applicable Statutes**).
  - d. The DA, in his discretion, shall make any digital evidence of the incident publically available.
  - e. Send a copy of the NO BILL to the ILEA for case closure purposes.
  - f. Send a copy of the NO BILL to the LEA for purposes of any administrative investigation.
- N. If the Grand Jury returns a TRUE BILL, the DA shall:
- a. Notify the injured party or family of the decedent of the Grand Jury's decision.
  - b. Meet with the Sheriff and/or Chief of Police for the subject LEA to discuss findings and conclusions.

- c. Notify the indicted officer or his/her legal counsel – if one has been retained.
- d. Notify POST of the indictment for a determination in accordance with O.C.G.A. § 35-8-7.1(d). (See **Appendix: Applicable Statutes**).
- e. Calendar the case for arraignment.
- f. Notify the public via press release and in a manner that will not compromise case integrity or the privacy of any involved party. (See **Appendix: Media**).
- g. Make notifications of victim stakeholders as required by the Crime Victim Bill of Rights throughout the prosecution.

## APPENDIX

**A. MEDIA NOTIFICATIONS.** All stakeholders must be vigilant about premature release of information, particularly prejudicial, incorrect or incomplete information. This protocol is designed to ensure the release of information to the public that is timely, correct and ethical. It is important that no party release information that could compromise an active investigation or an active prosecution.

Generally, any audio or video evidence shall not be released by the LEA or the ILEA to the media until the DA's review of the incident has been completed and the DA expressly consents to such release. This is because the release of audio or video which would be used as evidence in a criminal prosecution has a very real chance of being seen or heard by potential jurors and thus cause further delays in the prosecution of the case. Individual exceptions to this general rule shall be evaluated on a case-by-case basis with ILEA and the DA.

- a. Within 48 hours of the incident, the ILEA or its designee shall release a press statement identifying the context of the incident and investigation timeframe.
  - i. No factual specifics or party identities shall be included.
  - ii. No digital evidence shall be released absent the express direction of the DA.
  - iii. All media inquiries during the pendency of the incident investigation shall be managed by the ILEA.

- b. Once the DA receives the findings and casefile of the ILEA, the DA shall release a press statement announcing commencement of case review by the DA with an expected timeframe for a decision. This shall be done in a manner that will not compromise case integrity or the privacy of any involved party. When appropriate, a copy of the press release shall be forwarded to law enforcement prior to release.
- c. If the DA employs an expert for case consultation, the DA shall notify the media of this decision to keep the parties apprised of any delay incident to such review.
- d. If criminal charges are not warranted:
  - i. The DA shall coordinate with the LEA and ILEA on a joint press release which shall outline key points for public understanding.
  - ii. The DA shall prepare a written analysis of facts and law to be made available to the public.
  - iii. The DA, in his discretion, shall make any digital evidence of the incident publically available.
- e. If criminal charges are pursued:
  - i. The DA shall release a press statement to announce the convening of a Grand Jury or Special Grand Jury and shall do so in a manner that will not compromise case integrity or the privacy of any involved party.
  - ii. If the Grand Jury issues a NO BILL:
    - 1. The DA shall prepare written notice of the Grand Jury's decision along with a written analysis of facts and law to be made available to the public.
    - 2. The DA shall make transcripts of the Grand Jury proceedings publically available upon request, subject to redaction of any identifying information of an individual Grand Juror.
    - 3. The DA, in his discretion, shall make any digital evidence of the incident publically available.
  - iii. If the Grand Jury returns a TRUE BILL:

1. The DA shall release a press statement in a manner that will not compromise case integrity or the privacy of any involved party.
2. During the pendency of the prosecution, the DA shall endeavor to communicate all appropriate information to the public, without making statements or releasing evidence likely to prejudice the outcome of the prosecution.
3. Any party requesting access to digital exhibits tendered in open prior to case resolution shall be instructed to file a motion pursuant to O.C.G.A. § 50-18-72(c)(1), as such materials may only be released by the Court.

**B. CONFLICTS OF INTERESTS.** A conflict of interest is any factor which could unduly influence or could be perceived to influence a member of staff in the performance of their duties. A conflict of interest can also be perceived. It may pose no actual risk to the conduct of business, but it requires proper management in order to minimize the risk of reputational damage both to the organization and the individual(s) concerned.

A perception of a conflict of interest can be just as significant as an actual conflict of interest. The key issue is whether there is a risk that a fair-minded outside observer, acting reasonably, would conclude that there is a real possibility of bias.

The following questions should be considered when assessing whether an actual, potential or perceived conflict of interest exists with an agency which may lead to doubt about the integrity of the investigation.

- a. Would I or anyone associated with me benefit from, or be detrimentally affected by, my Involvement in this case?
- b. Could there be benefits for me in the future that could cast doubt on my objectivity?
- c. Do I have a current or previous personal, professional or financial relationship or association of any significance with an interested party?

- d. Would my reputation or that of a relative, friend or associate stand to be enhanced or damaged because of my involvement in this case?
- e. Do I hold any personal or professional views or biases that may lead others to reasonably conclude that I am not an appropriate person to deal with the matter?
- f. Have I contributed in a private capacity in any way to the case being considered?
- g. Have I made any promises or commitments in relation to the matter?
- h. Have I received a substantial gift, benefit or hospitality from someone who stands to gain or lose from my involvement in this case?
- i. Am I or have I been a member of an association, club or professional organization or do I have particular ties and affiliations with organizations or individuals who stand to gain or lose by my involvement in this case?
- j. Have I previously been deployed or served in the area in which this investigation took place?
- k. Have I previously worked in an individual capacity for any organization that is (or a member of it), the subject of investigation?
- l. Have I had any connection with any of the members or others involved in events that may give rise to bias on my part, or any perceived bias?
- m. Could there be any other benefits or factors that could cast doubt on my objectivity?

**C. APPLICABLE STATUTES.**

**a. O.C.G.A. § 15-12-74. Grand jury presentment of offenses; publication or filing of findings**

(a) Grand jurors have a duty to examine or make presentments of such offenses as may or shall come to their knowledge or observation after they have been sworn. Additionally, they have the right and power and it is their duty as jurors to make presentments of any violations of the

laws which they may know to have been committed at any previous time which are not barred by the statute of limitations.

(b) If a true bill is returned by the grand jury on any count of an indictment or special presentment, the indictment or special presentment shall be published in open court. If a no bill is returned by the grand jury on all counts of an indictment or special presentment, the prosecuting attorney shall file such indictment or special presentment with the clerk.

**b. O.C.G.A. § 15-12-83. Oath of court reporter attending grand jury proceeding; compensation; role and responsibilities**

(a) Upon the request of the district attorney or when the grand jury proceedings are in accordance with Code Section 17-7-52, a court reporter shall be authorized to be present and shall attend such proceedings. Before attending the grand jury proceedings, the court reporter shall take the following oath: "I do solemnly swear that I will keep secret all things and matters coming to my knowledge while in attendance upon the grand jury, so help me God."

(b) The district attorney of the circuit in which the county is located shall appoint the court reporter and, notwithstanding any law to the contrary, fix the compensation therefor, and such compensation, including the cost of transcripts, shall be paid by the county.

(c) The court reporter shall take and transcribe the testimony of any witness appearing before the grand jury and any argument or legal advice provided to the grand jury by the prosecuting attorney and shall furnish such transcript to the district attorney.

(d) When a witness testifies pursuant to a grant of immunity as provided in Code Section 24-5-507, such testimony shall be transcribed, a copy of the transcript shall be provided to the district attorney, and the original transcript shall be filed under seal in the office of the clerk.

(e) The court reporter shall be incompetent to testify at any hearing or trial concerning any matter or thing coming to the knowledge of the court reporter while in attendance upon the grand jury.

(f) Except as otherwise provided in this Code section, a recording, any court reporter's notes, and any transcript prepared from such recording or notes shall be provided solely to the district attorney, who shall retain control of such recording, notes, and transcript. The district attorney may use such materials to the extent such use is appropriate to the proper performance of his or her official duties, including compliance with Article 1 of Chapter 16 of Title 17.

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c. **O.C.G.A. § 15-12-100. Procedure for impaneling special grand jury; number of jurors; foreperson; powers of jury**

(a) The chief judge of the superior court of any county to which this part applies, on his or her own motion, on motion or petition of the district attorney, or on petition of any elected public official of the county or of a municipality lying wholly or partially within the county, may request the judges of the superior court of the county to impanel a special grand jury for the purpose of investigating any alleged violation of the laws of this state or any other matter subject to investigation by grand juries as provided by law.

(b) Until July 1, 2012, the chief judge of the superior court of the county shall submit the question of impaneling a special grand jury to the judges of the superior court of the county and, if a majority of the total number of the judges vote in favor of impaneling a special grand jury, the members of a special grand jury shall be drawn in the manner prescribed by Code Section 15-12-62. On and after July 1, 2012, the chief judge of the superior court of the county shall submit the question of impaneling a special grand jury to the judges of the superior court of

the county and, if a majority of the total number of the judges vote in favor of impaneling a special grand jury, the members of a special grand jury shall be chosen in the manner prescribed by Code Section 15-12-62.1. Any special grand jury shall consist of not less than 16 nor more than 23 persons. The foreperson of any special grand jury shall be selected in the manner prescribed by Code Section 15-12-67.

(c) While conducting any investigation authorized by this part, investigative grand juries may compel evidence and subpoena witnesses; may inspect records, documents, correspondence, and books of any department, agency, board, bureau, commission, institution, or authority of the state or any of its political subdivisions; and may require the production of records, documents, correspondence, and books of any person, firm, or corporation which relate directly or indirectly to the subject of the investigation being conducted by the investigative grand jury.

d. **O.C.G.A. § 15-12-101. Supervision of special grand jury; procedure for dissolution; additional investigation**

(a) When a special grand jury is impaneled pursuant to Code Section 15-12-100, the chief judge of the superior court of the county shall assign a judge of the superior court of the county to supervise and assist the special grand jury in carrying out its investigation and duties. The judge so assigned shall charge the special grand jury as to its powers and duties and shall require periodic reports of the special grand jury's progress, as well as a final report.

(b) When the judge assigned to a special grand jury decides that the special grand jury's investigation has been completed or on the issuance of a report by the special grand jury of the matter investigated by it reporting that the investigation has been completed, the judge so assigned shall recommend to the chief judge of the superior court that the special grand jury be dissolved. The chief judge shall report the recommendation to the judges of the superior court of the county and, upon a majority thereof voting in favor of the dissolution of the special

grand jury, the special grand jury shall stand dissolved. If a majority of the judges do not vote in favor of the dissolution of the special grand jury, the chief judge shall instruct and charge the special grand jury as to the particular matters to be investigated; and the special grand jury shall be required to investigate further and establish a period of time within which the investigation shall be completed. At the expiration of the period of time, the special grand jury shall be dissolved.

e. **O.C.G.A. § 15-12-102. Applicability of part**

This part shall apply only to all counties and consolidated city-county governments of this state. Except as otherwise provided by this part, Part 1 of this article shall apply to the grand juries authorized by this part.

f. **O.C.G.A. § 17-7-52. Procedure for indictment or special presentment of peace officer for crime in performance of duties; notification; rights of officer**

(a) Before a bill of indictment or special presentment against a present or former peace officer charging the officer with a crime which is alleged to have occurred while he or she was in the performance of his or her duties is presented to a grand jury, the officer shall be given a copy of the proposed bill of indictment or special presentment and notified in writing of the contemplated action by the prosecuting attorney. Such notice and a copy of the proposed bill of indictment or special presentment shall be provided to such officer not less than 20 days prior to the date upon which a grand jury will begin hearing evidence, and such notice shall inform such officer:

(1) That the grand jury is investigating such officer's conduct to determine if there is probable cause to conclude that he or she has violated one or more laws of this state;

(2) Of the date upon which the grand jury will begin hearing testimony on the proposed bill of indictment or special presentment and the location of the hearing;

(3) That he or she may request, but cannot be compelled, to testify as a witness before the grand jury regarding his or her conduct; and

(4) That, if such officer requests to testify before the grand jury, he or she will be permitted to do so at the conclusion of the presentation of the state's case-in-chief and that he or she may be questioned by the prosecuting attorney or members of the grand jury as are any other witnesses.

(b) If the officer requests to appear as a witness, he or she shall notify the prosecuting attorney any time prior to the date the grand jury will begin hearing testimony in such investigation. The prosecuting attorney shall, after consulting with the grand jury, inform the officer in writing of the date and time when he or she shall be present in order to testify and of the procedure that the grand jury will follow pursuant to subsection (c) of this Code section. The prosecuting attorney shall further advise the grand jury that an officer has the right to appear and testify or not to appear and testify and that, if the officer chooses not to testify, the grand jury shall not consider that in any way in making its decision.

(c) Prior to the introduction of any evidence or the first witness being sworn, the prosecuting attorney shall advise the grand jury of the laws applicable to the conduct of such proceedings, all relevant sections of the Code relating to the crime or crimes alleged in the bill of indictment, and any Code section that excuses or justifies such conduct. In particular, the grand jury shall be advised of Code Sections 16-3-20, 16-3-21, 16-3-23.1, and 17-4-20.

(d) If the officer requests to testify before the grand jury and appears at the date and time specified, the case shall proceed as in any other criminal case heard by a grand jury, except that the officer shall be permitted to testify at the conclusion of the presentation of the state's case-in-chief and that he or she shall only be present in the grand jury room while he or she is testifying. Such officer may be questioned by the prosecuting attorney or members of the grand jury as are any other witnesses. After the officer has been sworn as a witness and prior to

any testimony by the officer, the prosecuting attorney shall advise the officer substantially of the following:

- (1) The officer's appearance before the grand jury is voluntary, and he or she cannot be compelled to appear as a witness;
- (2) By agreeing to be sworn as a witness on the bill of indictment or special presentment that will be laid before the grand jury, he or she will be asked to testify and answer questions and may be asked to produce records, documents, or other physical evidence;
- (3) The officer may refuse to answer any question or to produce records, documents, and other physical evidence if a truthful answer to the question or producing such records, documents, or other physical evidence would tend to incriminate the officer or would tend to bring infamy, disgrace, or public contempt upon the officer;
- (4) Any testimony given by the officer may be used against him or her by the grand jury or in a subsequent legal proceeding; and
- (5) If the officer is represented by an attorney, the attorney shall have the right to be present in the grand jury room while the officer is testifying, and the officer will be permitted reasonable opportunity to consult with his or her attorney outside the grand jury room.

(e) After being sworn as a witness but prior to being asked any questions by the prosecuting attorney or the grand jurors, the officer may make such sworn statement as he or she shall desire. The officer's attorney shall not propound questions to the officer nor object to questions propounded to the officer on evidentiary grounds.

(f) At the conclusion of the officer's testimony, if any, the prosecuting attorney may present rebuttal evidence and advise the grand jury on matters of law.

(g) At any time during the presentation of evidence or during deliberations, the grand jury may amend the bill of indictment or special presentment or instruct the prosecuting attorney to cause a new bill of indictment or special presentment to be created as in any other case. When a bill of indictment or special presentment is

amended or newly created, the accused peace officer and his or her attorney shall be provided a copy of it.

(h) No individual other than the jurors, and any interpreter needed to assist a hearing impaired or speech impaired juror, shall be present while the grand jury is deliberating or voting.

(i) (1) As used in this subsection, the term "nonserious traffic offense" means any offense in violation of Title 40 which is not prohibited by Article 15 of Chapter 6 of Title 40. (2) The requirements of this Code section shall apply to all prosecutions, whether for felonies or misdemeanors, other than nonserious traffic offenses, and no such prosecution shall proceed either in state or superior court without a grand jury indictment or special presentment.

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**g. O.C.G.A. § 35-8-7.1. (d)**

Upon arrest or indictment of an officer for any crime which is punishable as a felony, the executive director of the council shall order the emergency suspension of such officer's certification upon the executive director's determination that the suspension is in the best interest of the health, safety, or welfare of the public. The order of emergency suspension shall be made in writing and shall specify the basis for the executive director's determination. Following the issuance of an emergency suspension order, proceedings of the council in the exercise of its authority to discipline any officer shall be promptly scheduled as provided for in Code Section 35-8-7.2. The emergency suspension order of the executive director shall continue in effect until issuance of the final decision of the council or such order is withdrawn by the executive director.

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