



# **OFFICER INVOLVED CRITICAL INCIDENTS**

## **POLICY AND PROCEDURE GUIDANCE**

### **NINTH JUDICIAL CIRCUIT**

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## **I. INTRODUCTION**

Solicitor Scarlett A. Wilson is the elected solicitor for the Ninth Judicial Circuit and as such, she is independent of city or county governments within the prosecutorial district. The Solicitor has no administrative authority or control over personnel of law enforcement agencies within the circuit. Each city, county or state government maintains authority and control over their respective law enforcement agencies.

Solicitors do not make arrests or conduct criminal investigations. Their role is to decide whether to prosecute charges based on the legal standard of proof of guilt beyond a reasonable doubt. Generally, solicitors do not approve or authorize law enforcement decisions to charge individuals with crimes. In South Carolina, an informal practice of solicitors reviewing Officer Involved Critical Incidents (OICIs) has evolved. In this ad hoc approach, solicitors typically review the complete investigative file of the investigating agency and then decide whether a charge is warranted. Historically, there was no uniform approach by prosecutors and investigators as to the standard of proof upon which these arrest decisions were based.

Because the procedures used in OICI cases are outside those routinely used to make charging decisions, and because there has been a lack of formality and consistency in these matters, Solicitor Wilson is promulgating the following policy and procedures to ensure consistency, transparency, and legitimacy when dealing with these most important and challenging incidents.

## **II. PURPOSE**

While OICIs and other use of force incidents are rare in comparison to the number of interactions law enforcement has with the public, these investigations can be complex and have profound social, civil, administrative and criminal consequences. When law enforcement uses force, it is important that law enforcement agencies and Solicitors are prepared to conduct thorough, fair, and impartial criminal investigations. Using independent investigatory assistance is one way to build trust in the community and ensure that a fair and impartial inquiry is conducted. Regardless of which independent agency investigates the incident, it is paramount that the process is transparent and unbiased.

To ensure professionalism and fairness in the process of investigating OICIs and to build trust and confidence in the results of those investigations, we must provide protocols to ensure a complete, thorough, transparent, and independent investigation is conducted in a timely manner.

Unlike other states, South Carolina does not have an investigative grand jury for these matters. The county grand juries that we do have in South Carolina determine probable cause based solely on a law enforcement witness who presents a summary of the evidence. The Solicitor is not permitted to attend the grand jury session during witness testimony and there are no recordings or transcripts of grand jury sessions.

Likewise, unlike other states, South Carolina's law does not provide a role for Solicitors in criminal investigations. When Solicitors become involved at the investigatory stage, they are subjected to potential civil or criminal liability. Courts have noted the difference in the prosecutor's role of evaluating evidence and interviewing witnesses in preparation for trial and the investigator's role of searching for the clues and corroboration that develops probable cause to seek an arrest warrant. The distinction is where the Solicitor's actions are more akin to that of a police officer or of a prosecutor's quasi-judicial role. Courts have held that

advising police in the investigative phase of a criminal case is not so intimately associated with the judicial phase of the criminal process as to entitle prosecutors to absolute immunity. Therefore, Solicitors must carefully examine their roles and actions when advising law enforcement regarding investigative actions prior to a probable cause determination by a court because they are not yet acting as an advocate.

Despite the risk of potential civil and criminal liability, upon request, Ninth Circuit Solicitor Scarlett Wilson will assist independent investigating agencies that agree and adhere to these policies and procedures in their investigations of OICIs and will make charging decisions in these matters.

These policies and procedures are to explain the process followed by the Ninth Judicial Circuit Solicitor's Office and Independent Investigating Agencies when OICIs occur. *These procedures are not exhaustive and investigators conducting OICI investigations must be cognizant of unique circumstances that may require deviations from this policy.*

### III. DEFINITIONS

- **Independent Investigative Agency (IIA):** A separate, outside department requested to conduct the OICI investigation that is not involved in the originating incident and has the knowledge, skills, and expertise to complete the investigative and forensic requirements of these complex cases.
- **Involved Department or Entity (ID):** The law enforcement branch that employs the officer(s) involved in the OICI.
- **Involved Department Liaison (Liaison):** Upon initiation of an OICI investigation, the involved department will designate an officer of senior command rank (Captain or above) who will act as a liaison between the IIA's Senior Special Agent/Investigating Supervisor and the ID, and aid in facilitating the investigative process.
- **Involved Officer (IO):** A law enforcement employee, whether on or off duty, who is involved in a critical incident as an actor, victim, or custodial officer. When circumstances warrant, a witness officer may be deemed an "Involved Officer."
- **Officer Involved Critical Incident (OICI): These include:**
  - Discharge of a firearm by a law enforcement officer that results or could have resulted in injury or death;
  - Any incident where a law enforcement officer sustains serious physical injury or death because of the actions of another person;
  - Any incident where a law enforcement officer uses force considered less lethal but which results in great bodily injury or death.
  - Any traffic incident where a law enforcement officer deploys techniques to terminate a threat posed by a suspect and which results in great bodily injury or death. (Investigations of deaths or

- injuries resulting from traffic accidents will be governed by the policies and procedures of the IDs.)
- Any custodial death which involves trauma, suicide or ingestion of a toxic substance. This protocol is not activated by custodial deaths that occur while the prisoner is under a physician's treatment for a disease or other natural condition which was diagnosed prior to death and which does not involve custodial trauma, custodial suicide or custodial ingestion of a toxic substance. "Custodial" means a situation when there has been a formal arrest or when, under the totality of the circumstances, there has been a restraint on freedom of movement of the degree associated with formal arrests.
  - **Supervisor Special Agent/Investigator (Supervisor):** The IIA designee with command authority that oversees all investigators and the overall investigation during an OICI.
  - **Lead Special Agent/Investigator (Lead):** The IIA designee in charge of the investigation as the lead detective/investigator, who exercises responsibility for guiding the investigation and completion of the case file.

## **IV. POLICY**

It is the consensus of the Sheriffs, Chiefs, and Solicitor serving in the Ninth Judicial Circuit that any OICI occurring in the Ninth Judicial Circuit should be investigated by an IIA. To maintain the integrity of the investigation, avoidance of real and/or perceived conflicts of interest, and transparency, no members of the ID(s) will be used for critical duties relating to the OICI investigation, except when exigent circumstances or public safety risk exist. The IIA will not utilize Investigators who were formerly employed by and not separated from the ID for less than 3 years. Whenever possible, the IIA will avoid utilizing an investigator who was formerly employed by the ID as the IIA Lead.

If a member of SLED is involved in the OICI, the Solicitor, after consultation with the SLED Chief, will select an agency that has both the skills and expertise to address the investigative and forensic requirements of the case. Likewise, in cases where members of SLED are involved, an accredited law enforcement laboratory outside of South Carolina will be utilized to accomplish all forensic testing and examinations to avoid any appearance of conflict of interest with SLED's laboratory services.

This agreement extends to crimes that led to the interaction between the suspect and IO when they occurred contemporaneously with the OICI. Where possible, the IIA will utilize separate investigators to investigate the initial allegation against the suspect involved in the OICI, if one exists. For example, if the suspect is believed to have committed an armed robbery and the IO's initial encounter with the suspect arises from that armed robbery when he uses force against the suspect, the IIA will use separate investigators to investigate the armed robbery and OICI arising from the use of force, if feasible. If exigent circumstances exist that threaten public safety and the integrity of the investigation, the ID may pursue an investigation, pursuant to their own policies and procedures, until the exigency is resolved.



If the suspect in the OICI is alleged to have committed criminal violations against the IO or are otherwise inextricably intertwined (common witnesses, etc.), these allegations will be included as part of the OICI investigation. For example, if there is an allegation that the suspect resisted arrest or assaulted the IO or other officers and these allegations are directly associated with the use of force in question, the same IIA investigators should pursue both investigations.

When an OICI occurs and a request for an investigation is received and initiated, the criminal investigation will have priority over the involved department's professional standards investigation. Professional Standards investigators shall not interview IOs until the criminal investigation is concluded or the Solicitor otherwise gives permission. It is imperative that information gathered during a professional standards investigation, outside of records requests, not be shared with IIA investigators as this may compromise the OICI investigation and render specific evidence inadmissible. Professional Standards will obtain permission from the Solicitor before initiating and conducting an interview with an IO.

To ensure compliance with this agreement, law enforcement agencies in the Ninth Judicial Circuit will develop a written policy addressing the use and designation of an IIA for these matters. The Ninth Circuit agencies shall clearly outline primary and secondary units for crime scene processing in exigent circumstances so as to avoid uncertainty or confusion when a need arises for a request.

## **V. PROCEDURES**

### **Initial Response Responsibilities by Involved Department**

The ID should undertake the following actions in accord with the ID's established policies and procedures:

- Obtain a Public Safety Statement from the IO. Provide on-site safety and security; address any threat;
- Render aid immediately to any injured party;
- Preserve, manage, and control the crime scene, making an effort to minimize the number of ID officers in and around the crime scene
- Protect all known evidence;
- Separate and care for involved officers/witnesses;
- Identify and preserve any video/photographic evidence of the incident that may be available. The ID should only collect the video/photographic evidence if there is a risk that before the IIA arrives to collect the evidence it will be lost or destroyed;
- Conduct an initial canvass for additional witnesses;
- Transport IO to hospital or safe location to await the arrival of IIA personnel;
- Communicate with IO regarding evidence collection of clothing, firearms, and gunshot residue. Do not allow clothing or firearms to be removed from IO unless they contain fluids that pose a health risk to the officers. These items will be collected by the IIA personnel;
- Preserve any dispatch audios for all channels;
- Do not allow IOs or witnesses to review audio/video recordings; and
- Ensure City/County administrative protocols relating to drug testing after serious incidents or accidents are accomplished and documented. Any reasonable suspicion testing should be conducted by the IIA after obtaining consent or a probable cause finding by a judicial official.

## **Independent Investigative Agency's Response Actions**

After the ID contacts the IIA to request assistance, the IIA will respond as soon as possible to assume responsibility for the investigation.

### **Notifications**

When an OICI occurs and a request is made to the designated IIA to conduct the investigation, the following actions shall occur if the assistance of the Ninth Judicial Circuit Solicitor's Office is expected in the investigative stage, case review, or for charge recommendations:

- Upon arrival on scene and receiving an initial briefing, the Supervisor/Lead will make notification to the Solicitor or a designee and inform them of the OICI.
- Upon notification, depending on the circumstances, the Solicitor, or a designee, may respond to the scene for the purposes of monitoring the investigation and gathering firsthand information, observing the scene during the initial response, and providing legal consultation.
- If a member of the Solicitor's Office responds to the scene, they will contact the Supervisor/Lead upon arrival and coordinate their respective activities. The responding Solicitor may also respond to any designated location to observe investigative activity and provide legal advice to the investigating agency as needed.
- If the Solicitor or a designee does not respond to the scene, as soon as practicable, the Supervisor/Lead will provide the Solicitor, or a designee, with a briefing of the event, to include:
  - The names and whereabouts of the LEOs involved in the incident;
  - The names and suspected whereabouts of all civilian witnesses to the event;
  - A summary of the content of the initial statements of the IO as provided to first responders
  - A summary of witness statements;
  - Information regarding the physical evidence discovered; and
  - The existence or possible existence of any video and/or audio recording of the incident; and

- The existence or possible existence of unidentified witnesses to the incident.
- Within 72 hours of the OICI, the Supervisor/Lead and Solicitor will meet to discuss the ongoing process for the timely disclosure of investigative materials and allow for two-way communication regarding legal consultation, challenges encountered, and case analysis.

### **Investigative Activities**

Upon arrival at the scene, the IIA will seek to:

- Control and ensure the crime scene is secured and expanded as necessary.
- Obtain briefing from Incident Commander from ID.
- Identify any evidence that may have been disturbed during initial law enforcement and medical response.
- Locate and separate IO if the ID has not done so already.
- Obtain a Public Safety Statement from the IO if not already accomplished by local department.
  - The Public Safety statement is based upon an immediate need to know specific information surrounding the OICI. The Public Safety statement is based on a structured set of questions designed to avoid legal issues arising from *Garrity*.
  - The Public Safety statement is intended to gain essential information quickly to address an emergency or public safety risk that may exist to safeguard the investigation and safety concerns of the community. Once this information is collected, the IO should be relocated to a law enforcement or government facility and ensure appropriate photographs, tests, and evidence collection occurs.
  - Public Safety statements should include information surrounding:
    - General overview of the incident;
    - What force was used by the officer;

- What force was used by the suspect and whether any weapons were used;
  - Directions of shots fired;
  - Knowledge of any injured persons and their locations;
  - Knowledge of any suspects at large and direction of travel;
  - Time elapsed from the event;
  - Any knowledge of witnesses including names, descriptions, and locations;
  - Any knowledge of evidence at the crime scene; and
  - Scope of the crime scene.
- Locate and separate civilian witnesses. If witnesses do not agree to cooperate or be interviewed, obtain as much identifying information as possible to allow for follow up interviews later.
  - Identify all non-involved officers and obtain a brief statement of facts surrounding the incident prior to their release. Also, gather any information they may have received from witnesses, neighborhood canvasses, or other evidence recovered.
  - Coordinate with Crime Scene Technician to ensure the collection and preservation of all appropriate evidence.
  - Collect any dispatch audios for all channels and CAD reports.
  - Request additional resources as necessary.
  - Allow the IO an early opportunity to communicate with family members and/or other persons with whom the IO wish to speak for counsel, advice, or support.

### **Crime Scene**

The responsibility for crime scene processing rests with the IIA. To avoid the appearance of conflict of interest or bias, crime scene technicians from the ID will not engage in any capacity during crime scene processing unless exigent circumstances exist that threaten the destruction or loss of evidence.

## **Exigent Circumstances**

In some situations, the incident scene and the public's safety may be compromised by weather or onlookers.

- To handle these situations, the IDs will have policies in place that:
  - Provide for preserving the integrity of the crime scene and the dignity of any deceased or injured person by shielding the affected people and areas from public view.
  - Provide specific guidance in how to conduct this phase of the investigation if exigent circumstances exist.
- If the exigent circumstances policy is executed during an OICI prior to the arrival of an investigator from the IIA, the following actions will occur:
  - The Supervisor on scene who approved the evidence recovery will detail the factors leading to the decision in a supplemental report.
  - If available, the recovery of items will be video recorded and under the direction of an on-scene supervisor. In such situations, the scene processing and evidence collection will be limited to those items that may be lost or destroyed. All other processing will be assumed by the IIA crime scene unit upon their arrival.
- Upon arrival of the IIA Lead, if it is determined that there will be a delay of three hours or more in the response of the IIA's crime scene unit, a previously designated crime scene unit will be activated to process the scene under the direction of the IIA.

## **Scene Processing**

The IIA (or in exigent circumstances, the ID) will conduct crime scene activities using best practices for processing the scene and collecting and storing evidence. The agency processing the crime scene must follow the standards promoted and required by national accrediting agencies and will include a statement regarding this commitment in its own OICI policies and procedures.

In addition to the general accreditation standards, any IIA must ensure that the following tasks are performed in an OICI:

- Photograph any injuries to IO or civilians involved.
- Photograph, collect and preserve IO's, firearm and any item that was or is on the IO's person during the OICI or at the scene and has the potential to provide probative, evidentiary value.
  - Photograph, collect and preserve IO's uniform if it has potential to provide probative, evidentiary value.
  - If the IO is in possession of personal property, consult with the Solicitor and determine whether or not a search warrant should be obtained to seize and search the personal property, including but not limited to personal weapons and mobile telephones.
- Preserve all recovered weapons for DNA and fingerprint analysis
  - Discuss the options for DNA and fingerprint recovery.
- Collect gunshot residue, as appropriate, from IO and other involved parties
- If available to the IIA, utilize technology to conduct 3D mapping of the scene, as soon as possible. 3D imaging should be utilized when it will provide additional information not captured or clarity not provided by traditional scene documentation methods and techniques. In determining the value of utilizing 3D technology, crime scene personnel and the IIA Lead will consider the complexity and geographical location of the scene and if such imaging will add value to the investigation.
- Process, if necessary, and inventory any involved vehicle on scene or utilized by the IO during the course of the OICI.
- Process, if necessary, any other vehicle on scene that may have been involved in the incident, securing any search warrants that may be required.
- Check all on-scene vehicles and officers for audio/video recordings and digital evidence and collect them from the IO. Canvas the area for any audio/video recordings and digital evidence possessed by lay witnesses. Preserve and collect any recordings and digital evidence,

obtaining search warrants if necessary. If none exist, obtain a statement from the appropriate party as to why none exist.

- If destructive examination, testing or analysis is considered, consult with the Supervisor and the Solicitor before making the request of the forensic laboratory.
- Maintain all evidence until the case is complete and released by the Solicitor handling the case.

### **Examinations, Testing and Analysis**

- Within 10 days of the OICI, a crime scene case review will be conducted. This review will include the lead crime scene investigator who processed the scene, Supervisor, the Lead, and the Solicitor, or her designee. During this review, the lead crime scene investigator will provide:
  - An overview of the scene;
  - Any challenges or concerns encountered during the scene processing;
  - An outline of the evidence seized at the scene and from any officer or witness; and
  - List of items that are pending/require laboratory analysis.
- All analysis of electronic devices of evidentiary value will be conducted by personnel trained in digital forensics after obtaining the necessary legal documents or consent for the search/examination. Any preliminary review or observation prior to the forensic analysis must ensure that all relevant information is safe guarded and available for any judicial proceedings where it may be required and that the necessary legal documents for the preliminary review are obtained.
- All decisions regarding enhanced testing or analysis procedures for specific items will only be accomplished after consultation between the Lead, the crime scene investigator, and other laboratory personnel with expertise in the specific field.
- Prior to any destructive processing, consultation will occur including the crime scene investigators, Lead, the Solicitor and any



experts/laboratories to be utilized. Once this discussion occurs, a joint decision will be made regarding further action.

- If a SLED officer is involved in the OICI, all forensic evidence collected at the scene must be submitted to an accredited law enforcement laboratory outside of South Carolina for analysis.

### **Officer/Witness Interviews**

There is much debate about when to conduct interviews of involved officers after critical incidents and the research is inconclusive about the best timing. This debate has become even more heightened with the significant need to build trust and transparency in the investigative process with the community. Therefore, law enforcement agencies in the Ninth Circuit and the Solicitor agree the following guidelines will be utilized during OICIs relating to involved officer interviews:

- Request for interviews with officers involved in OICIs should be made as soon as possible following the incident unless the IO is injured or incapacitated; understanding that *no one*, law enforcement or otherwise, *can ever be forced* to give a statement to criminal investigators.
- No member of the ID who is superior to the IO or involved in Professional Standards for the ID will be present during the interviews of the IO. This action is to avoid any possibility that the IO may feel compelled to speak with investigators if superior officers or department representatives are present. (This prohibition does not apply to Professional Standards representatives monitoring the interview from a remote location.)
- IOs will be Mirandized when legally required. At a minimum, they will be advised of the following by IIA personnel:
  - The IIA investigation is criminal, not internal;
  - The IO participation in the interview is voluntary;
  - The IO has the right to refuse to answer any questions;
  - The IO is not being compelled to cooperate under *Garrity*.

- As with any ongoing investigation, investigators may elect *not* to inform the IO and his/her attorney of all the evidence and information related to the OICI and evidence and information may be withheld from them during the investigation.
- Investigators will seek to gain information from the IO and witnesses regarding their memory of the event prior to introducing any evidence or artifacts to enhance memory or perceptions. It is important to obtain what the IO “subjectively believed” at the time of the incident prior to altering those beliefs with additional information. After the “free” recall interview, witnesses may be allowed to view additional information to clarify, amend, or expand their initial recollection.
  - Research has demonstrated that the use of general stimulus may help accurately recall aspects of an event that may not have been present by way of “free recall.” This process is consistent with the Cognitive Interview method.
  - A review of audio/video will not be offered to the IO or other witnesses prior to the “free recall” interview by the IIA. Should an IO or witness refuse to submit to an interview or give a statement, the IIA investigator will consult with the Solicitor as to how and whether to proceed with the interview.
- The IO and witnesses may be permitted to review in-car and body worn camera video and audio after completing a “free” recall interview by the IIA investigator and with the approval of the Solicitor.
- When making decisions regarding the review of video and audio evidence, there must be a balance between the increased evidentiary value of reviewing the video and the potential psychological risk. Each incident is different and will be considered on a case-by-case basis.
- IOs, other involved officers, and witnesses should be cautioned about the risk of social media presence and exposure to television and/or web-based postings as it relates to post-incident thoughts, emotions, and recall.

- In incidents where multiple officers are involved in the OICI, Ninth Circuit law enforcement agencies will have their own policy in place restricting IOs from discussing details of the incident or investigation until the case has been concluded, except with their attorney, mental health counselor, peer support members, spouse, or clergy. This would include an IO's participation in any "After Action Review" of policy, procedure, or tactics.
- Civilian witness interviews will be conducted under the same principles as IOs'.

### **Interview Documentation**

All interviews will be video and/or audio recorded unless not practicable. Furthermore:

- All interviews with IOs or eyewitnesses to the incident will be conducted in environments that allow for audio/video recording. If extenuating circumstances make this impossible, the reasons for not videotaping the interview will be detailed in a supplemental report to be included in the case file.
- Upon request of the Solicitor, after consultation with the IIA Supervisor/Lead, transcripts of specifically identified audio/video recorded interviews which are *necessary* for a charging decision will be provided to the Solicitor.
- When the need for audio/video enhancements occurs, the Solicitor will request the Lead provide recommendations for possible vendors to complete the work if the expertise is not available through a law enforcement department. Once a vendor has been agreed upon by the Lead and the Solicitor, the work may proceed. Related expenses will be paid by the IIA.

### **Case Review/Reporting**

To ensure OICI cases are conducted and managed as a joint process between the Solicitor and the IIA and that collaboration and consultation occurs throughout the investigation, bi-weekly coordination meetings will occur throughout the investigative process. The purpose of these meeting

is to create a continuous information flow during the investigation and ensure that issues identified and requested actions are addressed and handled as the case is processing and not at its conclusion, which only serves to create frustration, exacerbate community concerns and delay decisions. The coordination meetings will include the Solicitor, Supervisor, and Lead, as well as any other investigative personnel who are relevant to the discussion. The meeting agenda should include:

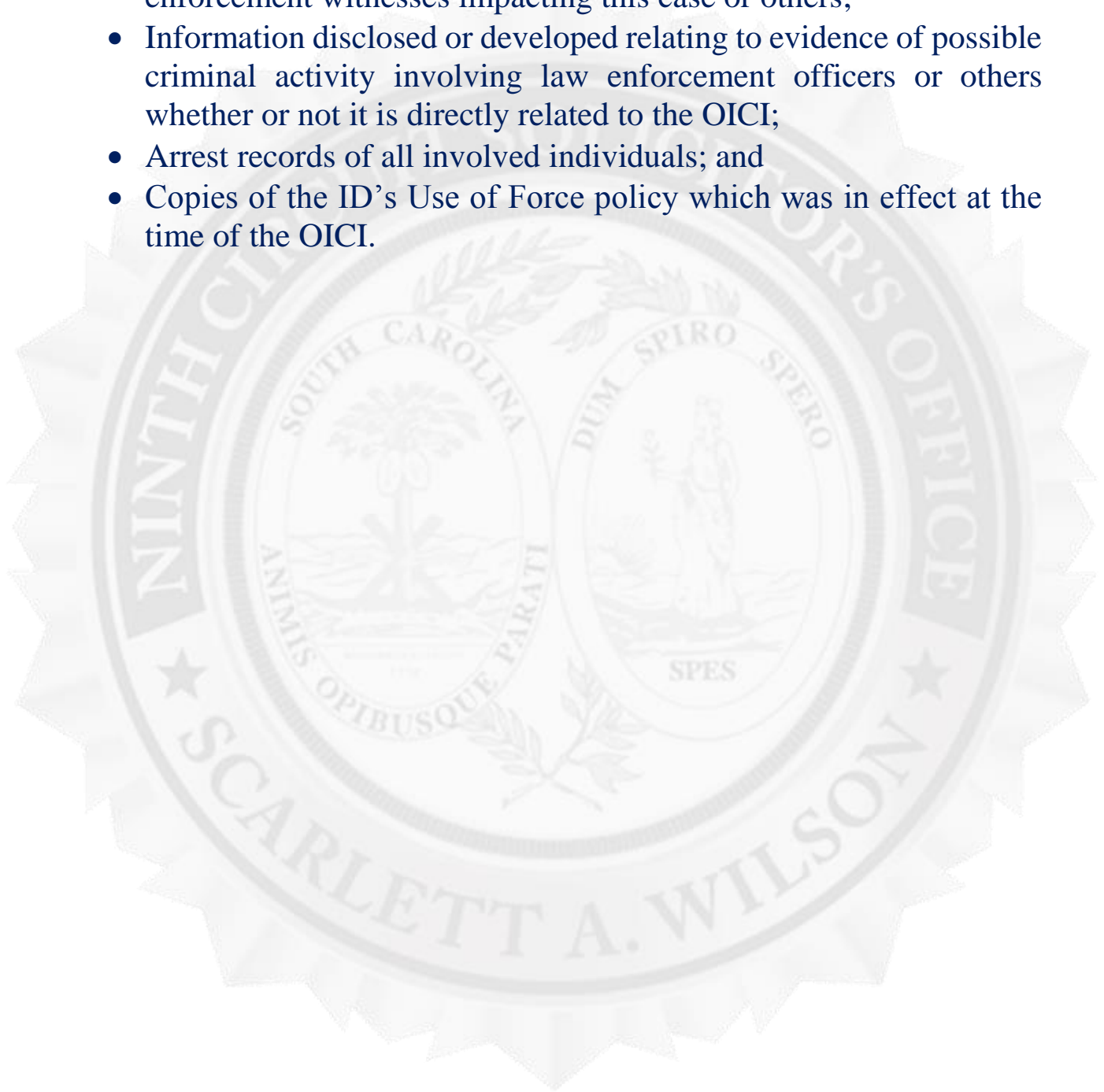
- Status of the investigation
- Outstanding leads or information request
- Evidence/Laboratory reports and analysis
- Any challenges or concerns arising in the case
- Request for additional investigative steps
- Legal review and consultation
- Timeline for completion

To prevent delays that impact the community, IOs and IDs, the IIA will make every effort to provide the Solicitor with an Investigative Report within 60 days of the incident. If the Investigative Report is not substantially complete within 60 days, the IIA will provide the Solicitor with an accounting of all outstanding records, reports or delayed items, the reason for any delays, and a projection of when the items will be forthcoming. It is anticipated that any delays or challenges which impact the completion of the Investigative Report will be communicated during the bi-weekly coordination meetings. If the Solicitor feels she has ample information to conduct her legal analysis of the OICI, she may do so at any time regardless of whether the Investigative Report is complete. As with any investigation and legal analysis, jeopardy does not attach and new information may always be considered, regardless of previous findings.

The Investigative Report will include but is not limited to the following:

- Transcripts of all recorded statements as previously described;
- Copies of any law enforcement audio/video recordings;
- Copies of any civilian audio/video recordings;

- Copies of any messages/transmissions from the involved officers and witnesses;
- Information regarding the credibility, integrity, and honesty of law enforcement witnesses impacting this case or others;
- Information disclosed or developed relating to evidence of possible criminal activity involving law enforcement officers or others whether or not it is directly related to the OICI;
- Arrest records of all involved individuals; and
- Copies of the ID's Use of Force policy which was in effect at the time of the OICI.



## **VI. SOLICITOR'S LEGAL ANALYSIS & CHARGING DECISION**

The Solicitor will complete a review of the investigation within 60 days of receipt of the completed investigative case file barring unusual circumstances that require additional time. If at any time during the process, the Solicitor believes further investigation is needed she will notify the IIA and request the necessary investigative action be taken. If the Solicitor requires additional time to make a decision, she will make a public statement disclosing the need for an extension of time, and the reason for the extension, if appropriate.

Upon consensus of the Solicitor and the IIA that all relevant information that could foreseeably impact the charging decision has been provided, the Solicitor will draft a letter to the Sheriff or Chief of the ID with their findings. The findings letter will be made public on the Solicitor's website after notification has been made to the involved department. The letter to the Sheriff or Police Chief will outline the joint decision of the Solicitor and IIA. The decision will fall into one of these three categories:

1. The IO's actions were justified based on legal standards and case law.
2. The relevant evidence does not provide proof beyond a reasonable doubt that the IO committed a crime.
3. The factors outlined in the investigative file and relevant case law support prosecution based on a guilt beyond a reasonable doubt standard and charges will be filed.

When reviewing OICI cases, the Solicitor will use the same standards used in all criminal cases in the Ninth Judicial Circuit. The analysis will involve reviewing the totality of facts developed in the criminal investigation and applying the pertinent law to those facts. Criminal liability is established only if it may be proven beyond a reasonable doubt that someone committed all the elements of an offense defined by South Carolina law and that the offense was committed without legal justification or excuse. While knowingly or intentionally shooting

another person is generally prohibited under South Carolina law, there are certain circumstances in which the use of physical force – deadly or not – is justified. In most situations, there is no dispute that the IO intended to use deadly force. The issue is usually whether the conduct was legally justified or criminal in nature.

When determining criminal responsibility and making charging decisions in officer involved shooting cases, the State must be able to prove *beyond a reasonable doubt* that the officer either did not believe he/she or another was in imminent danger, or if she/he did hold such a belief, that this belief was unreasonable considering the circumstances. In other words, at the instant the officer fired the shot that wounded or killed the person, did the officer reasonably believe that he/she or another person was in imminent danger of great bodily injury or death from the actions of the person who is shot?

- For criminal charges to be pursued, the Solicitor must find that there is a reasonable likelihood that any reasonable defenses may be disproven beyond a reasonable doubt and that all elements of the crime charged may be proven beyond a reasonable doubt to twelve jurors at trial. If this standard is met, a criminal charge will be pursued.

Charging decisions in criminal matters are not based on:

- Whether or not the IO handled the OICI appropriately from an administrative or tactical standpoint;
- The fact that a shooting is controversial; the fact the shooting was avoidable, or the officer did not follow proper policy or procedure does not necessarily make it a criminal matter.
  - In these circumstances, remedies may be pursued either administratively or through civil means. The Solicitor has no authority in these matters.
- The District Attorney Association's *National Prosecution Standards* states: a prosecutor should file only those charges which she reasonably believes can be substantiated by evidence at trial.

- In some circumstances, federal involvement and investigation may be appropriate. Federal Investigations are under the sole authority of the Department of Justice. Federal crimes are governed by federal laws that are different, separate and distinct from state law.

If a determination is made, based on a review of the investigation, that the facts constitute proof beyond a reasonable doubt that the IO committed a crime, the Solicitor and Lead will prepare charges (indictments) for presentation to the grand jury. In cases where public safety may be impacted, the IIA will have the ultimate authority to seek arrest warrants and immediately place the IO in custody. Unless exigent circumstances exist, the Solicitor will be informed prior to the IIA obtaining warrants.

Once a charging decision is made, the Solicitor will meet with the injured individual if the individual is not criminally charged, or family of the deceased individual before any announcement of charging decisions are made. (See Section Below: “Contact with the Injured or Deceased’s Family & Other Interested Community Members.”) Additionally, the Solicitor may elect to meet with community leaders to explain the facts of the case and the factors that were examined when making the charge decision. This will be followed by an analysis of the legal elements of the case posted to the Solicitor’s website. Upon closure of the investigation, the IIA file will become a public document and, thus, open to the media.



## **VII. RELEASE OF INFORMATION**

When an OICI occurs, it is understood that the ID has unique public information responsibilities involving transparency and demands from the public for information. However, there must be a balance between releasing information and conducting a complete, fair, and impartial investigation. Therefore, upon initial response, the ID will determine what information about the OICI to release. Any information released about specific facts should be caveated with a statement that the information is preliminary and is subject to change as more information is gathered during the formal investigation.

Once the Solicitor and IIA have been requested and arrived on scene, any information provided to the media or posted on any public sites will be coordinated with the Solicitor and IIA prior to release.

Additionally, it is the sole responsibility of the ID for any release of the following information:

- Officer's name;
- Officer photograph;
- Department assignment;
- Years of service; and
- Any other information *not* related to the facts of the investigation.

If the ID decides to release information regarding any of the above information relating to the IO, the Lead and Solicitor should be advised prior to the release. The ID may determine when to release this information depending on certain circumstances such as:

- Injuries to the officer;
- Threats against the officer/department; and
- Security consideration for the officer and their family.

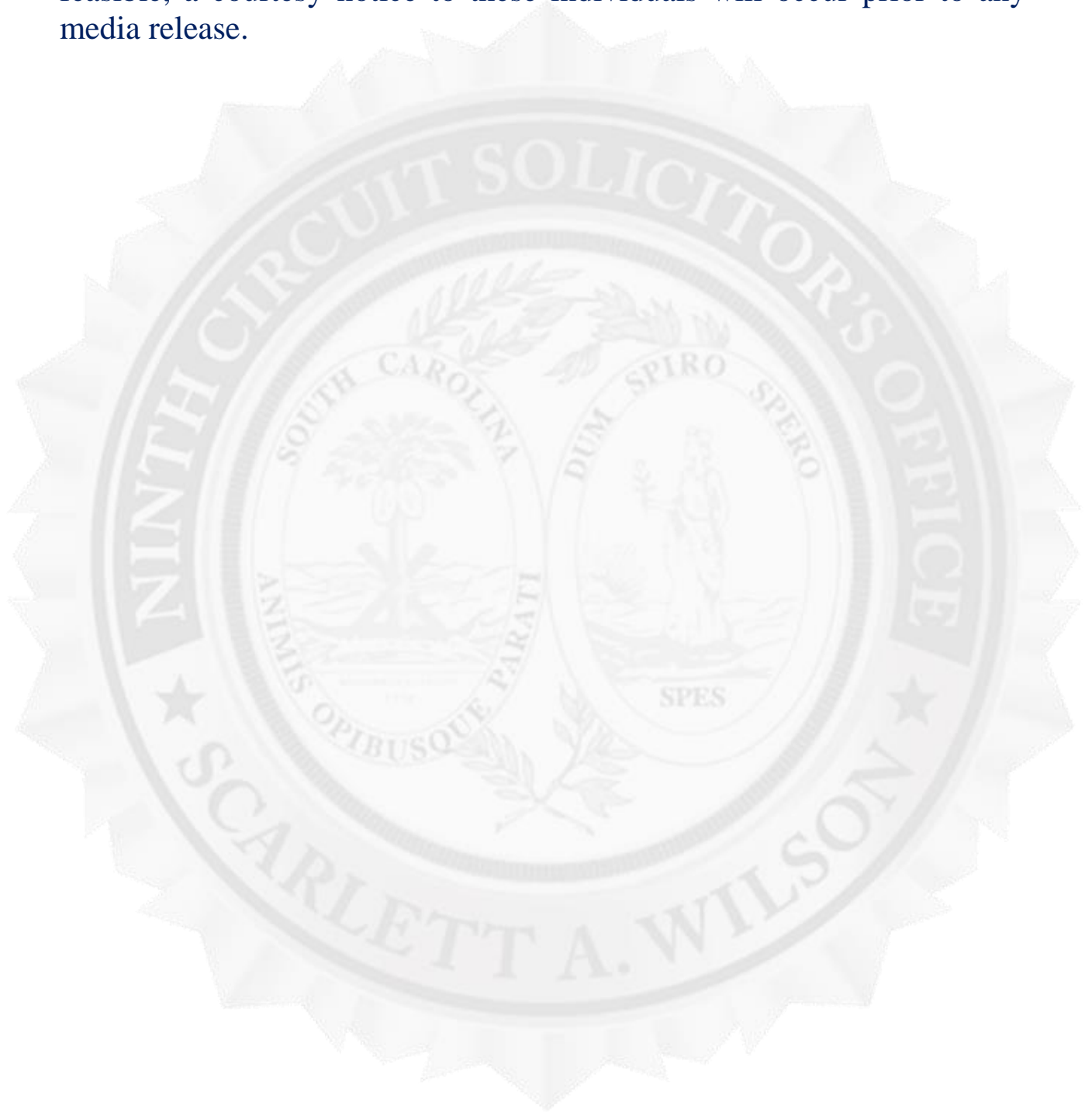
Once the IIA has assumed responsibility for the investigation in collaboration with the Solicitor, all information released to the public

regarding facts surrounding the investigations will be made jointly by the Solicitor, IIA, and ID. There should be consideration given to identifying one spokesperson for the incident and all media inquiries should be directed to that individual for review, coordination, and response. Except as otherwise required by FOIA, in most cases, specific information regarding the case will not be released until the investigation is closed. If the ID wishes to release information prior to the conclusion of the case, it should be restricted to matters involving departmental response, department policy and procedure, identity of personnel involved in the incident, employment status, and medical condition of the IO. Prior to any release, the ID should consult with the Solicitor and IIA to ensure that a release will not jeopardize the investigation.

In cases with significant public scrutiny, the Solicitor, IIA, and ID may decide to release recordings of the incident prior to the completion of the investigation. However, the timing of these releases will be based on the unique circumstances of each case and will not be released until all relevant witnesses have been located and identified to prevent altering the witness's recall of the incident and creating "*ghost*"/false witnesses.

The Solicitor and IIA may, at their sole discretion, provide periodic status updates of the investigation. The updates will not discuss details of the case but will provide the community and media with information relating to investigative activity completed, outstanding items (*e.g.*, laboratory reports, data review, etc.), anticipated timeline, and next steps. These status updates will follow a consistence timeframe which is communicated to the public to create transparency, establish community-wide expectations, and avoid ongoing, random request for case updates. The preferred timeframe would be at 30-day intervals until a charging decision is made. When an arrest is made, updates regarding the status of any further investigation will cease. All press releases, conference, or status updates will comply with the South Carolina Appellant Court Rule 407 and South Carolina Rules of Professional Conduct Rules 1.8, 3.6, and 3.8.

Prior to any release of information to the media or public announcements, the interest of the involved parties will be taken into consideration. When feasible, a courtesy notice to these individuals will occur prior to any media release.



## **VIII. CONTACT WITH THE INJURED OR DECEASED'S FAMILY & OTHER INTERESTED COMMUNITY MEMBERS**

In OICI where individuals have died or been seriously injured, the families will be treated with respect and dignity and offered the opportunity to ask questions and gain an understanding of the investigative and criminal justice process. This again is a key element in transparency, trust, and legitimacy in the process. Therefore, in any OICI resulting in serious injury or death, the following steps will be taken to communicate with family and community members:

- If a death is involved, the Coroner agrees to contact the Solicitor with information regarding the deceased's family as soon as possible.
- The Solicitor will meet with the deceased's family at a mutually agreeable time, as soon as practicable, but no later than 10 days from the death. The Coroner and representative from the IIA will be invited to attend the meeting as well.
- If a death is not involved, the IIA will contact the Solicitor regarding the subject/victim's contact information as soon as possible.
- The Solicitor and the Supervisor will meet with the subject/victim or his representatives to discuss the investigative process, as soon as practicable but no later than 14 days from the incident, *if he has not been charged in the incident.*
- If the subject/victim is charged with a crime, the Solicitor will follow the Rules of Professional Conduct regarding contact with defendants charged with crimes and persons represented by counsel.

## **IX. RECUSAL**

If the Solicitor determines that a direct conflict of interest exist (e.g., the Solicitor has a personal relationship with someone involved in the incident or the Solicitor is a witness to the incident), and she cannot participate in the investigation and prosecution, she will immediately recuse herself and take the following action:

- Alert the Attorney General Office;
- Follow the established Attorney General protocol for having the investigative and prosecutorial duties transferred to another prosecutor as soon as possible to avoid any delays in having the matter resolved; and
- Prepare and release a statement communicating the decision to the public.