

THE PROSECUTOR'S ROLE IN ADDRESSING  
OFFICER-INVOLVED FATALITIES AND CRITICAL INCIDENTS

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**ACTION FOR PROSECUTORS AND COMMUNITIES,  
BY PROSECUTORS AND COMMUNITIES**

FEBRUARY 2019

# BEFORE An Officer-Involved Critical Incident Occurs

Does your office:

Report the impact of your decisions?

NO

Collect data, analyze charges driving caseload and racial disparities

YES

Monitor potential police misconduct?

NO

Create/Strengthen Brady-Giglio Infrastructure

YES

Have established critical incident investigative protocol?

NO

Outline investigative steps, timeline, and transparency

YES

Discuss office's **data, policies, and protocol** with **community organizations** and **law enforcement partners**

Do you have recurring meetings with:

Community organizations?

NO

Schedule community forum

YES

Invite community suggestions on:

- **Charging priorities**
- **Standards of transparency**
- **Legislative priorities**

Local law enforcement partners?

NO

Schedule local law enforcement convening

YES

Align prosecutor & law enforcement policies on:

- **Reducing low-level enforcement & charging**
- **Use-of-force best practices**
- **Critical incident investigative protocol**

# AFTER An Officer-Involved Critical Incident Occurs

**IMMEDIATELY**  
begin investigation

**WITHIN 24 HRS**  
connect with family impacted by incident

**WITHIN 48 HRS**  
communicate with media

**Does your office:**

Have jurisdiction over critical incident investigations?

Provide services to families?

Have established communications infrastructure?

NO

YES

NO

YES

NO

YES

Assign prosecutors to monitor investigation

Connect family to resources

Develop standards of transparency

Activate investigative protocol

Provide support throughout investigation

Provide updates to family & public every month

**WITHIN 4-6 MONTHS**  
complete investigation

**WITHIN 2 WEEKS**  
of investigation's conclusion,  
release report to public

**Determine liability and appropriate accountability**

Criminal liability?

Administrative liability?

No liability?

Charge

Provide findings to police department, oversight bodies, & certification boards

Discuss decision with family; If family pursues civil suit, provide investigative findings

**Communicate evidence and rationale to public;  
Identify reform opportunities to prevent future UoF**

# Action for Prosecutors to Take and Communities to Advocate For **BEFORE** Officer-Involved Critical Incident Occurs

## WITHIN A PROSECUTOR'S OFFICE

- Create data-driven policies**
  - Collect & disaggregate case data by race of defendant & officer, prosecutor assigned
  - Analyze & discuss data with staff
  - Decline to prosecute low-level charges driving disparities and caseloads
  
- Monitor potential police misconduct**
  - Ensure infrastructure meets Brady-Giglio standards
  - Decline cases from officers with pattern of allegations against them
  - Pursue formal investigations of officers if evidence to sustain allegations
  
- Codify critical incident investigative protocol**
  - Create independent investigative unit
  - Assign prosecutors to unit, ensure they do not interact with police on other cases
  - Set timeframes and standards of transparency

## WITHIN A PROSECUTOR'S JURISDICTION

- Publish case data**
  - Invite suggestions from community organizations on charging priorities
  - Work with law enforcement partners to reduce enforcement of low-level offenses
  - Publish policy to decline low-level offenses
  
- Publish critical incident policies**
  - Make Brady policies and investigative protocol public and accessible
  - Work with law enforcement to align policies and infrastructure
  - Invite insight from community organizations on standards of transparency
  
- Contribute to public discourse on Use-of-Force (UoF)**
  - Encourage local police department to adopt UoF best practices
  - Advocate for state statute language that provides a path to accountability
  - Convene forums on UoF with community groups, law enforcement, other stakeholders

# Action for Prosecutors to Take and Communities to Advocate For **AFTER** Officer-Involved Critical Incident Occurs

## WITHIN A PROSECUTOR'S OFFICE

- Conduct investigation**
  - Immediately respond to scene and activate investigative protocol
  - Coordinate with local law enforcement partners
  - Conclude within 4-6 months of incident
  
- Determine liability**
  - Based on investigation's findings, determine criminal, administrative, or no liability
  - Write and publish report within 2 weeks of investigation's conclusion
  - Discuss liability decision, evidence, and rationale publicly
  
- Identify opportunities for reform**
  - Document any challenges in investigation, i.e. blockades from union policy, police department, or state statute?
  - Family informed throughout?
  - Independent, thorough, timely investigation?

## WITHIN A PROSECUTOR'S JURISDICTION

- Inform the family directly impacted**
  - Contact the family within 24 hours of incident and every month throughout investigation
  - Support family in accessing services
  - Ensure family has access to evidence as soon as possible and prior to public release
  
- Inform the public**
  - Issue press release within 48 hours of incident and provide updates every month thereafter
  - Meet standards of transparency, i.e. release video footage within 10 days
  - Use language that affirms dignity of person harmed
  
- Communicate path to accountability**
  - If criminal liability, charge
  - If administrative liability, provide findings to police department, oversight bodies
  - If wrongdoing but no liability, document why, advocate for reform
  - Provide information to family for civil suit
  - If no wrongdoing, document why, opportunities to prevent future UoF

The Institute for Innovation in Prosecution provides a collaborative national platform for prosecutors and the communities they serve to advance a more equitable and effective criminal justice system, founded on community-centered standards of safety, fairness, and dignity.

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