

The Ninth Circuit Procedure for Review of Law Enforcement Use of Deadly Force

Effective September 14, 2023, Andrew A. Bain, State Attorney for the Ninth Judicial Circuit of Florida, hereby establishes the Ninth Judicial Circuit of Florida's Procedure for Use of the Grand Jury for All Deadly Uses of Force by Police or Law Enforcement or that Result in Great Bodily Harm ("Grand Jury Procedure"). The Grand Jury Procedure will be used to examine all law enforcement uses of force that could have or did cause serious bodily injury or death and that have not previously been closed by formal notification of a prior State Attorney of the Ninth Judicial Circuit.

Purpose

The Grand Jury Procedure will use the duly empaneled grand juries of Orange and Osceola Counties to review and weigh evidence gathered and prepared by the independent authority that investigated the use of force incident pursuant to Florida Statute section 943.1740. Following the presentation of all relevant evidence, the applicable grand jury will provide the citizens of the Ninth Judicial Circuit with a charging decision in the form of an indictment or "no true bill." When appropriate, the grand jury will also provide recommendations regarding policies, priority issues, and best practices related to use of force issues in the form of presentments. This Grand Jury Procedure, using the judgment of grand jurors selected according to the law and from a cross-section of our community, will ensure a community review for use of force incidents, recognizing such events have immeasurable emotional, psychological, spiritual, and economic impacts on families, friends, members of law enforcement, and the greater community where the incidents occur.

Referral and Submission Procedure

The State Attorney requests that after a fatal, or non-fatal use of force that could or did cause serious bodily injury or death, incident has occurred the independent investigating authority take the following steps as soon as possible:

1. Notification of the incident shall be made to the State Attorney, Chief Assistant State Attorney ("Chief Assistant"), or their designee(s). The State Attorney, Chief Assistant, or their designee(s) may come to the scene to assist the independent investigating authority with legal matters related to the investigation.
2. Provide a summary of the event(s) or actions by the law enforcement officer(s) involved in the incident shall be provided to the State Attorney, Chief Assistant, or their designee(s) for the purpose of determining if an initial *Brady* notification is necessary.
3. Communicate with the Chief Assistant or a designee(s) should the need for investigative subpoenas arise so that the Chief Assistant or a designee(s) may generate any subpoenas or other necessary, investigative documents.

4. The investigative agency shall provide an executive level briefing to the State Attorney, Chief Assistant, and/or a designee(s) within a reasonable amount of time after the investigation is initiated. This briefing shall provide the preliminary findings of fact from the investigative efforts to date once key witnesses are identified and investigative interviews have been collected.

Following the executive level briefing, the State Attorney shall appoint either the Chief Assistant or another assigned Assistant State Attorney to review the completed investigation and present evidence to the applicable grand jury.

Upon completion of their investigation, the State Attorney requests the independent investigating authority undertake the following steps:

1. Provide an in-person presentation of facts to the Chief Assistant or a designee(s). All reports, attachments and available discoverable actions shall be presented and provided to the Chief Assistant or a designee(s) during the presentation.
2. Process any tasking request(s) made during the in-person presentation, or at any other time. All such taskings shall be moralized in the Ninth Judicial Circuit State Attorney's Office's ("SAO-9") Case Management system once a Use of Force ("UF") or other applicable SAO-9 case number is assigned. Any such tasking shall be addressed in a timely manner by the investigative authority, as the review of all other materials provided will be open and ongoing by the Chief Assistant, Chief Investigator, assigned Assistant State Attorney, or any other members of the Office of the State Attorney needed for a full review of the subject incident.

Review of Evidence and Presentation to the Grand Jury

The Chief Assistant or assigned Assistant State Attorney shall immediately begin a thorough review of all information provided by the investigative authority upon receipt of the in-person presentation of facts. The Chief Investigator or designee(s) and the SAO-9 Investigations Unit Supervisor assigned to *Brady* matters shall assist with the review. Any additional tasking(s) of the investigative authority shall be communicated to them by way of the Chief Assistant. Such requests shall be memorialized in the SAO-9 Case Management system under the applicable SAO-9 case number(s). Upon completion of the review by the Chief Assistant or the assigned Assistant State Attorney, and after all tasking(s) and related information have been provided by the investigating authority, the Chief Assistant or the assigned Assistant State Attorney shall present the case information/investigation to the applicable grand jury at their next appointed time to convene, but in no instance more than 60 days following the completion of the evidentiary review.

Consistent with the interests of justice, the State Attorney will ensure the Chief Assistant or assigned Assistant State Attorney present *all relevant evidence* regarding the law enforcement use

of force to the applicable grand jury. To ensure a complete and thorough review, any or all of the following may potentially be called upon to testify during the applicable grand jury proceeding:

1. Any witness to the use of force event(s) investigated.
2. The lead detective(s) assigned to investigate the matter(s) by the investigative authority.
3. The officer(s) involved in the use of force incident shall be extended an offer to voluntarily testify without the issuance of an investigative subpoena.
4. An independent Use of Force Subject Matter Expert (“SME”) retained by the SAO-9.
5. The Use of Force SME(s) for the primary agency employing the officer(s) whose use of force is under review.
6. The applicable agency’s SME(s) for any other relevant training, policy, or practice.
7. Any other witnesses wishing to testify shall make their request by letter to the State Attorney or a designee(s) prior to the date of the initial grand jury presentation of the subject incident. Any such witness must have information or testimony related to the specific use of force incident under review to be heard.

Any expert testifying before the grand jury shall provide a sworn report or statement, as well as a detailed curriculum vitae, to the Chief Assistant or assigned Assistant State Attorney 15 days prior to testifying. The Chief Assistant or assigned Assistant State Attorney shall review and consider any such report and accompanying documents prior to that expert being approved to testify before the grand jury.

The presentation of all evidence and the procedures used therein will be in strict compliance with all requirements established in Chapter 905 of the Florida Statutes. The State Attorney, Chief Assistant, or assigned Assistant State Attorney will consult with the members of the grand jury to ensure any additional information the grand jurors seek is obtained and additional witnesses called to the extent permitted under law and in any manner practicable.

Following the presentation of all evidence and a thorough discussion of the law, the grand jury shall deliberate and either return a written Indictment or “no true bill.”

Following the grand jury’s charging decision, the grand jurors shall be asked if they wish to draft a presentment or statement recommending amendment(s) to any law enforcement policy, procedure, or training with such presentment or statement tied to the facts and circumstances presented and surrounding the subject use of force incident. Should the grand jurors choose to pursue and draft a presentment or statement, they may request any additional testimony or evidence

to assist them. The State Attorney, Chief Assistant, or assigned Assistant State Attorney shall use subpoenas or other necessary tools to ensure the grand jurors are fully informed and have all relevant evidence necessary for their presentment or statement. Any presentment or statement drafted by the grand jury will be written with the assistance of the State Attorney, Chief Assistant, or assigned Assistant State Attorney and shall be published for the public and sent to all the law enforcement agencies within the Ninth Judicial Circuit

In all instances, and regardless of the grand jury's decision as to whether to author or draft a presentment, the person(s) subjected to the use of force, or in the event that person is deceased his or her next of kin, shall be afforded the opportunity to make a statement to the members of the grand jury after the charging decision is made.

Training

Members of the grand jury may be required to complete certain training on the applicable law and standards surrounding law enforcement use of deadly force, the community impacts that result from the use of deadly force, de-escalation practices, active assailant trainings using any simulator in possession of a law enforcement agency in either Orange or Osceola County, and any other trainings deemed appropriate.