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At Arm's Length: Improving Criminal Investigations of Police Shootings

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Improving Criminal Investigations of Police Shootings

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Introduction

District Attorney Tori Verber Salazar of San Joaquin County has asked this Stanford Law School Criminal Justice Center policy team (SCJC) to assess the County’s “officer-involved critical incident protocol” (OICIP).¹ Said protocol dictates how San Joaquin County investigates officer-involved “critical shooting incidents” (OISs) and “fatal incidents.”² OISs are instances in which a police agency employee intentionally or accidentally discharges a firearm and causes injury to a non-employee.³ Fatal incidents include any time a police agency employee uses some force that results in a fatality.⁴ This report containing our assessment of OICIP focuses primarily on investigations of OISs resulting in serious bodily injury or death. However, we leave open the possibility that our recommendations may be applied to the broader universe of OISs, fatal incidents, and other officer-involved incidents as well.

In forming these recommendations, we surveyed the best and worst practices across the United States and compared the current OICIP to both. Our recommendations for the ideal OICIP are meant to embody the best possible balance between 1) independence, including minimizing conflicts of interest; 2) accountability; and 3) expertise.

¹ SAN JOAQUIN OFFICE OF THE DIST. ATT’Y, OFFICER-INVOLVED CRITICAL INCIDENT PROTOCOL MANUAL (2008) [hereinafter OICIP].

² *Id.* at 3.

³ *Id.* at 2.

⁴ *Id.* at 1.

San Joaquin County's Current Officer-Involved Critical Incident Protocol

San Joaquin County contains seven incorporated cities—Escalon, Lathrop, Lodi, Manteca, Ripon, Stockton, and Tracy—with a total population of 726,106.⁵ Each city has its own police department.⁶ The San Joaquin County Sheriff's Office also provides police services for the County and employs eight hundred sworn and support personnel.⁷ According to data published by Open Justice, the California Department of Justice (DOJ) transparency initiative, there were 28 “arrest-related deaths” in San Joaquin County from 2005 to 2014.⁸ Open Justice further reports that 25 in-custody deaths occurred in San Joaquin County during that same time period.⁹

OICIP was initially adopted on August 1, 1994.¹⁰ It applies automatically and immediately upon the occurrence of an “officer-involved critical incident,” which refers to not only shooting fatalities, but deaths resulting from the use of other dangerous weapons, physical altercations, vehicular collisions, and other causes.¹¹ Member agencies may also invoke the protocol upon the occurrence of any “sensitive or critical event” involving a police employee that “may have possible criminal liability attached.”¹² Under the protocol, however, criminal investigations of officer-involved critical incidents are handled separately from administrative investigations. This report focuses on the former and related criminal charging decisions.

⁵ *Quick Facts: San Joaquin County, California*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/table/PST045214/06077> (last visited Sept. 3, 2016).

⁶ *San Joaquin County Police Departments*, COUNTYOFFICE.ORG, <http://www.countyoffice.org/ca-san-joaquin-county-police-department> (last visited Sept. 3, 2016).

⁷ SAN JOAQUIN COUNTY SHERIFF'S OFF., <http://www.sjgov.org/sheriff> (last visited Sept. 3, 2016). <http://www.sjgov.org/sheriff/>

⁸ *County Map*, ST. OF CAL. DEP'T OF JUST.: OPEN JUST., <http://openjustice.doj.ca.gov/agencies/county-map> (last visited Sept. 3, 2016). “Arrest-related deaths” include fatalities that result from the use of deadly force by an officer, even if the decedent was not formally under arrest. *Id.*

⁹ *Id.* Unfortunately, Open Justice does not specify how many of these were homicides, suicides, or related to natural causes.

¹⁰ *Forward [sic] to OICIP*, *supra* note 1.

¹¹ OICIP, *supra* note 1, at 2-3.

¹² *Id.* at 4. Such matters are otherwise typically investigated by member agencies themselves, or by some other agency if its aid is sought. *Id.*

The Criminal Investigation

In San Joaquin County, criminal investigations of OISs take investigative priority over administrative investigations.¹³ To conduct the criminal investigation, San Joaquin County utilizes a task force comprised of a co-equal team of criminal investigators from different agencies who conduct the investigation.¹⁴ Within the Task Force, there are three teams—the A, B, and C teams—who oversee different arms of the investigation.¹⁵ Those teams each have one investigator from: 1) the agency or agencies with jurisdiction over the incident location (Venue Agency); 2) the agency or agencies employing the officer(s) involved in the incident (Employer Agency); 3) the California Highway Patrol, when the incident occurs within its jurisdiction; and 4) the District Attorney’s Office (DA) Investigations Division.¹⁶ The A team is the primary team and includes the primary investigator from each Task Force agency.¹⁷

Although in theory the investigators within the Task Force teams are co-equal, the Venue Agency is considered the “lead” and has the ultimate authority to “decide irreconcilable investigative issues.”¹⁸ Often the Employer Agency is the same as the Venue Agency. This means that the Employer Agency commonly acts as the lead investigative agency under San Joaquin’s current OICIP. Moreover, the Venue Agency has initial responsibility for immediately securing crime scene(s) within its territorial jurisdiction.¹⁹ Employer Agencies thus frequently secure their own crime scenes as well.

San Joaquin County relies on DOJ’s Regional Criminalistics Laboratory to assist with the collection of physical evidence after an OIS. The protocol states that the Regional Criminalistics Laboratory is responsible for “direct[ing] and/or coordinat[ing] the collection of evidence that will be forensically tested.”²⁰ Venue Agency field evidence technicians are involved in this process, and all non-forensically tested physical evidence is collected and/or identified

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Interview with Tori Verber Salazar, Dist. Att’y, San Joaquin Cty., in Stockton, Cal. (Apr. 28, 2016).

¹⁶ OICIP, *supra* note 1, at 4.

¹⁷ *Id.* at 5.

¹⁸ *Id.*

¹⁹ *Id.* at 7-8.

²⁰ *Id.* at 8.

by the Task Force investigators.²¹ The entire Task Force criminal investigation is overseen by the San Joaquin DA.²²

The Charging Decision: The Role of the District

Attorney

The San Joaquin District Attorney's Office both supplies an investigator for the Task Force and supervises it. The protocol provides that the DA should "assist and advise the Task Force on various criminal law and criminal procedure issues which may arise."²³ Current policy mandates that the DA should act as the sole source of legal advice on issues affecting the criminal investigation.²⁴ In the event of a legal conflict of interest, the Task Force may seek legal advice from the California Attorney General's Office (AG).²⁵ This is extremely uncommon.²⁶

Once the Criminal Investigation has concluded, the DA analyzes the Task Force's findings, and ultimately decides whether to pursue legal action.²⁷ The DA has investigative authority separate from the Task Force, and may perform an independent investigation if she chooses.²⁸ This is also exceedingly rare.

Moreover, the AG's Office has discretionary authority to assume responsibility over a case if it is dissatisfied with the progress of an investigation. For example, when a district attorney is conducting an investigation unlawfully or has a conflict of interest, the attorney general has the power to take over the case. Indeed, California Attorney General Kamala Harris has recognized the significance of this authority as a check on the discretion of local district attorneys: "Where there are abuses, we have designed the system to address them."²⁹ Nonetheless, contrary to the AG's preference for local control over

²¹ *Id.*

²² Interview with Rick Price, Deputy Dist. Att'y, San Joaquin Cty., in Stockton, Cal. (Apr. 28, 2016).

²³ OICIP, *supra* note 1, at 17.

²⁴ *Id.*

²⁵ *Id.*

²⁶ "We have not conflicted out per se; however, we have consulted with [the AG] on many cases and sought their insight. After our evaluation, the family can petition for the AG to review our decision unless CHP is involved." Interview with Tori Verber Salazar, *supra* note 15.

²⁷ OICIP, *supra* note 1, at 17.

²⁸ *Id.*

²⁹ Bob Egelko, *Kamala Harris Sees Safeguards in D.A.s Prosecuting Police Killings*, S.F. CHRON. (Dec. 22, 2014), <http://www.sfgate.com/news/article/Kamala-Harris-sees-safeguards-in-D-A-s-5972586.php>.

most investigations, our research has led us to conclude that the current system is problematic. Moreover, although the AG has expressed concern that a system of independent investigation might run contrary to prosecutorial discretion, we have tailored our recommendations so as not to offend that discretion, and they involve the voluntary participation of local District Attorneys.

Problem

Employer Agency Investigations Lack Independence.

The most critical gap in the current San Joaquin OICIP with respect to ensuring independence is its permitting Employer Agencies to investigate their own officers. The protocol provides that the Venue Agency should lead the Task Force's criminal investigation. Thus, when the Venue Agency is the same as the Employer Agency,³⁰ the investigation is led by the agency employing the very officer being investigated. The problem with this practice is plain enough. Indeed, San Joaquin County has already acknowledged such a procedure's shortcomings by prohibiting Employer Agencies from investigating their own in cases of off-duty officer misconduct, such as domestic violence or embezzlement.³¹ In explaining the off-duty misconduct policy, DA Verber Salazar observed that it is difficult to investigate one's colleagues.³² She suggested that the same policy should be followed for officer-involved fatalities.³³

Deputy Adam Lewis³⁴ of the San Joaquin County Sheriff's Office, who serves as both an officer in the Sheriff's gang task force and as a police union leader, echoed District Attorney Salazar's sentiment, stating that employer agencies should not have sole responsibility for investigating their own.³⁵ Deputy Lewis has been involved in two shootings, the second of which was fatal.³⁶ The DA

³⁰ SCJC understands the Venue Agency is often the Employer Agency.

³¹ Telephone Interview with Tori Verber Salazar, Dist. Att'y, San Joaquin Cty. (Mar. 31, 2016).

³² *Id.*

³³ *Id.*

³⁴ Name has been changed to preserve anonymity.

³⁵ Interview with "Deputy Adam Lewis," San Joaquin Cty. Sheriff's Office, in Stockton, Cal. (Apr. 28, 2016).

³⁶ *Id.*

deemed his use of force justified in the first incident, and he remains under investigation for the second.³⁷

Police experts have echoed Deputy Lewis and DA Verber Salazar's opinions. For example, Merrick Bobb, the court-appointed monitor overseeing the implementation of a consent decree between the United States Department of Justice (USDOJ) and the City of Seattle, has stated that "self-policing . . . necessarily and unavoidably produce[s] biased result[s]" because "even reasonable, honest, and well-intentioned police investigators simply cannot overcome the pressures from all sides that come to bear on . . . investigations of an officer-involved shooting . . . or a serious use of force on the street."³⁸ Walter Katz, a career law enforcement watchdog who currently serves as San Jose's independent police auditor, similarly observed, "[w]hen the investigator and the subject of the investigation are connected to the same organization, there is a natural impulse to interpret evidence in a way that supports the conclusion the interpreter would prefer."³⁹ And even if this "natural impulse" could be overcome, USDOJ experts believe agencies' investigating themselves still undermines the public's trust in the police and public perception of fairness in the investigation.⁴⁰

Investigations of such practices provide ample support for these experts' concerns. In a 2014 civil investigation of the Albuquerque Police Department (APD), USDOJ determined APD homicide detectives were unfit to conduct OIS investigations because they lacked the proper incentive to do so. In a Civil Rights Division report, USDOJ found "detectives approached [officer-involved shootings] with less scrutiny than required, such as by failing to canvass for witnesses, to test the officer's account, and to address contradictions."⁴¹ "This practice encourages collusion and discourages candor," the report continued, and "reviews seemed biased in favor of clearing the officer as opposed to

³⁷ *Id.*

³⁸ Merrick Bobb, *Internal and External Police Oversight in the United States* 5 (2005), <http://bit.ly/2bXVRHy>. Bobb is also the founder and executive director of the Police Assessment Resource Center (PARC) and a former independent monitor of the Los Angeles County Sheriff's Department.

³⁹ Walter Katz, *Commentary, Enhancing Accountability and Trust with Independent Investigations of Police Lethal Force*, 128 HARV. L. REV. FORUM 235, 238-39 (2015).

⁴⁰ Telephone Interview with Researcher, U.S. Dep't of Justice (Apr. 27, 2016). The interviewee has expressed a desire to remain anonymous.

⁴¹ Letter from Jocelyn Samuels, Acting Asst. Att'y Gen., U.S. Dep't of Justice & Damon P. Martinez, Acting U.S. Att'y, U.S. Dep't of Justice, to Richard J. Berry, Mayor, City of Albuquerque (Apr. 10, 2014), <http://1.usa.gov/1WRibHK>.

gaining a full understanding of the incident.”⁴² Similarly, USDOJ’s Collaborative Reform Initiative assessed the Philadelphia Police Department (PPD) and found that PPD’s practice of allowing local police investigators to investigate OISs led to “[d]istrust in the ability of PPD to investigate itself pervade[ing] segments of the community. Scandals of the past and present, high profile officer involved shooting incidents, and a lack of transparency in investigative outcomes help[ed] cement this distrust.”⁴³

The pathology of APD and PPD’s policies are not anomalous. Across the country, examples such as these have called into question the ability of police agencies to conduct their own OIS investigations. Indeed, that ability has even been challenged by President Obama’s Task Force on 21st Century Policing, which recommended in its final report that police agencies utilize “external and independent criminal investigations in cases of police use of force resulting in death, officer-involved shootings resulting in injury or death, or in-custody deaths.”⁴⁴ In providing this recommendation, President Obama’s Task Force relied on testimony given during a panel on use-of-force investigations and oversight.⁴⁵ For example, Sim Gill, Salt Lake County District Attorney, testified that the employing agency should *not* be involved at all in such investigations to ensure “the integrity of the process.”⁴⁶

In sum, our research has led it to conclude that San Joaquin’s policy of allowing Employer Agencies to lead Task Force Criminal Investigations cannot sufficiently meet its goals of independence and accountability.

⁴² *Id.*

⁴³ GEORGE FACHNER & STEVEN CARTER, COMMUNITY ORIENTED POLICING SERVICES, U.S. DEP’T OF JUSTICE, COLLABORATIVE REFORM INITIATIVE: AN ASSESSMENT OF DEADLY IN THE PHILADELPHIA POLICE DEPARTMENT 8 (2015), <http://ric-zai-inc.com/Publications/cops-w0753-pub.pdf>.

⁴⁴ PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING, FINAL REPORT OF THE PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING 21 (2015), http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf [hereinafter PRESIDENT’S TASK FORCE].

⁴⁵ COPS Office, *January 30, 2015: Listening Session on Policy and Oversight—Panel 2*, YOUTUBE (Mar. 2, 2016), <https://www.youtube.com/watch?v=3OYHvJu6hN0>.

⁴⁶ *Id.*

District Attorney Involvement in Investigations Presents Similar Conflicts of Interest.

Likewise, the San Joaquin DA's involvement in the Task Force's criminal investigation is sub-optimal. According to Kate Levine, an attorney and assistant professor at New York University School of Law, a "structural conflict of interest" exists when local district attorneys involve themselves in investigations of use of force by local law enforcement.⁴⁷ District attorneys routinely disqualify themselves from cases when a fellow prosecutor has been accused of a crime.⁴⁸ There is even greater reason to do so when the case involves a local officer because "[m]ost prosecutors try their own cases . . . [and] do not rely on other lawyers in the office for successful case resolution. On the other hand, there is almost never a criminal case where the police are not involved."⁴⁹

Empirical support for Kate Levine's skepticism arises from analysis of New York City's previous policy of allowing local district attorneys to investigate police shootings and make related charging decisions. A *New York Daily News* investigation found that at least 179 people had been killed by on-duty NYPD officers over the 15 years prior to 2014.⁵⁰ Just three of those deaths led to an indictment in New York state courts.⁵¹ Robert Gangi, the executive director of the Prison Reform Organizing Project, attributed the low rate of criminal accountability to the "inherent conflict of interest" that arises where "[t]he police and DA work very closely together, and need each other to carry out their jobs."⁵²

Moreover, just as the public perception of a conflict of interest when police investigate themselves undermines trust in the outcome of such investigations, so too does the public's perception of DAs' conflicts of interest undermine trust in decisions not to charge in OISs. In the wake of Richmond County District Attorney Daniel Donovan's failure to secure a grand jury indictment against the Staten Island officer who used a lethal chokehold on Eric Garner, New York

⁴⁷ Kate Levine, *Who Shouldn't Prosecute the Police?*, 101 IOWA L. REV. 1447, 1464 (2016).

⁴⁸ *Id.* at 1483.

⁴⁹ *Id.* at 1484.

⁵⁰ Sarah Ryley et al., *EXCLUSIVE: In 179 Fatalities Involving On-Duty NYPD Cops in 15 Years, Only 3 Cases Led to Indictments—and Just 1 Conviction*, N.Y. DAILY NEWS (Dec. 8, 2014), <http://www.nydailynews.com/new-york/nyc-crime/179-nypd-involved-deaths-3-indicted-exclusive-article-1.2037357>.

⁵¹ *Id.*

⁵² *Id.*

Attorney General Eric Schneiderman requested an executive order from New York Governor Andrew Cuomo directing Schneiderman's office to investigate and prosecute cases involving unarmed civilians killed by police officers. In his proposal, Schneiderman wrote: "A common thread in many of these cases is the belief of the victim's family and others that the investigation of the death, and the decision whether to prosecute, have been improperly and unfairly influenced by the close working relationship between the county District Attorney and the police officers he or she works with and depends on every day."⁵³

San Joaquin County's current protocol raises similar perception concerns. As DA Verber Salazar has acknowledged, her office relies on law enforcement for every criminal case.⁵⁴ Because of this close working relationship, the public may perceive San Joaquin County prosecutors and local municipal police officers as not only colleagues, but friends.⁵⁵ Moreover, DA Verber Salazar has candidly noted that every law enforcement agency in San Joaquin County had endorsed her candidacy. Thus, the involvement of the San Joaquin DA in County OIS investigations compromises the appearance of fairness at the very least.

Non-Law Enforcement Entities, While More Independent, Lack Comparable Levels of OIS Investigative Expertise.

Despite these dual problems of actual and perceived conflicts of interest when local law enforcement and/or district attorneys conduct OIS investigations, law enforcement has invaluable expertise in conducting thorough and accurate investigations. Whereas some, in response to concerns about police bias and public distrust, have called for the complete disentanglement of law enforcement and local district attorneys from criminal investigations of police

⁵³ Press Release, N.Y. State Office of the Att'y Gen., A.G. Schneiderman Requests Executive Order to Restore Public Confidence in Criminal Justice System (Dec. 8, 2014), <http://www.ag.ny.gov/press-release/ag-schneiderman-requests-executive-order-restore-public-confidence-criminal-justice>.

⁵⁴ Telephone Interview with Tori Verber Salazar, *supra* note 31.

⁵⁵ See, e.g., Paul Cassell, *Who Prosecutes the Police?: Perceptions of Bias in Police Misconduct Investigations and a Possible Remedy*, WASH. POST: THE VOLOKH CONSPIRACY (Dec. 5, 2014), <http://wapo.st/2c7FVES>.

officers,⁵⁶ Our research has convinced us not only that law-enforcement-connected entities are capable of conducting these investigations, but also that it is ideal for them to do so.

Although utilizing some sort of civilian review would undoubtedly lend greater independence to the investigations of these incidents, that independence would most likely come at the expense of investigator expertise, a factor just as or arguably more valuable in these investigations. Indeed, this trade-off has been recognized by experts. For example, President Obama’s Task Force on 21st Century Policing, in forming its recommendation that criminal investigations be performed by law enforcement agencies,⁵⁷ acknowledged a “lack [of] strong research evidence that [civilian oversight] works.”⁵⁸ The President’s Task Force unequivocally stated “investigations should be performed by law enforcement agencies [i.e. not civilians] with adequate training, knowledge, and experience investigating police use of force.”⁵⁹ Similarly, in 2001 the National Institute of Justice published a report on civilian review of police. In doing so, it noted “many [civilian review] procedures have had a troubled history involving serious—even bitter—conflict among involved parties.”⁶⁰ Flaws of citizen oversight boards include their limited authority, their failure to hold department supervisors accountable, and long delays between filing of complaints and their resolution.⁶¹ Finally, Merrick Bobb, the Executive Director of the Police Accountability Research Center, has noted that a “lack of expertise in police tactics, strategy, and policy has prevented many review boards from effectively overseeing the police, and has often resulted in boards agreeing with the police department 90 percent or more of the time.”⁶²

OISs often have substantially complicated facts. Consequently, they require the expertise of skilled investigators. We have concluded entrusting these

⁵⁶ See, e.g., Levine, *supra* at note 47, at 1488 (suggesting federal prosecutors should automatically handle cases where police are suspects); BC CIVIL LIBERTIES ASS’N, POLICE-INVOLVED DEATHS: THE FAILURE OF SELF-INVESTIGATION 37 (2010), <http://bit.ly/1sOMUsB> (“The trust of the public can only be preserved if the police complaints process is handled and investigated by an independent third party. This requires a civilian led agency, where not only is there civilian oversight but more importantly, there is a civilian-managed and civilian-run process.”).

⁵⁷ PRESIDENT’S TASK FORCE, *supra* note 44, at 21.

⁵⁸ *Id.* at 26.

⁵⁹ *Id.* at 21.

⁶⁰ See NAT’L INSTITUTE OF JUSTICE, U.S. DEP’T OF JUSTICE, NCJ 184430, CITIZEN REVIEW OF POLICE: APPROACHES AND IMPLEMENTATIONS 13 ex. I-3 (2001), <https://www.ncjrs.gov/pdffiles1/nij/184430.pdf>.

⁶¹ *Id.*

⁶² See Bobb, *supra* note 38, at 8.

investigations to civilians lacking any law enforcement experience or background, though not impossible, is not feasible.⁶³

Recommendations

In light of the problems identified in the previous section, this report provides a set of recommendations for the San Joaquin County DA to consider. Rather than representing idealistic goals, our policy recommendations contemplate real, practical challenges that the DA may face if she chooses to adopt them. These short-term and long-term suggestions pertain both to the manner in which San Joaquin County conducts its criminal investigations and to the process by which it makes charging decisions. We intend for the recommendations to be complementary and capable of implementation in the same universe. The DA may implement some recommendations unilaterally, while others will require the cooperation of various state entities or legislative initiatives.

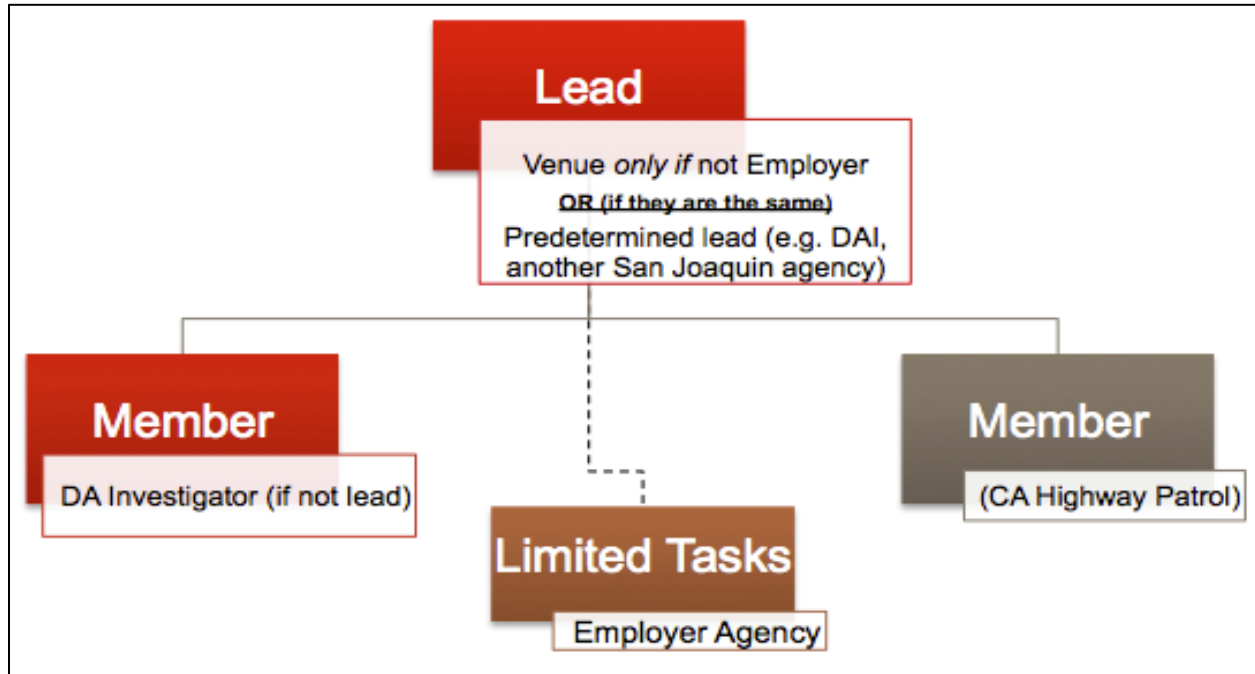
San Joaquin Criminal Investigations

In response to the challenges presented above, we outline two sets of recommendations for San Joaquin County's criminal investigations. One set provides short-term proposals for improving independence and accountability. The other is meant to be a longer-term solution that may require cooperation and/or funding from other political entities in the State.

⁶³ Nor does creating some system in which civilians undergo the requisite law enforcement training seem feasible. Telephone Interview with Researcher, *supra* note 40.

Short-Term Solution

Figure 1. Short-Term Criminal Investigation.



OICIP Must Prohibit the Employer Agency from Serving as the Task Force Lead.

As an immediate solution, San Joaquin County should update its OICIP to explicitly prohibit an Employer Agency from ever leading the Task Force Criminal Investigation. The independence and perception concerns described above, and a lack of convincing evidence to the contrary, make this a vital part of improving the OICIP. The protocol should instead mandate that the lead agency, predetermined by the San Joaquin County DA, be some predetermined agency other than the Employer Agency. This could potentially be the DA Investigations Division or a law enforcement agency from another county, or continue to be the Venue Agency—as long as the Venue Agency is *not* the Employer Agency. The multi-jurisdictional Task Force may continue to include all of the agencies presently on the team.

Employer Agency Involvement Should Be Minimal.

Should the Employer Agency be entirely removed from the criminal investigation? Employer Agency involvement is certainly suboptimal in light of the problems described above. But practical considerations may make Employer Agency involvement unavoidable. First, the lead agency may need to

delegate to a dual Venue-Employer Agency actions such as securing the scene, taking initial statements from witnesses, and collecting evidence so that these tasks are completed in a timely and efficient manner. Second, requiring an Employer Agency to completely relinquish investigative control to another agency may alienate certain agencies—particularly when the other agency is thought to have fewer investigative resources or less expertise. Village of Hartland (Wisconsin) Police Chief Robert Rosch, who also serves as president of the Wisconsin Chiefs of Police, identified this problem when he explained that, although involvement of the state police is not required by law, most of the police departments in the state have opted to call on state investigators as a matter of internal policy because they do not “get along with” other local agencies.⁶⁴

Still, the OICIP should minimize the Employer Agency’s involvement as much as possible. The DA should do this by determining the tasks for which the Employer Agency must necessarily take responsibility and ensure it does not otherwise participate.

Employer Agency Involvement Should Not Include Participation in Criminal Investigation Interviews.

Specifically, the Employer Agency should be excluded from participating in criminal investigation interviews. As mentioned above, practical considerations may make it necessary for a dual Venue-Employer Agency to take initial witness statements. However, to the extent the Employer Agency’s participation in non-immediate, post-incident interviews of involved officers and witnesses can be minimized, it should be. This approach ensures the optimal bifurcation of criminal and internal administrative investigations of OISs. Participation risks the criminal investigation suffering from conflicting law enforcement and administrative priorities. Exclusion from interviews allows criminal investigations to be conducted by a single, overarching investigative team serving as the sole liaison between officers and witnesses and the prosecutor reviewing the case for criminal charges.⁶⁵ And as the investigations move forward independently, the internal affairs division of the Employer Agency will be able to interview discharging officers sooner, without concern for the administrative investigation impermissibly contaminating the criminal investigation.

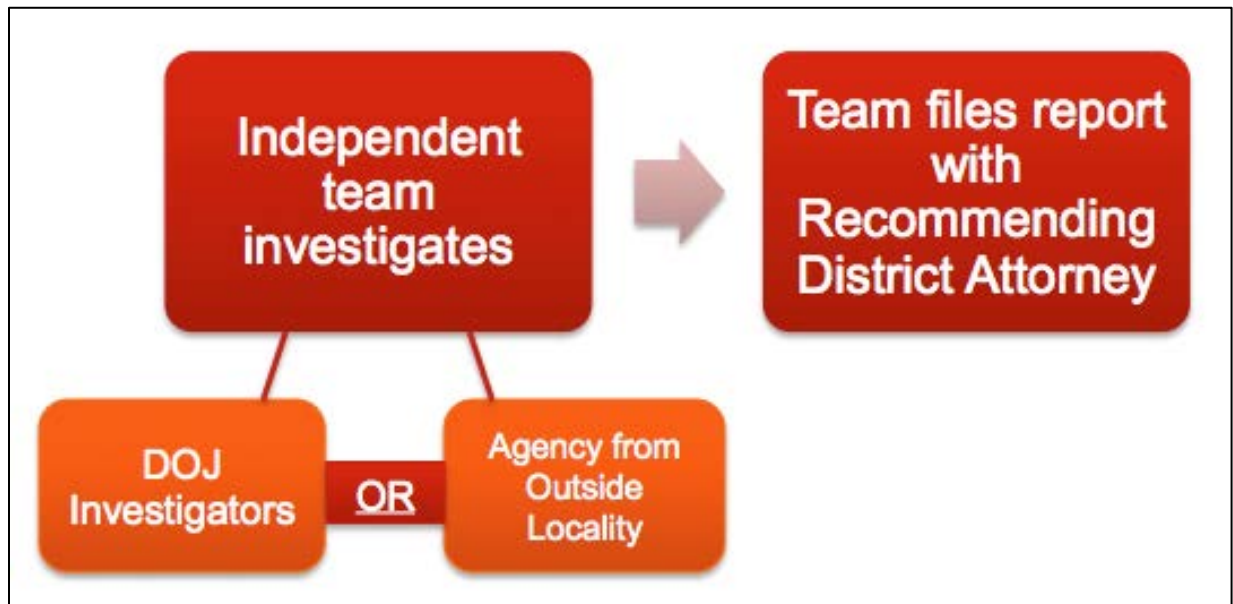
⁶⁴ Telephone Interview with Robert J. Rosch, Chief, Vill. of Hartland, Wisc. Police Dep’t (May 11, 2016).

⁶⁵ See *infra* Part IV.B.

Exclusion of the Employer Agency from interviews is also appropriate due to the limits placed on employers by the Public Safety Officers Procedural Bill of Rights.⁶⁶ Because of the incentives for the Employing Agency to use such interviews as an opportunity to conduct its administrative investigation as well, the investigators may have myriad constraints on the mode of interviewing.⁶⁷

Long-Term Solution

Figure 2. Long-Term Criminal Investigation.



In the long-term, San Joaquin County should retire its Task Force approach and adopt a new policy under which either DOJ⁶⁸ or a law enforcement agency outside the County unconnected to the OIS conducts the bulk of the criminal investigation. In other words, to the extent feasible, the Employer/Venue Agency’s involvement in the criminal investigation should be minimized (if not entirely diminished). Wisconsin’s officer-involved critical incident model—the basis for our recommendation—demonstrates the merits of this approach . Thus, we provide below an overview of the model, including its strengths and limitations, along with suggestions for adapting the model to California jurisdictions.

⁶⁶ CAL. GOV. CODE §§ 3300-3313 (West 2016).

⁶⁷ See, e.g., *id.* § 3303.

⁶⁸ The CA DOJ has a law enforcement division comprised of a “team of special agents who . . . are highly trained and provide . . . services in specialized fields including . . . criminal investigations.” *Law Enforcement*, ST. CAL. DEPT’T JUST.: OFF. ATTY GEN., <https://oag.ca.gov/law> (last visited Sept. 6, 2016).

The Wisconsin OICIP Model.

Wisconsin Statute section 175.47, passed in April 2014,⁶⁹ requires at least two independent investigators to conduct the investigation of any “officer-involved death.”⁷⁰ None of the investigators may be employed by the same agency as the officer involved in the incident.⁷¹

Although any agency other than the Employer Agency may conduct the investigation, the Wisconsin Department of Justice’s Division of Criminal Investigations (DCI) has typically led investigations of officer-involved deaths since section 175.47 passed. DCI employs approximately 100 Special Agents, sworn law enforcement officers who are charged with investigating crimes that are “statewide in nature or importance.”⁷² Of those, three work exclusively on officer-involved deaths.⁷³

DCI has been the lead investigating agency on 24 of the 28 OISs that have occurred in Wisconsin since January 2015.⁷⁴ Following the completion of the investigation, section 175.47 mandates that investigators present a report of their findings to the district attorney in the jurisdiction where the death occurred. If the DA chooses not to file charges against the officer,⁷⁵ the investigators must release the report to the public.⁷⁶ Since January 2015, DCI has completed and published ten such reports on its website.⁷⁷ Reports from shootings that occurred after January 2016 are not yet publically available. Those that have been published suggest DCI can typically complete its

⁶⁹ Yamiche Alcindor, *Wis. Bill Mandates Rules for Officer-Involved Deaths*, USA TODAY (Apr. 30, 2014, 4:44 PM EDT), <http://www.usatoday.com/story/news/nation/2014/04/26/wis-bill-mandates-rules-for-officer-involved-deaths/8178905>.

⁷⁰ “Officer-involved death’ means a death of an individual that results directly from an action or an omission of a law enforcement officer while the law enforcement officer is on duty or while the law enforcement officer is off duty but performing activities that are within the scope of his or her law enforcement duties.” WIS. STAT. § 175.47 (2015).

⁷¹ *Id.* § 175.47(3)(a).

⁷² *Officer Involved Critical Incident*, WIS. DEPT JUST., <http://bit.ly/1OLZ21z> (last visited Sept. 6, 2016).

⁷³ Telephone Interview with Tina Virgil, Dir. of Special Investigations, Wisc. Div. of Criminal Investigations (May 13, 2016).

⁷⁴ See *infra* Appendix A.

⁷⁵ Wisconsin does not rely on grand juries for homicide charges. Telephone Interview with Bernhart Kempinen, Professor of Law, Univ. of Wis. Sch. of Law (May 9, 2016).

⁷⁶ WIS. STAT. § 175.47(5)(b) (2015).

⁷⁷ WIS. DEPT OF JUST., *supra* note 72.

investigation present its report to the appropriate DA within one to four months of the officer-involved death.⁷⁸

Strengths of the Wisconsin Model

Investigative independence might take several forms, but five attributes of Wisconsin's system make it an especially favorable way of achieving independence.

Investigator Expertise

In addition to independence, there is reason to believe that in at least some instances, DCI's presence improves the professionalism of the investigation. DCI investigators deal solely with high-profile and complex criminal investigations. Their purview includes "homicide, arson, financial crimes, illegal gaming, multi-jurisdictional crimes, drug trafficking, computer crimes, homeland security, public integrity and government corruption as well as crimes against children."⁷⁹ Special Agents typically come to DCI with prior experience in law enforcement,⁸⁰ and DCI trains local authorities on "current issues in law enforcement."⁸¹ As a result, DCI's capacity to mount and manage a complex OIS investigation outpaces that of local law enforcement in the many rural, sparsely populated areas of Wisconsin.⁸²

Broad Popular and Law Enforcement Support

Wisconsin's model, which was created through legislation rather than executive action, has garnered widespread public support. The passage of section 175.47 was largely uncontroversial. Before the law passed, a survey conducted by the Wisconsin Professional Police Association (WPPA) found that 81 percent of respondents would have supported a state law requiring an outside law enforcement agency to review cases in which an officer uses deadly force.⁸³

Because the cooperation of local authorities is critical to an effective investigation of OISs, a statewide agency like DCI would not be able to fulfill its

⁷⁸ See *infra* Appendix A.

⁷⁹ WIS. DEPT OF JUST., *supra* note 72.

⁸⁰ Telephone Interview with Tina Virgil, *supra* note 73.

⁸¹ *Id.*

⁸² Telephone Interview with Jim Palmer, Exec. Dir., Wis. Prof'l Police Ass'n (Apr, 21, 2016).

⁸³ Press Release, Wis. Prof'l Police Ass'n, Overwhelming Support to Require Investigations of Officer-Involved Deaths (Mar. 11, 2014), <http://wppa.com/wppa-statewide-poll-shows-overwhelming-public-support-for-bill-to-require-independent-investigations-of-officer-involved-deaths>.

mission without the cooperation of local law enforcement. The WPPA, Wisconsin's largest police union, strongly supported section 175.47 prior to its enactment.⁸⁴ In the estimation of Jim Palmer, WPPA Executive Director, the law and DCI's involvement in OIS investigations have been "very successful."⁸⁵ As a testament to law enforcement satisfaction with DCI, Palmer notes that DCI is often asked to investigate even non-lethal use of force incidents, for which section 175.47 does not require an independent investigation.⁸⁶ Palmer notes that many of Wisconsin's more rural localities are impressed with, and rely on, DCI's expertise in investigating the use of lethal force.⁸⁷

Transparency

When DCI leads an investigation, it is required to publish a report summarizing the investigation. DCI has elected to publish these reports on its website, and typically has included therein a timeline of the incident, descriptions of physical evidence, correspondences with various parties, and forensic diagrams. Using DCI as a central repository for such reports allows citizens to track incidents over time, even when they take place in distant counties.

Some Local Flexibility Retained

Wisconsin law on officer-involved deaths does not require DCI involvement. It provides only that two independent investigators preside over the criminal investigation. This allows local police departments some flexibility in choosing whether a statewide group or some outside local law enforcement organization best fits its needs.⁸⁸ Indeed, affording local law enforcement some autonomy helped secure WPPA support for section 175.47,⁸⁹ suggesting similar flexibility may make the potential imposition of outside investigative authority more palatable in California. As a matter of practice, however, almost all of Wisconsin's police departments immediately contact DCI to assume responsibility for OIS investigations.⁹⁰ The local department secures the scene, but its involvement ceases when DCI arrives.

Investigations Completed Promptly

⁸⁴ Alcindor, *supra* note 69.

⁸⁵ Telephone Interview with Jim Palmer, *supra* note 82.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Telephone Interview with Robert J. Rosch, *supra* note 64.

⁸⁹ Telephone Interview with Jim Palmer, *supra* note 82.

⁹⁰ Telephone Interview with Robert J. Rosch, *supra* note 64.

Since early 2015, DCI investigations of OISs have typically taken between one and four months to conclude.⁹¹ Wisconsin Chiefs of Police President Robert Rosch attributed this quick turnaround to DCI's prioritization of OIS investigations: "When they have these officer-involved shootings, they drop everything. They understand the family wants answers, that the District Attorney wants to make a decision."⁹² Mr. Rosch also noted that investigations exceeding a year are unacceptable.

Limitations of the Wisconsin Model

Criticisms of DCI's role in investigating officer-involved deaths offer insight into some of some of the system's limitations and potential obstacles to implementing a similar initiative in California. Likewise, some of Wisconsin's success may be attributed to strong political consensus that may not yet be present in California.

Logistical Challenges

Wresting investigative control out of the hands of the Employer Agency and giving it to a statewide group would almost certainly introduce delay in gathering evidence. This logistical challenge will likely be amplified in a state the size of California. Although DCI has several field offices in different regions of the Wisconsin,⁹³ there are portions of the state situated nearly 200 miles away from the nearest field office. Even assuming the nearest office is staffed with OIS-trained investigators ready to begin at a moment's notice, it may take several hours just for an investigator to arrive on the scene. In the meantime, involved officers will have been sequestered and witnesses' memories, along with their willingness to remain on the scene or be re-contacted by investigators, will have begun to fade. As discussed below, implementing a similar initiative in California would require even more field offices to achieve even the imperfect agility of Wisconsin's DCI. Especially in the initial stages of such implementation, these practical concerns will need to be balanced against the independence of the investigation. For example, to prevent the accuracy of witnesses' observations from diminishing over time, local investigators may need to collect initial statements.

Potential for Pro-Law Enforcement Bias or Conflict

⁹¹ WIS. DEP'T OF JUST., *supra* note 72.

⁹² Telephone Interview with Robert J. Rosch, *supra* note 64.

⁹³ *Regions*, WIS. DEP'T JUST. DIV. OF CRIM. INVESTIGATION, <http://bit.ly/2cdcWlJ> (last visited Sept. 6, 2016).

The years of law enforcement experience DCI investigators bring to investigations may prove problematic when agents investigate their former employers. Even when there is no allegation of an actual conflict of interest, awareness of such ties can significantly undermine public trust in an investigation. For example, in 2014, shortly after section 175.47 became law, DCI investigated the death of Dontre Hamilton, who was killed by a Milwaukee Police Department officer. However, the public quickly learned that DCI's lead investigators on the case were former Milwaukee Police Department officers.⁹⁴ Hamilton's family expressed concerns that DCI worked too closely with the local department to be impartial.⁹⁵

The ACLU of Wisconsin has also expressed concern over the potential allegiances between DCI investigators and local law enforcement officers they are called upon to investigate. Molly Collins, associate director of the ACLU of Wisconsin, notes that section 175.47 originally contained "more checks and balances" aimed at preventing conflict of interest than the final version of the law, including express prohibitions on investigators who might have a conflict of interest participating in the investigation.⁹⁶

Unilateral Law Enforcement Action Undermining Public Trust

Wisconsin's experience demonstrates that even an impartial investigative team cannot completely guard against law enforcement missteps undermining public trust in an investigation. Perhaps the most glaring example occurred during the investigation of the Neenah Police Department's fatal shooting of Michael Funk in December 2015. Funk was involved in a hostage situation at a motorcycle shop. Neenah Police officers shot Funk as he exited the building.⁹⁷ Ten hours after the shooting, Neenah's police chief issued a statement claiming that Funk had failed to obey officers' orders to drop his weapon.⁹⁸ DCI took the lead in investigating the shooting and filed a report with the local DA on

⁹⁴Ashley Luthern, *Ex-Milwaukee Officer Won't Be Charged in Dontre Hamilton Shooting*, MILWAUKEE J. SENTINEL (Dec. 22, 2014), <http://www.jsonline.com/news/milwaukee/former-officer-wont-be-charged-in-fatal-shooting-of-dontre-hamilton-b99398655z1-286559211.html>.

⁹⁵*Department of Justice to Review Milwaukee Police Shooting That Killed Donte Hamilton*, ASSOCIATED PRESS (Dec. 23, 2014), <http://www.nydailynews.com/news/national/departments-justice-review-milwaukee-police-shooting-article-1.2054376>.

⁹⁶ Telephone Interview with Molly Collins, Assoc. Dir., Am. Civil Liberties Union of Wis. (Apr. 12, 2016).

⁹⁷Duke Behnke, *Video of Neenah Standoff Shows Police Shooting Hostage Without Warning*, MILWAUKEE J. SENTINEL (Apr. 28, 2016), <http://www.jsonline.com/news/crime/video-of-neenah-standoff-shows-police-shooting-hostage-without-warning-b99715321z1-377452131.html>.

⁹⁸ *Id.*

January 14, 2016.⁹⁹ DCI's report included a summary of dashboard camera footage, but did not mention the police chief's justification for the shooting.¹⁰⁰ In April, press obtained and released dashboard camera footage from officers on the scene that showed no indication officers ever directed Funk to drop his gun.¹⁰¹

Political Will

Although section 175.47 was passed by broad political consensus and DCI enjoys widespread support, that consensus did not arise overnight. One of the champions of the bill was Michael Bell, whose son was killed by police in 2004.¹⁰² Bell spent years lobbying for the bill, and reportedly devoted \$850,000 received in a civil settlement related to the shooting to his efforts.¹⁰³

Although Wisconsin's experience suggests building consensus for a statewide legislative measure on OIS investigations may be challenging, California may have more success sooner by virtue of the change in the public consciousness surrounding officer-involved shootings. Section 175.47 was signed months before Michael Brown's death in Ferguson, Missouri, and even before Dontre Hamilton was killed in Milwaukee. Lawmakers and voters—the latter of whom may also make law by virtue of California's ballot initiative process—are likely more receptive to efforts to reduce actual or perceived bias from this process than they were in early 2014.

Adapting Wisconsin's OICIP Model for San Joaquin County

This section lays out only some possible recommendations for adapting the principles of Wisconsin's OICIP Model to San Joaquin County. For example, one way of working towards a Wisconsin-style OICIP would be for the County to enter into a Memorandum of Understanding with either DOJ or another external agency. The MOU would require investigation of all officer-involved critical incidents to be referred to that external agency. This option of soliciting help from DOJ's investigative resources would address the concern raised by Hartland Police Chief Robert Rosch about the competency of outside law

⁹⁹ WIS. DEPT OF JUSTICE DIV. OF CRIMINAL INVESTIGATION, CASE REPORT NO. 15-6622/128, REPORT OF INVESTIGATION: OFFICER INVOLVED DEATH (OID) OF MICHAEL L. FUNK (2016), <https://www.doj.state.wi.us/sites/default/files/oid-reports/15-6622/Michael%20Funk%20Report.pdf>.

¹⁰⁰ *Id.* at 5-7.

¹⁰¹ Behnke, *supra* note 97.

¹⁰² Alcindor, *supra* note 69.

¹⁰³ *Id.*

enforcement agencies, and potentially avoid any animus between agencies. Moreover, this recommendation aligns with the national movement, per President Obama's Task Force on 21st Century Policing, towards having law enforcement agencies mandate external and independent criminal investigations.¹⁰⁴

Implementing this change may require some legislation or political impetus. Currently, DOJ homicide investigators already help small law enforcement agencies lacking in resources conduct investigations. DOJ funds this assistance, meaning a local DA or agency must demonstrate need in order to receive it. Thus, to accommodate the solution above, DOJ's policy would need to be amended to accommodate this plan, perhaps by expanding its criteria for assisting local agencies to consider their overall investigative ability as opposed to their economic standing.

Furthermore, implementing a Wisconsin-style system almost certainly would require additional DOJ field offices to maximize investigators' responsiveness. Wisconsin's population is 5.8 million,¹⁰⁵ and is spread over 54,158 square miles,¹⁰⁶ with only two population centers comprising over 200,000 people (Milwaukee at 599,642 and Madison at 245,691 in 2014)¹⁰⁷. California, by contrast, has 39 million residents,¹⁰⁸ spread over 155,779 square miles,¹⁰⁹ and contains 22 cities with over 200,000 people (Stockton is the 13th largest city),¹¹⁰ including three cities with populations exceeding 1 million (Los Angeles, San Diego, and San Jose).¹¹¹ In total, California has 482 cities or towns¹¹² and 58 counties,¹¹³ which translates to roughly 330 local police chiefs¹¹⁴. Given the

¹⁰⁴ PRESIDENT'S TASK FORCE, *supra* note 44, at 21.

¹⁰⁵ *QuickFacts: Wisconsin*, U.S. CENSUS BUREAU, <http://www.census.gov/quickfacts/table/PST045215/55> (last visited Sept. 6, 2016).

¹⁰⁶ *Id.*

¹⁰⁷ *Population Estimates for Wisconsin Cities, Towns and Villages 2014*, MILWAUKEE J. SENTINEL, <http://archive.jsonline.com/watchdog/dataondemand/population-estimates-for-wisconsin-cities-towns-and-villages-2014-304507351.html> (last visited Sept. 6, 2016).

¹⁰⁸ *QuickFacts: California*, U.S. CENSUS BUREAU, <http://www.census.gov/quickfacts/table/PST045215/06> (last visited Sept. 6, 2016)

¹⁰⁹ *Id.*

¹¹⁰ *2015 City Population Rankings*, LEAGUE OF CAL. CITIES, <https://www.cacities.org/Resources/Learn-About-Cities/2011Cities-by-Population.aspx> (last visited Sept. 6, 2016).

¹¹¹ *Id.*

¹¹² *Id.*

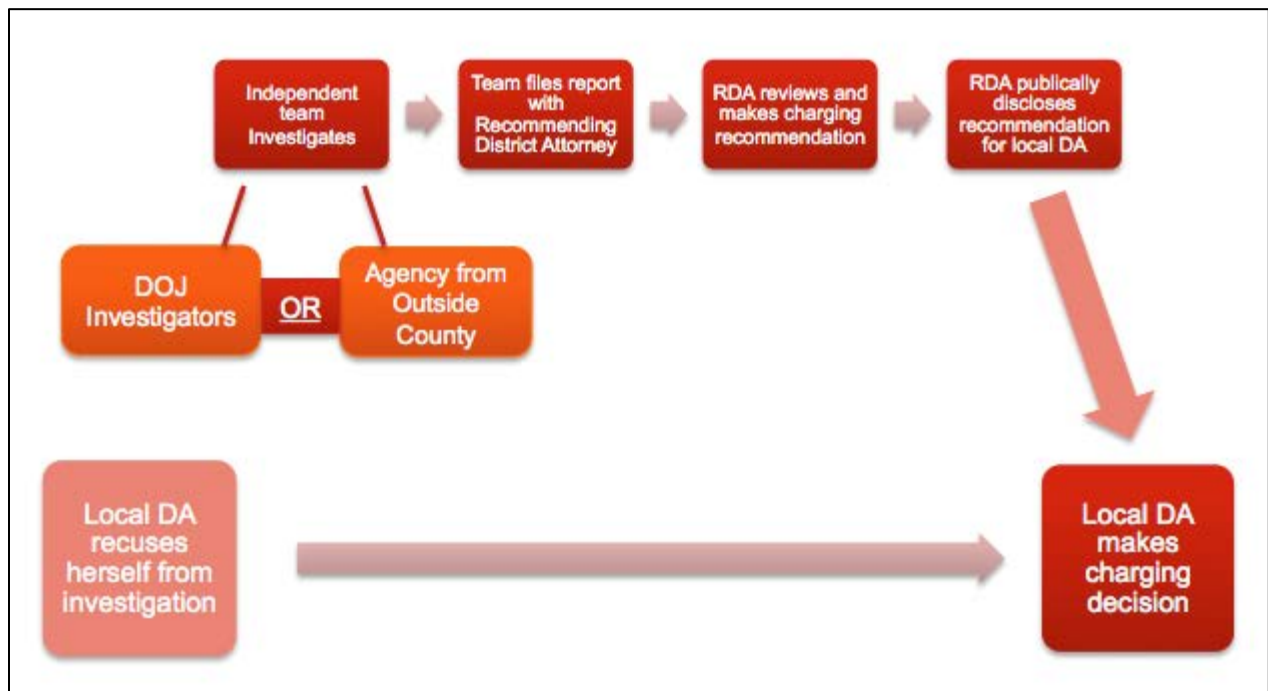
¹¹³ *Welcome to CSAC*, CAL. ST. ASS'N COUNTIES, <http://www.counties.org/about-csac> (last visited Sept. 6, 2016).

¹¹⁴ *Welcome from the President*, CAL. POLICE CHIEFS ASS'N, <https://cpca.memberclicks.net/welcome-from-the-president> (last visited Sept. 6, 2016).

size and population of California, the San Joaquin County District Attorney's Office estimates a California DOJ OIS Unit would need at least eight field offices to be effective (i.e., within 50 miles of a major population area or capable of responding to any incident in under an hour).¹¹⁵

San Joaquin County Charging Decisions

Figure 3: Long-Term Charging Decision.



Similar to the criminal investigation context, independence concerns regarding the charging decision require that the San Joaquin DA move towards a smaller role in OICIP. In the short term, the DA may retain its current supervisory and decision-making roles in OIS cases. In the long term, however, the DA should relinquish supervisory authority over the investigation. And while accountability concerns caution against completely removing the charging decision from the San Joaquin DA, we recommend an outside prosecutor weigh in on this decision in order to improve objectivity in analysis. Accordingly, we propose that the DA designate either a separate DA (from another jurisdiction) or DOJ to supervise all San Joaquin County OIS criminal investigations moving forward.

¹¹⁵ Estimate provided by San Joaquin County District Attorney Tori Verber Salazar.

This recommendation would ideally operate in a universe in which every California county has agreed to comply with this procedure. In theory, with statewide participation, counties could agree to swap their OIS supervisory responsibilities. For example, instead of reviewing investigations of its own County Task Force, the San Joaquin DA would receive and review Stanislaus County criminal investigations of OISs, and vice versa.

Once again, anticipating the reluctance of some counties to comply with such a policy—possibly out of concern for the competence of neighboring DAs—we suggest district attorneys have the option to request that the DOJ oversee their criminal investigations instead. We believe district attorneys would be open to such an arrangement. And because the Attorney General’s Office already has the discretionary authority to take over a case if dissatisfied with the progress of an investigation or if asked to do so by a county district attorney, this solution is unlikely to require legislation.¹¹⁶

As a final recommendation, we suggest that the office supervising the investigation prepare a public report¹¹⁷ with recommendations for the San Joaquin DA. The San Joaquin DA, upon receiving those recommendations, should be tasked with ultimately deciding whether or not to bring charges.¹¹⁸ This should make a difference in two respects. First, it will allow the San Joaquin DA to make her charging decisions based on the input from an outside

¹¹⁶ Kate Levine has suggested that DAs are unlikely to willingly adopt a per se rule mandating recusal in police fatality cases and therefore thinks a statute or executive order would be necessary. Levine, *supra* note 47, at 1488 n.191 (quoting Letter from Frank A. Sedita, III, President, Dist. Atty’s Ass’n of the State of N.Y. to Governor Andrew M. Cuomo (Dec. 16, 2014)). However, if DA Verber Salazar is amenable to a per se rule, a memorandum of understanding with another county should be sufficient, at least in the short term. On this point, David McGuire, the Legislative and Policy Director of the ACLU in Connecticut, where the state legislature recently passed a statute requiring prosecutorial reassignment in lethal use-of-force cases, stressed the importance of codifying these arrangements as opposed to trusting a de facto practice to survive changes in leadership. Telephone Interview with David McGuire, Legislative & Policy Dir., Am. Civil Liberties Union of Conn. (May 5, 2016).

¹¹⁷ The office that prepares the report should decide which parts are to be publicized and which are not. For example, the report may contain confidential information implicating privacy or investigative integrity concerns. However, the charging recommendations should always be public. Notably, because the Public Safety Officers Procedural Bill of Rights only applies to investigations by an officer’s employing agency, *see* CAL. GOV. CODE § 3301 (West 2016), findings from criminal investigations conducted without the employing agency would not be subject to the law’s privacy provisions.

¹¹⁸ This recommendation will preserve the following characteristics of the charging determination in the context of officer-involved critical incidents: 1) the local District Attorney will still make the ultimate decision about whether to prosecute an officer; and 2) the state Attorney General will continue to have the authority to undertake the role of the prosecuting officer if it determines the local District Attorney has unjustifiably failed to act.

entity, which will bolster both police and public acceptance of her decision. Second, it will ensure the DA remains appropriately accountable and subject to public evaluation for her ultimate decision, particularly when she deviates from the recommended action.

Conclusions and Further Research

We recognize several remaining open questions. First, with respect to changes in charging decision procedures, it is unclear whether the local DA and the recommending outside DA should be in contact while the latter conducts its investigation and analysis. It would be reasonable for the local DA to wish to remain updated throughout the investigation in order to ensure she has all the relevant information she needs in order to make the most informed decision at the end of the process. However, independence concerns may dictate limited exchange until the recommending DA completes their analysis.

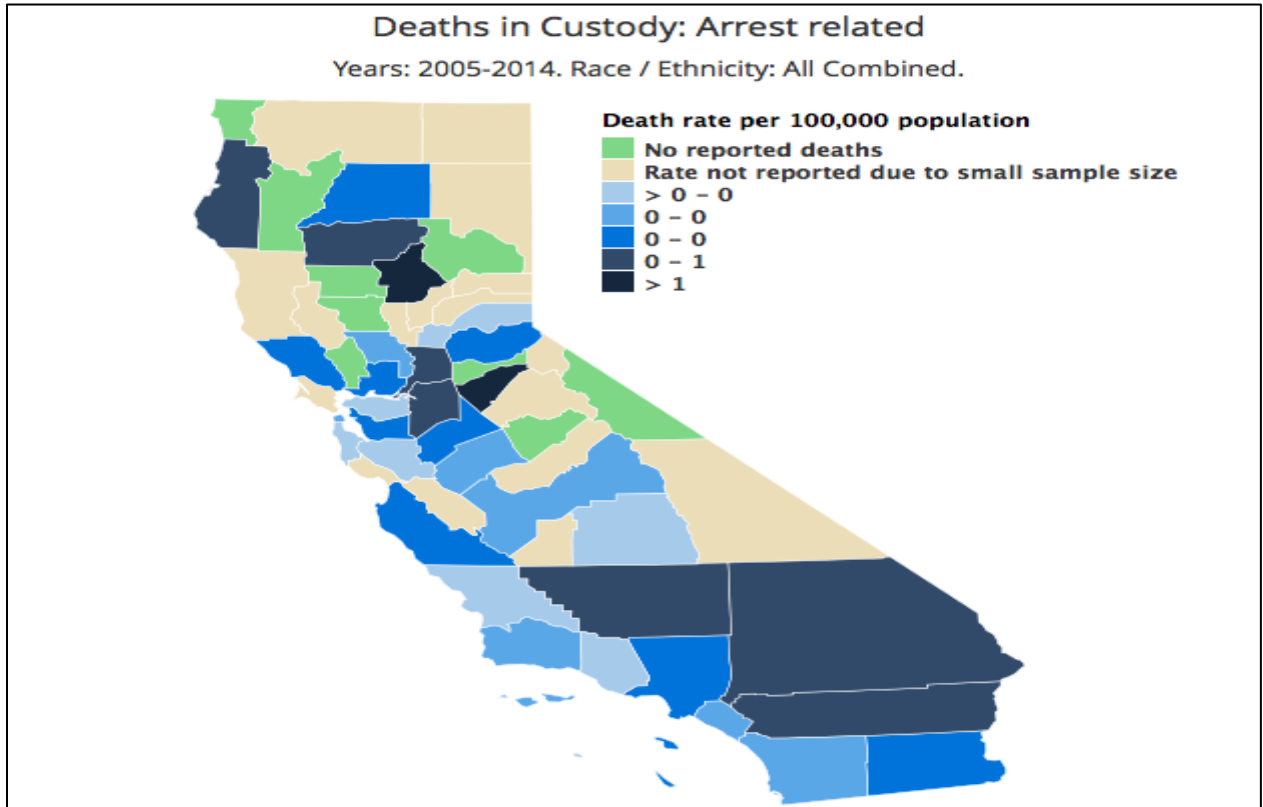
Moreover, absent additional legislative or financial expertise, we leave for further consideration the specific legislative, administrative, political, and/or financial logistics of implementing these changes. With respect to financing a new OICIP requiring expansion of DOJ's law enforcement division through additional investigators or field offices, counties responsible for the most OISs could provide the majority of necessary funds. Figure 4 below indicates which counties have been responsible for the highest concentrations of arrest-related deaths in the past ten years.

Statewide surveys may help illuminate logistical concerns needing to be addressed. For example, future researchers could contact California's 58 District Attorney's Offices to determine each office's support for the long-term solutions identified in this report. This effort could also help craft specific terms not outlined in this report, such as the ideal level of communication between recommending DAs and local DAs during the charging decision analysis. Additionally, future researchers should strive to develop a more accurate picture of the average number of OISs in each California county. Doing so would provide additional concrete support for requisite legislation, including funding mechanisms, and would help refine our recommendations so that they can better account for the logistical challenges identified above.

Ultimately, regardless of specific logistical questions related to long-term solutions and the pending answers to them, San Joaquin County has ample

means to begin revising OICIP immediately in order to ensure fair, objective OIS investigations and rebuild community trust.

Figure 4. Arrest-related deaths in California, 2005-2014.



Appendix A

Officer-Involved Shootings in Wisconsin Since January 2015^[1]

Date	Victim	Lead Agency	Completion * Date	Duration	Posted Online^[2]
8/19/16	Kole Knight	DCI ^[3]	-	Ongoing	-
8/13/16	Sylville Smith	DCI ^[4]	-	Ongoing	-
8/5/16	James Quealy	DCI ^[5]	-	Ongoing	-
7/26/16	Scot Minard	DCI ^[6]	-	Ongoing	-
7/23/16	Austin Howard	DCI ^[7]	-	Ongoing	-
7/17/16	Kevin Higgins	Winnebago Cty. Sheriff Dept. ^[8]	7/29/16	<1 month	-
7/1/16	Helmut Wihowski	DCI	8/5/16	1 month	√
6/29/16	Michael Schumacher	DCI ^[9]	-	Ongoing	-
6/23/16	Jay Anderson	MPD ^{[10][11]}	7/21/16 ^[12]	1 month	-
6/15/16	Michael Rasmussen	DCI	7/15/16	1 month	√
5/5/16	Burt Johnson	DCI ^[13]	-	Ongoing	-
4/30/16	Oswald Mattner	DCI	6/30/16	2 months	√
4/23/16	Jakob Wagner	DCI	6/15/16	2 months	√
4/8/16	Melissa Abbott	DCI ^[14]	-	Ongoing	-
4/3/16	David Mack	DCI	5/4/16	1 month	√
2/24/16	Christopher Davis	DCI ^[15]	-	Ongoing	√*

1/8/16	Eric Olsen	DCI	4/15/16	4 months	√
12/5/15	Michael Funk	DCI	1/14/16	1 month	√
10/24/15	Darren Fude	DCI	3/16/16	5 months	√
9/9/15	Dustin Kuik	DCI	1/8/16	4 months	√
8/5/15	John Dieringer	MPD ^[16]	Unknown	Unknown	-
7/22/15	Francisco Benitez-Santiago	DCI	9/14/15	2 months	√
7/16/15	Antonio Gonzalez	MPD	10/1/15	<2 months	√ ^[17]
3/24/15	Stephen Snyder	DCI	5/11/15	2 months	√
3/14/15	Aaron Siler	DCI	8/28/15	5 months	√
3/6/15	Tony Robinson	DCI	3/27/15	<1 month	√
3/5/16	Tyrone Ryerson Lawrence	DCI	4/24/15	<2 months	√
2/24/15	Joseph Biegert	DCI	4/22/15	2 months	√

*Investigative documents made public; full DCI report not yet available.

[1] List of victim names and dates derived from: Database of fatal police shootings, Washington Post, <https://www.washingtonpost.com/graphics/national/police-shootings> (last visited April 20, 2016).

[2] Publication of reports on DCI website all referenced from: <https://www.doj.state.wi.us/dci/officer-involved-critical-incident>

[3] <http://wby.com/2016/08/19/police-investigation-underway-in-new-london/>

[4] <http://fox6now.com/2016/08/18/have-a-tip-regarding-officer-involved-fatal-shooting-of-sylville-smith-submit-it-anonymously/>

- [5] http://www.wiscnews.com/bdc/news/local/article_04da55ad-1976-5e45-b097-7b2432598fa4.html
- [6] <http://www.rivernewsonline.com/main.asp?SectionID=6&SubSectionID=59&ArticleID=73525&PollID=525&btnView=1>
- [7] <http://fox6now.com/2016/07/25/milwaukee-police-identify-victim-suspect-in-connection-with-officer-involved-shooting/>
- [8] <http://www.sheboyganpress.com/story/news/2016/07/19/officials-release-name-suspect-killed-police/87318586/>
- [9] http://host.madison.com/wsj/news/local/crime-and-courts/man-killed-in-police-shooting-identified-madison-officials-place-responsibility/article_41f41564-34c0-5a65-9014-99ced8d99cd9.html
- [10] Milwaukee Police Department
- [11] <http://fox6now.com/2016/07/08/we-need-answers-loved-ones-of-jay-anderson-march-near-wauwatosa-pd-after-officer-involved-shooting/>
- [12] <http://fox6now.com/2016/07/22/final-investigative-report-filed-in-jay-anderson-case-d-a-now-reviewing-case/>
- [13] <http://fox6now.com/2016/05/06/latest-police-id-man-killed-in-officer-involved-shooting-near-76th-mill/>
- [14] <http://www.weau.com/home/headlines/Law-Enforcement-responding-to-possible-shooting-at-Lake-Hallie-Walmart-375095671.html>
- [15] <http://fox6now.com/2016/02/29/latest-officials-identify-deputy-who-discharged-firearm-in-east-troy/>
- [16] <http://fox6now.com/2015/08/06/police-identify-51-year-old-man-shot-and-killed-by-two-year-veteran-of-greenfield-police-department/>
- [17] <http://media.jrn.com/documents/2015+June+Wauwatosa+shooting+district+attorney+letter.pdf>