

Investigative Models in Other Jurisdictions

This document summarizes the investigative models from five other jurisdictions that the Governor’s Task Force on Independent Investigations of Police Use of Force will be reviewing over the course of the next four meetings. These are just some of the categories that may be discussed in the larger conversation, and you may consider throughout your conversations and discussions.

Element	San Francisco, California Independent Investigations Bureau (IIB)	Chicago, Illinois Civilian Office of Police Accountability (COPA)	New York State Special Investigations and Prosecutions Unit (SIPU)	Ontario, Canada Special Investigations Unit (SIU)	England & Wales Independent Office for Police Conduct (IOPC)	Washington State Criminal Investigation Process
ORGANIZATIONAL INDEPENDENCE						
Separate Agency	×	✓	×	×	✓	✓
Division Within an Agency	✓	×	✓	✓	×	×
SCOPE/JURISDICTION						
Has A Stated Goal	✓	✓	✓	×	✓	✓
Investigates Deaths Only	×	×	✓	×	×	×
Possibility for Appeal	✓	✓	✓	✓	✓	✓
POWERS						
Search/Seizure	✓	×	✓	×	✓	✓
Can Compel Testimony	✓	✓	✓	×	✓	×
Can Request or Make Arrests	✓	×	✓	✓	×	✓
Can File Charges	✓	×	✓	✓	×	×
Can Punish Misconduct or Recommend Disciplinary Action	×	✓	✓	×	✓	×
Can Access Records	✓	✓	✓	✓ (limited)	✓	✓
TRANSPARENCY						
Must Publish Findings	×	✓	×	✓	✓	✓
Required Interactions with Family and Community	×	✓	×	×	×	✓

San Francisco (IIB)

Independent Investigations Bureau

Relevant Legislation:

Memorandum of Understanding, May 2019

Title of Director: Managing Attorney

Stated Goal

Summary: Accurately, thoroughly, and objectively investigate incidents and determine potential criminal liability of lack thereof.

Text: The primary objective of San Francisco District Attorney's investigation is to accurately, thoroughly, and objectively investigate the incident and to determine potential criminal liability, or lack thereof, of San Francisco Police Department (SFPD) officers covered in a Covered Incident.

Commentary: IIB's investigation and review does not consider issues of civil liability, tactics, and departmental policies and procedures; the only inquiry is whether the officer(s) involved committed any violation of criminal law.

Jurisdiction

Summary: All in-custody deaths and uses of potentially lethal force (shootings, chokeholds), as well as incidents leading to serious bodily injury and other instances of "excessive force."

Text: Memorandum of Understanding:

B. For the purposes of this MOU, "Covered Incidents" shall mean the following incidents wherein SFPD officers are acting under color of law or color of authority: (1) officer-involved shootings, (2) in-custody deaths, and (3) uses of force resulting in serious bodily injury, as outlined below ...

Agencies/individuals covered

Summary: All San Francisco Police Department officers that meet the California Penal Code's definition of a "peace officer".

Text: Memorandum of Understanding:

Any person employed by SFPD who meets the definition set forth in California Penal Code § 830.6.

Possibility of Appeal

Commentary: Consistent with appellate law in California for all criminal prosecutions.

Search/Seizure

Summary: The District Attorney can request the issuance of a search warrant from the magistrate judge.

Text: See California Penal Code §§ 1523 - 1542.

Compel Testimony

Summary: Yes.

Text: California Penal Code § 1326(a):

The process by which the attendance of a witness before a court or magistrate is required is a subpoena. It may be signed and issued by any of the following:

- (1) A magistrate before whom a complaint is laid or his or her clerk, the district attorney or his or her investigator, or the public defender or his or her investigator, for witnesses in the state.
- (2) The district attorney, his or her investigator, or, upon request of the grand jury, any judge of the superior court, for witnesses in the state, in support of an indictment or information, to appear before the court in which it is to be tried.
- (3) The district attorney or his or her investigator, the public defender or his or her investigator, or the clerk of the court in which a criminal action is to be tried. The clerk shall, at any time, upon application of the defendant, and without charge, issue as many blank subpoenas, subscribed by him or her, for witnesses in the state, as the defendant may require.

Arrest

Summary: The District Attorney can request an arrest warrant or a summons from a judge.

Text: California Government Code § 26501:

The district attorney shall institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses when he has information that such offenses have been committed.

Charge

Summary: Yes, the policies around charging are the same as all criminal charges.

Text: Memorandum of Understanding:

At the conclusion of SFDA's investigation of a Covered Incident, the District Attorney or his/her designee, shall review and analyze all the evidence to determine whether any SFPD officer acted unlawfully. If the District Attorney declines to file criminal charges, the District Attorney or his/her designee shall notify the SFPD of the findings in writing.

The admissible evidence should be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact finder after hearing all the evidence available to the prosecutor at the time of charging and after hearing the most plausible, reasonably foreseeable defense that could be raised under the evidence presented to the prosecutor.

Punish Misconduct

Summary: All questions of misconduct by SFPD personnel are investigated by SFPD.

Text: Memorandum of Understanding:

D. Administrative Investigation: An investigation conducted by SFPD administrative investigators to determine whether any involved SFPD personnel violated any general order, regulation, policy, or other workplace rule during the Covered Incident. These investigations are administrative in nature only.

Access to Records

Summary: The SFDA leads the criminal investigation of the issue and thus has broad access to evidence and records.

Text: Memorandum of Understanding:

Assistant district attorneys and inspectors from SFDA will respond to the scene and will lead the criminal investigation into the covered incident with assistance from the SFPD.

As the criminal investigation proceeds, and as the information becomes available, copies of all reports, statements, forensic analysis, chronological records, digital recordings (video, audio, photos), and any other information received by SFPD shall be forwarded to the assigned SFDA personnel.

Any requests by SFDA for additional crime scene investigation or laboratory tests shall be made in writing to SFPD. Upon written request by SFDA, SFPD shall promptly provide copies of all materials as permitted by applicable law.

Publication of Findings

Summary: There is no obligation to publish findings in the Memorandum of Understanding.

Commentary: Despite lack of obligation, all final reports written by IIB are submitted to the California Department of Justice and posted on the office's website.

Interactions with Families and Relations with the Community

Summary: No Obligations.

For additional information, please visit:

<https://sfdistrictattorney.org/independent-investigations-bureau-iib>

Chicago (COPA)

Civilian Office of Police Accountability

Relevant Legislation:

Chicago Municipal Ordinance, October 5, 2016

Title of Director: Chief Administrator

Personnel/Staffing

Summary: Minimum qualifications set by the office; investigators cannot be current or former sworn members of the Police Department within the last five years.

Text: MO 2-78-120:

The Office and Chief Administrator shall have the following powers and duties ...

(s) To set minimum qualifications and appropriate screening procedures for all persons to be considered for employment by the Office, and to set appropriate staffing levels to carry out the powers and duties set forth herein, provided, however, that no investigator employed by the Office shall be a current or former sworn member of the Police Department within the last five years ...

Budget

Summary: Budget by law cannot be less than 1 percent of the Chicago Police Department's non-grant funding.

Text: MO 2-78-105:

...The appropriations available to pay for the expenses of the Office during each fiscal year shall be determined by the City Council as part of the annual City budget process, but shall not be less than one percent (1.0%) of the annual appropriation of all non-grant funds for the Police Department contained in the annual appropriation ordinance for that fiscal year.

Stated Goal

Summary:

- Provide a just and efficient means to fairly and timely conduct investigations within our jurisdiction;
- Determine whether allegations of police misconduct are well-founded;
- Identify and address patterns of police misconduct; and
- Make policy recommendations to improve the Chicago Police Department, thereby reducing incidents of police misconduct.

Text: MO 2-78-110:

The mission of the Civilian Office of Police Accountability is to provide a just and efficient means to fairly and timely conduct investigations within its jurisdiction, including investigations of alleged police misconduct and to determine whether those allegations are well-founded, applying a preponderance of the evidence standard; to identify and address patterns of police misconduct; and, based on information obtained through such investigations, to make policy recommendations to improve the Chicago Police Department and reduce incidents of police misconduct.

Jurisdiction

Summary: Allegations of bias-based verbal abuse, coercion, death or serious bodily injury in custody domestic violence, excessive force, improper search and seizure, firearm discharge, taser discharge that results in death or serious bodily injury, pattern or practices of misconduct, unlawful denial of access to counsel.

Text: MO 2-78-120:

The Office and Chief Administrator shall have the following powers and duties:

- (a) To receive and register all complaints filed against members of the Police Department;
- (b) To conduct investigations into complaints against members of the Police Department alleging domestic violence, excessive force, coercion, or verbal abuse;
- (c) To conduct investigations into all incidents, including those in which no allegation of misconduct is made, in which a Police Department member discharges: (i) a firearm in a manner that potentially could strike another individual, (ii) a stun gun or taser in a manner that results in death or serious bodily injury, or (iii) in the Chief Administrator's discretion, other weapons discharges and other

use of Police Department-issued equipment as a weapon that results in death or serious bodily injury;

(d) To conduct investigations into incidents, including those in which no allegation of misconduct is made, where a person dies or sustains a serious bodily injury while detained or in Police Department custody, or as a result of police actions, such as during attempts to apprehend a suspect;

(e) To conduct investigations into all incidents of an "officer-involved death," as that term is defined in 50 ILCS 727/1-5;

(f) To conduct investigations into complaints against members of the Police Department alleging improper search or seizure of either individuals or property, or unlawful denial of access to counsel;

Commentary: CPD's Bureau of Internal Affairs investigates all other complaints of police misconduct, including theft, planting of drugs, and operational violations.

Agencies/individuals covered

Summary: Chicago Police Department (CPD)

Text: MO 2-78-100:

..."Police Board" means the Police Board established in Chapter 2-84 of this Code. "Police Department" means the Department of Police established in Chapter 2-84 of this Code.

Possibility of Appeal

Commentary: Per COPA website, officer may elect to grieve discipline in accordance with collective bargaining agreements.

Search/Seizure

Summary: No.

Compel Testimony

Summary: Yes.

Text: 2-78-125.

The Office may administer oaths and secure by subpoena both the attendance and testimony of witnesses and the production of relevant information. A subpoena shall be served in the same manner as subpoenas issued under the Rules of the Illinois Supreme Court to compel appearance of a deponent ...

Arrest

Summary: No.

Charge

Summary: No.

Commentary: Per website, can make referrals to prosecutorial agencies.

Punish Misconduct

Summary: No authority to enforce any discipline but can recommend disciplinary action. If the Chief Administrator determines the allegations are sustained and discipline should be recommended, then the findings and/or recommendations will be shared with the CPD Superintendent. The Superintendent has 60 days to review the findings and recommendations and respond to COPA. Superintendent can disagree or decline to pursue action, and Chief Administrator can then appeal to a member of the Police Board, who can then override Superintendent's objections and implement the recommendation.

Text: 2-78-120:

The Office and Chief Administrator shall have the following powers and duties...

(l) To recommend to the Superintendent, with respect to incidents within its jurisdiction, appropriate disciplinary or other remedial action against members of the Police Department found to be in violation of any applicable Police Department rules ... Such remedial action may include, but is not limited to, reassignment, additional training, or counseling ...

Access to Records

Summary: Access to all city & police records needed to conduct investigations.

Text: 2-78-120:

The Office and Chief Administrator shall have the following powers and duties ...

(o) Subject to applicable law, to have full access to all information in the possession or control of the Police Department, the Police Board, and any other City Department or agency in order to conduct investigations within the Chief Administrator's jurisdiction; ...

Publication of Findings

Summary: Extensive reporting requirements

Text: 2-78-120:

The Office and Chief Administrator shall have the following powers and duties ...

(t) To address Police Department personnel and community groups, and inform the public, on the mission, policies, and ongoing operations of the Office ...

2-78-145: All Final Summary Reports of the Office shall be posted on the Office's website and open to public inspection, except to the extent that information contained therein has been redacted ... Such reports, as redacted, shall be posted on the Office's website and open to public inspection, along with the response of the Superintendent thereto, if any, promptly after, but not before, the process set forth in Section 2-78-130(a) is completed and disciplinary charges, if any, are served on the employees in question ...

Reports of the Office concerning its recommendations as to a Police Department policy, practice, or process, or training pursuant to Section 2-78-120(m) or (n) shall be posted on the Office's website and open to public inspection, except to the extent that information contained therein has been redacted ...

2-78-150: (a) Quarterly Reports. No later than the fifteenth day of, April, July and October of each year, the Chief Administrator shall post on the Office website for public review and file with the Mayor or his designee, the Superintendent, the Chairman of the City Council Committee on Public Safety, and the office of the City Clerk, a quarterly report providing information based on data through the end of the preceding month ...

(b) Annual Reports. No later than the fifteenth day of February of each year, the Chief Administrator shall post on the Office's website for public review and file with the Mayor or his designee, the Superintendent, the Chairman of the City Council Committee on Public Safety, the Office of the City Clerk, and the Deputy Inspector General for Public Safety, an annual report providing information based on data during the prior calendar year...

Interactions with Families and Relations with the Community

Summary: Required to keep community/"the public" informed on ongoing operations and implement a process for community members to file complaints.

Text: 2-78-120:

The Office and Chief Administrator shall have the following powers and duties ...

(t) To address Police Department personnel and community groups, and inform the public, on the mission, policies, and ongoing operations of the Office;

(u) To develop and implement a process for allowing citizens to file complaints by various means, including submission of complaints using the Internet, by telephone, and in person at locations or meetings in the community; ...

Commentary: Per website, maintains a Community Advisory Council made up of attorneys, affected family members, religious leaders, etc.

For more information, please visit:

<https://www.chicagocopa.org/>

New York State (SIPU)

Special Investigations and Prosecutions Unit

Relevant Legislation:

Executive Order No. 147, July 8, 2015

Title of Director: Special Prosecutor (Attorney General)

Personnel/Staffing

Summary: Broad discretion given to AG to hire staff for SIPU

Text: Executive Order 147:

...for any matter covered herein, the special prosecutor shall have the powers and duties specified in subdivisions 2 and 8 of section 63 of the Executive Law for purposes of this Order.

EL § 63(2): ... [the attorney-general] may, in his discretion, and without civil service examination, appoint and employ, and at pleasure remove, such deputies, officers and other persons as he deems necessary, determine their duties and, with the approval of the governor, fix their compensation. All appointments made pursuant to this subdivision shall be immediately reported to the governor and shall not be reported to any other state officer or department.

Stated Goal

Summary: Prosecuting deaths of unarmed civilians that have challenged the public's confidence and trust in the criminal justice system without conflict or bias.

Text: Executive Order 147:

WHEREAS, there have been recent incidents involving the deaths of unarmed civilians that have challenged the public's confidence and trust in our system of criminal justice; and
WHEREAS, public concerns have been raised that such incidents cannot be prosecuted at the local level without conflict or bias, or the public perception of conflict or bias; and
WHEREAS, it is necessary to ensure that a full, reasoned, and independent investigation and prosecution of any such incident is conducted without conflict or bias, or the perception of conflict or bias; and
WHEREAS, the foregoing compels me to conclude that my constitutional obligations provide that in cases where an issue of a real or perceived conflict of interest exists, and to ensure full confidence in our system of criminal justice, a special prosecutor should be appointed with respect to such incidents.

Jurisdiction

Summary: Incidents where a law enforcement officer causes the death of an unarmed civilian, or where there is a significant question as to whether the civilian was armed and dangerous.

Text: Executive Order 147:

I, ANDREW M. CUOMO, Governor of the State of New York, ... hereby require the Attorney General (hereinafter, the "special prosecutor") to investigate, and if warranted, prosecute certain matters involving the death of an unarmed civilian, whether in custody or not, caused by a law enforcement officer, as listed in subdivision 34 of section 1.20 of the Criminal Procedure Law. The special prosecutor may also investigate and prosecute in such instances where, in his opinion, there is a significant question as to whether the civilian was armed and dangerous at the time of his or her death;

Commentary: EO 147 does not provide jurisdiction for SIPU for any police-civilian encounter that does not result in a civilian's death.

There is no definition for "armed and dangerous".

The ambiguous language of the executive order opens many questions about jurisdiction - in nearly all of the cases taken on by SIPU since the order was signed, the attorney general sought clarifying orders from the governor authorizing the agency to move forward.

Agencies/individuals covered

Summary: Law enforcement officers as listed in subdivision 34 of section 1.20 of the Criminal Procedure Law.

Text: Executive Order 147:

I, ANDREW M. CUOMO, Governor of the State of New York ... hereby require the Attorney General (hereinafter, the "special prosecutor") to investigate, and if warranted, prosecute certain matters ... caused by a law enforcement officer, as listed in subdivision 34 of section 1.20 of the Criminal Procedure Law.

Possibility of Appeal

Summary: Yes.

Commentary: Consistent with appellate law in New York state for all criminal prosecutions.

Search/Seizure

Summary: Like District Attorneys, SIPU can request issuance of a search warrant from local court.

Text: Executive Order 147:

The special prosecutor shall ... possess and exercise all the prosecutorial powers necessary to investigate, and if warranted, prosecute the incident.

NY CPL § 690.10: Under circumstances prescribed in this article, a local criminal court may, upon application of a police officer, a district attorney or other public servant acting in the course of his official duties, issue a search warrant.

Commentary: County District Attorneys have plenary jurisdiction to investigate and, if warranted, prosecute violations of the state's Penal Law that take place within their jurisdiction. EO 147 creates an exception to this general rule by conferring these powers upon the Attorney General, but only for the types of incidents set forth in the EO.

Compel Testimony

Summary: Yes

Text: Executive Order 147:

...for any matter covered herein, the special prosecutor shall have the powers and duties specified in subdivisions 2 and 8 of section 63 of the Executive Law for purposes of this Order...

EL § 63(8): ...The attorney-general, his deputy, or other officer, designated by him, is empowered to subpoena witnesses, compel their attendance, examine them under oath before himself or a magistrate...

Arrest

Summary: Like District Attorneys, SIPU can request an arrest warrant or summons from a judge.

Text: Executive Order 147:

The special prosecutor shall... possess and exercise all the prosecutorial powers necessary to investigate, and if warranted, prosecute the incident.

Commentary: County District Attorneys have plenary jurisdiction to investigate and, if warranted, prosecute violations of the state's Penal Law that take place within their jurisdiction. Executive Order 147 creates an exception to this general rule by conferring these powers upon the Attorney General, but only for the types of incidents set forth in the Executive Order.

Charge

Summary: Yes.

Text: Executive Order 147:

The special prosecutor shall... possess and exercise all the prosecutorial powers necessary to investigate, and if warranted, prosecute the incident.

Commentary: County District Attorneys have plenary jurisdiction to investigate and, if warranted, prosecute violations of the state's Penal Law that take place within their jurisdiction. EO 147 creates an exception to this general rule by conferring these powers upon the Attorney General, but only for the types of incidents set forth in the EO.

Punish Misconduct

Summary: In cases where the special prosecutor has declined to prosecute, or a grand jury has declined to return an indictment, the special prosecutor must present a report explaining the outcome and providing recommendations for systemic reform. Presumably these recommendations may include disciplinary recommendations.

Text: Executive Order 147:

...the special prosecutor will provide to [the governor] a report on all cases where, (i) the special prosecutor declines to present evidence to a grand jury regarding the death of a civilian as described in this Order, whether in custody or not, allegedly caused by a law enforcement officer, or (ii) the grand jury declines to return an indictment on any charges. The report will include, to the extent possible and lawful, an explanation of that outcome and any recommendations for systemic reform arising from the investigation.

Access to Records

Summary: Broad access to records.

Text: Executive Order 147:

...for any matter covered herein, the special prosecutor shall have the powers and duties specified in subdivisions 2 and 8 of section 63 of the Executive Law for purposes of this Order...

EL § 63(8): ...The attorney-general, his deputy, or other officer, designated by him, is empowered to ... require that any books, records, documents or papers relevant or material to the inquiry be turned over to him for inspection, examination or audit, pursuant to the civil practice law and rules. ... It shall be the duty of all public officers, their deputies, assistants and subordinates, clerks and employees, and all other persons, to render and furnish to the attorney-general, his deputy or other designated officer, when requested, all information and assistance in their possession and within their power.

Publication of Findings

Summary: Required to submit reports to governor for all cases in which the special prosecutor declined to prosecute or the grand jury declined to return an indictment, explaining the outcome and including recommendations for systemic reform. No obligation to otherwise publish findings.

Text: Executive Order 147:

...the special prosecutor will provide to [the governor] a report on all cases where, (i) the special prosecutor declines to present evidence to a grand jury regarding the death of a civilian as described in this Order, whether in custody or not, allegedly caused by a law enforcement officer, or (ii) the grand jury declines to return an indictment on any charges. The report will include, to the extent possible and lawful, an explanation of that outcome and any recommendations for systemic reform arising from the investigation.

Commentary: The SIPU website states that "Executive Order No. 147 requires SIPU to issue a biennial report regarding cases over which it has jurisdiction", but no language exists in EO 147 supporting this statement.

Though not required to do so by EO 147, SIPU regularly publishes reports on all of its cases.

Interactions with Families and Relations with the Community

Summary: No Obligations.

For additional information, please visit:

<https://ag.ny.gov/SIPU>

Ontario (SIU)

Special Investigations Unit

Relevant Legislation:

Police Services Act, R.S.O. 1990, c. P.15; Ontario Regulation 267/10

Title of Director: Director

Personnel/Staffing

Summary: Cannot be current police officers; or categorized as peace officers; cannot participate in investigations that relate to members of a police force of which they were members in the past.

Text:

PSA § 113(2): The unit shall consist of ... investigators appointed under Part III of the Public Service of Ontario Act, 2006.

PSA § 113(3): (3) A person who is a police officer or former police officer shall not be appointed as director, and persons who are police officers shall not be appointed as investigators.

PSA § 113(4): The director, acting director and investigators are peace officers.

PSA § 113(6): An investigator shall not participate in an investigation that relates to members of a police force of which he or she was a

Stated Goal

Summary: Since its inception in 1990, the SIU's mission has been to nurture public confidence in policing by ensuring that the conduct of police officers, in cases which fall under the SIU jurisdiction, is subject to rigorous and independent investigations. This is reflected in the Unit's motto: Independent Investigations - Community Confidence.

Jurisdiction

Summary: Serious injuries and deaths that may have resulted from criminal offences committed by police officers

Text: PSA § 113(5):

The director may, on his or her own initiative, and shall, at the request of the Solicitor General or Attorney General, cause investigations to be conducted into the circumstances of serious injuries and deaths that may have resulted from criminal offences committed by police officers.

Commentary: The definition of "serious injuries" used by the SIU was set out by the first Director of the SIU, John Osler:

"Serious injuries" shall include those that are likely to interfere with the health or comfort of the victim and are more than merely transient or trifling in nature and will include serious injury resulting from sexual assault. "Serious Injury" shall initially be presumed when the victim is admitted to hospital, suffers a fracture to a limb, rib or vertebrae or to the skull, suffers burns to a major portion of the body or loses any portion of the body or suffers loss of vision or hearing, or alleges sexual assault. Where a prolonged delay is likely before the seriousness of the injury can be assessed, the Unit should be notified so that it can monitor the situation and decide on the extent of its involvement."

Agencies/individuals covered

Summary: All municipal, regional and provincial police officers in Ontario.

Text: See Police Services Act § 2

Commentary: Does not include Royal Canadian Mounted Police (RCMP) officers. This is at variance with oversight agencies in other provinces, including Serious Incident Response Team in Nova Scotia, Alberta Serious Incident Response Team, and the Independent Investigation Unit in Manitoba, which have jurisdiction over RCMP in their provinces.

Possibility of Appeal

Summary: Yes.

Commentary: Consistent with appellate law in Ontario for all criminal prosecutions.

Search/Seizure

Summary: No.

Compel Testimony

Summary: No subpoena powers. Per O.Reg 267/10, all "witness officers" must submit to interviews with the SIU within 24 hours of receiving the request; however, the interview can only be recorded or videotaped with the officer's consent.

Text: O.Reg 267/10 § 8:

(1) Subject to subsections (2) and (5) and section 10, immediately upon receiving a request for an interview by the SIU, and no later than 24 hours after the request if there are appropriate grounds for delay, a witness officer shall meet with the SIU and answer all its questions.

(2) A request for an interview by the SIU must be made in person.

(3) The SIU shall cause the interview to be recorded and shall give a copy of the record to the witness officer as soon as it is available.

(4) The interview shall not be recorded by audiotape or videotape except with the consent of the witness officer.

Commentary: The [SIU's 2015-2016 Annual Report](#) specifically requested an amendment to the PSA that granted the SIU subpoena powers.

In April 2015, the Superior of Court of Justice ruled in *R. v. Blonde and Cavan* that compelling two Ottawa Police Service officers charged with an offence by the SIU to attend at the SIU's offices in Mississauga to be fingerprinted and photographed did not violate their rights.

Arrest

Summary: Under the Canadian Criminal Code, peace officers can arrest without warrant a person who they believe on reasonable grounds has committed an indictable offense.

Text: CC § 495:

(1) A peace officer may arrest without warrant
(a) a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence;
(b) a person whom he finds committing a criminal offence; or
(c) a person in respect of whom he has reasonable grounds to believe that a warrant of arrest or committal, in any form set out in Part XXVIII in relation thereto, is in force within the territorial jurisdiction in which the person is found.

Charge

Summary: If the Director believes that a criminal offence has been committed, they can lay a criminal charge against the officer(s), and that charge will then be prosecuted by the Crown Attorney.

Text: PSA § 113(7):

If there are reasonable grounds to do so in his or her opinion, the director shall cause informations to be laid against police officers in connection with the matters investigated and shall refer them to the Crown Attorney for prosecution.

Punish Misconduct

Summary: No; misconduct investigations are conducted by the chief of police.

Text: O.Reg. 267/10 § 11:

(1) The chief of police shall also cause an investigation to be conducted forthwith into any incident with respect to which the SIU has been notified, subject to the SIU's lead role in investigating the incident.

(2) The purpose of the chief of police's investigation is to review the policies of or services provided by the police force and the conduct of its police officers.

(3) All members of the police force shall co-operate fully with the chief of police's investigation.

(4) The chief of police of a municipal police force shall report his or her findings and any action taken or recommended to be taken to the board within 30 days after the SIU director advises the chief of police that he or she has reported the results of the SIU's investigation to the Attorney General, and the board may make the chief of police's report available to the public.

Access to Records

Summary: Access to notes of incident made by witness officers; vague commitment for police officers to cooperate fully with investigation. Notes by subject officers are protected and subject officers may decline to be interviewed.

Text: PSA § 113(9):

Members of police forces shall co-operate fully with the members of the unit in the conduct of investigations.

O. Reg. 267/10 § 9(1-2):

(1) A witness officer shall complete in full the notes on the incident in accordance with his or her duty and, subject to subsection (4) and section 10, shall provide the notes to the chief of police within 24 hours after a request for the notes is made by the SIU.

(2) Subject to subsection (4) and section 10, the chief of police shall provide copies of a witness officer's notes to the SIU upon request, and no later than 24 hours after the request.

(3) A subject officer shall complete in full the notes on the incident in accordance with his or her duty, but no member of the police force shall provide copies of the notes at the request of the SIU.

Publication of Findings

Summary: Must report the results of investigations to the Attorney General; may not make statements while investigations are ongoing.

Text: PSA § 113(8):

The director shall report the results of investigations to the Attorney General.

O. Reg. 267/10 § 13: The SIU shall not, during the course of an investigation by the SIU, make any public statement about the investigation unless the statement is aimed at preserving the integrity of the investigation.

Commentary: Per website: "At the end an investigation the SIU attempts to provide as much information as possible to the public, subject to the Freedom of Information and Protection of Privacy Act. Particular attention is paid to the need for the complainant or next of kin to have a full understanding of the investigative results. This is generally accomplished through direct personal contact by the lead investigator."

Interactions with Families and Relations with the Community

Summary: No obligations.

Commentary: Maintains an "Affected Persons Program", "providing support services to those negatively impacted by incidents investigated by the Unit."

For more information, please visit:

<https://www.siu.on.ca/en/index.php>

England & Wales (IOPC)

Independent Office for Police Conduct

Relevant Legislation:

Police Reform Act 2002; Policing and Crime Act 2017

Title of Director: Director General

Personnel/Staffing

Summary: Office is made up of Director-General, non-executive members, and employee members. Non-executive members are appointed by the Secretary of State. Employee members are appointed by non-executive members.

All Regional Directors/Director for Wales can never have worked for the police in any capacity.

Text: PRA § 9:

The Office for Police Conduct.

...

(2) The Office is to consist of—

- (a) a Director General appointed by Her Majesty, and
- (b) at least six other members.

(2A) The other members must consist of—

- (a) persons appointed as non-executive members (see paragraph 1A of Schedule 2), and
- (b) persons appointed as employee members (see paragraph 1B of that Schedule), but the powers of appointment under those paragraphs must be exercised so as to secure that a majority of members of the Office (including the Director General) are non-executive members.

See Schedule 2 for terms of appointment.

Stated Goal

Summary: Secure public confidence; maintain independence.

Text: See PRA § 10: General Functions of the Director General.

Jurisdiction

Summary: All complaints and instances of death or serious injury (DSI) following police contact.

"Mandatory" referrals are made to the IOPC should a person die or sustain serious injuries following police contact. Additionally, a force's professional standards department may also make a "voluntary" referral – in which a force will ask the IOPC to consider if they wish to investigate independently, supervise a force professional standards investigation, or decline and refer the investigation back to the force to investigate without any IOPC input.

The police have to refer serious and sensitive cases to the IOPC; there are "mandatory referral criteria", which cover allegations of:

- Serious assault
- Serious sexual offences
- Serious corruption
- Criminal behaviour
- Misconduct
- Discrimination

Text: PRA § 10:

General Functions of the Director-General

(2) [The matters subject to IOPC jurisdiction] are:

- (a) the handling of complaints made about the conduct of persons serving with the police [within the meaning given by section 12] or other concerns raised by virtue of Part 2B (whistle-blowing);
- (b) the recording of matters from which it appears that there may have been conduct by persons serving with the police which constitutes or involves the commission of a criminal offence or behaviour justifying disciplinary proceedings;
- (ba) the recording of matters from which it appears that a person has died or suffered serious injury during, or following, contact with a person serving with the police;
- (c) the manner in which any such complaints or other concerns or any such matters as are mentioned in paragraph (b) or (ba) are investigated or otherwise handled and dealt with.

For definitions of complaints and other matters, see PRA § 11: Complaints, matters and persons to which Part 2 applies.

PRA Schedule 3 § 4: Reference of Complaints to the Director General

(1) It shall be the duty of the appropriate authority to refer a complaint to the Director General, if—

- (a) the complaint is one alleging that the conduct or other matter complained of has resulted in death or serious injury;
- (b) the complaint is of a description specified for the purposes of this sub-paragraph in regulations made by the Secretary of State; or

(c) the Director General notifies the appropriate authority that the Director General requires the complaint in question to be referred to the Director General for the Director General's consideration.

...

(3) In a case in which a reference under sub-paragraph (1) or (2) is neither made nor required to be made, a local policing body may refer a complaint to Director General if—

(a) it is one in relation to which the chief officer of police of the police force maintained by that body is the appropriate authority; and

(b) the local policing body considers that it would be appropriate to do so reason of—

(i) the gravity of the subject-matter of the complaint; or

(ii) any exceptional circumstances.

Agencies/individuals covered

Summary: Police and crime commissioners; London Mayor's Office for Policing and Crime; certain specialist police forces; Her Majesty's Revenue and Customs (MHRC); certain border and immigration staff; the National Crime Agency (NCA); certain staff at the Gangmasters and Labour Abuse Authority (GLAA)

Text: See PRA Part 2: Complaints and Misconduct

Possibility of Appeal

Summary: Yes.

- Complainants can appeal about:
the decision not to record a complaint;
- the outcome of a local resolution process;
the local or supervised investigation into a complaint;
- the decision to discontinue a local investigation;
the decision to disapply the requirements under the Police Reform Act 2002; or
- the outcome of a complaint that has been subject to disapplication.

The IOPC hears appeals against non-recording of complaints. It also hears appeals against the outcomes of complaints which:

- Concern the conduct of a senior officer
If proved right, would justify criminal or misconduct proceedings or would involve infringement of the right to life or freedom from inhuman or degrading treatment;
- Had to be referred to the IPCC

Text: See PRA Schedule 3 §§ 25, 26, 30.

Commentary: If a complainant disagrees with the outcome of an appeal, the only other option is judicial review.

Search/Seizure

Summary: Yes.

Text: PRA Schedule 3 § 19ZE:

...

(2) The designated person may seize anything which is on the premises if the designated person has reasonable grounds for believing—

(a) that it is evidence relating to the conduct or other matter to which the investigation relates, and

(b) that it is necessary to seize it in order to prevent the evidence being concealed, lost, altered or destroyed.

(3) The designated person may require any information which is stored in any electronic form and is accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible, or from which it can readily be produced in a visible and legible form, if the designated person has reasonable grounds for believing—

(a) that it is evidence relating to the conduct or other matter to which the investigation relates, and

(b) that it is necessary to do so in order to prevent the evidence being concealed, lost, tampered with or destroyed.

Compel Testimony

Summary: Yes.

Text: PRA Schedule 3 § 19ZA:

Investigations by the Director General: power to serve information notice

1) The Director General may serve upon any person an information notice requiring the person to provide the Director General with information that the Director General reasonably requires for the purposes of an investigation in accordance with paragraph 19.

PRA Schedule 3 § 19ZB: Failure to comply with information notice

(1) If a person who has received an information notice—

(a) fails or refuses to provide the information required by the notice, or

(b) knowingly or recklessly provides information in response to the notice that is false in a material respect,

the Director General may certify in writing to the High Court that the person has failed to comply with the information notice.

(2) The High Court may then inquire into the matter and, after hearing any

witness who may be produced against or on behalf of the person, and after

hearing any statement offered in defence, deal with the person as if the

person had committed a contempt of court.

Arrest

Summary: No.

Charge

Summary: Upon completion of investigation, can refer cases to the Director of Public Prosecutions.

Text: PRA Schedule 3 § 23:

Action by the Director General in relation to an investigation report

...

(2) On receipt of the report (or on its completion by the Director General), the Director General — ...
(b) shall determine whether the conditions set out in sub-paragraphs (2A) and (2B) are satisfied in respect of the report;
(c) if the Director General determines that those conditions are so satisfied, shall notify the Director of Public Prosecutions of the determination and send him a copy of the report; and
(d) shall notify the appropriate authority and the persons mentioned in sub-paragraph (5) of the Director General's determination under paragraph (b) and of any action taken by the Director General under paragraph (c).

...

(2A) The first condition is that the report indicates that a criminal offence may have been committed by a person (if any) to whose conduct the investigation related.
(2B) The second condition is that—
(a) the circumstances are such that, in the opinion of the Director General, it is appropriate for the matters dealt with in the report to be considered by the Director of Public Prosecutions, or
(b) any matters dealt with in the report fall within any prescribed category of matters.
(3) The Director of Public Prosecutions shall notify the Director General of any decision of his to take, or not to take, action in respect of the matters dealt with in any report a copy of which has been sent to him under sub-paragraph (2)(c).

Punish Misconduct

Summary: Can mandate disciplinary proceedings.

Text: PRA Schedule 3 § 23:

Action by the Director General in relation to an investigation report

...

(5A) On receipt of the report (or on its completion by the Director General), the Director General shall also—
(a) seek the views of the appropriate authority on—
(i) whether any person to whose conduct the investigation related has a case to answer in respect of misconduct or gross misconduct or has no case to answer,
(ii) whether or not any such person's performance is unsatisfactory, and
(iii) the other matters (if any) dealt with in the report (but not on whether the conditions in sub-paragraphs (2A) and (2B) are satisfied in respect of the report),
(b) having considered the views (if any) of the appropriate authority, make a determination as to—
(i) the matters described in paragraph (a)(i) and (ii), and
(ii) whether or not disciplinary proceedings should be brought against any person to whose conduct the investigation related and, if so, what form the disciplinary proceedings should take,
(c) having considered the views (if any) of the appropriate authority and if the Director General considers it appropriate to do so, make a determination as to any matter dealt with in the report, being a determination other than one that the Director General is required to make under sub-paragraph (2)(b) or paragraph (b) of this subparagraph,
(d) notify the appropriate authority of the Director General's determination under paragraph (b) and any determination under paragraph (c),
(e) where the Director General determines that disciplinary proceedings of a form specified in the determination should be brought against a person, direct the appropriate authority to bring those proceedings, and
(f) direct the appropriate authority to determine what action (if any) the appropriate authority will in its discretion take, not being action involving the bringing of disciplinary proceedings, in respect of the matters dealt with in the report and having regard to the Director General's determination under paragraph (b) and any determination under paragraph (c).

(5B) The appropriate authority must comply with a direction given under subparagraph (5A)(e) and must secure that the proceedings, once brought, are proceeded with to a proper conclusion.

Access to Records

Summary: Broad access to records.

Text: See, e.g., PRA § 18:

Inspections of police premises on behalf of the Director General

- (1) Where—
(a) the Director General requires—
(i) a local policing body maintaining any police force, or
(ii) the chief officer of police of any such force,
to allow a person nominated for the purpose by the Director General to have access to any premises occupied for the purposes of that force and to documents and other things on those premises, ... it shall be the duty of the body or, as the case may be, of the chief officer to secure that the required access is allowed to the nominated person.

See also PRA Schedule 3 § 19 (on rights of entry, search, and seizure conferred on IOPC "designated persons").

Publication of Findings

Summary: Annual reports must be made to the Secretary of State, and subsequently reported to Parliament, published, and sent to every local policing body and certain other agencies. Other reports may be published under the Secretary of State's discretion.

Text: PRA § 11:

Reports to the Secretary of State

- (1) As soon as practicable after the end of each of the Office's financial years, the Director General and the Office must jointly make a report to the Secretary of State on the carrying out of their functions during that year.

- (2) The Secretary of State may also require reports to be made (at any time)—
(a) by the Director General about the carrying out of the Director General's functions,
(b) by the Office about the carrying out of the Office's functions, or
(c) jointly by the Director General and the Office about the carrying out of their functions.

...

- (5) Where the Secretary of State receives any report under this section, he shall—
(a) in the case of every annual report under subsection (1), and
(b) in the case of any other report, if and to the extent that he considers it appropriate to do so, lay a copy of the report before Parliament and cause the report to be published.

See remainder of Section 11 for further details.

Interactions with Families and Relations with the Community

Summary: No obligations.

For more information, please visit:

<https://www.policeconduct.gov.uk/>

Washington State

Criminal Investigation Process

Relevant Legislation:

Washington Administrative Code (WAC) 139-12-030
(effective January 6, 2020)

Title of Director: IIT Commander

Personnel/Staffing

Summary: WAC details IIT membership requirements

Text: WAC 139-12-030

(c) The standards for credible investigators include:

(i) Appointed Members.

The chiefs and sheriffs who sign a written agreement to support and participate in the IIT shall appoint:

- The IIT leadership team, which may include an IIT commander, assistant commander, or co-commander.
- At least two nonlaw enforcement community representatives who have credibility with and ties to communities impacted by police use of deadly force. The chiefs and sheriffs of each regional team shall create a transparent process for soliciting names and creating a roster of individuals willing to serve in this capacity. The IIT community representatives must be chosen from this list by the chief(s) and/or sheriff(s).
- All IIT leadership shall be commissioned peace officer(s), with previous experience in criminal investigations.
- The IIT supervisors shall be recommended by their agency to the IIT commander.

(ii) Selection Process for IIT Members.

The IIT leadership shall:

- Ensure all applicants meet all time, rank, and training prerequisites described in chapter xxx WAC [WAC 139-12-030 (4)(c)(v)].
- Ensure that qualified applicants are interviewed by a panel, which includes the nonlaw enforcement community representatives and other members of the IIT selected by the IIT commander.
- All applicants shall be interviewed using criteria pertinent for the position of an IIT investigator. The same questions should be asked of each applicant.
- At the conclusion of the panel the IIT commander shall consider the recommendations of the panel and select those best suited for the needs of the IIT.

(iii) Requirements for IIT Investigators.

- Applicants for the position of investigator must be employed by a member agency of the IIT.

- The applicant shall be a commissioned peace officer in the state of Washington with previous experience as a detective or investigator, or have special skills or experience necessary for the team.

Stated Goal

Summary:

- Independence;
- Transparency;
- Communication;
- Credible process; and
- Credible investigators.

Text: WAC 139-12-030:

There are five principles that are fundamental to enhancing public trust in the integrity of independent investigations involving police use of deadly force:

- Independence;
- Transparency;
- Communication;
- Credible process; and
- Credible investigators.

Standards are necessary for the involved agency and the public to assess whether the actions taken by the IIT are independent, transparent, credible, and communicated in a manner that results in a compliant and complete investigation and builds public trust.

Jurisdiction

***Summary:* Any instance where the use of deadly force by a peace officer results in death, substantial bodily harm, or great bodily harm.**

Text: RCW 10.114.011:

Except as required by federal consent decree, federal settlement agreement, or federal court order, where the use of deadly force by a peace officer results in death, substantial bodily harm, or great bodily harm, an independent investigation must be completed to inform any determination of whether the use of deadly force met the good faith standard established in RCW [9A.16.040](#) and satisfied other applicable laws and policies. The investigation must be completely independent of the agency whose officer was involved in the use of deadly force. The criminal justice training commission must adopt rules establishing criteria to determine what qualifies as an independent investigation pursuant to this section.

Agencies/individuals covered

Summary: All Washington State Peace Officers

Text: RCW 10.93.020:

(3) "General authority Washington peace officer" means any full-time, fully compensated and elected, appointed, or employed officer of a general authority Washington law enforcement agency who is commissioned to enforce the criminal laws of the state of Washington generally.

Possibility of Appeal

Summary: Yes.

Commentary: After a criminal case is completed the officer may appeal through the regular criminal court system. Following an administrative investigation, the officer may challenge this ruling as well through the process laid out in their agency's collective bargaining agreement.

Search/Seizure

Summary: Yes.

Commentary: As with other criminal investigations, an investigative team can search and seize evidence with either consent from the party being searched, or a warrant from a judge. The standard for obtaining a warrant is that the judge must believe that there is probable cause that a crime has occurred, and that the search will find evidence of that crime.

Compel Testimony

Summary: No.

Commentary: Everyone has the right to NOT incriminate themselves under the United States Constitution's [5th Amendment](#). When a law enforcement officer is involved in a use of force case, they are obligated to provide a public safety statement that cannot be used against the officer. According to most police contracts, the involved officer will be given up to 72 hours to provide a statement because studies show better recall after a period of time passes due to traumatic events. An involved officer, like any citizen may choose to obtain representation and/or may choose to make or not make a statement.

Arrest

Summary: Yes.

Commentary: If the investigative team has jurisdiction, they can complete an arrest. If they do not have jurisdiction, the investigative team may obtain an arrest warrant through a prosecutor and judge.

Charge

Summary: No.

Commentary: Formal charges are filed by the prosecutor, not the investigative team.

Punish Misconduct

Summary: No.

Commentary: The investigative team has not been given any authority under WAC 132-12 to punish or recommend disciplinary action.

Access to Records

Summary: Yes.

Text: The investigative team has the same access to records as they do in any other criminal investigation.

Publication of Findings

Summary: Extensive reporting requirements

Text: WAC 139-12-030:

(2) Transparency.

(a) Transparency is the critical element of procedural justice that allows community members to assess whether the process of the investigation is conducted in a trustworthy manner and complies with the standards for the five listed principles.

(b) Standards for the transparency of an independent investigation:

- The policies and operating procedures of the IIT will be available to the public.
- The names of the members, supervisors, commanders, and nonlaw enforcement community representatives on the IIT will be available to the public.
- A minimum of two nonlaw enforcement community representatives will be assigned to each IIT to:

a. Participate directly in the vetting, interviewing, and/or selection of IIT investigators. (Existing teams will have until January 2021 to provide necessary information about the qualifications of current IIT investigators to the nonlaw enforcement community representatives for review.)

b. Review conflict of interest statements submitted within seventy-two hours of the commencement of each investigation by the investigators;

c. Be present at the briefings with the involved agency(s) chief or sheriff;

d. Have access to the investigation file when it is completed;

e. Be provided a copy of all press releases and communication to the media prior to release; and

f. Review notification of equipment use of the involved agency.

- The nonlaw enforcement community representatives must sign a binding confidentiality agreement at the beginning of each police use of deadly force investigation that remains in effect until the prosecutor of jurisdiction either declines to file charges or the criminal case is concluded.

- If the confidentiality agreement is violated, the nonlaw enforcement representative may be subject to prosecution under RCW [9A.76.020](#) (Obstructing a law enforcement officer) and chapter [10.97](#) RCW, Washington State Criminal Records Privacy Act. For the purpose of this chapter, "criminal background information" is the same as "criminal history information" as defined in RCW [10.97.030](#)(4).

- The commander or other representative of the IIT will provide public updates about the investigation at a minimum of once per week, even if there is no new progress to report.

- When an independent investigation is complete the information will be made available to the public in a manner consistent with applicable state law.

Interactions with Families and Relations with the Community

Summary: Required to provide public updates about the investigation at least one per week. Family is also assigned a family liaison with the IIT within 24 hours of the incident.

Text: WAC 139.12.030

(2) Transparency.

... • The commander or other representative of the IIT will provide public updates about the investigation at a minimum of once per week, even if there is no new progress to report.

- When an independent investigation is complete the information will be made available to the public in a manner consistent with applicable state law.

(3) **Communication.**

(a) Communication is key to enhancing the public's perception of police legitimacy and fairness. A lack of open communication leads to suspicion and damages trust.

(b) Standards for communication during an independent investigation:

- A family member of the person against whom deadly force has been used will be notified as soon as they can be located by either the involved agency or the IIT, whichever is faster.

- A member of the IIT will be assigned as a family liaison within the first twenty-four hours and keep the family, or a representative of the family's choice, apprised of all significant developments in the

independent investigation and will give the family and the involved agency advance notice of all scheduled press releases.

- Neither the involved agency nor the IIT will provide the media with criminal background information of the person against whom deadly force has been used, unless it is specifically requested, and release of the information is required by the Public Records Act or other applicable laws.

- If the person against whom deadly force is used is, or is believed to be a member of a federally recognized tribe:

- The involved agency will notify the governor's office of Indian affairs (GOIA) in accordance with RCW [10.114.021](#).

- A member of the IIT will be assigned as a tribal liaison within the first twenty-four hours and keep the tribe (or a representative of the tribe's choice) apprised of all significant developments of the investigation.

For more information, please visit:

<https://apps.leg.wa.gov/wac/default.aspx?cite=139-12-030>