



OFFICE OF THE DISTRICT ATTORNEY
CONTRA COSTA COUNTY

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DISTRICT ATTORNEY

July 28, 2023

Cynthia Roberts
Foreperson of the 2022 – 2023 Contra Costa Civil Grand Jury
725 Court Street
P.O. Box 431
Martinez, CA 94553

Dear Mrs. Roberts,

Thank you for the opportunity to respond to the Grand Jury report titled, "Expanding Transparency and Reducing Delays," which you forwarded to me on June 2nd, 2023. The civil grand jury serves an important role, and my hope is that this letter adequately addresses the grand jury's concerns. The grand jury's specific findings and recommendations are addressed below:

Grand Jury Finding 1A:

Despite policies and internal goals, the DA's Office takes too long to make a criminal charge determination in a fatal incident involving law enforcement officers.

CCCAO Response: The CCCDAO partially disagrees with the finding.

1. **Introduction:**

Beginning in October of 2018, the Contra Costa County District Attorney's Office (CCDAO) initiated the implementation of a new policy in order to completely revamp the Law Enforcement Involved Fatal Incidents (LEIFI) process to make it more thorough, independent, and transparent. The new policy was developed after a critical review of the previous policy and several listening sessions with members of the public both noting significant deficiencies.

The new CCCDAO LEIFI policy is now complete and the CCCDAO is one of only a handful of District Attorney's Offices in the State of California that provides complete transparency into LEIFI incidents by publishing an online report, available to the public, which provides a factual description of the incident, details of the investigation, and a legal analysis as to why criminal charges are not warranted.

As of June of 2023, after thousands of dedicated work hours, the CCCDAO has successfully completed the extensive backlog of LEIFI cases dating back to 2018 and the CCCDAO is currently up to date on all online LEIFI reports. The implementation and execution of this new process took years and spanned the COVID pandemic, which greatly impacted the CCCDAO and caused further delay. In total, the implementation and execution of the new LEIFI process required countless meetings, trainings, and conversations over multiple units within the CCCDAO. The CCCDAO has completed its review of all backlogged LEIFI cases and is currently on schedule to make a filing decision, at the latest, within 90 days after the coroner's inquest.

Although the CCCDAO LEIFI process is now one of the most thorough, independent, and transparent in the state, it took years of planning, reorganization, and training to fully implement and execute. As such, the CCCDAO acknowledges that criminal charge determinations for LEIFI incidents were delayed during the implementation and execution of the new process.

2. The Revision, Implementation, and Execution of the New CCCDAO LEIFI Policy/Procedure was an Extensive and Multifaceted Process that Took Years to Complete.

On a fundamental level, the implementation of the new CCCDAO LEIFI process changed the previous system that relied on a single person overseeing the LEIFI investigation, to a new system that includes a team of inspectors and a team of attorneys. In essence, LEIFI process transitioned from "a person," to "a process."

Completing this fundamental transition required a number of action items, including but not limited to: the creation of a written CCCDAO internal LEIFI policy; expansion and restaffing of the investigative division participating in the investigation; expansion and restaffing of the Deputy District Attorneys [DDAs] attending and consulting in the investigation, and training of both DDA and CCCDAO Inspectors in newly enacted laws and policies/procedures. *Ideally, the CCCDAO would have a dedicated team of independent investigators and attorneys for this important work. However, it should be noted that in the absence of additional funding, the CCCDAO implemented the new policies and procedures without adding any new staff members. Existing investigators and attorneys perform the necessary work in addition to their regular assigned duties.*

The new LEIFI process includes a Lieutenant of Inspectors, Deputy District Attorney, and a team of inspectors conducting the investigation, follow-up and review of all reports, audio recordings/transmissions, videos, and photographs. Of note, each LEIFI case can include the review of up to approximately 3,000 pages of documentation, thousands of photographs, and can include the review of up to 60 hours of audio or video evidence.¹

¹ As an example of the potential complexity of LEIFI cases, the 2020 LEIFI incident involving Jose Luis Lopez involved the use of force of approximately 10 officers, almost all of whom were equipped with body worn camera in an incident that lasted approximately 45 minutes. In total, the review of the body worn camera alone took over 40 hours to view in preparation of the LEIFI report.

In addition, the new process instituted transparency in the form of an online report that provides details on if and why criminal charges are not filed. Creation of this report required the successful completion of a number of action items, including developing a standardized online LEIFI report; implementing a process for the creation, presentation, and review of the document; and reorganizing/restructuring of the CCCDAO website to make the newly created reports publicly available.

Of note, in 2020 the California Legislature amended Penal Code 835a which defines the law around the use of deadly force by peace officers in California. These amendments require a more comprehensive analysis of incidents where a peace officer uses deadly force that results in the death of a person in the community. The deliberative process of deciding whether to file a criminal case against a police officer can take time and is uniquely complex. Filing considerations should include what is observed on body worn cameras, patrol vehicle cameras, and all other available video and audio capturing events relevant to the incident.

Filing considerations also include the involved officer's training, the use of de-escalation techniques, the law enforcement agency's relevant policies and whether such policies were violated, the officer's prior and subsequent use of force and professional history, the history of the decedent, what information the officer received via dispatch, fellow officers or other persons, the observations and statements of witnesses, and the potential consultation of police use of force experts.

3. The Coroner's Inquest is an Important Aspect of the LEIFI Process and Should Be Reviewed and Considered, when Feasible, Prior to the Making of a Filing Decision.

As referenced in the Grand Jury report, the CCCDAO does not author a report that is available online in instances where criminal charges are filed against any of the involved individuals. Understanding the impact of a delayed report, the CCCDAO established a self-imposed 90-day post coroner's inquest deadline to publish the aforementioned online LEIFI reports.

The purpose of waiting for the completion of the coroner's inquest is to give the CCCDAO the opportunity to review and consider the evidence presented at the hearing. Testimony provided at the coroner's inquest is under oath, and many, if not all of the involved civilian and police officers who witnessed the fatal incident testify at the hearing. For purposes of making a filing decision, it is important to review subsequent sworn statements of key witnesses to determine if there are any critical changes to their testimony or if any additional evidence is presented at the hearing.

The coroner's inquest may provide valuable insight into whether or not criminal charges are warranted, however the completion of the coroner's inquest is not required in order for the CCCDAO to file criminal charges in LEIFI incidents. Depending on the facts of each particular

LEIFI incident, the strength of a case against a police officer or civilian may be so strong as to warrant the immediate filing of criminal charges.

4. Conclusion

Although the CCCDAO acknowledges that criminal charge determinations in LEIFI incidents were delayed during the implementation and execution of the new LEIFI process, the CCCDAO has completed its review of all backlogged cases. Moving forward, the CCCDAO will meet its' internal deadline of issuing a filing decision, at the latest, within 90 days of the completion of the coroner's inquest.

Grand Jury Finding 1B:

The criminal investigation process has significantly improved since 2018.

CCCDAO Response: The CCCDAO agrees with the finding.

Grand Jury Finding 1C:

The DA's Office waits on average 10 months for the coroner's inquest to be held.

CCCDAO Response: The CCCDAO agrees with the finding.

Grand Jury Finding 1D:

N/A

CCCDAO Response: Page 16/17 of the Grand Jury Report requested a response from the CCCDAO to Grand Jury Findings F1A – F1D. However, a review of the findings listed on page 11/17 of the report reveals that the Grand Jury did not appear to make a factual finding under "1D." As such, the CCCDAO is unable to respond to this finding.

Grand Jury Recommendation #1:

For incidents in which a member of a law enforcement agency uses deadly force, the district attorney should consider releasing a public report about the incident or filing charges within six months of the incident and without necessarily waiting for the coroner's inquest.

CCCDAO Response: The recommendation (in part) is currently in effect.

As stated previously, the CCCDAO is not required to wait for the coroner's inquest and, depending on the particular facts, may issue a criminal complaint prior to the completion of the coroner's inquest when warranted.

Grand Jury Finding 3A: The Protocol has not been updated since 2014

CCCDAO Response: The CCCDAO agrees with the finding.

Grand Jury Finding 3B: Since 2014 there have been changes in state law, including, but not limited to, Government Code Sections 7286(b) (requiring that agencies adopt policies that include immediate reporting of excessive force, separate reporting to the department of justice, and other procedures) and 7286.5 (transport restrictions) and Penal Code Sections 832.5 (retention of certain records) 832.7 (providing that certain factual information is not privileged) and 832.13 (required immediate reporting of all use of force) and new policies in the offices of the DA and Sheriff.

CCCDAO Response: The CCCDAO agrees with the finding.

Grand Jury Recommendation #3

The parties to the 2014 Protocol should consider updating the Protocol to ensure that it is in compliance with current state law, the procedures identified in the DA's LEIFI policy, and any applicable changes in the Sheriff's LEIFI policy. This should include updating the checklists that are part of the Protocol.

CCCDAO Response: The CCCDAO agrees with the finding. The CCCDAO, Sheriff's Office, and Contra Costa County Chiefs of Police are currently in the process of updating the Protocol.

Sincerely,



Diana Bector
District Attorney