

# **TRAVIS COUNTY DISTRICT ATTORNEY**

## **CIVIL RIGHTS UNIT**

### **Standard Operating Procedures (SOP)**

**Revised 10/2017**

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**TRAVIS COUNTY DISTRICT ATTORNEY**  
**CIVIL RIGHTS UNIT**  
**Standard Operating Procedures Governing Monitoring, Review, and Investigation of**  
**Officer-Involved Shootings and Other Qualifying Instances of**  
**Law Enforcement Use of Force**

**I. OVERVIEW; APPLICABILITY; EFFECTIVE DATE; DEPARTURES AND MODIFICATION.**

**A. Overview of Civil Rights Unit and Operations.**

- 1.01. These standard operating procedures (“SOP”) govern the operations and responsibilities of the Travis County District Attorney’s (“District Attorney”) Civil Rights Unit (“CRU”).
- 1.02. The CRU reports directly to the District Attorney. The CRU’s primary duty is to determine whether evidence exists to prosecute a peace officer, or person acting under his/her direction, for the use or threatened use of force, or otherwise causing injury, to any person in any incident falling within the Unit’s Scope of Work, as defined in this document, occurring within the District Attorney’s jurisdiction.
- 1.03. The CRU is responsible for the monitoring and review of any law enforcement agency’s investigation of an officer-involved shooting or other use-of-force incident falling within the Unit’s Scope of Work. Where appropriate or necessary to fully develop evidence, the CRU may conduct its own independent investigation to supplement the evidence provided by the law enforcement agency investigating the incident. The Unit shall determine whether to seek the filing of criminal charges by grand jury indictment, or by other means. The Unit will work in cooperation with other prosecuting offices having geographic jurisdiction over any state or federal crimes. Throughout this document, any incident falling within the Unit’s Scope of Work will be referred to as a “critical incident.”<sup>1</sup>
- 1.04. If the CRU’s Scope of Work is expanded to include the review, monitoring or review of any other matters, the Director of the Unit shall draft and present policies, operating procedures, and protocols governing its expanded responsibilities to the District Attorney for approval and implementation.

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<sup>1</sup> Definitions of key terms such as “monitor,” “review,” “investigation,” *etc.*, are set forth in this SOP in § II A, below.

## **B. Applicability; Effective Date; Purpose and Preface.**

1.01. Mission Statement, Institutional Values, Performance Measures, and Strategic Goals and Objectives. The CRU's Mission Statement, Institutional Values, Performance Measures, and Strategic Goals will be made publicly available in separate documents that will be available on the Unit's portal accessible through the District Attorney's website.<sup>2</sup> This document sets forth the CRU's policies, standard operating procedures, performance measures, and strategic goals and objectives. Throughout this document, the collective statements, policies and procedures, and performance measures will be referred to as the "Standard Operating Procedures" (SOP).

1.02. Conflict with Existing Policies and Procedures. Nothing stated in this SOP is intended to alter or modify any office policy or procedure of general applicability. This SOP is intended to address solely the day to day operations governing the CRU's performance of its duties and functions within the District Attorney's Office.

1.03. Modification, Alteration, or Suspension of Policies and Procedures. The District Attorney for Travis County has sole authority to alter, modify, or rescind any statement, value, policy, procedure, or measure at his / her discretion and without the need for any process governing the alteration, modification, suspension, or rescinding of the SOP or any of its contents.

With the approval of the District Attorney, the Director of the CRU has the authority to modify, alter, rescind, or suspend the SOP or any of its contents as is necessary to better implement existing District Attorney policies and procedures, to carry out its duties in relation to the needs of a specific investigation, or promote the mission statement and institutional values governing the CRU's operation.

Nothing in this SOP is to be interpreted as precluding the CRU's authority to pursue any legal means to fulfill its investigative or prosecutorial functions. Any departures will be noted, documented, and published in the same manner as are specific items set forth in this SOP.

1.04. Effective Date. This SOP is effective immediately upon the District Attorney's approval. This SOP may be modified at any time by the CRU

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<sup>2</sup> Access the Civil Rights Unit's webpage at <https://www.traviscountytexas.gov/district-attorney/cru>.

Director with approval by the District Attorney. This SOP should not be read as creating a basis for any criminal, civil, or administrative liability.

- 1.05. Immediate Implementation. The Director shall implement this SOP immediately.
- 1.06. Annual Performance Re-Evaluation for SOP Revision. The Director and Assistant CRU District Attorney shall develop a policy by which the CRU will implement this SOP and seek to determine ways in which it can develop and implement Best Practices in its day to day operations and fulfillment of its prosecutorial functions and mission. In reviewing the effectiveness of the CRU and its policies, procedures, and protocols, the Unit shall rely upon the data it collects that is gathered pursuant to policies governing data collection and analysis as contained these SOPs and other Unit statements of policy, procedure and protocol.

### **C. Legal and Prosecutorial Standards**

- 1.01. Independent Monitoring and Review. It is the policy of the CRU to conduct an independent monitoring and review, and where appropriate an independent investigation of all critical instances and other matters falling within its Scope of Work as defined in these SOPs.
- 1.02. Best Practices. In conducting its independent monitoring and review or independent investigation, the CRU is to follow prosecutorial best practices in fulfilling its primary duty to see that justice is done and will adopt, implement, and follow a standard of inquiry that embraces both its legal and ethical responsibilities intended guide its discretion in its decision to decline or seek the filing of criminal charges.<sup>3</sup> These standards shall be designed to further the institutional values of impartiality, professionalism, and fairness to all parties involved and directly impacted by a critical incident—both law enforcement and civilian, with due regard for the purposes and construction of the Texas Penal Code and Texas Code of Criminal Procedure.<sup>4</sup>

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<sup>3</sup> TEX. CODE CRIM. PROC. § 2.01.

<sup>4</sup> There are various sources found within Texas substantive and procedural law that provide guidance in determining an appropriate prosecutorial standard. The Texas Penal Code provides that penal statutes are not be applied “strictly” but rather “shall be construed according to the fair import of their terms, to promote justice and effect the objective of [the] code.” TEX. PEN. CODE § 1.05 (a). The determination of whether criminal charges should be sought should consider the objectives of the penal code set forth § 1.02 of the Penal Code. In short, those objectives include deterrence, rehabilitation, incapacitation, with due regard to proportionality and prevention of arbitrary and oppressive treatment to subjects of investigation. The Texas Code of Criminal Procedure is directed in part to “the officers who are to act under them” and seek to further the institutional goals of deterrence, comprehensive and impartial investigations, and ensuring fair trials. TEX. CODE CRIM. PROC. ART. 1.03. Chapter 56 of the Texas Penal Code sets

## II. DEFINITIONS; TERMINOLOGY

### A. Terminology Related to Policies and Procedures.

The following terms govern the interpretation and implementation of the matters set forth in this SOP:

1. “Policies” set for the mandatory instructions governing how CRU is to be run and are based on both legal and extra-legal aspirational considerations. Any departure must be preceded by specific and documented approval. Policies are enacted to implement organizational values and founding principles.
2. “Procedures” are specific instructions and rules that govern the means by which a process is implemented, and will define the day to day operations of the CRU. Procedures are mandatory. Any departure must be preceded by specific and documented approval. Procedures are designed to implement policy.
3. “Investigation” refers to an instance in which the CRU determines, following the conclusion of a law enforcement agency’s investigation of any incident falling within the CRU’s Scope of Work, that the investigation has left significant or necessary investigative or forensic matters under or unresolved, and that in order to fully investigate the incident that an investigation independent of the law enforcement agency having primary investigative responsibility is appropriate and should be conducted and led by the CRU. An independent CRU investigation can take place with or without the Grand Jury.
4. “Monitor” refers to the process by which the CRU is able to observe and participate in the primary investigation conducted by the law enforcement agency having primary investigative responsibility over any incident within the Unit’s Scope of Work. “Monitoring” contemplates that the CRU and its agents have unfettered access to the initial processing of the scene of any critical incident and to any subsequent investigation, including, but not limited to, having the authority to monitor witness interviews, gather evidence, etc. Because the extent to which the CRU has unfettered access to the law enforcement agency’s investigation is dependent upon the agency, the Unit will seek memorandums of understanding of all law

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forth both institutional values and goals as well as specific procedures to ensure that the rights of victims are accorded due respect.

enforcement agencies having jurisdiction within Travis County that guarantee such access. “Monitoring” also includes a meaningful opportunity for the CRU to participate in any law enforcement agency investigation by having any reasonable investigative or forensic requests considered and acted upon. “Monitoring” of a law enforcement agency’s investigation is one aspect of the CRU’s responsibilities when any critical incident occurs: monitoring of a law enforcement agency’s investigation contemplates the Unit’s responsibilities while the investigation is being conducted. The other aspect of the CRU’s responsibility is a review function which is to take place once the law enforcement agency’s investigation has been completed and the Unit has been provided the investigating agency’s entire investigative file. The monitoring function is distinct from the CRU’s traditional advisory role by which it advises the primary investigating law enforcement on legal matters such as the drafting of search and arrest warrants, the interviewing of witnesses, *etc.*

5. “Protocol” is meant to refer to rules governing relations between individuals involved in a single matter. Protocol is meant to govern the means by which separate agencies carry out their day to day operations in a joint effort or under a single set of circumstances. Protocol should be based on formal Memorandums of Understanding with other agencies or informal practices, customs, and traditions in the absence of such memorandums of understanding.
  
6. “Review” refers to the process by which the CRU evaluates and assesses the entirety of the evidence and information disclosed following and as the result of the primary investigating law enforcement agency’s investigation of a critical incident. The CRU’s review function is the second of 2 functions in the investigative process of an incident falling within its Scope of Work: the first function is a monitoring of the law enforcement agency’s investigation while the investigation is underway; the “review” function is undertaken once the law enforcement agency’s investigation has been completed and the CRU has been provided with the entirety of its investigative file. The review function is distinct from the CRU’s traditional advisory role by which it advises the primary investigating law enforcement on legal matters such as the drafting of search and arrest warrants, the interviewing of witnesses, *etc.*

## **B. Definitions Governing Specific CRU Operations.**

In this SOP, the following terms are defined as follows:

1. “Critical incident” has the same meaning as “Officer-Involved” incident and is meant to refer to any incident falling within the CRU’s Scope of Work, as defined below at § IV A, below.
2. “Involved Officer” any peace officer displaying or using a weapon, or otherwise engages in any conduct, or causing a resulting injury, meeting any of the criteria defining CRU’s Scope of Work as defined below at § IV A, below.
3. “Cause” is understood to include any result would not have occurred but for the conduct of the actor, operating either alone or concurrently with another cause, unless the concurrent cause was clearly sufficient to produce the result and the conduct of the actor clearly insufficient.<sup>5</sup>
4. “Officer-Involved Incident” includes any incident in which a peace officer, (or someone acting under his / her direction), acting under the color of authority, is directly involved in the following:
  - a. The discharge of a firearm which causes the death of, or the injury, of another;
  - b. The intentional use of any weapon, non-deadly or deadly, by a peace officer (or someone acting under his / her direction), which causes the death, serious bodily injury, or injury to another;
  - c. The use or threatened use of deadly or non-deadly force causing death, serious bodily injury, or injury;
  - d. The death of a person while in custody, or under a peace officer’s control excluding deaths occurring after the person has been booked, while the person is under the care of a provider for disease or illness, when such deaths are medically expected and when custodial suicide, trauma, accident, or use of intoxicants are not involved.

“Primary Investigating Law Enforcement Agency” refers to a law enforcement agency having geographical jurisdiction over the investigation of an Officer-Involved Incident.

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<sup>5</sup> TEX. PEN. CODE § 6.04.

6. “Employing Agency” refers to a law enforcement agency employing an officer[s] who is a participant in an Officer-Involved Incident.

### III. ORGANIZATION

#### A. Organization Chart

1.01.Independence and Autonomy of the Division. The CRU is an independent and autonomous division with the District Attorney’s Office whose day-to-day operations are defined by its Scope of Work subject to the approval of the District Attorney. The CRU may engage in any matters directly requested by the District Attorney not specifically set forth in the Scope of Work if the District Attorney deems such to be necessary to fulfill any legitimate prosecutorial function.

As an independent division with the District Attorney’s Office, the CRU is bound by the mandate to see that justice is done in the fulfillment of its duties and the governing principles and values of the Office of the District Attorney, but the CRU’s primary purpose is to investigate all officer-involved incidents according to the highest investigative and prosecutorial standards with integrity, due regard for the dignity of all persons involved, and in as expeditious, professional and transparent manner as the circumstances permit.

The CRU will ensure that any officer-involved incident referred to it is fully and impartially investigated, all material evidence is gathered, and each investigation is carefully evaluated under relevant law to determine whether prosecution is warranted. CRU investigations or case decisions are expressly not to be governed by possible effects on particular cases prosecuted by the Trial Division.

1.02.Chain of Command. The CRU is comprised of a Director of Civil Rights Division, and an Assistant District Attorney / Deputy of Civil Rights Division. The CRU Director reports directly to the District Attorney and is to consult with the District Attorney concerning all matters of policy, procedures, and protocol prior to implementation, unless such approval has already been expressly granted.

1.03.Organization and Span of Control. Once fully operational, the CRU, at a minimum should have assigned to it a (1) full-time Director, (2) full time Assistant District Attorney / Deputy of Civil Rights Division, (2) paralegal or administrative assistant. Additionally, the CRU shall have at its disposal at all times either (1) a full-time licensed peace officer or investigator assigned

solely to the unit, or (2) a full-time licensed peace officer or investigator available for assignment to particular cases.<sup>6</sup>

- 1.04. Mandate for Determination of Resources. The CRU shall conduct an annual review of its performance measures and institutional needs to determine whether it can meet fulfill its purpose and mission and determine whether additional budgetary and / or human resources are necessary. Such requests shall be made by the Director to the District Attorney.
- 1.05. Alignment and Dialog with Local, Statewide, and National Law Enforcement Agencies, Educational, and Policy Agencies. The CRU shall seek to establish partnerships with its local, state and national partners in order to more effectively and efficiently monitor, review, investigate, and prosecute cases falling within its Scope of Work, create opportunities for meaningful interaction and sharing of information with families of those directly impacted by a law enforcement officer's use of force (irrespective of the legality of the use of such force), and seek meaningful opportunities for engagement at the policy level to minimize the occurrence of and, where possible, lethality of instances in which law enforcement use of force is employed.
- 1.06. Training in All Aspects of Use of Force from Perspectives of Use of Force, Modification of Use of Force, and Sensitivity Training. The CRU shall ensure that all of its prosecuting attorneys, paralegals and administrative assistants, and investigators receive training specifically focusing on matters relating to law enforcement use of force in order to implement the CRU's policies and procedures in the most efficient, effective, and professional manner possible.

## **B. Implementation of Initiatives and Mandates.**

- 1.01. Initiatives and Mandates. Upon approval of these SOPs, the CRU Director shall evaluate the need for any initiatives and mandates believed necessary to optimize the Unit's efficiency, effectiveness, and professionalism in the exercise of its responsibilities. If the Director determines the possible need for any such initiatives or mandates, he / she shall reduce the same to writing and forward them to the District Attorney. The CRU Director shall evaluate the need to propose, modify or alter, or repeal such initiatives and mandates periodically on a quarterly basis and as needed on a case by case basis.

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<sup>6</sup> See Travis County District Attorney Organizational Chart at <https://www.traviscountytx.gov/district-attorney/divisions>.

**C. Implementation and Review of Strategic Goals, Objectives and Performance Measures.**

1.01.Strategic Goals and Objectives; Performance Measures. Upon approval of these SOPs, the CRU director shall determine the strategic goals and objectives and corresponding performance measures that govern the CRU in its day to day operations and the fulfillment of its responsibilities. The CRU Director shall evaluate the need to propose, modify or alter, or repeal such strategic goals and objectives and corresponding performance measures on a quarterly basis and as needed on a case by case basis. The CRU shall review its strategic goals and objectives and corresponding performance measures on an annual basis and publish a set of strategic goals and objectives on an annual basis.

**IV. OVERVIEW OF UNIT**

**A. Scope of Work**

1.01.Scope of Work. The CRU investigates and prosecutes offenses involving a law enforcement officer's use of force against another and causes "harm", as that term is defined in Texas Penal Code § 1.07 (25), in the following circumstances:

- (a) The officer's use of force causes "bodily injury" of another as that term is defined in Texas Penal Code § 1.07 (8);
- (b) The officer's use of force caused the death or "serious bodily injury" of another as that term is defined in TEX. PEN. CODE § 1.07 (46);
- (c) The officer uses a deadly weapon, as that term is defined in TEX. PEN. CODE § 1.07 (16), and any individual dies or suffers serious bodily injury;
- (d) The officer's use of force is classified as "deadly force" as that term is used and contemplated in TEX. PEN. CODE § 9.01 (3);<sup>7</sup> or
- (e) A person dies while in the custody of a law enforcement officer.

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<sup>7</sup> A critical incident in which a person other than a peace officer uses force under the above-listed circumstances and who claims to have acted under the direction of a peace officer as contemplated under TEX. PEN. CODE § 9.51 (b) is a matter properly within the Civil Rights Unit's Scope of Work.

1.02. Typical Offenses. The CRU's Scope of Work involves a peace officer's (or someone acting at his/her direction) use of force against another individual. Consequently, the offenses that will typically be the subject of a CRU investigation are contained in penal provisions governing crimes against persons (Title 8, TEX. PEN. CODE), offenses against public administration, (Title 8, TEX. PEN. CODE), and offenses against public administration (Title 8, TEX. PEN. CODE). Typically, CRU investigates offenses involving the use of force, with or without injury, and / or display or discharge of a firearm, or use of a weapon, and may include (but not limited to)<sup>8</sup>:

- (a) Murder [TEX. PEN. CODE § 19.01]
- (b) Manslaughter [TEX. PEN. CODE § 19.04]
- (c) Criminally Negligent Homicide [TEX. PEN. CODE § 19.05]
- (d) Unlawful Restraint [TEX. PEN. CODE § 20.02]
- (e) Assault [TEX. PEN. CODE § 22.01]
- (f) Aggravated Assault [TEX. PEN. CODE § 22.02]
- (g) Injury to a Child, Elderly Individual, or Disabled Individual [TEX. PEN. CODE § 22.04]
- (h) Deadly Conduct [TEX. PEN. CODE § 22.05]
- (i) Terroristic Threat [TEX. PEN. CODE § 22.07]
- (j) Abuse of Official Capacity [Tex. Pen. Code § 39.02]
- (k) Official Oppression [TEX. PEN. CODE § 39.03]
- (l) Violations of the Civil Rights of Person in Custody; Improper Sexual Activity with Person in Custody [TEX. PEN. CODE § 39.04]
- (m) Failure to Report Death of Prisoner [TEX. PEN. CODE § 39.05]

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<sup>8</sup> The enumeration of the above-listed offenses is not to be construed as limiting the CRU from investigating and prosecuting other offenses not here enumerated or contained in provisions outside of the Texas Penal Code.

(n) Misuse of Official Information Abuse of Official Capacity [Tex. Pen. Code § 39.06]

1.03. Typical Defenses. If a CRU review or investigation indicates that an instance of use of force would constitute a penal offense under Texas law, CRU will proceed to determine whether such use of force was justified as a legal defense as contemplated by TEX. PEN. CODE § 9.02 under the following provisions:

1. Justifiable confinement, TEX. PEN. CODE § 9.03;
2. Justifiable threatened use of force, TEX. PEN. CODE § 9.04;
3. Public Duty, TEX. PEN. CODE § 9.21 (a); or
4. Use of Force to effect an arrest or search as contemplated by TEX. PEN. CODE § 9.51.

1.04. Use of Force against a Law Enforcement Officer's Unjustified Use of Force. In some instances, analysis of whether a law enforcement officer's use of force is justified may warrant a determination of whether an individual against whom a law enforcement officer used force was justified in using force in self-defense as provided in Texas Penal Code § 9.31 (c).

Role of Prosecutor in Primary Law Enforcement Agency's Investigation: Monitoring, Review, and Independent Investigation. Following the occurrence of a critical incident falling within the CRU's Scope of Work, the CRU will:

1. Respond to the scene of any critical incident and monitor the primary law enforcement agency's processing of the scene, gathering of evidence, questioning of subject and non-subject officers and witnesses, *etc.* Where possible and pertinent to the resolution of key investigative/forensic matters involved in a critical incident, attend procedures related to the investigation conducted by agencies other than the primary investigating law enforcement agency, *e.g.*, an autopsy conducted by a medical examiner, to the extent possible under law or the agency's policy.
2. Assist and advise the primary investigating law enforcement agency on various legal issues that may arise during the investigation of a critical incident including but not limited to search and seizure, the issuance of warrants, Miranda warnings, custodial interrogations, interviews, identification procedures, arrests, elements of crimes, immunity, defenses, *etc.*

3. To the extent permitted by law or agreement, monitor the primary investigating law enforcement agency's investigation by ensuring that the primary investigating law enforcement agency briefs the CRU on developments in the investigation in a timely and regular manner, provides the CRU with access to all evidence gathered during the investigation, keeps the CRU updated on the status of the investigation and any outstanding and unresolved investigative or forensic matters.
4. To the extent permitted by law or agreement, participate in the primary law enforcement agency's investigation by making pertinent investigative or forensic requests, consulting with the law enforcement agency's investigators assigned to the investigation, and otherwise taking affirmative steps to ensure the integrity of the investigative process.
5. Upon the primary investigative law enforcement agency's notice to the CRU that it has completed its investigation, the primary investigative law enforcement agency shall provide the CRU and its agents with the entire investigative file, including, but not limited to, photographs, video recordings, and audio recordings, including but not limited to, 911 communications, DMAV and body camera recordings; witness statements; physical evidence; results of forensic testing; and reports, *etc.*
6. The CRU shall conduct an independent review of the entire investigative file to determine whether (a) further investigation is necessary to resolve significant unresolved investigative matters, or (b) criminal charges should be sought. If there are unresolved investigative matters, the CRU director shall determine whether the primary investigating law enforcement agency can resolve the matters or whether an independent investigation is necessary. If the integrity of the investigation is not compromised, the Director shall request the primary investigating law enforcement agency to take steps to resolve the unresolved investigative matters.
7. An independent investigation by the CRU may be warranted if (1) there are unresolved investigative or forensic matters necessary for the legal determination of whether a crime has occurred, or (2) if the integrity of the investigation, and the appearance thereof is adversely impacted by the failure to resolve the investigative or forensic matter.7. If the

Director of the CRU determines that an independent investigation is necessary, he/she shall:

- (a) draft an investigative directive that specifically identifies the matters left unresolved by the primary investigating law enforcement agency's investigation the reasons for the determination, and the means suggested for resolution;
- (b) provide the District Attorney with this directive;
- (c) if the District Attorney agrees, the Director may (1) initiate the independent investigation employing the CRU's resources, and/or (2) conduct any further investigation by means of the grand jury process. The CRU will notify the Primary Agency of its intent to conduct additional independent investigation;
- (d) the CRU may submit additional directives to the District Attorney for approval to expand its investigation if further investigation is appropriate.

## **B. Prosecutorial/Investigative Standard**

1.01. In investigating a criminal matter falling within its Scope of Work as defined in § IV A, above, the objective of the CRU is to make the following legal determination:

*Whether there is credible and admissible evidence sufficient to convince a rational trier of fact beyond a reasonable doubt that that a peace officer (or one acting under his/her supervision or direction) has caused bodily injury to, or the death of another,<sup>9</sup> without legal justification.*

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<sup>9</sup> The inquiry shall include the identity of all person[s] who might be responsible for the conduct which is the subject matter of the investigation as contemplated under § 7.01, *et. seq.*, TEX. PEN. CODE, defining criminal responsibility.

**TRAVIS COUNTY DISTRICT ATTORNEY  
CIVIL RIGHTS UNIT  
Declination Letter Policy and Procedure**

**V. DECLINATION LETTER POLICY AND PROCEDURE**

**A. Statement of Policy; Applicability; Purpose; Definitions**

This statement of policy and procedure governs the Civil Rights Unit’s (“CRU” or “Unit”) drafting and issuance of its publicly-addressed letters declining the criminal prosecution of cases (“declination letter”) of a specific category of cases falling within the Unit’s Scope of Work.<sup>10</sup> Specifically, this policy is intended to implement the CRU’s policy of providing a formal and public statement of the Office of the Travis County District Attorney’s (“Travis County District Attorney) decision to forego presentation of a case covered by this policy<sup>11</sup> to a grand jury or special grand jury for possible indictment, and an explanation of that decision.

1.01. Statement of Policy. It is the policy of the Travis County District Attorney to issue public declination letters in criminal investigative matters formally referred to the Civil Rights Unit in which the District Attorney decides to forego presentation of that matter to a grand jury or special grand jury for possible indictment in applicable cases as enumerated in this policy.

1.02. Applicability. This section addresses cases covered by the CRU’s declination letter policy. The policy of issuing declination letters in lieu of grand jury or special grand jury presentation is applicable only to criminal investigations referred to and opened by the CRU involving:

- (a) an officer-involved shooting causing injury to any person; and
- (b) an officer-involved use of deadly force causing injury to any person.

1.03. Purpose. The purpose of the declination letter is to:

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<sup>10</sup> See Civil Rights Unit Standard Operating Procedure *Standard Operating Procedures Governing Monitoring, Review, and Investigation of Officer-Involved Shootings and Other Qualifying Instances of Law Enforcement Use of Force* § IV A.

<sup>11</sup> See § 1.02.

- (a) provide a formal, written explanation of the Travis County District Attorney's decision to forego presentation of a criminal investigation to a grand jury or special grand jury for possible indictment; and
  - (b) provide the public with a summary of the facts and circumstances leading to the particular use of force instance, including a discussion of the evidence forming the basis of the decision, a summary of witness reports of the incident, and a summary of the investigation including any forensic analysis and testing.
- 1.04. Definitions. For purposes of these policies and procedures, the following definitions are applicable.
- (a) "Primary Prosecutor" is the CRU prosecutor who has been assigned the primary responsibility for the drafting of a declination letter in a particular criminal investigative matter referred to the CRU for investigation, review and possible prosecution.
  - (b) "Primary Investigator" is the CRU investigator who has been assigned by the primary prosecutor, and who has the primary responsibility for assisting the primary prosecutor in the review and investigation of a particular criminal investigative matter referred to the CRU for investigation, review and possible prosecution.
  - (c) "Investigating law enforcement agency" is the law enforcement agency having jurisdiction and/or to whom has been assigned as the primary investigative agency in an instance involving a law enforcement officer's use of force for which the declination letter process is applicable. *See* § 1.02, above.

**B. Overview of Declination Letter Assignment, Drafting, and Publication.**

- 1.01. Drafting Process. Declination letters shall be drafted by the Civil Rights Unit. The drafting of declination letters is intended to be collaborative and will involve a process of multi-party and agency review for accuracy and completeness. Typically a declination letter will be assigned to a single CRU prosecutor for primary drafting responsibilities, but collaboration and sharing of drafting responsibilities is appropriate and encouraged if circumstances warrant. The following process provides a general framework for the drafting of decision letters and need not be followed in strict lexical order, as long as each step is followed prior to publication of a final declination letter.

(a) Assignment.

- i. *Prosecutor Assignment.* As soon as is practicable following notification by the law enforcement agency assigned to the investigation of the use of force incident (“investigative law enforcement agency”), a CRU prosecutor, the primary prosecutor, shall be assigned as the primary attorney responsible for drafting of the declination letter. If the circumstances of the incident warrant, or the needs of the CRU warrant, more than one CRU prosecutor may be assigned the responsibility of drafting the declination letter.
- ii. *Investigator Assignment.* Each criminal investigation involving an instance of use of force within the CRU’s scope of work shall be assigned a primary Travis County investigator, the primary investigator, preferable (although not necessarily) an investigator who attended the initial incident call out and responded to the scene of the incident. Assignment of an investigator shall always consider specialized experience, skill, or training best suited to the investigative needs of a particular matter to which he/she is assigned. The prosecutor assigned to the matter has the authority to assign the investigator to any matter he/she has been assigned the responsibility of declination letter drafting.

(b) Review. After notice by the investigating law enforcement agency of a completed investigation, the primary prosecutor shall review the investigation and brief the CRU on—

- i. the specific use of force legal issues involved in the matter,
- ii. a summary of the credible investigative facts, including any unresolved investigative issues or investigative conundrums,
- iii. recommendations for further investigation by the investigative law enforcement agency or the District Attorney’s Office, and
- iv. matters of special individual/public interest or concern, if any. If the primary prosecutor determines the investigation complete, he/she shall draft a declination letter. If there are further matters in need of investigation, the primary prosecutor

shall ensure that those matters are resolved. The primary prosecutor and/or the CRU Director shall notify and brief the District Attorney on the status of the investigation and initial legal analysis.

- (c) Drafting. The primary prosecutor shall draft a declination letter that shall address all of the matters as required by the policy governing declination letter content.
- (d) Review by Interested Parties/Agencies; Forward to District Attorney for Review. Upon completion of a draft declination letter, the primary prosecutor shall distribute a copy of the draft to the following parties/persons to ensure that the draft is accurate and complete:
  - i. CRU personnel including the CRU Director, prosecuting attorneys, administrative assistant, and primary investigator;
  - ii. The primary investigative agency's lead detective assigned to the case;
  - iii. Any agency or laboratory performing any forensic analysis or testing relevant to the declination letter's analysis, conclusion, or public interest.
- (e) The primary prosecutor shall ensure that the feedback and responses given by notified parties are considered and incorporated, when necessary, in the declination letter draft.
- (f) Forwarding of Initial Draft to District Attorney; Revision, Editing, and Revision Process; Final Declination Letter.
  - i. A draft that has been reviewed by CRU personnel and interested parties/agencies shall be forwarded to the District Attorney for initial review and comment.
  - ii. The primary prosecutor shall revise, edit and proofread the declination letter. CRU personnel shall assist the primary prosecutor in the revision, editing, and proofreading process.

- iii. The primary prosecutor shall notify the CRU Director and District Attorney when a final declination letter has been completed.
  
- (g) Surviving Family Notice and Outreach. The primary prosecutor shall coordinate its victim/surviving family member outreach in such a way that any meetings with victim/surviving family members should take place prior to the release of the declination letter. Victim/surviving family members shall be notified prior to the public release of the declination letter.
  
- (h) Final Declination Letter and District Attorney Approval; IT Notification and Preparation. Once the District Attorney has approved the final declination letter, the CRU shall provide an electronic copy of the letter to the IT department for inclusion on the CRU's webpage.
  
- (i) Announcement and Publication; Release of Investigative Information. The CRU shall adopt policies and procedures governing the announcement and publication of a completed declination letter. The CRU shall adopt policies and procedures governing the release of investigative information relevant to the published declination letter consistent with the Texas Open Records Act, TEX. GOV'T. CODE §§ 552.001, *et. seq.*

### **C. Content of Declination Letters.**

1.01. Each declination letter shall include:

- (a) Identification of All Parties Directly Involved in the Use of Force Incident. Consistent with relevant rules governing confidentiality a full statement of the name[s] of all officers involved as well as all private parties directly injured in the incident.
  
- (b) Summary and Statement of Facts. A statement of the credible facts established by the investigation, along with a statement of any significant investigative issues for which the investigative facts are unresolved or contradicted. The statement of facts shall include a statement of all facts relevant to the legal analysis and determination and, in appropriate cases, a discussion of facts of significant public interest.

- (c) Legal Analysis. A discussion of the relevant legal issues and an explanation of the decision not to prosecute. The explanation of the decision not to prosecute shall be stated in terms of the prosecutor's duty to see that justice is done in the context of the proof beyond a reasonable doubt standard. The legal discussion shall include an explanation of the circumstances of the initial law enforcement-citizen contact if the contact involved a detention or arrest and the legal justification[s] thereof, and a discussion of the various legal grounds justifying the use of force.
- (d) Summaries of Witness Statements and Reports. A discussion of the various statements and reports provided by law enforcement and civilian witnesses including but not limited to 911 calls, on-scene interviews, formal interviews and interrogations, etc.
- (e) Key Evidentiary Items. A discussion of the key evidentiary items recovered at the scene of the incident and the locations at which the items were recovered, post-incident seizure of evidentiary items pursuant to warrant or by other means, *etc.*
- (f) Forensic Analysis. A discussion of any forensic analysis and testing on evidentiary items recovered and obtained during the investigation, the results of which are pertinent to the legal analysis or for purposes of providing a comprehensive summary of the investigation including but not limited to:
1. Ballistics Analysis—Operability of seized and recovered firearms, post-shooting inventory of live cartridges, accounting of fired shell casings recovered, comparison of recovered shell casings with post-shooting accounts of ammunition inventory, *etc.*, wound and structure trajectory analysis.
  2. Tool mark Analysis—When possible, association of fired shell casings and recovered projectiles and fragments as having been fired from particular handgun[s];
  3. DNA Analysis—When conducted, the results of any DNA forensic analysis of biological materials recovered or seized during the investigation.

4. Gunshot Residue Analysis—When conducted, the results of any gunshot residue analysis.
  5. Medical Examiners' Post-Mortem/Autopsy Report—A summary of the injuries directly related to the use of force; evidence recovered during the post-mortem/autopsy; wound path analyses, if possible; orientation and direction of gunshot wound trajectory; toxicology report, *etc.*
- (g) Where Items may be Located/Press Release Information and Evidence. A discussion of key evidentiary items and, if they are to be released publicly, how the items may be viewed or inspected.