

RESOLUTION NO. 2021- 2792

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN THE TOWN OF SURFSIDE AND THE FLORIDA DEPARTMENT OF LAW ENFORCEMENT RELATING TO INVESTIGATIONS OF INCIDENTS INVOLVING THE USE OF DEADLY FORCE BY LAW ENFORCEMENT OFFICERS; PROVIDING FOR AUTHORIZATION; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Chapter 23, Florida Statutes, the Florida Department of Law Enforcement (“FDLE”) is authorized to enter into agreements with jurisdictionally responsible local police departments to investigate incidents involving the use of deadly force by law enforcement officers and/or incidents involving death or life-threatening injuries of individuals in-custody (“Incidents”) upon the request of a local government police chief, among other state and local entities; and

WHEREAS, the Town of Surfside (“Town”) Police Department is the jurisdictionally responsible local police department in the Town’s boundaries; and

WHEREAS, in order to receive assistance from FDLE in the investigation of Incidents, the Town and DCF wish to enter into a Memorandum of Understanding to further their respective duties under law and facilitating investigations of Incidents, in substantially the form attached hereto as Exhibit “A” (the “MOU”); and

WHEREAS, the Town Commission wishes to approve the MOU and finds that this Resolution is in the best interest and welfare of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above-stated recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval. The MOU, in substantially the form attached hereto as Exhibit “A,” is hereby approved.

Section 3. Authorization. That the Town Manager and/or Chief of Police are hereby authorized to execute the MOU in substantially the form attached hereto as Exhibit “A.”

Section 4. Implementation. The Town Manager, Chief of Police and/or designees are authorized to take any and all action necessary to implement the purposes of this Resolution and the MOU.

Section 5. Effective Date. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED this 8th day of June, 2021.

Motion By: Commissioner Velasquez

Second By: Commissioner Kesl

FINAL VOTE ON ADOPTION:


Commissioner Charles Kesl Yes

Commissioner Eliana R. Salzhauer Yes

Commissioner Nelly Velasquez Yes

Vice Mayor Tina Paul Yes

Mayor Charles W. Burkett Yes




Charles W. Burkett, Mayor

ATTEST:



Sandra N. McCready, MMC
Town Clerk

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:



Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorney

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into by and between the Town of Surfside, Florida, (Town), by and through its police department, the Town of Surfside Police Department (SPD) and the Florida Department of Law Enforcement (FDLE), in furtherance of their respective duties under law for the purpose of facilitating investigations of incidents as described hereafter. The Town and the FDLE agree as follows:

1. The occurrence of any of the following predicate events will initiate investigative and forensic involvement, assistance or coordination by FDLE:
 - a. The shooting of a person by a SPD law enforcement officer acting in the line of duty; or
 - b. The death of an arrestee while in the care, custody or control of a SPD law enforcement officer, the death of an arrestee shortly after being in the care, custody or control of a SPD law enforcement officer or the death of an intended arrestee during an arrest attempt by a SPD law enforcement officer.

2. Upon the occurrence of any of the enumerated predicate events, the ranking SPD member on the scene will ensure that emergency medical services are provided to injured persons and that a secure crime scene perimeter is established with restricted access. Only emergency medical personnel, crime scene technicians, medical examiner personnel, State Attorney personnel, investigating FDLE members and other law enforcement investigators assisting FDLE will be permitted inside the crime scene perimeter. The ranking SPD representative will then ensure that the FDLE regional operations center is promptly contacted and requested to dispatch the FDLE Critical Incident Team to initiate an investigation, notify the SAO Police Shooting Team and to coordinate crime laboratory services at the scene. FDLE will notify the State Attorney as soon as reasonably possible.

3. Pending arrival of the FDLE Critical Incident Team, the ranking SPD member will ensure that the scene remains secured, that physical evidence and documentation is protected and preserved and that all law enforcement and citizen witnesses are identified and separated pending initial interview. If feasible, the ranking SPD member will ensure that arrested persons at the scene are detained pending the arrival of the FDLE Critical Incident Team. The SPD will conduct the investigation related to any underlying criminal activity that preceded or occurred at the same time as the predicate events outlined in paragraph 1 above, when applicable. The ranking SPD member will also provide any assistance requested by FDLE during and after the on-scene investigation has been concluded, such as additional collection of evidence from suspects, vehicles, or involved law enforcement personnel, as well as the securing of other evidence such as radio communications tapes. The ranking SPD member will also coordinate with local law enforcement in any necessary crowd control efforts.

4. Upon receipt of notification from the SPD that any of the enumerated predicate events have occurred, the appropriate FDLE Special Agent in Charge or designee will immediately implement an investigation pursuant to FDLE Procedures governing FDLE investigations of FDLE Officer Involved Shootings and In-Custody Death Incidents, which are incorporated herein by reference. FDLE, in conjunction with SPD, will promptly coordinate the dispatch of the Critical incident Team together with the appropriate crime scene personnel, medical examiner personnel, State Attorney personnel and any additional law enforcement personnel which are required. FDLE will be the lead agency, in consultation with the State Attorney's Office, responsible for conducting all interviews and sworn statements of witnesses and subject officers.

5. FDLE will assume operational direction of investigations and forensic assistance or coordination initiated pursuant to this Memorandum of Understanding. FDLE may request the assistance of SPD personnel or personnel from other law enforcement agencies.

6. The SPD will retain overall direction and responsibility for any internal or administrative investigations initiated in response to the occurrence of any of the enumerated predicate events. However, the parties agree that the criminal investigative efforts take precedence over any internal or administrative investigations conducted by the SPD. No documentation, whether internal report or statement authored or obtained by SPD personnel involved in the subject incident that has been provided to the SPD under order or policy, shall be provided, or its contents revealed, to the criminal investigative team or the prosecutor until such time as the criminal investigative team and the FDLE Office of General Counsel agree that the criminal investigation will not be adversely impacted by any potential for immunity that may attach to any such statement. The criminal investigative team and the FDLE Office of General Counsel may consult with the prosecutor to determine whether such statement may adversely impact any subsequent criminal prosecution. However, the criminal investigative team and the FDLE Office of General Counsel will make the final determination regarding use of such statements in FDLE's investigation. To help assure that the criminal investigation is not impeded or negatively affected by internal or administrative investigative efforts, the SPD's internal or administrative investigation shall be initiated only after the criminal investigative efforts have been concluded or when otherwise specifically authorized by the FDLE's investigative team.

7. The parties agree that the SPD may issue initial press statements acknowledging an incident, reporting the status of the law enforcement officer(s) involved in the incident, and referral to the investigative process. At the appropriate stage(s) of an investigation initiated under this Memorandum of Understanding, FDLE will forward copies of all investigative reports and investigative summaries to the State Attorney having jurisdiction over the case and to the SPD for review. Transmittal of reports and summaries will be done so as to preserve any applicable exemptions from public disclosure and to maintain any confidentiality of information that may apply. Any press release related to investigative activities and responses to public records requests shall

be coordinated jointly by the involved agencies to assure that disclosure, if any, is appropriate and timely. The parties agree that best efforts will be made to coordinate said releases jointly.

8. FDLE will submit all final reports to the State Attorney for review. FDLE will report the material factual findings of the investigation but will offer no recommendations or reach legal conclusions concerning whether the force used, if any, was justified.

9. This Memorandum of Understanding represents the entire agreement between the parties on this subject matter. Any alteration or amendment of the provisions of this agreement shall be in writing, duly signed by authorized personnel of each of the parties and attached to the original of this agreement.

10. This agreement shall become effective upon all parties having signed below. Any party may terminate this agreement by providing the others with thirty (30) days advance notice in writing or by mutual agreement of the parties.

11. This Memorandum of Understanding does not supersede or replace any existing Memorandum of Understanding between the Town of Surfside, by and through its police department, SPD, and Federal Law Enforcement Agencies or municipal police departments as it relates to Police Use of Deadly Force Investigations.

For FDLE:

For the Town:

Richard L. Swearingen, Commissioner
Florida Department of Law Enforcement

Julio Yero
Chief of Police

Date: _____

Date: _____

Florida Department of Law Enforcement
Investigations & Forensic Science

**OFFICER INVOLVED SHOOTINGS
AND IN-CUSTODY DEATH OR LIFE-THREATENING INJURY INCIDENTS**

**PRIMARY RESPONSIBILITIES:
NON-FDLE OFFICER INVOLVED SHOOTINGS AND IN-CUSTODY DEATH OR
LIFE-THREATENING INJURY INCIDENTS**

A. Responsibilities of the Florida Fusion Center (FFC):

1. When the FFC receives a request for assistance to investigate another agency officer involved shooting or in-custody death or life-threatening injury incident, the FFC member will immediately establish and document the following:
 - a. Identity of the person calling, their contact information and agency requesting assistance;
 - b. Identity of the on-scene officer in charge and their contact information;
 - c. Date and time of call/request for assistance;
 - d. Date and time incident occurred;
 - e. Location of and directions to the incident; and
 - f. Brief synopsis of incident.
2. Immediately make the following notifications:
 - a. In the event of an officer involved shooting, FFC will make notification to the regional on-call Special Agent Supervisor (SAS) and Assistant Special Agent in Charge (ASAC).
 - b. In the event of an in-custody death or life-threatening injury incident, FFC will make notification to the regional on-call SAS.
3. It will be the responsibility of the ASAC to make the appropriate notifications to the Special Agent in Charge (SAC), Chief of Forensic Services, Office of External Affairs (OEA) and Office of the State Attorney.
4. If the request for assistance is received by the region, the region will ensure FFC is notified regarding the incident as soon as practical.

B. Responsibilities of SAS (or designee):

1. Ensure activation of response team members;
2. Establish law enforcement (involved agency) contact;

3. Ensure the crime scene perimeter is established and secured;
 4. Respond to the scene of the incident, if applicable, and assume control of the investigation;
 5. Obtain comprehensive incident briefing;
 6. Assign case agent and ensure investigative assignments are made as necessary-
 7. Coordinate with the first responding sworn member;
 8. Coordinate crime scene response and activities. If an FDLE crime scene unit is not available, personnel from another agency can be utilized;
 9. Provide summary for immediate briefing of FDLE command personnel; and
 10. Coordinate a post-incident team briefing to identify future investigative needs.
- C. Responsibilities of first sworn members on scene:
1. Obtain a general briefing of the incident;
 2. Assess scope and security of the scene;
 3. Begin to identify all pertinent parties and their locations-; and
 4. Brief responding SAS and response team members.
- D. Responsibilities of case agent:
1. Consult with the SAS on investigative assignments to ensure that special agents are assigned appropriate investigative tasks, as identified in the [FDLE Officer/Deputy Involved Use of Force Incident Assignment](#) or the [FDLE In Custody Incident Assignment](#) forms, to include:
 - a. Separate all witnesses to include subject officer(s) and witness officer(s), if possible;
 - b. Obtain and/or ensure the issuance of a search warrant or consent to search for the crime scene when applicable;
 - c. Debrief agents for results of leads and development of additional witnesses and leads;
 - d. Coordinate the collection and inspection of all weapons and ammunition that were involved during the incident. A complete ammunition round count will be documented within the case file;
 - e. Facilitate interviews of all subject officers and witness officers;
 - f. Ensure that all evidence is properly collected and submitted;

- g. Collect all pertinent video and audio recordings. Identify and document any inoperable recording devices; and
 - h. Seek input from the appropriate prosecutor and/or Regional Legal Advisor (RLA), if needed.
2. Brief SAS on significant developments.
 3. Maintain liaison with involved agency's lead investigator.
 4. Consult with SAS and other relevant parties (state attorney, involved agency head, etc.) for time/place of appropriate briefings.
 5. Prepare for the briefing by incorporating facts, witness statements, photos, and a draft timeline of events.
 6. Review all administrative files of the involved officers. This review will include records such as disciplinary, training and use of force records.
- E. Responsibilities of SAC (or designee):
1. Ensure notification of the Assistant Commissioner, when appropriate;
 2. Ensure liaison with the involved agency's chief executive is maintained; and
 3. Provide an executive briefing of the incident with command representatives of the involved agency and the State Attorney's Office within a reasonable timeframe after the incident. The briefing will include a summary of investigative progress, to date and an identification of future investigative needs.

INTERVIEWS: NON-FDLE OFFICER INVOLVED SHOOTINGS AND IN-CUSTODY DEATH OR LIFE-THREATENING INJURY INCIDENTS

- A. When interviewing witnesses, all interviews should be conducted under oath and recorded via audio and/or video.
- B. When interviewing sworn officers:
1. All sworn officer interviews should be conducted under oath and recorded via audio and/or video.
 2. Sworn officers will not be afforded an opportunity to walk through a scene or review any digital evidence unless directed by the SAC, their designee or the State Attorney.
 3. The [interview preamble](#) will precede and be included in the recording of all interviews of all sworn officers. The agent(s) conducting the interview will ensure the officer is aware ~~that~~ the statement is voluntary and part of a criminal investigation.
 4. During the interview of involved officers, no persons other than FDLE agents will be present unless authorized by the SAC or their designee.

CONTENTS OF THE INVESTIGATIVE CASE FILE: NON-FDLE OFFICER INVOLVED SHOOTINGS AND IN-CUSTODY DEATH OR LIFE-THREATENING INJURY INCIDENTS

- A. Agents will refer to the appropriate incident assignment form for documentation purposes, [FDLE Officer/Deputy Involved Use of Force Incident Assignment](#) or [In-Custody Incident Assignment](#)).
- B. The contents of the investigative case file will be pursuant to existing procedures in the Automated Investigative Management System (AIMS) and include other information, as appropriate. Any official documentation created during the investigation shall be included in the case file.
- C. An investigative packet will be submitted to the Office of the State Attorney and will contain at a minimum:
 - 1. Investigative summary/timeline should follow the format in the [Investigative Summary Template](#);
 - 2. Witness/officer's interview statements/transcriptions;
 - 3. FDLE investigative reports/related items;
 - 4. Evidentiary exhibits list;
 - 5. Crime scene reports/photos;
 - 6. Lab reports;
 - 7. Medical Examiner's report, if appropriate;
 - 8. Other agency reports and documentation; and
 - 9. Other information as appropriate.

PRIMARY RESPONSIBILITIES: FDLE SWORN MEMBER OFFICER INVOLVED SHOOTINGS AND IN-CUSTODY DEATH OR LIFE-THREATENING INJURY INCIDENTS

- A. Responsibilities of ASAC:
 - 1. Make the appropriate notifications to the SAC, Chief of Forensic Services, OEA, Office of Executive Investigations (OEI) and Office of State Attorney.
 - 2. The region will ensure FFC is notified regarding the incident as soon as practical.
- B. Responsibilities of FFC - When the FFC receives information of an FDLE agent/officer involved shooting or in-custody death or life-threatening injury incident, the FFC member will immediately establish and document the following:
 - 1. Identity of the FDLE region of occurrence and the on scene contact information;

2. Identity of the on-scene officer in charge and their contact information;
 3. Date and time of call/request for assistance;
 4. Date and time incident occurred;
 5. Location of and directions to the incident; and
 6. Brief synopsis of incident.
- C. Responsibilities of the SAS (or designee) - Initiate completion of the following, until OEI or the applicable regional response team, adjoining regional response team or local law enforcement agency arrives and assumes command of the investigation:
1. Ensure activation of response team members;
 2. If determined that a local law enforcement/governmental agency will handle the investigation, establish applicable local law enforcement/governmental agency contact and ensure the crime scene perimeter is established and secured;
 3. Respond to the scene of the incident, if applicable, and assume control of the investigation;
 4. Obtain comprehensive incident briefing;
 5. Assign case agent and ensure investigative assignments are made as necessary;
 6. Coordinate with the first responding sworn member;
 7. Coordinate crime scene response and activities. If an FDLE crime scene unit is not available, personnel from another agency can be utilized;
 8. Provide summary for immediate briefing of FDLE command personnel; and
 9. Coordinate a post-incident team briefing to identify future investigative needs.
- D. Responsibilities of first sworn members on scene:
1. Obtain a general briefing of the incident;
 2. Assess scope and security of the scene;
 3. Begin to identify all pertinent parties and their locations; and
 4. Brief responding SAS and response team members.
- E. Responsibilities of regional lead agent/inspector:
1. Consult with SAS on investigative assignments to ensure special agents or inspectors are assigned appropriate investigative tasks, as identified in the [FDLE Officer/Deputy Involved Use of Force Incident Assignment](#) form, to include:

- a. Separate all witnesses to include subject officers and witness officers, if possible;
 - b. Obtain and/or ensure the issuance of a search warrant or consent to search for the crime scene when applicable;
 - c. Debrief agents/inspectors for results of leads and development of additional witnesses and leads;
 - d. Coordinate the collection and inspection of all weapons and ammunition that were involved during the incident. A complete ammunition round count will be documented within the case file;
 - e. Facilitate interviews of all subject officers and witness officers;
 - f. Ensure that all evidence is properly collected and submitted;
 - g. Collect all pertinent video and audio recordings. Identify and document any inoperable recording devices; and
 - h. Seek input from the appropriate prosecutor and/or RLA, if needed.
2. Brief the SAS on significant developments.
 3. Maintain liaison with involved agency's lead investigator.
 4. Consult with SAS and other relevant parties (state attorney, involved agency head, etc.) for time/place of appropriate briefings.
 5. Prepare for the briefing by incorporating facts, witness statements, photos and a draft timeline of events.
 6. Review all administrative files of the involved agents/officers to include disciplinary, training and use of force records.

F. Responsibilities of SAC (or designee):

1. Ensure notification of the Assistant Commissioner, when appropriate.
2. Ensure liaison with an involved investigative agency's chief executive or designee to aid the assigned investigators, as needed.
3. Offer an executive briefing of the incident with command representatives and the State Attorney's Office within a reasonable timeframe after the incident. The briefing will include a summary of investigative progress, to date, and an identification of future investigative needs.

INTERVIEWS: FDLE SWORN MEMBER OFFICER INVOLVED SHOOTINGS AND IN-CUSTODY DEATH OR LIFE-THREATENING INJURY INCIDENTS

- A. When interviewing witnesses, all interviews should be conducted under oath and recorded via audio and/or video.
- B. When interviewing sworn agents/officers:
 - 1. All sworn agent/officer interviews should be conducted under oath and recorded via audio and/or video.
 - 2. Sworn agents/officers will not be afforded an opportunity to walk through a scene or review any digital evidence unless directed by the SAC, their designee or the State Attorney.
 - 3. An [interview preamble](#) will precede and be included in the recording of all interviews of all sworn agents/officers. The agent/inspectors conducting the interview will ensure the agent/officer is aware that the statement is voluntary and part of a criminal investigation.
 - 4. During the interview of involved agents/officers, no persons other than FDLE agents (or agent's/officer's representative, if requested) will be present unless authorized by the SAC or their designee.

CONTENTS OF THE INVESTIGATIVE CASE FILE: FDLE SWORN MEMBER OFFICER INVOLVED SHOOTINGS AND IN-CUSTODY DEATH OR LIFE-THREATENING INJURY INCIDENTS

- A. Agents/inspectors will refer to the appropriate Incident Assignment form for documentation purposes, ([FDLE Officer/Deputy Involved Use of Force Incident Assignment Form](#)).
- B. The contents of the investigative case file will be pursuant to existing procedures in AIMS and include other information, as appropriate. Any official documentation created during the investigation shall be included in the case file.
- C. An investigative packet will be submitted to the Office of the State Attorney and will contain at a minimum:
 - 1. Investigative summary/timeline will follow the format in the [Investigative Summary Template](#) document, which can be amended as appropriate for specific judicial circuits;
 - 2. Witness/officer interview statements/transcriptions;
 - 3. FDLE investigative reports/related items;
 - 4. Evidentiary exhibits list;
 - 5. Crime scene reports/photos;
 - 6. Lab reports;

7. Medical Examiner's report, if appropriate;
8. Other agency reports and documentation; and
9. Other information as appropriate.