



COOK COUNTY STATE'S ATTORNEY'S OFFICE

FEDERAL IMMIGRATION ENFORCEMENT ACTION RESPONSE PROTOCOL

Approved: February 19, 2026

Effective: February 19, 2026  
Supersedes all previous Protocols

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A. Intent

1. It is the intent of this Protocol to ensure that the Cook County State's Attorney's Office (CCSAO) is working effectively with state and local law enforcement to properly and ethically:
  - a. assess evidence when a **death, shooting, act of violence, or use of force incident related to federal immigration enforcement activity occurs**;
  - b. determine whether collected evidence could support a criminal prosecution when a death, shooting, act of violence, or use of force incident involving federal immigration enforcement authorities occurs and such a prosecution is cognizable under state and federal law;
  - c. make charging decisions; and
  - d. promote public safety.
2. The CCSAO's mission is to uphold public safety and justice by fairly, ethically, and effectively prosecuting crime, supporting victims, and protecting the rights of all residents. The CCSAO is committed to setting forth clear legal and process guidelines for Law Enforcement Agencies (LEAs).
3. This Protocol is intended to be followed by any CCSAO employee that may review and/or provide investigative support when a death, shooting, act of violence, or use of force incident related to federal immigration enforcement activity occurs. It is the expectation of the CCSAO that all investigating entities will also follow this Protocol.
4. This Protocol is intended to be interpreted consistently with and subject to applicable state and federal law and is subject to amendment upon any legislative changes.
5. This Protocol **supersedes all earlier** protocols and/or agreements, written or verbal, that may have existed from time to time on subjects covered in this protocol.

B. Areas Affected



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This Protocol should be followed by all CCSAO employees. Local and state Law Enforcement Agencies (LEAs) shall be advised that failure to follow this Protocol may result in an inability of the CCSAO to support investigations, assist in memorializing evidence, or otherwise participate in the process of reviewing investigations for felony charges.

#### **C. Nondiscrimination**

The CCSAO prohibits the discriminatory application, implementation, or enforcement of any provision of this policy on the basis of race, religion, creed, color, national origin, sex, pregnancy, sexual orientation, gender identity, age, ancestry, physical or mental disability, genetic information, marital status, work authorization status, or any other category protected by local, state, or federal law.

#### **D. Prosecutorial Duties and Obligations of the CCSAO**

1. Illinois law sets forth the powers and duties of a duly elected State's Attorney and provides that it is the State's Attorney's duty to commence and prosecute all indictments and prosecutions in the circuit court for the county "in which the People of the state or county may be concerned." 55 ILCS 5/3-9005(a)(1). The State's Attorney is vested with discretion in enforcing criminal laws by evaluating evidence and other pertinent factors to determine if an offense should be charged. *People v. Williams*, 147 Ill. 2d 173, 256 (1991).
2. Rule 3.8 of the Illinois Rules of Professional Conduct sets forth "[s]pecial responsibilities of a prosecutor" including the duty to "seek justice" and "refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause." Prosecutors must also refrain from making extrajudicial comments that pose a serious and imminent threat of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making any extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule."
3. State's Attorneys do not serve the primary role of investigator in criminal cases and defer to law enforcement agencies to perform investigative duties. *People v. Ringland*, 2017 IL 119484, ¶ 24. The Illinois Supreme Court has held that "the State's Attorney's common-law duty to investigate suspected illegal activity is limited to circumstances where other law enforcement agencies inadequately deal with such investigation or where a law enforcement agency asks the State's Attorney for assistance." *Ringland*, at ¶ 25.



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**E. Matters Related to Federal Immigration Authority Conduct Resulting in Death, a Shooting, Violence, or Use of Force**

1. The CCSAO will conduct an independent review and/or assessment of any investigation conducted by LEAs and will consider the recommendations made by LEAs.
2. If a LEA becomes aware, through the report of a victim, witness, video evidence, personal observation, or other form of evidence of a death, shooting, act of violence, or use of force incident related to federal immigration enforcement activity that may constitute a felony criminal act, the LEA should document and collect evidence as it would otherwise be documented and collected in the normal and regular course of a criminal investigation.
3. The LEA may present evidence to CCSAO's Law Enforcement Review Unit (LERU) for memorialization of sworn testimony or the collection of additional evidence, or, once the LEA believes that there is sufficient evidence to support felony charging and is seeking felony review.
4. If the LEA's investigation requires the memorialization of sworn testimony or the collection of additional evidence that is not voluntarily provided, the following additional steps may be taken depending on the facts and circumstances of each case:
  - a. If a victim or witness provides evidence to a LEA, the victim or witness may be subpoenaed to provide testimony to the Grand Jury. Similarly, a Grand Jury subpoena may be issued for physical, documentary, and/or video evidence, and once the subpoenaed material is returned, the subpoenaed material shall be presented to the Grand Jury.
  - b. Notably, Grand Jury proceedings are secret to prevent the escape of those under indictment, to ensure the Grand Jury freedom in its deliberations, to prevent subornation of perjury, to encourage disclosure by witnesses, and to protect the innocent from unwarranted exposure. *People v. Toolen*, 116 Ill. App. 3d 632 (1983).
  - c. The Grand Jury may issue a subpoena to a federal law enforcement agent who is a material witness that could provide relevant evidence to the Grand Jury. The ASA should send both the Grand Jury subpoena and a Touhy request seeking the witness's appearance based on the factors set forth in 28 C.F. R. 21-29.
  - d. The Grand Jury may also issue a subpoena for physical, documentary, video, or other evidence. The ASA should send both a Grand Jury subpoena and a Touhy request to the federal government seeking the relinquishment of that evidence based on the factors set forth under 28 C.F.R. 21-29.



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- e. Authorized LEAs shall review and analyze any returned Grand Jury material in furtherance of their investigation and are required to engage in all future collaboration regarding that Grand Jury investigation with the CCSAO.

5. **Charging Decision Process**

- a. Charging decisions will be made by the CCSAO based upon all available facts, evidence, and if CCSAO reasonably believes the charges are supported by probable cause, and that admissible evidence will be sufficient to support a conviction beyond a reasonable doubt, and that the decision to charge is in the interests of justice, in accordance with applicable law and CCSAO's ethical obligations. American Bar Association (ABA) Criminal Justice Standard 3-4.3.
- b. ASAs must conduct a legal analysis that considers the following:

**The Supremacy Clause**

- To prosecute a federal officer, the State must meet its burden of showing that the officer does not have Supremacy Clause immunity. *New York v. Tanella*, 374 F.3d 141, 148 (2d Cir. 2004). An officer has Supremacy Clause immunity from state prosecution if the officer was performing an act authorized by the law of the United States and in performing that authorized act, the officer "did no more than what was necessary and proper for him to do." *Kentucky v. Long*, 837 F.2d 727, 744 (6th Cir. 1988); accord *Wyoming v. Livingston*, 443 F.3d 1211, 1226 (10th Cir. 2006); *Tanella*, 374 F.3d at 147.
- There are essentially four elements to Supremacy Clause immunity that must be considered, including whether: (1) the actor was a federal officer; (2) authorized by federal law to act; (3) who did no more than the officer subjectively believed was necessary and proper; and (4) that subjective belief was objectively reasonable under the circumstances. *Texas v. Kleinert*, 855 F.3d 305, 314-15 (5th Cir. 2017). The requirement of both subjective belief and objective reasonableness has been affirmed by the Circuit Courts considering the question. *See, e.g., Tanella*, 374 F.3d at 147; *Long*, 837 F.2d at 744; *Clifton v. Cox*, 549 F.2d 722, 724 (9th Cir. 1977). Any evidence of "personal interest, malice [or] criminal intent" may negate subjective reasonableness. *Baucom v. Martin*, 677 F.2d 1346, 1350 (11th Cir. 1982).



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- Additionally, a federal officer asserting immunity may file a petition for removal in a federal district court, and removal is then subject to a federal judge's decision. 28 U.S.C. § 1442(a); *Sato-Smith*, 2024 U.S. Dist. LEXIS 201527, \*9-10 (collecting cases). Removal is proper if defendant is an officer of the United States, the state prosecution relates to any act under color of such office, or on account of any authority of an act of Congress for the apprehension or punishment of criminals, and there is a colorable defense to the prosecution. 28 U.S.C. 1442(c); *Texas v. Kleinert*, 855 F.3d 305, 311-12 (5th Cir. 2017).

**Evidence in the Possession of the Federal Government**

- CCSAO can request testimony or the production of documents from the federal government related to a criminal investigation pursuant to *United States ex rel Touhy v. Ragen*, 340 U.S. 462, 468 (1951); 6 CFR 5.41-5.45. A *Touhy* request is the mechanism provided by federal law for a litigant to seek official information for litigation purposes, including witnesses and documents, when the federal government is not a party to the litigation.
- Disclosure is discretionary if it is necessary to pursue a civil or criminal prosecution, and consideration must be given to the seriousness of the violation or crime involved, the past history or criminal record of the accused, the importance of the relief sought, the importance of the legal issues presented, or other matters presented for consideration. 6 CFR 5.41-5.45. The federal government, including its law enforcement entities, are not required to comply with any subpoena issued by a state prosecutorial body, and CCSAO does not have jurisdiction or authority to mandate subpoena compliance.

**Deconfliction**

CCSAO must make inquiry to the appropriate federal investigative agencies reviewing an incident to determine whether a federal review process is ongoing or has transpired. Decisions following deconfliction must be made on a case-by-case basis depending on the facts and circumstances revealed.

CCSAO employees are legally and ethically bound to consider these issues when determining whether charging is appropriate. Considerations related to federal immunity, federal subpoenas, and deconfliction must be made but do not necessarily preclude any ASA from



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assisting a LEA in the process of obtaining, securing, memorializing, analyzing evidence, and filing charges where appropriate.