

LAW ENFORCEMENT CONSOLIDATION TASK FORCE INSPECTOR GENERAL REPORT

November 7, 2011 and updated December 15, 2011

I. Introduction

On May 26, 2011, Governor Rick Scott signed Senate Bill 2160 that established a statewide Law Enforcement Consolidation Task Force (Task Force). Specifically, the legislation directed the Task Force to “evaluate any duplication of law enforcement functions throughout state government and identify any functions that are appropriate for possible consolidation. The Task Force was also tasked to evaluate administrative functions including, but not limited to, accreditation, training, legal representation, vehicle fleets, aircraft, civilian-support staffing, information technology, and geographic regions, districts, or troops currently in use.” The legislation further directed the Task Force to submit a plan to the Florida Senate and House of Representatives with recommendations on how to achieve the consolidation of state resources, if appropriate.

As part of this statutory mandate, on July 14, 2011, the Task Force chaired by Julie Jones, Executive Director, Florida Department of Highway Safety and Motor Vehicles, established thirteen teams based on specific subject matter to review various functions of state law enforcement and submit reports and recommendations to the Task Force. Given the role of state agency Inspectors General as the internal affairs function in nine of the ten state agencies with a law enforcement component, Chair Julie Jones appointed a team led by Melinda Miguel, Chief Inspector General, Executive Office of the Governor, to evaluate the state agency Inspector General investigative function within state agencies.

The objectives of the Inspector General Team were as follows:

- address the current and ideal roles, responsibilities, relationships and resources of Offices of Inspector General (OIG), specifically within state agencies that have a law enforcement function (*provided herein*);
- recommend the proportion and type of OIG resources that should be attributed to state agency law enforcement functions (*interim information is provided herein, but additional details will follow*);
- recommend a model OIG organizational structure that effectively and efficiently meets current statutory requirements and describes the ideal role, responsibilities, relationships, workload, and resources for OIGs, including but not limited to agencies that have a law enforcement function (*additional details will follow in a subsequent report*);

Law Enforcement Consolidation Task Force Inspector General Team Report

- recommend additional changes as determined by the Team (*contained herein*); and,
- recommend a strategy for implementing the recommendations (*contained herein with added details to follow*).

The Team identified a number of recommendations that would strengthen the independence of and improve the efficiency and effectiveness of OIGs. Some of these recommendations may be implemented in policy, but **we recommend** others be addressed by amending the Florida Inspector General Act, the Chief Inspector General, and the Florida Sunshine Law. Further, consolidating law enforcement functions across state agencies will have an impact on OIGs (in both the agencies receiving law enforcement functions as well as any agencies losing these functions) and, **we recommend** specific issues be addressed or strategies followed relating to OIGs to ensure appropriate oversight is maintained. We also make some recommendations to clarify pertinent existing laws where conflicts exist. Our recommendations are found in Section IV below.

II. Current Statutory Authority of State Agency Inspectors General

A. Role of Inspectors General

Section 20.055, Florida Statutes (F.S.), the Florida Inspector General Act, specifies that the Governor and each state Agency Head establish an Office of Inspector General (OIG) and the purpose of the OIG is to provide a *central point* for coordination of and responsibility for activities that promote accountability, integrity, and efficiency in state government. The OIG accomplishes its objectives by providing independent and objective assurance and consulting activities. OIG activities also include the responsibility to detect, deter, and prevent fraud, waste, and abuse. OIGs conduct their work in accordance with *Principles and Standards for Offices of Inspectors General* established by the Association of Inspectors General and other professional standards as outlined in statute.

Currently, Inspectors General provide oversight in 32 state agencies. Additionally, Inspectors General provide oversight in the five Water Management Districts and the State Board of Administration. In accordance with Section 20.055(3)(b), F.S., “each inspector general shall report to and be under the general supervision of the Agency Head and shall not be subject to supervision by any other employee of the state agency. The inspector general shall be appointed without regard to political affiliation.”

In Fiscal Year 2010-2011, staff in the state agency OIGs comprised of Inspectors General, auditors, and investigators totaled 439 staff.ⁱ Overall, more than 60,000 audit or investigative activities were performed by audit and investigative staff.ⁱⁱ

**Law Enforcement Consolidation Task Force
Inspector General Team Report**

B. Role of the Chief Inspector General

Section 14.32, F.S., creates the Office of the Chief Inspector General with “responsibility for promoting accountability, integrity, and efficiency in the agencies under the jurisdiction of the Governor.” The Chief Inspector General has statutory authority in part to “act as a liaison and monitor the activities of the Inspectors General in the agencies under the Governor’s jurisdiction.” The Chief Inspector General also, by statute, plays a role in the appointment and removal of Inspectors General within agencies under the jurisdiction of the Governor. In Fiscal Year 2010-2011, staffing for the Office of the Chief Inspector General comprised of 8 staff.

III. Current State Agency Inspectors General with a Law Enforcement Function

A. Agencies with a Law Enforcement Function and the Internal Affairs Role of Inspectors General

The following ten state agencies have a sworn law enforcement function:

- Florida Department of Highway Safety and Motor Vehicles (DHSMV)
- Florida Fish and Wildlife Conservation Commission (FWC)
- Florida Department of Law Enforcement (FDLE)
- Florida Department of Agriculture and Consumer Services (DACS)
- Florida Department of Business and Professional Regulation (DBPR)
- Florida Department of Environmental Protection (DEP)
- Florida Department of Corrections (DOC)
- Florida Department of Legal Affairs (DLA)
- Florida Department of Financial Services (DFS)ⁱⁱⁱ
- Florida Lottery

The OIG has the authority to conduct “internal affairs” investigations of alleged misconduct by sworn law enforcement personnel within each of these ten state agencies.^{iv} All but two^v of these OIGs employ sworn law enforcement officers. Sworn investigators within the OIG may be assigned to conduct both criminal and administrative employee misconduct cases on either the agencies’ sworn or non-sworn staff. However, routinely, criminal investigations supersede administrative investigations and are conducted separately. Exhibit I provides a description of OIGs within agencies with a sworn law enforcement component.

B. Police Officers’ Bill of Rights apply to Investigations of Sworn Law Enforcement Personnel

Sections 112.532 – 112.534, F.S. (*Law Enforcement Officers’ and Correctional Officers’ Rights – commonly referred to as the Police Officers’ Bill of Rights*) directs how investigations are conducted for alleged employee misconduct of sworn personnel.

**Law Enforcement Consolidation Task Force
Inspector General Team Report**

This statute, combined with the officers' labor agreement and respective departmental rules and policies, define the manner by which an investigation will proceed and discipline taken, if applicable.

C. Increased Costs Associated with Sworn Law Enforcement Staff

There are costs associated with having a sworn law enforcement investigator within the OIG. Costs associated with sworn law enforcement investigators include additional retirement expenditures due to assignment to the Special Risk category, equipment and supplies, vehicle acquisition, fuel and maintenance, and criminal justice incentive pay. It should be noted that if sworn positions were staffed with non-sworn members, in some agencies, there may still be a portion of vehicle, fuel, and maintenance costs incurred.

Estimated costs of having sworn law enforcement investigators were obtained from the Florida Department of Transportation (FDOT), DHSMV and FDLE. From this information, an estimate of the additional costs of having a sworn OIG investigator over a non-sworn investigator totaled \$13,776 annually during employment. See Table 1 below for an itemization of these costs.

TABLE 1: ADDITIONAL ANNUALIZED COSTS OF HAVING A SWORN LAW ENFORCMENT INVESTIGATOR OVER A NON-SWORN INVESTIGATOR (per employee)

Cost Element	FDOT Estimated Cost Per Employee	FDLE Estimated Cost Per Employee	DHSMV Estimated Cost Per Employee	Composite Estimate of Recurring Annual Cost
Additional Retirement Costs ^{vi}	\$4,595	\$4,595	\$4,595	\$4,595
Equipment and Supplies ^{vii}	\$400	\$680	Itemized list not provided	\$680
Cost of Vehicle (Amortized over 8 Years) ^{viii}	\$2,380	\$2,625	Cost of new vehicle not provided	\$2,380
Fuel, Repairs, and Maintenance ^{ix}	\$4,000	\$3,000	\$4,705	\$4,000
Criminal Justice Incentive Pay (CJIP) ^x	\$2,121	\$1,560	\$1,215	\$2,121
Total	\$13,496	\$12,460	N/A	\$13,776

VI. Recommendations Regarding Inspectors General

We offer the following recommendations to enhance the independence and improve the effectiveness of the state agency Inspector General function in the State of Florida. We also make recommendations to consider when consolidating law enforcement functions across state agencies and recommend pertinent existing laws, where conflicts exist, be clarified.

Law Enforcement Consolidation Task Force
Inspector General Team Report

A. Strengthen the Independence of Inspectors General (Reporting Structure, Hiring and Removal of Inspectors General)

Section 20.055, F.S., specifies that each Inspector General shall report to and be under the general supervision of the Agency Head and shall not be subject to supervision by any other employee of the state agency. Statutes specify that the Agency Head or agency staff shall not prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation. However, an Inspector General may be removed by the Agency Head after written notification to the Governor and Chief Inspector General of the intention to terminate the Inspector General at least 7 days prior to the removal. For state agencies under the direction of the Governor and Cabinet, the Agency Head shall *notify* the Governor and Cabinet in writing of the intention to terminate the Inspector General at least 7 days prior to the removal. This reporting structure is viewed by some (including the 2010 19th Statewide Grand Jury and Florida TaxWatch) as hindering the Inspector General's ability to independently complete audits and investigations due to Inspectors General being subordinates of officials directly responsible for activities being audited or investigated and Inspectors General serving at the pleasure of officials responsible for those activities.

While Section 20.055, F.S. states that an Agency Head cannot prevent investigations by an OIG, it also mandates that the Inspector General keep the Agency Head informed of fraud, waste, and abuse. Examples were outlined in the 19th Statewide Grand Jury report where Agency Heads notified others who may not have a need to know of the existence of the investigation or applied pressure to the Inspector General without technically preventing the investigation. The Association of Inspectors General *Principles and Standards for Offices of Inspectors General* states as follows:

"The Office of Inspector General should be placed in the governmental structure to maximize independence from operations, programs, policies, and procedures over which the Office of Inspector General has authority. Factors external to the Office of Inspector General can restrict the efforts or interfere with the Office of Inspector General's ability to form independent and objective opinion and conclusions. Influences that jeopardize continued employment of the Inspector General or individual Office of Inspector General staff for reasons other than competency or the need for Office of Inspector General services" are considered impediments to independence.

We recommend that Inspectors General continue to fulfill their statutory mandate as the central point for coordination of accountability efforts within their respective state agencies and serve as the internal affairs investigators for agencies with a law enforcement function. **We recommend** that the Florida Inspector General Act be amended to strengthen the independence of the Inspector General to add terms of office for the Inspector General, removal only for cause, and confirmation in writing by the Chief Inspector General and the Governor or concurrence by the Governor and Cabinet or the Legislature before an Agency Head can terminate a state agency Inspector General.

We recommend that state agency Inspectors General continue to serve the agencies they are housed in to ensure efficient assessment of state agency operations, but we recommend the Chief Inspector General Act be amended to require greater statewide coordination by the Chief Inspector General to ensure proper oversight of state-level operations such as state procurement, information technology, property management and economic coordination of resources.

We also recommend that the Legislature mandate periodic reports of agency Inspectors General at specific intervals and on agency websites regarding activities relating to economy and efficiency of agency operations and efforts relating to preventing fraud, waste and abuse to enhance the transparency of OIG audits and investigations.

B. Ensure Independent Staffing Decisions and Adequate Resources for Inspectors General

Agency OIGs are required to request authorization to fill vacant positions from their Agency Head or designee. Additionally, if the OIG is authorized to fill a vacant position, approval for individuals selected by the Inspector General to fill vacancies must be obtained from the Agency Head or designee. This gives agency management the opportunity to apply restrictions on the ability to fill positions within an OIG; provides agency staff with the opportunity to usurp the Inspector General's independent judgment in selecting the most suitable candidate; subordinates the Inspector General to staffing decisions of agency staff below the Agency Head; and restricts the independence of this statutorily mandated independent function.

The Association of Inspectors General *Principles and Standards for Offices of Inspectors General* state "Factors external to the Office of Inspector General can restrict the efforts or interfere with the Office of Inspector General's ability to form independent and objective opinion and conclusions. Interference or undue influence in the selection, appointment, and employment of Office of Inspector General staff" is considered impairment to the Inspector General's independence.

We recommend the Florida Inspector General Act be amended to direct that Inspectors General have specific authority to independently select staff for OIGs and specify that Inspectors General independently set OIG policies and maintain all functional authority related to the staffing, administration and management of the OIG.

We also recommend that the Team work through the Chief Inspector General to independently provide to the Office of Policy and Budget minimally acceptable staffing levels for OIGs much like the Department of Management Services and the Office of Policy and Budget has recommended a minimum cost structure for professional and support staff for agencies. The Team can submit this information to the Task Force in a subsequent report.

C. Provide Inspectors General Independent Budget Authority and Funding

Inspectors General must compete for limited resources with other agency offices that have a more direct impact on mission accomplishment than does the OIG. In some agencies, specific cost centers have been established that are unique to the OIG function. In others, OIGs use the agency's *Executive Direction and Support* cost center for the OIG and funds for the OIG are comingled with other state agency funds. In either case, OIG expenses such as training, equipment, salary/rate, information technology resources, etc. are subject to the influence, approval, or reduction by agency management which has the effect of delegating decisions on OIG budgets to levels below the Agency Head even though statutes mandate that the Inspector General report directly to the Agency Head and shall not be subject to the supervision of any other agency staff.

The Association of Inspectors General *Principles and Standards for Offices of Inspectors General* state "The Office of Inspector General should be funded through a mechanism that will provide adequate funding to perform its mission without subjecting it to internal or external impairments on its independence. Factors external to the Office of Inspector General can restrict the efforts or interfere with the Office of Inspector General's ability to form independent and objective opinion and conclusions."

We recommend the Florida Inspector General Act be amended to specify separate appropriations accounts for all OIGs and Inspectors General have the authority to independently determine the budget needs and funding levels of the OIG subject to the written approval by only the Agency Head or Agency Head approval with agreement from the Chief Inspector General.

We also recommend that this Team work through the Chief Inspector General to independently provide the Office of Policy and Budget minimally acceptable budget baselines for OIGs much like the Department of Management Services and the Office of Policy and Budget has recommended a minimum cost structure for professional and support staff for agencies and submit this information to the Task Force in a subsequent report. These steps should make the budgets of OIGs and the budget process more transparent, more visible, and less susceptible to manipulation by agency management. In addition, this can result in separate reviews of OIG budgets by budget analysts and legislative authorizing and appropriating committees.

D. Streamline the Inspector General Mission to Maximize Oversight of Agency Operations

In September 2011, twenty-seven state agency OIGs were surveyed to verify functions being performed by each office. We found that eighteen of the twenty-seven OIGs had assumed responsibilities for operational functions that were outside the scope of Section 20.055, F.S. These functions absorbed by the OIGs appear to be a program responsibility that is more operational in nature. Duties assumed by the OIGs in some agencies are as follows:

Law Enforcement Consolidation Task Force Inspector General Team Report

- some OIGs review audit reports conducted pursuant to the Federal and State Single Audit Acts;
- some OIGs conduct Equal Opportunity/Discrimination investigations;
- some OIGs conduct background screenings of agency employees and contractors;
- some OIGs are responsible for HIPAA compliance;
- some OIGs handle emergency management planning for their agencies;
- an OIG handles Medicaid fraud and abuse activities;
- an OIG runs the inmate drug testing;
- an OIG handles appeal hearings for several agencies;
- an OIG is responsible for the accreditation management for the agency;
- an OIG is responsible for oversight of cities and counties in a state of financial emergency.

While there is likely a legitimate reason or business need for these functions being housed in the OIG, these functions are outside of the statutory mandate of Inspectors General and housing these functions within the OIG preclude the Inspector General from conducting independent audits, evaluations, and investigations of these functions. Based on professional standards, the assumption of operational and program duties by OIGs is presumed to impair the independence of Inspectors General. Also, this diminishes oversight by the Inspector General of total agency operations.

We recommend that agency OIGs work with the Chief Inspector General to conduct a comprehensive assessment complete with recommendations to affected state agencies and the Office of Policy and Budget regarding the responsibilities assigned to OIGs to ensure consistency with statutory mandates of Section 20.055, F.S., and maximize the number of operational activities subject to oversight by the OIG.

We also recommend that the Team work through the Chief Inspector General to establish standardized protocols for submission to the Office of Policy and Budget for use by state agencies when making decisions about placement of responsibilities within an OIG to maximize the independent oversight of the Inspector General of agency operations.

E. Provide Inspectors General Exclusive Independent Legal Counsel

All legal representation available or assigned to OIGs currently report to either the agency General Counsel or a member of the agency's general counsel's staff. A primary objective of the Office of the General Counsel is to represent the best interests of the agency. The statutory mandate for OIGs is to independently find facts and make conclusions which could negatively impact the agency. An inherent conflict may exist between the two functions if those two functions disagree or if legal advice is tainted by any duty owed by counsel to agency management.

Law Enforcement Consolidation Task Force Inspector General Team Report

The Association of Inspectors General *Principles and Standards for Offices of Inspectors General* state “Factors external to the Office of Inspector General can restrict the efforts or interfere with the Office of Inspector General’s ability to form independent and objective opinion and conclusions. Restrictions on funds or resources dedicated to the Office of Inspector General such as timely independent legal counsel could prevent the Office of Inspector General from performing essential work.”

We recommend that the Florida Inspector General Act be amended so the Office of the Chief Inspector General or agency OIGs are given exclusive independent resources for legal counsel to support the OIG function thereby assuring the OIG is the primary client, attorney-client privilege is extended when applicable and legal advice is not influenced by any duty owed by counsel to management. In the interim, to rectify this situation, **we recommend** that Inspectors General and the Offices of General Counsel negotiate a memorandum of understanding whereby independent counsel is established within the Office of the General Counsel to serve the OIG and the Chief Inspector General. The memorandum should further stipulate that attorney(s) serving the OIG cannot be rewarded or removed without the IG’s approval.

F. Provide Inspectors General Administrative Subpoena Power with Oversight by the Chief Inspector General

OIGs currently do not have the authority to issue and serve subpoenas to compel the attendance of witnesses not assigned to their agencies and the production of documents, papers, books, records, and other evidence on administrative cases. In these situations, OIGs must rely on “right to audit” clauses for documents and cooperation from individuals to obtain testimony. During the course of certain investigations, individuals and entities have not been fully cooperative with the Inspector General for requests for information or testimony and, often, state contract enforcement provisions for rights to audit or failure to produce records are lacking.

The Association of Inspectors General *Principles and Standards for Offices of Inspectors General* state “Offices of Inspector General should be granted specific powers and identify any limits on those powers, such as the power of subpoena for persons and documents, requirements for service of the subpoena, confidentiality of subpoenaed documents and testimony, and subpoena enforcement provisions.”

We recommend amending the Chief Inspector General Act to include the addition of administrative subpoena authority and enforcement provisions for the Governor’s Chief Inspector General (a similar manner is identified in Section 516.23, F.S.) This would provide OIGs, subject to oversight by the Chief Inspector General, the ability to issue administrative subpoenas during audits and investigations rather than rely on “right to audit clauses” in state agency contracts and cooperation of individuals to provide testimony.

We also recommend that the Team work with the Chief Inspector General to strengthen and standardize right to audit clauses in state contracts and other purchase agreements to ensure ample access by and protections for Inspectors General and their

**Law Enforcement Consolidation Task Force
Inspector General Team Report**

ability to perform all statutory functions and have full and complete access to records and staff pertaining to business conducted with the state.

G. Protect Active Investigations from Improper Disclosure

The Public Records Law, under Chapter 119, F.S., requires the release of public records upon request. Most Inspector General investigations and audits are not considered confidential or exempt while active. The premature release of Inspector General information can lead to inaccurate conclusions based on incomplete information. This could harm the reputation of the subject of the investigation and perhaps witnesses or compromise the integrity of the audit or investigation by allowing individuals to influence testimony or destroy evidence.

The Association of Inspectors General *Principles and Standards for Offices of Inspectors General* state “Offices of Inspector General should be authorized to maintain appropriate confidentiality of records and, to the extent practicable, of the identities of individuals who provide information to the Office of Inspector General, unless it is necessary to make such records or identities public in the performance of his/her duties.”

Consistent with recommendations made by the 19th Statewide Grand Jury Report, **we recommend** that the Florida Sunshine Law be amended so that state agency OIGs and the Chief Inspector General’s audits and investigations are exempt from public disclosure **while active** as are reports produced currently by the Auditor General and local government counterparts.

H. Consolidation is an Opportunity to Address Disparities and Standardize Staffing Ratios, Position Descriptions, Rank and Titles

Any consolidation of law enforcement functions would have impact on OIGs in affected agencies. It will be important when making these decisions to consider the proportion of sworn officers assigned to the agency compared to total agency personnel and transfer only those OIG investigators that support the law enforcement component leaving a sufficient non-sworn investigative capacity to manage remaining workloads. During our evaluation, we found that disparities exist between OIGs regarding staff sizes, position classifications, and available funding. Some of our observations are as follows:

- The sworn law enforcement investigators in the DBPR OIG have the rank of Lieutenant and its Director of Investigations has the rank of Captain. In DEP, OIG sworn law enforcement investigators have the rank of Captain and its Director of Investigations has the rank of Major. Further, in Offices of Inspectors General with non-sworn investigators, position titles vary for investigators from OIG Analyst II in the Lottery’s OIG to Investigation Specialist II in the DHSMV OIG.

Law Enforcement Consolidation Task Force Inspector General Team Report

- The proportion of OIG non-sworn investigators to the total number of employees in agencies without a law enforcement component also varies. As an example, the Department of Health has 16,457 authorized positions^{xi}, and seven non-sworn investigators^{xii} assigned to the OIG for a ratio of one non-sworn investigator to 2,351 agency staff members. The Agency for Healthcare Administration has 1,625 authorized positions and five non-sworn investigators assigned to the OIG for a ratio of one investigator to 325 staff members.
- The proportion of OIG sworn investigators to the total number of employees in agencies with a sworn component varies as well. As an example, DEP has 3,490 authorized positions, 135 of which are sworn with four sworn investigators^{xiii} assigned to the OIG. This is a ratio of one investigator per 839 non-sworn agency members and one investigator for every 34 sworn agency members. DHSMV has 4,574 authorized positions, 1,945 which are sworn, with six sworn and two non-sworn investigators assigned to the OIG. This is a ratio of one sworn investigator to 324 sworn staff members and one investigator (sworn or non-sworn) for every 572 sworn or non-sworn agency staff members.

Exhibit II provides a comparative analysis by agency and OIG staffing with the number of investigations conducted.

We recommend that the Team work through the Chief Inspector General to present to the Task Force and to the Office of Policy and Budget baseline staffing ratios for OIGs to ensure adequate agency oversight during consolidation efforts of law enforcement functions and to ensure proper ratios of sworn to non-sworn investigators for OIGs.

We also recommend that the Team work through the Chief Inspector General to present to the Task Force and to the Office of Policy and Budget standardized job descriptions, titles, and ranks for OIGs with a law enforcement component and across state agencies.

I. Statutory Clarification Needed BEFORE Staffing Decisions on Consolidation can be Finalized

In eight of ten agencies with law enforcement functions, sworn law enforcement investigators are assigned to the OIG. However, the Florida Inspector General Act does not specify the authority to hire sworn law enforcement officers or the specific and appropriate limits on the authority of an assigned law enforcement officer. Despite the aforementioned assignment of sworn officers in eight OIGs, in only one case, the DOC, is specific authority and associate limitations described in a separate statute. The Florida Inspector General Act does mandate OIGs to seek the participation and assistance from sworn law enforcement officers when there are grounds to believe a crime has occurred or is suspected and there is specific protocol in place between the Chief Inspector General and the Florida Department of Law Enforcement to provide for this need.

Law Enforcement Consolidation Task Force Inspector General Team Report

With regards to having sworn versus non-sworn personnel in an OIG, interpretations of the Police Officers' Bill of Rights and the perceived mandate to have sworn personnel conduct these investigations varied across agencies. There was a preference in the agencies for sworn law enforcement officers to conduct misconduct investigations of sworn law enforcement personnel.

In a few agencies, the citations used in support of having sworn law enforcement conduct investigations of sworn law enforcement personnel are as follows: The Police Officers' Bill of Rights states: "If any law enforcement agency or correctional agency, including investigators in its internal affairs or professional standards division, or an assigned investigating supervisor, intentionally fails to comply with the requirements of this part, the following procedures apply." Section 112.534(1)(g), F.S., states:

"If the alleged violation is sustained as intentional by the compliance review panel, the Agency Head shall immediately remove the investigator from any further involvement with the investigation of the officer. Additionally, the Agency Head shall direct an investigation be initiated against the investigator determined to have intentionally violated the requirements provided under this part for purposes of agency disciplinary action. If that investigation is sustained, the sustained allegations against the investigator shall be forwarded to the Criminal Justice Standards and Training Commission for review as an act of official misconduct or misuse of position."

This is construed by some agencies that the investigation of a sworn law enforcement officer **shall be** conducted by a sworn investigator.

In the interim, **we recommend** that an Attorney General Opinion be sought on whether the Police Officers' Bill of Rights mandates sworn personnel conduct these investigations or not so that agencies can properly evaluate operations and associated costs during consolidation efforts and ensure compliance with the intent of the Police Officers' Bill of Rights.

We recommend that the statutes be amended to specify if sworn law enforcement officers versus non-sworn investigators must conduct these "internal affairs" investigations of sworn law enforcement personnel and, if sworn law enforcement officers are required, amend the Florida Inspector General Act to specifically allow for the hire of sworn law enforcement officers in OIGs and specify, but limit their authority to the statutory mandates of the OIG.

J. Statutory Clarification Needed between the Police Officers' Bill of Rights and the Whistle-blower's Act

Sections 112.532 – 112.534, F.S. (*Law Enforcement Officers' and Correctional Officers' Rights – commonly referred to as the Police Officers' Bill of Rights*) and Sections 112.3187- 112.31895, F.S (*Whistle-blower's Act*) mandate specific requirements on OIGs.

The Police Officers' Bill of Rights requires that the law enforcement officer or correctional officer under investigation must be informed of the nature of the investigation and the names of all complainants. The complaint, all witness statements, including all other existing subject officer statements, and all other existing evidence must be provided before the beginning of any investigative interview of the officer under investigation.

The Whistle-blower's Act requires that the name or identity of any individual who discloses in good faith to the Chief Inspector General or an agency Inspector General that an employee or agent of an agency or independent contractor has violated or is suspected of having violated any federal, state, or local law, rule, or regulation, thereby creating and presenting a substantial and specific danger to the public's health, safety, or welfare; or has committed an act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty may not be disclosed to anyone other than a member of the Chief Inspector General's office, agency Inspector General's office, or without the written consent of the individual. Except as specifically authorized, all information received, produced, or derived from fact-finding or other investigations is confidential and exempt from disclosure while an investigation is active. Complying with either statute while an investigation is ongoing creates a violation of the other.

Further, the Police Officers' Bill of Rights and the Whistle-blower's Act specify when the investigation is final or no longer active. The Police Officers' Bill of Rights requires that the contents of the complaint and investigation shall remain confidential until the employing law enforcement agency makes a final determination whether or not to issue a notice of disciplinary action consistent with certain levels of discipline. The Whistle-blower's Act states that a complainant may submit comments to the Chief Inspector General and the Agency Inspector General on the final report within 20 days of receiving the report and that those comments will be attached to the final report. The Whistle-blower's Act further directs the Chief Inspector General to then transmit the final report and comments provided by the complainant to the Governor, the Joint Legislative Auditing Committee, the investigating agency and the Chief Financial Officer.

We recommend that an Attorney General's Opinion be sought to clarify which statute has priority when both are applicable so that agencies can ensure compliance with the intent of both statutes.

Law Enforcement Consolidation Task Force Inspector General Team Report

We also recommend that legislation be sought to remove the conflicting provisions of these two statutes.

IV. Major Contributors to this Report

Jim Boyd, Inspector General, Florida Department of Health
Dawn E. Case, Inspector General, Florida Department of Children and Families
Bob Clift, Inspector General, Florida Department of Transportation
Julie Leftheris, Inspector General, Florida Department of Highway Safety and Motor Vehicles
Melinda M. Miguel, Chief Inspector General, Executive Office of the Governor
Steve Rumph, Inspector General, Florida Department of Management Services
Roy Dickey, Major, Director of Investigations, Florida Department of Environmental Protection

ⁱ This does not include administrative support staff or functions assigned to OIGs outside responsibilities defined in 20.055, F.S. and staff assigned to the Office of the Chief Inspector General.

ⁱⁱ Office of the Inspector General Annual Reports for Fiscal Year 2010-2011 were reviewed and summarized.

ⁱⁱⁱ Since the report was provided to the Task Force on November 7, 2011, DFS has added two FTE's that are sworn law enforcement officers to the OIG.

^{iv} In the Florida Department of Law Enforcement, the Office of Executive Investigations has primary responsibility by policy to conduct member/employee misconduct investigations. However, statutory authority remains with the Office of Inspector General.

^v The Florida Lottery does not have sworn staff within the Office of Inspector General.

^{vi} The source for this total is *Division of Retirement Informational Release 2011-150*, dated 5-31-2011. Beginning with the 2011-2012 Fiscal Year, state employees contribute three percent of their salary to their retirement. The State of Florida contributes 14.10 percent for sworn employees and 4.91 percent for non-sworn employees. The difference of 9.19 percent represents the additional cost for a sworn employee. This difference multiplied by \$50,000 = \$4,595 and represents both an initial and recurring cost.

^{vii} Equipment and Supplies: FDLE provided the most complete list of equipment and supplies. The list includes:

- clothing allowance - \$540
- tactical clothing and equipment - \$1,107
- bullet resistant vest - \$720
- handgun and shotgun - \$780
- binoculars - \$80
- credentials - \$90
- duffle bag - \$75

Although expensed in the year purchased, many of these items have a useful life of several years. We amortized the Equipment and Supplies total of \$3,392 over five years, resulting in initial and recurring costs of \$680.

^{viii} New vehicle costs vary depending on make and model. We used a new vehicle cost of \$19,044, which is the cost of a 2011 Ford Taurus. The source of this information is the Department of Management Services Equipment Management Information System, for FDLE. In addition, OPPAGA Report No. 11-16, Footnote 9, indicates that the useful life of a pursuit vehicle is 8 years. We therefore estimated a cost of \$2,380 ($\$19,044 / 8 = \$2,380$), which is both an initial and recurring cost. FDLE, by comparison, used a new vehicle cost of \$21,000, which over 8 years represents an annual cost of \$2,625.

^{ix} The best estimate of fuel, repairs and maintenance costs came from OPPAGA Report No. 11-16, page 3, showing 5,571 vehicles with fuel and repairs costs of \$22M ($5,571 / \$22M =$ approximately \$4,000).

^x Chapter 11B-14, Florida Administrative Code, provides a maximum of \$130 per month for sworn officers for Criminal Justice Incentive Payments. A 36% average cost of benefits is also applied for an annual total of \$2,121 ($\$130 \times 12 \text{ months} \times 1.36\% = \$2,121$).

^{xi} DMS Annual Workforce Report – June 30, 2010.

Law Enforcement Consolidation Task Force Inspector General Team Report

^{xii} Investigators do not include supervisory personnel.

^{xiii} Investigators do not include supervisory personnel.

Exhibit I

Offices of Inspector General in Agencies with a Law Enforcement Component

Department of Highway Safety and Motor Vehicles

The Investigation Unit within the Office of Inspector General (OIG) is responsible for the management and operation of criminal and administrative investigations involving the Department's law enforcement, civilian members and contractors or vendors.

On February 1, 2010, the Florida Highway Patrol's, Office of Professional Compliance (OPC), was incorporated into the Office of Inspector General. The OPC served as the internal affairs unit for the Florida Highway Patrol (FHP). Both OPC and the Office of Inspector General, prior to February 1, 2010, had investigative responsibilities and separate reporting structures. Based on the assumed responsibility of the internal affairs function, seven sworn law enforcement positions and five non-sworn positions of FHP were allocated to the OIG. Currently the investigative unit is comprised of 13 members.

For investigations against members of FHP, all complaints are documented on a Complaint Intake and Inquiry Form, which includes a brief synopsis of the complaint and are signed by the Troop Commander. Upon receipt, an FHP Captain and the Office of Inspector General determine the appropriate investigative assignment. Upon evaluation, if the complaint is serious in nature, the complaint will be assigned to an Office of Inspector General investigator; complaints minor in nature are assigned to the appropriate Troop Commander for investigative assignment. A Troop supervisor, Lieutenant or designee with investigative training, is assigned to the complaint investigation. For complaints against members other than FHP, the Office of Inspector General, Legal and Bureau of Personnel Services review complaints and make the decision regarding the most appropriate handling.

The Office of Inspector General maintains a single investigation system, which includes all complaints/investigations for the Department. This system, which was implemented in January 2011, automates many of the manual investigative processes and permits the electronic submission, review and routing of investigation reports and related supporting materials. Additionally, the system has automated and improved the work flow and tracking of FHP crash reporting, use of force, provides for maintenance and tracking of discipline and an officer early warning system.

The Florida Highway Patrol and the Florida Department of Law Enforcement (FDLE) have entered into a memorandum of understanding involving the investigation of an officer-involved shooting. FDLE assumes overall responsibility for the criminal investigation, while the OIG is responsible for the administrative investigation.

The Office of Inspector General has an Internal Investigation Pre-Closure Conference at the close of each investigation prior to final completion and dissemination. Through the

investigation case management system, a case is sent to the appropriate division representative, Legal and the Bureau of Personnel Services.

Florida Fish and Wildlife Conservation Commission

The Fish and Wildlife Conservation Commission, Division of Law Enforcement represents about half of the agency's personnel, with 902 employees, of which 725 are sworn officers. The division emphasizes compliance with fishing and hunting regulations, state and federal laws that protect threatened and endangered species, laws dealing with commercial trade of wildlife and wildlife products, and boating safety laws and regulations.

The Office of Inspector General has been responsible for the internal affairs function for the Division of Law Enforcement since 2003. Complaints received come primarily from two sources, a Division of Law Enforcement complaint intake form and through an internal electronic complaint. Complaints received against a member of the Division of Law Enforcement are discussed formally at least weekly with the Professional Compliance Liaison position who reports to the Colonel of the Division of Law Enforcement. At these meetings a decision is made regarding the handling of the complaint, and for those resulting in an investigation, whether the Office of Inspector General or Division will staff the investigation. Typically cases of a more serious nature, which if sustained would result in discipline of suspension or higher, are worked by the Office of Inspector General (OIG). This determination is made based on the information contained in the complaint, as well as officer discipline history.

All investigations, whether worked by an OIG investigator or Division manager are tracked and monitored by the OIG. For those investigations worked by a member of the Division of Law Enforcement, the investigation is monitored by an OIG investigator, and the report is submitted by the Division investigating member directly to the OIG, who reviews, and approves the final report.

Completed investigative reports are available for review and comment, by the Division and the OIG has access to Legal staff members to review investigative findings. Investigative staff are comprised primarily of sworn law enforcement officers consisting of a Major, three Captains, and a part-time other personal services position. The OIG issued approximately 240 cases during Fiscal Year 2010-2011.

Florida Department of Law Enforcement

The Office of Inspector General within the Florida Department of Law Enforcement (FDLE) reports to the Commissioner and is comprised of two sections; Accreditation Standards, Investigations and Compliance; and Internal Audit.

The primary activities of the Accreditation Standards, Investigations and Compliance Section include the oversight of state and national accreditation for the agency. Additionally, the Unit is responsible for staff inspections for 7 regional operation centers.

This entails providing an objective review of departmental administrative and operational activities, facilities, evidence, property, equipment and personnel outside the normal supervisory function. In addition, this Unit performs Bias-Based Profiling Reviews, Officer Early Intervention reporting, Use of Force analysis, comparative review of intelligence operations with federal and state guidelines and review of FDLE traffic enforcement activities. Furthermore, this Unit conducts Chief Inspector General ordered investigations and investigations resulting from complaint(s) against a member(s) of the Office of Executive Investigations, Professional Standards Unit.

The FDLE, Office of Executive Investigations, Professional Standards Unit is responsible for receiving, processing and investigating all complaints of alleged administrative and criminal employee misconduct for members of the FDLE. For calendar year 2010, there were 36 cases involving sworn members and 33 involving non-sworn. Of those investigations, 15 cases were for violations of FDLE Policy 1.4 (Use of Resources) and 15 cases were for Safety violations (At-Fault Vehicle Accidents). This unit is comprised of a Special Agent Supervisor, three Inspectors and a Government Analyst.

Florida Department of Agriculture and Consumer Services

According to its website, the Investigations Section of the Office of Inspector General is responsible for “insuring that all complaints of a serious nature made against the Department of Agriculture and Consumer Services and its employees are thoroughly, completely and impartially investigated.” The Investigations Section consists of three investigative staff members who report to a Director of Investigations. The Director of Investigations, in turn, reports directly to the Inspector General. One of the three investigative staff members is located in Tampa, Florida.

All Investigations Section staff members, including the Inspector General, are sworn law enforcement officers under Section 943.13, Florida Statutes. These officers conduct both criminal and administrative investigations in response to allegations made against any of the Department’s four thousand employees in its 12 Divisions and 5 Offices. The Investigations Section is specifically authorized to conduct investigations under Sections 20.055, F.S. and 570.092, F.S.

The Investigations Section is responsible for all Internal Affairs investigations involving members of the Department’s Office of Agricultural Law Enforcement. According to the Inspector General, the Office of Agricultural Law Enforcement management consults with Inspector General staff on potential employee misconduct issues involving sworn personnel, and refers all internal employee misconduct allegations to the Investigations Section for handling. All allegations received by the Investigations Section are logged in and initially evaluated by the Director of Investigations. If an investigation appears to be warranted the information is entered into a stand-alone tracking data base and a Case Opening Plan form is generated. The cases, which are generally categorized as either Preliminary Inquiries or IG Investigations, are then assigned to an individual investigator for completion. During 2010-2011, the Investigations Section completed 80

investigations, 43% of which contained a criminal predicate. Approximately 15% of the investigations conducted involved sworn law enforcement officers as subjects of the investigation.

Florida Department of Business and Professional Regulation

The Department of Business and Professional Regulation, Bureau of Law Enforcement is responsible for the management of the Division of Alcohol, Beverage, and Tobacco's (ABT) law enforcement and investigation programs. These responsibilities include conducting license discipline investigations; providing guidance, direction and leadership to licensees; conducting criminal investigations pursuant to beverage and cigarette laws and statutes; and determining the need for using extraordinary emergency suspension powers when a business licensed by ABT has become an immediate danger to the health, safety and welfare of Florida's citizens.

The Office of Inspector General is responsible for performing internal investigations of alleged misconduct by department employees involving fraud, waste or abuse of laws, policies, procedures and rules. The scope of their responsibility includes the internal affairs function for ABT. The office is staffed with sworn personnel that include three law enforcement Lieutenant Investigators, a sworn Director of Investigations, and a sworn Inspector General.

Florida Department of Environmental Protection

The Florida Department of Environmental Protection (DEP) is the lead agency for environmental management and stewardship. The Division of Law Enforcement is Florida's oldest state law enforcement agency and is responsible for protecting the people, environment as well as Florida's cultural and natural resources through enforcement, education and public service.

The Office of Inspector General (OIG) is responsible for both internal criminal and administrative investigations for the Department. As part of this responsibility, the OIG serves as the internal affairs function for the Division of Law Enforcement. All internal affairs investigations are tracked by the OIG and all are assigned a case number. Less serious matters are handled within the Division of Law Enforcement with OIG oversight. More serious matters are handled by OIG investigators.

All investigators, comprised of a Law Enforcement Major, and 4 Law Enforcement Captains, within the OIG are sworn members. The investigative (sworn) members are not from the Division of Law Enforcement, but rather, former members of local police agencies. There are also a Criminal Intelligence Analyst and a Management Review Specialist who sometimes complete investigations of a non-criminal nature such as Background Investigations and they contribute to most of the sworn staff's projects. Their expertise upon hiring was general law enforcement rather than agency and program specific expertise. As such, the Division of Law Enforcement is focused on environmental crimes, while the OIG is focused on crimes and allegations of misconduct by and against the agency.

Of concern for the Investigation Unit within the OIG, are a case management system, which is nearing the end of its useful life as well as staffing and funding to operate an effective OIG.

Florida Department of Corrections

The duties and functions of the Office of Inspector General, within the Department of Corrections (DOC) are specifically outlined in Section 944.31, Florida Statutes. The office's scope of responsibility includes prison inspections and investigations, internal affairs investigations and management reviews.

Currently, 176 positions, 148 sworn law enforcement and correctional officers, work within the Office of Inspector General. Staff are responsible for criminal and administrative matters relating to the Department. Pursuant to Section 944.31, Florida Statutes, the Secretary has the authority to designate persons within the Office of Inspector General as law enforcement officers to conduct any criminal investigations that occur on property owned or leased by the Department or involves matters over which the Department has jurisdiction. The Office of Inspector General currently serves as the single source of law enforcement authority to over 67 institutions with prison populations in excess of 100,000 and 180,000 probationers.

In excess of 40,000 complaints are reviewed annually by the Office of Inspector General. From these complaints, over 6,000 administrative cases and 2,000 criminal cases, including the investigation of 1,500 sexual batteries and 6,400 use of force incidents are conducted on an annual basis.

The Department of Corrections with its authority, role and responsibility is essentially a law enforcement agency. As such, to meet their statutory responsibilities the office operates a statewide multi-jurisdiction interdiction unit comprised of twenty canine teams. The job is to identify contraband including narcotics, cell phones and weapons within the state prison system. The office also partners with the U.S Department of Homeland Security to conduct confidential intelligence gathering upon subjects of national interest.

The investigative system utilized by the Office of Inspector General, Management and Incident Notification System is outdated. The office is currently exploring options to streamline and automate its processes to include the incident tracking, case management, officer history and reporting.

Crimes conducted within Florida prisons require unique investigative skills. If this function were staffed with non-sworn investigators, it would require local law enforcement to assume the criminal investigation function. Investigations oftentimes include multi-jurisdiction circuits which would require law enforcement inter-county of statewide law enforcement authority.

Florida Department of Legal Affairs

According to its website, the mission of the Office of Inspector General (OIG) within the Attorney General's Office is to "assist the Department in facilitating the State of Florida's legal needs by providing timely auditing, investigative, and review services; assessments of management functions; and the promotion of integrity, economy, and efficiency and effectiveness of departmental programs and activities." The OIG is comprised of an Audit Section and an Investigations Section, with a total of 5 staff members. One of the five members is a sworn, law enforcement Captain located in Ft. Lauderdale, Florida. The Investigations Section is specifically authorized to conduct investigations under Section 20.055, Florida Statutes.

The Investigations Section conducts all Department employee misconduct investigations in response to allegations made against any of the Department's 1,300 plus employees, including Internal Affairs investigations involving sworn personnel in the Department's Medicaid Fraud Control Unit. Allegations received by Investigations Section staff are logged into the Office's tracking system, which is a Lotus Notes System supported through the Department's network. All complaints received are initially reviewed by the Director of Investigations or the law enforcement Captain, and are then reviewed and approved for assignment by the Inspector General. While the Investigations Section is authorized to conduct both administrative and criminal cases, complaints involving potential criminal violations are routinely referred to the Florida Department of Law Enforcement for investigation. During Fiscal Year 2010-2011, the Investigations Section conducted between 20-30 preliminary inquiries and between 20-30 administrative investigations. Seventeen (17) investigations conducted during the referenced fiscal year(s) (08-09, 09-10, 10-11) involved sworn personnel as subjects and three (3) inquiries conducted did as well.

Florida Lottery

The Florida Lottery has a Division of Security that provides security services for the Lottery, including protection of employees and facilities, investigative activities, draw management, and background investigations. The Investigations and Operations unit monitors the physical security of all Lottery facilities and investigates security breaches. This unit also investigates problem claims and other allegations of potential illegal activity, and is responsible for managing the draw process. The Division of Security in conjunction with the Florida Lottery Office of Inspector General maintains a retailer integrity program for 3,000 plus retailers. All sworn members of the Lottery are in the Division of Security. The Division currently has 10 sworn members.

The Florida Lottery, Office of Inspector General is responsible for administrative investigations, including internal affairs investigations for the Division of Security. Criminal matters are either referred to the Lottery's Division of Security or FDLE, dependant on specifics. The Office of Inspector General is staffed with all non-sworn positions.

Exhibit 2

Agency	Agency Total Members	Agency Sworn Members	IG - Sworn Staff	IG Sworn Investigators	IG Non Sworn Investigators	Total Number of Investigations FY 2010-2011	Number of Investigations on Sworn LEO Staff FY 2010-11	Ratio of Sworn Investigators to Sworn Investigations	Ratio of Sworn Staff in IG to Agency Sworn	Ratio of Investigations on Sworn Personnel
Highway Safety and Motor Vehicles	4,628	1,946	8	6	2	112	85	7%	0.41%	76%
Fish and Wildlife Conservation	1,830	720	3	2	1	258+	161	1%	0.42%	62%
Department of Law Enforcement	1,682	445	3	1	0	0	0	0%	0.67%	0%
Agriculture & Consumer Services	4,266	266	5	3	0	80	12	25%	1.88%	15%
Business & Professional Regulation	1,651	149	5	3	0	46	14	21%	3.36%	30%
Environmental Protection	3,434	135	5	4	2	55	16	25%	3.70%	29%
Department of Corrections#	26,458	21,044	148	136	0	5,191	0	N/A	0.70%	0%
Department of Legal Affairs	1,299	70	1	1	2	17	3	33%	1.43%	18%
Florida Lottery	424	10	0	0	3*	2	0	N/A	0.00%	0%
Department of Financial Services^										

+ Staff in the FWC, Office of Inspector General provide oversight and review of officer investigations conducted by field personnel.

* Staff in the Florida Lottery, Office of Inspector General have both investigative and audit responsibilities.

^ No information was received from the Department of Financial Services.

The Department of Corrections, Office of Inspector General has 74 law enforcement officers and 74 correctional officers.