

**Department of Justice Guidance
for Federal, State, Tribal, Local, and Territorial
Law Enforcement Agencies on
Best Practices for Providing Official Notification of
Deaths in Custody**



Department of Justice Guidance for Federal, State, Tribal, Local, and Territorial Law Enforcement Agencies on Best Practices for Providing Official Notification of Deaths in Custody

This guidance is provided pursuant to Section 11(d) of Executive Order 14074, which calls for the Department of Justice to issue guidance for Federal, State, Tribal, local, and territorial law enforcement agencies (hereinafter “LEAs”), or other entities responsible for providing official notification of deaths in custody, on best practices to promote the timely and appropriate notification of, and support to, family members or emergency contacts of persons who die in correctional or LEA custody, including deaths resulting from the use of force.¹

Detaining authorities are responsible for the life and physical safety of every detainee. As such, when an individual dies in custody their family members or emergency contacts deserve to be notified in a timely and compassionate manner.

This guidance includes a discussion of best practices as it relates to naturally occurring deaths that occur while an individual is in custody (e.g., a prisoner who dies of cancer), and those deaths that occur as a result of action or inaction taken by law enforcement actors (e.g., a shooting or altercation involving an officer).²

Consistent with the Death in Custody Reporting Act of 2013, the guidance in this report applies to “the death of any person who is detained, under arrest, or is in the process of being arrested, is en route to be incarcerated, or is incarcerated” by a Federal, State, Tribal, local, or territorial LEA, or LEA (or Federal-, State-, Tribal-, local-, or territorial-contracted) facility or officer, whether at a jail, prison, boot camp prison, other correctional facility, including any juvenile facility, or elsewhere.³

The report is not meant to set out a comprehensive, step-by-step procedure that must be followed in every case. Rather, the report should be treated as a guide, with the recognition that its application may vary somewhat case-by-case. The recommendations provided in this report are completely voluntary and are provided only to inform the independent efforts of Federal, State, Tribal, local, and territorial LEAs to establish policies and procedures for conducting death notifications. This guidance is not an all-encompassing directive for all LEAs, and how these recommendations are implemented should be adapted to best suit an individual LEA. In establishing its own policies and procedures, each LEA must account

¹ Exec. Order No. 14074, *Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety*, 87 Fed. Reg. 32,945 (May 25, 2022).

² A death is ‘natural’ when it is caused solely by disease and/or the aging process. An ‘unnatural’ death is one that is caused by external acts, such as intentional injury (homicide, suicide), negligence (including medical negligence), or unintentional injury (death by accident).

³ See 42 U.S.C. § 13727a.

for federal and state law, as well as its own legal, constitutional, administrative, policy, and operational considerations and requirements.⁴

I. Established Policies

LEAs and custodial entities should develop and implement a written policy about death notifications. This policy should include a discussion of the designation of notification team members, the training for such members, a timeline for notifications, the way notification can and should occur, and other factors to consider when making death notifications. The policy should include guidance regarding what hours of the day such notifications will occur. The policy should also discuss the additional notifications that are required within the agency and to other government actors, including the Department of Justice, as discussed in greater detail below.

II. Training and Identification of the Death Notification Team

LEAs and custodial entities should identify and train individuals to perform death notifications. A group of such individuals is commonly referred to as a Death Notification Team. These teams function best when they have the consistent responsibility to perform this important, sensitive, and potentially traumatic task and when (1) members of the team are good listeners, efficient, and empathetic, and (2) members of the team are multi-disciplinary and well-trained in death notification best practices.

The training for these roles should include a discussion of issues related to language access and cultural sensitivity. Training should include a discussion of the use of preferred language, as well as phrases and language to avoid. The FBI has created a 45-minute training module for death notifications, which can be found [here](#).⁵ Other training and resource materials, in multiple languages, can be found [here](#).⁶

Each team should be comprised of at least two members, one responsible for delivering the notification (the “primary notifier”), while the other(s) are responsible for maintaining scene safety and assessing reactions of the family members or emergency contacts. The individual delivering the notification should do all the speaking and deliver all the information. Having a single messenger is more likely to minimize confusion for those

⁴ This document provides guidance only. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable by law by any party in any matter or proceeding. Nor does it place any limitations on otherwise lawful privileges or litigation prerogatives of the Department of Justice.

⁵ *We Regret to Inform You*, <http://www.deathnotification.psu.edu> (last visited April 24, 2023) (training module developed jointly by the FBI and Pennsylvania State University).

⁶ *Resources*, <http://www.deathnotification.psu.edu/resources/> (last visited April 24, 2023).

receiving the notification.

Multi-disciplinary members of these teams often are chaplains or medical professionals who can provide direct assistance to those receiving the notification. If there is heightened media attention, a trained public affairs representative may also be asked to join the team.

Depending on jurisdiction and setting, some agencies may collaborate with other agencies to address scene safety, but local law enforcement should always be informed if a notification is taking place in their jurisdiction.

Several volunteer and non-profit organizations across the country have been formed to assist localities in responding to traumatic incidents. If these individuals are certified as having received advanced training on crisis intervention and death notification, law enforcement/custodial agencies should consider including them, when appropriate, on Death Notification Teams.

III. Identifying the Appropriate Individual(s) to Receive Notification

Death Notification Teams should spend the necessary time and resources to determine the names and locations of appropriate family members or emergency contacts to receive notification. For a decedent who was imprisoned, this information is typically retained by the detaining agency in an inmate's file. If such information is not readily available, the Death Notification Team should use common investigative techniques for identifying the appropriate individuals to receive notification.

The Death Notification Team should consult local laws regarding the hierarchy of next of kin to assist in identification of family members or emergency contacts. Generally, spouses, children, parents/guardians, and siblings are considered the appropriate individuals to receive the notification.

IV. Planning and Preparing for the Notification

The Death Notification Team should be aware of all local protocols and standard operating procedures. The Death Notification Team should assess any available information about the family members or emergency contacts to ensure adequate support services for the notification. The Death Notification Team should also review answers to commonly asked questions, many of which can be found [here](#).⁷

The Death Notification Team should be prepared for various reactions to this event, including shock, disbelief, denial, fear, anger, confusion, immobilization, and a fight or

⁷ Department of Justice, *Frequently Asked Questions*, http://www.doj.state.or.us/wp-content/uploads/2017/03/DeathNotification_PocketGuide_9-15.pdf (last visited April 24, 2023) (guide developed jointly by DOJ and Pennsylvania State University).

flight response. If possible, the Death Notification Team should gain awareness of any relevant cultural and religious practices of the decedent and the notified individuals.

The Death Notification Team should have as much accurate information as possible, some of which may not be shared if there is a criminal investigation.

Family members or emergency contacts may want to know what happened, how the Death Notification Team members are certain of the identity of the decedent, when and where the death happened, and where the decedent is presently located. The Death Notification Team should determine beforehand what information they will and will not share.

Relatedly, the Death Notification Team should be aware of local standard operating procedures and policies concerning the identification of decedents in custody. Standard methods of identification include fingerprints, dental records, DNA, and visual confirmation. Methods generally not accepted by local officials as sufficient include tattoo comparison, possession of ID cards, or other forms of official or unofficial identification.

V. Core Principles

Certain core principles should form the foundation of all communications concerning the death of a person in law enforcement custody.

To the extent possible, death notifications should be made in person, even if the family members or emergency contacts do not live in the same jurisdiction as the decedent. Significant distance and other extenuating circumstances may require cooperation with officials closer to the location of the family members or emergency contacts. Some law enforcement agencies will need to specifically consider their policies and procedures when the family member or emergency contact lives outside the United States.

For naturally occurring deaths, which occur on a regular basis within prison settings, notification via telephone is often necessary, given the nature and volume of such deaths. Such notifications are typically made by a relevant high-ranking official, such as a warden, chief of police, or sheriff, in conjunction with a chaplain or other designated official. These notifications can be made via telephone. In addition to a phone call, the relevant high-ranking official, such as a warden, chief of police, or sheriff should send a letter to the family members or emergency contacts, advising the person of the timing and circumstances of the death. When the Death Certificate is received, the Warden (or designee) should send a copy to the person who received the deceased's remains

Death information (e.g., confirmation of passing of a named individual, the manner of death, or other details about the incident) should never be broadcast over law enforcement radio or other non-secure communications networks.

Family members or emergency contacts should be afforded dignity and be treated with respect.

After a body has been identified, family members or emergency contacts should be informed immediately. To the extent applicable, the investigating authorities should communicate the status of the investigation (e.g., whether it is about to begin or is already underway) and the general process and expected timeline of the investigation (including that there may be elements they cannot share). The investigating authorities should report regularly to the family members or emergency contacts on the progress of the investigation. Some law enforcement agencies will need to specifically consider their policies and procedures when family members or emergency contacts live outside the United States.

If an autopsy is to be performed, the family members or emergency contacts should be informed in advance and offered the possibility of being represented at the autopsy. The consent of the family should be sought for the retention of organs, for forensic examination after the autopsy.

The decedent should be returned to the family members or emergency contact when all post-mortem examinations essential to any investigation are complete. This transfer should be done in a manner that is respectful of the dignity of the deceased, so that rites or other customary procedures can be conducted with the least possible delay. The personal belongings of the deceased should be returned to the family members or emergency contacts as soon as possible.

LEOs and other entities responsible for providing official notification of deaths in custody should also consider referring counseling and therapeutic services to family members or emergency contacts.

VI. Delivering the Notification

The members of the Death Notification Team should notify the family members or emergency contacts of the death once they have gathered all the necessary information. The Death Notification Team can take additional action that might help to reduce shock or strong reactions. For example, the Death Notification Team should make sure their uniform or clothing is free from any biohazard from the crime scene or place of death.

Once the family members or emergency contacts have been contacted, the members of the Death Notification Team should identify themselves and then confirm the identities of the family members or emergency contacts.

The Death Notification Team should attempt to deliver the notification in a location that is comfortable and familiar to the family members or emergency contacts, such as a residence, office, or other private location. The Death Notification Team should always

ask for permission to enter such locations. If a location that is comfortable and familiar to the family members or emergency contacts is not available, the Death Notification Team should identify an alternative suitable private location.

The Death Notification Team should encourage everyone, including the team, to be seated. The Death Notification Team should confirm with the family member/emergency contact if they want everyone present to remain present for the notification. The primary notifier should briefly review what happened before delivering the notification. The Death Notification Team should use the decedent's name and not language such as "the body" or "remains." The Death Notification Team should be prepared to repeat information.

The Death Notification Team should be familiar with the process in their jurisdiction for family members or emergency contacts to view their loved one. Also, the Death Notification Team should be prepared with a general explanation of the autopsy process so if asked, they can respond effectively.

The Death Notification Team should document if extenuating circumstances require a remote notification. In the event of a remote notification, the local jurisdiction should conduct the in-person notification (with a trained team) and have the Death Notification Team jurisdiction available by phone.

The Death Notification Team should have resources, including publications and contact information for other resources, available to leave with the family members or emergency contact. This should include resources in the appropriate language.

There are many statements that family members or emergency contacts may not find helpful. For example, the Death Notification Team should not share personal stories of loss. Each loss is different. The Death Notification Team should not state that they know how the family members or emergency contacts feel. The Death Notification Team should not say that time heals all wounds. The Death Notification Team should not say that the family members or emergency contacts need to be strong, or that "you will get over this someday." They may not. There are also cliché statements that serve no purpose. They include "He was just in the wrong place at the wrong time," "You must go on with your life," and "You will find closure."

The Death Notification Team should schedule a follow-up meeting within 24 hours. The Death Notification Team should suggest family members or emergency contacts write down any questions or thoughts that arise to ask at the next meeting.

The support person on the team should monitor the family members or emergency contacts for any type of reaction and overall scene safety.

The Death Notification Team should answer questions honestly and ask if there is anyone

that the family members or emergency contacts need help contacting. The Death Notification Team should not leave the family members or emergency contacts alone until additional support resources are able to be present or contact the family members or emergency contacts. If an individual does not have any local support, the Death Notification Team should stay with them until they are able to speak with familial or professional support.

When authorities know or suspect that the death is the result of a crime, the victim's family may be entitled to certain information and resources. Not every law enforcement agency has a victim advocate. However, there are victim advocates based in many county and community organizations. Victim advocates can offer professional support to family members and emergency contacts including crisis intervention. They can also provide resources including referrals to funeral homes, counseling, and state crime victims' compensation programs to assist with burial expenses. Victim advocates can also accompany family members and emergency contacts through the criminal justice system if a subject is arrested.

The Death Notification Team must be aware that family members or emergency contacts may already be aware of the death through public media reports or other means, and they may need confirmation of the death, as opposed to notification. If possible, Death Notification Teams should check with their agency's communications team to determine whether any information about the death is public. The Death Notification Team should be prepared for the possibility that family members or emergency contacts may resent that the Death Notification Team did not connect with them sooner.

In cases where there is an ongoing investigation into the cause of death, the Death Notification Team should be prepared to explain the ongoing nature of the investigation and provide family members with the contact information of the investigating law enforcement personnel. The Death Notification Team should not espouse opinions on the cause of death in such circumstances or opinions as to how any such investigation is likely to be resolved.

VII. Special Circumstances

The Death Notification Team should be cognizant of certain groups of individuals when conducting a notification. The Death Notification Team should never conduct an initial notification with children present. Children should not be used to translate for adults and the Death Notification Team should consider whether interpreters will be needed prior to arrival. If the notification needs to be made to a child, it should be done by someone the child trusts.

If the decedent is a criminal subject, a different Death Notification Team should handle the notification to the decedent's family or emergency contacts and to any victims (or victims'

families or emergency contacts) of the decedent's alleged criminal actions. A victim or victim's family may be entitled to certain information and resources, including victim advocates and support teams.

VIII. Documentation

Once notification has been attempted or has occurred, the Death Notification Team should document and maintain within the custodial record of the individual each death notification or attempt.

Law enforcement and custodial agencies should publicly post their policies and procedures on death in custody notification.

IX. Follow Up

The Death Notification Team should provide family members or emergency contacts with contact information should such individuals wish to ask follow-up questions that they were unable to ask upon notification. This allows family members and emergency contacts the chance to calm down, reflect, and consider questions that may not have been apparent when first receiving the news.

In addition, this offers the Death Notification Team the chance to discuss the delivery of personal effects and offer assistance with managing any media inquiries, should that be applicable.

The Death Notification Team should debrief once off scene and address management of team stress as well as accessing any resources needed by the team.

X. Notification to Other Officials and Government Agencies

The Death in Custody Reporting Act requires states and federal law enforcement agencies to report to the Attorney General information regarding the death of any person who is either detained, under arrest, in the process of being arrested, en route to be incarcerated, or is incarcerated at a municipal or county jail, state prison, state-run boot camp prison, boot camp prison that is contracted out by the state, any state or local contract facility, or other local or state correctional facility (including any juvenile facility); any facility (including any immigration or juvenile facility) pursuant to a contract with such Federal law enforcement agency; any State or local government facility used by such Federal law enforcement agency; or any Federal correctional facility or Federal pretrial detention facility located within the United States. In such an event, officials should review the reporting requirements in 42 U.S.C. § 13727a.

If the decedent is a non-U.S. citizen, the relevant high-ranking official, such as a warden, chief of police, or sheriff (or other appropriate official) should notify the appropriate consulate official by telephone, no later than the next workday. The warden, chief of police, or sheriff (or other appropriate official) should confirm the notification by a letter explaining the circumstances of the death. Officials should also review the reporting requirements under the Death in Custody Reporting Act.

In many jurisdictions, the Office of the Medical Examiner or the Coroner's Office is generally responsible for performing death notifications for most deaths occurring in their jurisdiction. When a death in custody occurs, the LEA should assume responsibility for the notification.

Many jurisdictions have statutes and policies requiring the independent investigation of any deaths in custody. In these jurisdictions, the agency with custody should follow all local rules and regulations and provide whatever information and cooperation is required to allow the investigating agency to perform the notification in line with this guidance.