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**Department of Justice Guidance  
for State, Tribal, Local, and Territorial  
Law Enforcement Agencies on  
Best Practices for Conducting Independent  
Criminal Investigations of Deaths in Custody  
That May Involve Conduct by Law  
Enforcement or Prison Personnel**



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Law Enforcement Agencies on Best Practices for Conducting Independent Criminal  
Investigations of Deaths in Custody That May Involve Conduct by  
Law Enforcement or Prison Personnel**

This report is provided pursuant to Section 2(a) of Executive Order 14074, which calls for the Department of Justice to issue guidance to State, Tribal, local, and territorial law enforcement agencies (LEAs) regarding best practices for conducting independent criminal investigations of deaths in custody that may involve conduct by law enforcement or prison personnel.<sup>1</sup>

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 State, Tribal, local, or territorial LEA, including while at a LEA (or State-, Tribal-, local-, or territorial-contracted) facility, whether at a jail, prison, boot camp prison, other correctional facility, including any juvenile facility.<sup>2</sup> LEAs should consider whether this guidance would be beneficial in other situations involving an officer-involved shooting that do not meet the definition described above. In accordance with the text of Section 2(a), this report addresses only criminal investigations of in-custody deaths, not administrative investigations.

In-custody deaths are a profoundly important issue. They are of great consequence to the legitimacy and integrity of the criminal and juvenile justice systems, to the lives of the people who come into contact with those systems, and to the family members and loved ones of those who have died in custody. Though few officers will be directly involved in a death in custody situation during their career, many more may experience the impact of one, as the effects of such events touch not only the officers involved, but the department and the community as well. Growing awareness of deaths in custody has increased demands for criminal and juvenile justice reform.

Within a nation that contains approximately eighteen thousand distinct police organizations, there is inconsistency in training, policies, and practices.<sup>3</sup> The Department of Justice (“Department” or “DOJ”) recognizes the importance of thoroughly, impartially, and promptly investigating all deaths in custody, particularly those that may involve conduct by law enforcement or correctional personnel. Such investigations are essential for producing appropriate findings and drawing conclusions about the causes of and necessary

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<sup>1</sup> 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).

<sup>2</sup> See 34 U.S.C. § 60105(a).

<sup>3</sup> Reaves, Brian A. 2011. *Census of state and local law enforcement agencies, 2008*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics. Available from [www.bjs.gov](http://www.bjs.gov).

and appropriate remedies for an in-custody death, and to guide policy, training, and equipment enhancements.

The purpose of this guidance is to offer best practices that will assist LEAs in conducting independent criminal investigations of deaths in custody that may involve conduct by law enforcement or prison personnel.

This 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 case-by-case, particularly since the size, resources, expertise, and other features of LEAs can differ greatly. The Department recommends that LEAs that are unable to adhere to the guidelines set out in this report seek assistance from other agencies when conducting a criminal investigation of a death in custody.

LEAs can design policies, procedures, and training to ensure that personnel know exactly how to respond when a death in custody involving an officer occurs. Clear and concise policies and procedures relating to these events should be developed, documented, updated regularly, and presented to all officers through recruit and in-service training. As agencies develop or review their processes, including policies and procedures, they should include explanatory language that describes the methodology and reasoning behind the approach. This language on the process will help build or strengthen the trust between law enforcement and the public, since it communicates the rationale behind the investigatory process. Developing a written policy or standard operating procedures prior to an incident will ensure that all involved entities know and understand their roles, expedite the response to the event, and promote more efficient investigative efforts.

LEAs should fully train all staff on the contents of these policies and procedures to ensure that they understand what is required of them and the steps that the department will take. On-scene checklists are particularly helpful for those responding to these types of incidents.

The recommendations provided in this report are completely voluntary and are provided only to inform the independent efforts of State, Tribal, local, and territorial LEAs to establish policies and procedures for conducting independent criminal investigations of deaths in custody. 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 for federal and state law, as well as its own legal, constitutional, administrative, policy, and operational considerations and requirements.

Deaths in custody can be emotionally charged events that require a rapid response, often leaving little time for deliberation. It is critical that an LEA prepare officers and investigators in advance for these situations, so that they will be better prepared to handle the situation. Therefore, the most important recommendation for all LEAs is to have

policies and procedures in place for conducting independent criminal investigations of deaths in custody that may involve conduct by law enforcement or correctional personnel, so as to ensure accurate and impartial investigations, promote transparency, and enhance public trust.

## **BACKGROUND**

As noted above, in-custody deaths involving conduct by law enforcement or correctional personnel are of immense significance to the legitimacy and integrity of our nation's justice systems. Following a death in custody that may involve conduct by law enforcement or correctional personnel, it is vital that an independent criminal investigation be conducted, regardless of the presumed cause of death, and it is critical that such deaths be investigated accurately, professionally, and with integrity. Each death in custody that may involve conduct by law enforcement or correctional personnel should be criminally investigated unless a preliminary investigation conclusively establishes that no law enforcement or correctional personnel contributed to or were otherwise involved in the death.

Criminal investigations of deaths in custody should be independent, objective, fair, thorough, thoughtful, and prompt. An impartial, effective, timely investigation is necessary to determine the cause of death, prevent similar incidents in the future, ensure the safety of other detainees, and provide the family of the deceased with objective and prompt information. To achieve those aims, it is imperative that LEAs establish policies and procedures for investigations of in-custody deaths in advance. The development of a protocol prior to the investigation will help affected agencies articulate to the public how an investigation will occur, promote the public's confidence that a fair and objective investigation will occur, and enhance the sense of community justice.

A criminal investigation of a death in custody serves various goals. The investigation should seek to find out what happened in a given case. The investigation should determine the cause of death and whether it was natural or unnatural. The investigation should establish whether involved law enforcement or correctional personnel acted in accordance with all applicable laws, regulations, policies, and procedures. And the investigation may also provide information that is relevant to broader policy questions, such as whether a pattern or practice may have contributed to the death and should be redressed. An investigation can also contribute to lessons learned and consideration of possible changes in policies or procedures to reduce the likelihood of such incidents occurring in the future.

## **RECOMMENDATIONS**

### **I. Appointing an Investigative Team Before an Incident Occurs**

Deaths in custody involving law enforcement or correctional personnel require a rapid response and a thorough investigation. Such investigations can differ in important ways

from other criminal investigative work, including homicide cases. These undertakings can be complex, and accurate and complete investigations require agency planning and following established protocols.

Establishing a single unit devoted to these investigations will help ensure that a consistent standard is applied; thus, the first step in ensuring a proper investigation is the designation of an investigative team(s).

Criminal investigations of in-custody deaths generally should be conducted by an investigative team that is trained in criminal investigations and operates outside the detaining agency's ordinary chain of command. This structure will help avoid conflicts of interest and promote the reality and appearance of impartiality. These investigative teams are typically comprised of officers from traditional investigative units, including Internal Affairs, Homicide, Special Investigations Units, and Force Investigations Units.

Once the team is identified, all members must be fully trained and prepared to handle multiple scene requirements, including those at the scene of the death, the department, and potentially at an emergency care facility. These trainings can be provided by federal law enforcement agencies or through private entities that focus on law enforcement training. Internal training will also be necessary in order to ensure compliance with the policies and practices of the agency conducting the investigation. The investigative team should also receive additional training in the science of human performance factors that influence human behavior during high-stress, time-pressured deadly force confrontations, and collection and analysis of video evidence, e.g., body-worn camera (BWC) recordings and bystander smart phone recordings.

Certain law enforcement agencies may lack the resources or capacity necessary to conduct its own independent criminal investigation of a death in custody that may involve law enforcement or correctional personnel. In such cases, that agency should rely on another LEA with appropriate jurisdiction to assist with the investigation. This can be a federal agency, state agency, or local agency. To be clear, this guidance does not suggest that all such investigations should be conducted by another LEA. That decision should be made based on the resources available to the respective LEAs, the ability of an LEA to effectuate an independent investigation, and considerations related to potential delays. If an outside LEA is utilized, it is imperative that agencies make these arrangements in advance to ensure that all parties agree to established protocols and responsibilities. LEAs can formalize these partnerships through memoranda of understanding that outline the ways in which the agencies will work together and share resources.

It is important to note that the use of outside agencies to conduct or assist in a death in custody matter that may involve law enforcement or correctional personnel is not limited to smaller LEAs. To ensure and demonstrate an LEA's commitment to a fair and impartial investigation, some medium and larger sized agencies may call upon others to consult,

assist in, or conduct investigations to help demonstrate integrity and impartiality. This may be the typical practice or done on certain cases.

In conjunction with the investigative team, a public information officer or other designated staff should be trained and prepared to address critical public aspects involving such incidents. Staff assigned to this role should be aware of the considerable sensitivities surrounding an in-custody death that may involve law enforcement or correctional personnel and be prepared to provide consistent messaging through an incident and in its aftermath.

## **II. Immediate Response**

### ***A. Rendering Aid and Eliminating Threats***

The actions taken by the initial responding officer (who may be present at the scene when the incident occurs) will greatly affect the success or failure of any investigation. As detailed below, the officer must arrive at the scene safely, defuse any dangerous situations, provide medical assistance, apprehend any subjects, secure the scene, identify witnesses, call for appropriate assistance, and notify supervisors.

Following a death in custody that may involve law enforcement or correctional personnel, the first officers on scene should render medical aid as circumstances allow and to the degree reasonably possible, pending the arrival of trained medical personnel. The safety and well-being of those involved – whether it be the individual suffering from the injury or illness, the officer(s), or innocent bystanders – should be the first priority. The primary responsibility of every law enforcement officer is to preserve life.

In the course of providing any such care, officers should seek to preserve the scene with minimal contamination and disturbance of physical evidence. Similarly, to the extent they are able, the officers should instruct any responding medical personnel to disturb the scene as little as possible and not to clean up the scene during or after the medical care. Further, and as discussed in greater detail below, any and all medical interventions should be documented for investigative purposes.

To the extent that an individual on or near the scene remains a threat to any bystanders, subjects, or law enforcement personnel, on-scene personnel should take necessary actions, including disarming, handcuffing, or otherwise securing the individual. An officer should never assume, for example, in an officer-involved shooting incident, that because a subject has been shot or incapacitated, that he or she is unable to take aggressive action.

In general, it is better for an officer to remain at the incident scene than leave to pursue a subject, unless the officer can apprehend the subject readily. There may be other situations that demand an officer pursue a subject. But actions such as foot pursuits are inherently

dangerous, especially when compounded by the stress of the initial incident that caused the death in custody. When an officer remains at the scene, they can summon backup, await emergency medical assistance, assist the injured, protect evidence, and identify witnesses. Instead of pursuing a subject, the officer can provide the agency's real-time communication center with information, including the subject's physical description, their manner of travel, direction of travel, and whether they were armed.

### ***B. Securing the Scene***

If officers have established that an individual is deceased and the subject is not at the scene, securing the incident scene becomes the most important responsibility of the responding officer. Officers should cordon off the area. This can be accomplished through the use of crime-scene tape, rope, vehicles, or barricades, or simply locking a door and stationing an officer at the entrance. In addition to the immediate scene, officers should consider whether additional areas need to be secured, such as approach or escape routes.

Officers should seek to establish and protect the boundaries of the incident scene, in order to prevent anyone from entering except those who have a specific function to perform and to otherwise preserve evidence. Persons to be excluded from the scene include law enforcement officers not assigned to the case, politicians, members of the media, family, and friends. Cooperation with members of the media must not interfere with the investigation. Officers should establish a fixed point to stage media near the scene for updates. Family members and friends of a deceased individual may also be present. These people must be treated compassionately but still be kept away from the incident scene.

Officers should make a record of everyone who is present at the scene and identify potential witnesses. To the degree reasonably possible and appropriate, the first officers on the scene (as opposed to the investigative team) should focus on a few key matters and rely on assisting officers to handle other duties. Once they have identified potential witnesses, officers should separate them and remind them not to discuss any aspects of the incident among themselves or with others, so as to ensure that their statements are as independent as possible. Officers should ask such witnesses to remain present to provide a statement. If a witness wishes to leave, the officer should obtain contact information for future communications, or provide their supervisor's contact information and request that the witness contact them. If capable of doing so, assisting officers may use photographic or video recordings to document any onlookers and vehicle license plates present for possible future identification and questioning, should they leave the incident scene.

Officers must secure in place all firearms and other weapons in the vicinity. If an officer must physically secure a weapon, its exact position should be marked and photographed. If an officer's firearm was involved in the incident, that firearm should be secured for later examination. Particular attention should be paid to this issue. For example, the firearm should not be moved if dropped, nor removed if holstered, nor opened, reloaded, or

tampered with in any manner. Ideally, officers should ensure that all weapons and expended cartridge casings remain in place undisturbed for the assigned investigators.

To the extent possible, the officers should conduct brief witness interviews at the scene, particularly of law enforcement or prison personnel in an effort to provide investigators with a starting point (this issue is addressed in greater detail below). Such interviews should be confidential and conducted outside the presence of other staff and detainees. The interviews should also be sensitive to the psychological, emotional, and physical wellbeing of the interviewees.

All officers involved should also provide a public safety statement. The public safety statement is intended to establish the level of danger that may still exist and the initial operational response to locate subjects, and it should focus the initial stage of the investigation. This time-sensitive statement, usually verbal, by an involved or witnessing officer should describe the type of force used, the direction and approximate number of shots fired by the involved member(s) and subject(s), the location of an injured person, the description of outstanding subject(s) and their direction of flight, the time elapsed since the subject(s) were last seen, whether the subject(s) are armed and the type of weapon(s) if known, any additional known safety risks about the outstanding subject(s), whether any evidence needs protection, and the presence and location of any known victims and witnesses. As appropriate, LEAs should engage community leaders and local stakeholders to share the public safety statement and other information that can reasonably be disclosed at the time.

### ***C. Making Appropriate Notifications***

Officers should notify supervisors and the appropriate officials as designated by agency policy. A policy regarding these notifications should be set out in advance, and checklists should be provided to officers that they carry with them on an ongoing basis, so that confusion at the scene of the incident does not hinder rapid notification. These notifications should include appropriate supervisors, including potentially the top-ranking official for the agency. These notifications may also include internal affairs, a real-time crime center, legal counsel, third-party partner agencies, the coroner or medical examiner, and a relevant prosecutor's office.

Officers should notify their communications unit of exactly where they are, what they have, and what they need. Resources to consider requesting include (1) additional patrol units, (2) an immediate supervisor, (3) rescue personnel, (4) investigators, (5) evidence technicians, and (6) a public information officer.

Officers may not receive all the assistance requested. Technicians or detectives may not be readily available, the public information officer may be at another scene, or the immediate supervisor may be temporarily unavailable. Officers should focus their efforts



on the duties discussed above. Using available resources to perform tasks in the right priority will minimize any negative impact on the investigation.

If appropriate, it is also advisable that agencies inform a subject officer's family or next of kin that the subject officer is safe and unharmed.

### **III. Assuming Control of the Scene from Those Involved and Obtaining Evidence**

The criminal investigators should report to the incident scene as promptly as possible. Upon their arrival, the criminal investigative team should obtain a detailed briefing about the incident and ensuing events from the detaining agency's responding officers. The criminal investigators should then begin their independent documentation and evaluation of the scene.

Depending on the timing of the arriving investigative officers, an appropriate supervising officer or an incident commander should, after arrival, assume responsibility for the scene of the incident from the officers who were present for the incident or who first responded. Such official or the investigative team should follow the next steps outlined below in an effort to further secure evidence and ensure a thorough investigation.

#### ***A. Photograph and Videotape the Scene***

Investigators should photograph and videotape the scene and all evidence from various perspectives and distances, with scales. It is also important that investigators document in writing a description of each photograph and video for future reference. Consideration of the appropriate perspectives is critical.

Although a photo log has sufficed throughout much of police history, an emerging practice in crime scene documentation is the use of video. Doing so provides supervisors and investigators with an additional perspective on the incident and the spatial relationships between different parts of the crime scene. Still photos capture lighting differently than video. This is particularly true at night. As a result, video can show a truer visual representation of the scene as it presented. Moreover, video capabilities are now prevalent within police forces and investigative teams. Thus, investigators should conduct a video walk-through of the scene and capture relevant views and angles as they relate to the incident.

Investigators should likewise photograph any involved individuals wherever possible, so as to document their contemporaneous appearance and injuries, if any. These photographs and videos should be recorded as soon as possible, and within two hours of the incident's detection.

In addition, investigators should determine whether there are any other audio and video recordings, including BWC recordings, bystander recordings, or surveillance cameras in the area, and if there are, secure those recordings.

### ***B. Develop a Descriptive Documentation of the Scene***

Investigators should prepare a detailed description of the scene. That description should, among other things, describe the conditions of the scene, including lights, smells, and temperatures. The description should also note whether any conditions have changed, or evidence has been moved prior to the written documentation.

Investigators should likewise diagram the scene and any evidence, including marking the positions of those present at the time of the incident and describing the relationship of any items to the body, with necessary measurements. For instance, investigators should document and diagram any blood and bodily fluid evidence, including volume, patterns, spatters, and other characteristics. Investigators should ensure that the diagram includes labels and is sufficiently detailed.

### ***C. Establish Probable Location of Injury or Illness***

Investigators should identify the probable location of the decedent's injury or illness. The specific location where the deceased is found may not be the actual location where the injury or illness that caused or contributed to the death occurred. Once any such other locations are identified, investigators should follow this report's recommendations for securing, evaluating, and documenting all locations associated with the detainee's death.

### ***D. Collect, Inventory, and Safeguard Evidence***

All activities conducted and observations made at the scene (and any other relevant locations) should be documented as soon as possible after the incident to preserve information. Investigators should prioritize the collection of evidence to prevent its loss, destruction, or contamination. Investigators should focus on the most transient evidence first, and they should establish a plan so that initial collections do not compromise later ones.

Investigators should properly collect, label, secure, and document all items of potential evidentiary value, including personal items, clothing, and any weapons. Investigators should likewise ensure the effective preservation, packaging, and transport of evidence for secure storage, and that the chain of custody is maintained and documented throughout the entire process. Moreover, investigators should comply with federal, state, and local laws, regulations, policies, and procedures governing the collection of evidence so as to ensure its admissibility in the event there is a prosecution or other legal proceeding.

A log of all persons entering or exiting the crime scene should be kept by a designated officer. An incident chronology is also recommended, which should include documentation of the arrival of supervising officers, investigators, medical personnel, calls for service, and other critical issues.

Officer should attempt to collect the cell phones of all individuals involved in the incident and seek consent to search those phones, and if they cannot, the investigative team should seek warrants in appropriate circumstances. Cell phones can often provide significant evidence, including evidence related to location, timing, and communications. Investigators should also monitor social media for any video or photographic evidence from bystanders that was not identified and collected at the scene.

#### *E. Interview Witnesses at the Scene*

Investigators should obtain statements from all witnesses as appropriate, including from any officers, detainees, emergency service personnel, and other first responders, at the scene, keeping in mind that potential investigative targets including law enforcement and prison personnel cannot be compelled to incriminate themselves. See discussion of issues relating to compelled interviews below. These interviews are more detailed than those conducted by first responders, discussed above. Investigators should conduct interviews with each and every person involved, irrespective of whether they previously made a statement to the detaining agency's officers. These interviews should be recorded, and investigators should collect all available identifying data from those interviewed. Investigators should seek to ensure that all relevant details are discussed and documented.

In particular, interviews should include the appropriate use of open-ended and targeted questioning, a lack of bias or leading questioning, appropriate follow-up, and appropriate timeliness.

If deadly force was used by an officer, investigators should collect specifics about the officer involved, including his or her actions, available options, attempts to deescalate (if any), experience, training, nature and extent of any injuries, if or when emergency responders were called, the context of the encounter, the imminence of any threat, the relative numbers of officers and other individuals present, opportunities for de-escalation, the presence of bystanders who may have been endangered by a subject, weather and environmental factors, the experience, training, and background of the officer, force options available to the officer, any officer injuries, knowledge of a subject's criminal history or prior dangerous or violent behavior, and the officer's appearance (such as uniform, badge display).

Investigators should also try to learn as much as possible about the deceased or other non-officers involved in the incident. For example, investigators should seek to understand the decedent's condition and actions before and during the incident leading to death, the nature

and extent of his or her injuries, who was present at the incident scene, what injuries (if any) were sustained during an interaction with any officers, whether the decedent was unresponsive, whether and when medical attention (if any) was requested and provided to the deceased, whether any weapon was in possession or in reach of a subject, the type of weapon, the physical capabilities of the decedent, any pre-existing injuries, whether the subject was restrained, indications of alcohol or drug use prior to the incident, any mental health issues, refusals by the subject to comply with police commands, verbal threats, threatening gestures, and the seriousness of the underlying crime (if applicable).

Further, if the decedent was being held at a law enforcement facility, investigators should interview the detaining facility's staff—in particular, medical and mental health staff—and other nearby detainees about the decedent's health, medication(s), and most recent contact with a nurse or physician. Investigators should obtain any morbidity/mortality reviews prepared by the detaining facility's staff. Investigators may also wish to obtain drug and/or alcohol screens of any involved officers or detainees, consistent with all applicable laws, regulations, policies, procedures, and contractual agreements. Investigators should preserve body camera footage.

To the extent applicable, a neighborhood canvass, although time consuming, represents a best practice. The file should document which addresses were attempted and which ones were successful. These canvasses should include a search for any video and audio of the incident, which would include doorbell cameras or other security footage.

#### **IV. Documenting and Evaluating the Body**

Prior to moving the decedent's body or any evidence on or around it, investigators should photograph the body and its immediate surroundings, documenting how the decedent was initially found. Investigators should also photograph the decedent's face and any apparent injuries.

These photographs should be taken both with and without measurements, as appropriate. In addition, investigators should conduct an external examination of the body—documenting detailed information about the decedent's physical attributes, their relationship to the scene, the presence, absence, and condition of clothing and personal effects, the presence or absence of any objects that may be relevant, the presence or absence of any marks, injury, trauma, scars, and tattoos, and the possible cause(s), manner, and circumstances of death.

The documentation should also note any and all post-mortem changes in the decedent or the environment. In conducting this examination, investigators should preserve any evidence on the body, and then collect, transport, and document that evidence in an orderly and proper fashion to ensure the chain of custody is maintained.

Based on their initial findings, investigators should also determine the need for any further evaluation of any evidence by specialists. Further, investigators should ensure the security of the decedent's remains and arrange transportation for the autopsy. An autopsy, and related medical data, should be requested for any death in custody that may involve actions by law enforcement or correctional personnel. The autopsy should be conducted by an independent, trained coroner or medical examiner, consistent with best practices for the field.

## **V. Completing the On-Scene Investigation**

Once the initial investigation of the scene is complete, investigators should participate in a debriefing with officers from all participating agencies. Doing so will help establish post-scene responsibilities and ensure that all investigative information is shared with the lead investigating entity. Before leaving, investigators should also properly "close out" the scene, including by conducting a "walk through" to ensure that the on-scene investigation is complete, that all evidence has been collected, that materials are not inadvertently left behind, and that any dangerous materials or conditions have been documented and reported to the proper entities and officials. Depending on the time (e.g., at night) or other environmental conditions (e.g., rain, snow), investigators should consider holding the scene secure to conduct further examination in more favorable conditions. This will help ensure all relevant evidence is identified, documented, and preserved. Investigators should then prepare a summary report about the incident, collecting all of the information gathered up to that point.

## **VI. Continuing the Investigation**

Once the on-scene investigation is complete, investigators should gather, verify, and corroborate all relevant witness statements. Investigators should also follow up on all leads and additional points of contact. In the course of their evidence gathering, investigators should not share any opinions or divulge investigative information, even in an effort to obtain information or statements from witnesses.

Investigators should likewise seek to gather any and all other relevant evidence. For example, investigators should document the history and circumstances surrounding the discovery of the decedent's body, including establishing and recording the person(s) who discovered the body and when. Investigators should also determine the decedent's pre-death history, documenting when, where, how, and by whom the decedent was last known to be alive. In addition, investigators should document any relevant incidents and events occurring prior to the death.

Further, investigators should obtain all relevant medical information about the decedent and his or her death. For example, investigators should document any complaints or symptoms of the deceased prior to death.

In certain cases, investigators should also document the decedent's medical history, including medications obtained and taken, alcohol and drug use, and family medical history, as well as his or her physical characteristics and traits. Investigators should likewise obtain information from treating health care providers to confirm that history and treatment record. Investigators should similarly obtain and review any relevant emergency medical personnel records and antemortem specimens.

Additionally, investigators should document the decedent's mental health history, including any behavioral issues, hospitalizations, medications, or family history of mental illness. The documentation should note any mental health professionals who treated the decedent, and investigators should obtain and review any and all potentially relevant mental health records.

## **VII. Notifying the Next of Kin**

The prompt notification of the next of kin not only is a humanitarian gesture but also may further the investigative process. The next of kin should be informed of the death as soon as possible after the incident, and investigators should report regularly to the next of kin throughout the investigation, consistent with all applicable laws, regulations, policies, and procedures. The best practices for such a notification have been discussed in greater detail in the Department's Best Practices for the Official Notification of Deaths in Custody.

Among other things, investigators should provide the next of kin with an approximate timeline for the investigation, notify them of the autopsy, inform them approximately when the body and any information will be released, give them information about the appropriate officials to contact with questions, and make them aware of any available support services. The investigative team's contacts with the next of kin should be sensitive to their psychological, emotional, and physical wellbeing.

## **VIII. Interviews with Involved Officers**

A recorded interview with those officers suspected of being involved in the death in custody is appropriate and should be attempted. Research and best practices suggest that such an interview should take place as soon as practicable. Certain agencies have policies regarding the timing of such statements.

To the extent an officer is a suspect in a criminal proceeding, they have the same rights as any other suspect. Agencies should be careful to not utilize an administrative process to circumvent these rights.

Although the instant document focuses on criminal investigations, it is important to note that once an administrative process/investigation begins, officers are often required to

answer such questions when they are germane to an administrative investigation. However, in answering these questions, officers may make statements or admissions that could result in termination of their employment. Using such compelled testimony in a criminal investigation is a violation of the Fifth Amendment. Investigators should consult with internal legal counsel or the relevant prosecutor prior to seeking to interview officers and ensure that criminal investigators and prosecutors have no access to compelled statements obtained in an administrative investigation.

## **IX. Closing the Investigation**

Once the criminal investigation is complete, investigators should prepare a final report documenting all relevant evidence gathered and conclusions reached throughout the investigation. Investigators should spend considerable time ensuring that they have collected, organized, and safeguarded all relevant evidence for prosecutors, defense counsel, and others. A log of such evidence should be created and maintained.

At an appropriate time following an incident, agencies should also consider whether any health or wellness resources should be provided to any individual involved in the incident, including law enforcement officers.

## **X. Timetables Related to Investigations**

Strict timelines on criminal investigations are difficult to impose given the high variability in the time it takes to complete an investigation. External factors or actors can elongate an investigation beyond an investigator's control. For example, a medical report related to the death may take several weeks or months. Similarly, an investigator's work may be delayed by other investigations or pressing matters.

Nonetheless, the best practice is to finish the investigation as soon as practicable, so long as thoroughness is not compromised. In such incidents, public confidence in law enforcement is often tied or correlated to the combination of the timeliness and thoroughness of the investigation. In addition, administrative investigations are often delayed until a criminal investigation is complete, meaning any appropriate discipline or exoneration of an officer can also be delayed. This too has a significant impact on public confidence in such investigations and the criminal justice system. As a result, investigators should strive to complete the investigation as quickly as they can, while ensuring that the investigation is complete.

## **XI. Review Teams**

Following an incident and the complete and thorough investigation of the incident, including the final adjudication of any charges or administrative penalties, agencies often form and utilize a review team, which analyzes the incident, the response thereto, and any

investigation, for purposes of improving processes and practices within the agency. This look-back review is designed to impact the overall agency, as opposed to the individual officers involved in the incident. The review team should be comprised of a cross-section of employees, including supervisors, officers, and investigators, to ensure a global view of the response to incidents. Review team members should undergo training, including expanded training on the deadly use of force and investigations, before appointment.

## **CONCLUSION**

It is critically important for State, Tribal, local, and territorial LEAs to conduct an independent criminal investigation of all deaths in custody that may involve conduct by law enforcement or correctional personnel. The Department of Justice hopes that this guidance will help LEAs ensure the independence, impartiality, efficacy, and timeliness of all such investigations. Following the recommendations in this report will promote the accuracy, integrity, and professionalism of investigations of deaths in custody and also ensure that such deaths can be and are appropriately redressed. Importantly, doing so should also help facilitate advances in knowledge and practice to reduce the number of in-custody deaths.