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**Department of Justice Report Regarding
Investigations and Discipline for Incidents
Involving the Use of Deadly Force or
Deaths in Custody**



**Report of the Department of Justice
Pursuant to Section 2(d) and 2(f) of Executive Order 14074**

**Investigations and Discipline for Incidents
Involving the Use of Deadly Force or Deaths in Custody**

This report responds to Sections 2(d) and 2(f) of Executive Order 14074. Section 2(d) requires the heads of all Federal law enforcement agencies (LEAs) to (i) “assess whether any of their respective agency’s policies or procedures cause unwarranted delay in investigations of Federal law enforcement officers for incidents involving the use of deadly force or deaths in custody,” and (ii) “without abrogating any collective bargaining obligations, make changes as appropriate to ensure the integrity and effectiveness of such investigations.”

Section 2(f) requires the heads of all Federal LEAs to (i) “assess whether any of their respective agency’s policies or procedures cause unwarranted delay or inconsistent application of discipline for incidents involving the use of deadly force or deaths in custody,” and (ii) “without abrogating any collective bargaining obligations, make changes as appropriate.”

Within the Department of Justice (Department), there are six components that could potentially perform an investigation of or impose discipline on Federal law enforcement officers for incidents involving the use of deadly force or deaths in custody: the Federal Bureau of Investigation (“FBI”), the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”), the Bureau of Prisons (“BOP”), the Drug Enforcement Administration (“DEA”), the United States Marshals Service (“USMS”), and the Office of the Inspector General (“OIG”).

In response to the Executive Order, each of these components reviewed employee incidents involving the use of deadly force or a death in custody during the prior five-year period (2017-2021), investigations into such incidents, and discipline imposed in connection with such incidents. The component reviews focused primarily on the timing of the administrative investigation and disciplinary process, in addition to a comparison of discipline imposed.¹

Each component also identified, reviewed, and analyzed the steps in its individual investigatory process. This included a specific identification of the average and median amount of time each step in the investigatory and disciplinary process consumed. Each component also identified the training associated with the response to such incidents, including reporting requirements.

¹ Removing cases that remain pending (primarily because criminal investigations are ongoing), over this five-year period, there were 301 incidents involving either (1) a deadly use of force by a federal law enforcement officer or (2) a death while in federal custody where an investigation was initiated. Following these investigations, eleven incidents resulted in either discipline or proposed discipline (which could not be imposed because an employee resigned prior to imposition). These numbers should be considered in the appropriate context, which includes the fact that there are more than 25,000 Federal agents, over 15,000 Federal task force officers, and more than 34,000 BOP employees.

The specific processes related to investigation and discipline differed significantly among components as a result of the specific needs and history of each component. Nonetheless, certain factors caused delays across components. For example, for each of the components, where criminal investigations were initiated, administrative investigations could not conclude until the criminal investigations were resolved, typically through a declination by both the local prosecutor's office (a state prosecutor or the relevant United States Attorney's Office) and the Department's Civil Rights Division.² For certain incidents, these criminal investigations took years to complete. In addition, the COVID-19 pandemic caused delays in certain administrative investigations, as it hampered investigators' ability to perform necessary investigative steps or allow disciplinary bodies to meet as they had in a pre-pandemic setting. Where possible, components began administrative investigations prior to the completion of criminal investigations.

Following the detailed review discussed above, and considering the above-mentioned barriers, each law enforcement component concluded that its policies or procedures did not cause unwarranted delay in investigations of Federal law enforcement officers for incidents involving the use of deadly force or deaths in custody. In addition, following the detailed review of each incident and the discipline imposed, each law enforcement component concluded that its policies or procedures did not cause unwarranted delay or inconsistent application of discipline for incidents involving the use of deadly force or deaths in custody. The Department is unaware of any allegations of unwarranted delay or inconsistent discipline for incidents involving use of force or in-custody deaths that involved Department components during the five-year period.

Nonetheless, the Department's law enforcement components have undertaken certain changes to improve their policies and processes related to incidents involving the use of deadly force or deaths in custody.

- ATF has implemented new mechanisms where, should another pandemic (or like incident) occur in the future, portions of administrative investigations can proceed virtually. ATF has examined how to update trainings to target these types of incidents. ATF is also exploring options as to how it can use data gathered on use of force incidents more effectively in training to the field.
- In the summer of 2022, a Department working group issued a written report with a series of recommendations, including that BOP should enhance the use of administrative actions and discipline for BOP employees who commit sexual misconduct. Based on those recommendations, BOP has implemented a plan to improve the timely investigation of potential misconduct and processing of discipline. Specifically, BOP is bolstering and reorganizing investigative resources and personnel to support the Office of Internal Affairs (OIA) in conducting timely and thorough investigations. BOP is in the process of adding more than 40 employees to the OIA team and approximately ten new Employment Law Branch employees (attorneys and disciplinary letter reviewers).
- As a result of the Executive Order, the DEA is currently in the process of revising the manner in which its Shooting and Assault Incident Review Committee operates, with an

² In certain limited circumstances those criminal investigations resulted in the filing of criminal charges. In such instances, administrative investigations and discipline were delayed until resolution of the criminal case.

emphasis on the identification of potential policy and compliance concerns as well as best practices and lessons learned.

- After identifying that its policies and procedures for critical incidents were focused on agent-involved shootings, FBI is developing new policies and procedures for the investigation of critical incidents involving use of force or in-custody deaths. The FBI has applied the processes in its Shooting Incident Guide to non-shooting critical incident investigations in the past and will do the same for any non-shooting death in custody incidents that occur in the future prior to the development of new policy and procedures covering death in custody incidents.
- In 2021, the USMS created the Office of Professional Responsibility, Force Review Branch which was designed solely for the purpose of investigating and analyzing agency use of force incidents. This new office was created to ensure that all USMS use of force incidents are thoroughly, objectively, and independently examined, without prejudice, bias, or favor.
- The OIG must both consider its own policies as they relate to these issues and play a role in investigating incidents involving other components. The OIG is undertaking efforts to revise its data keeping systems so that it can better identify, segregate, track, and analyze incidents involving the use of deadly force or deaths in custody. The OIG anticipates replacing its case management system in the near future and will ensure that the new system provides for tracking of such incidents in a robust manner. The OIG believes that these efforts will better ensure that cases are investigated in a prompt manner and better facilitate communications with components and Department leadership on this important issue.

The Department has directed each law enforcement component to designate personnel who will identify incidents involving the use of deadly force or a death in custody, track where and when a criminal or administrative investigation is opened in connection therewith, and maintain records regarding the timing and progress of the investigative and disciplinary process relating to those incidents. Such tracking will ensure that the Department maintains a heightened overall focus on these issues, and such collection will permit Department leadership to evaluate on a periodic basis whether there are unwarranted delays in investigations or disparities in discipline.

Each of these components will continue to track the application of their respective policies and procedures in practice, in an effort to ensure that they do not lead to unwarranted delays or disparities in the future.