FAQ OF OFFICER-INVOLVED DEATH INVESTIGATIONS

MaryNell Regan
Executive Director, Fire and Police Commission

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In Wisconsin, what happens after an Officer Involved Death?

An "officer-involved death" means a death of an individual that results directly from an action or an omission of a law enforcement officer while the law enforcement officer is on duty or while the law enforcement officer is off duty but performing activities that are within the scope of his or her law enforcement duties.

The Milwaukee Police Department (MPD) has a Standard Operating Procedure (No. 453) consistent with state statute that upon an officer-involved death, there must be an investigation conducted by at least two outside investigators, one of whom is the lead investigator and neither of whom may be employed by the Milwaukee Police Department. The statutory requirement of outside investigators applies to all Wisconsin law enforcement agencies.

What is the role of the Outside Investigators?

The outside investigators have statutory authority to oversee and direct the investigation. The outside agency conducts a criminal investigation of the event, or events, which led to the officer-involved shooting. They take possession of, or direct the collection of, all evidence, the taking of statements of witnesses and police officers, and act as the primary contact for prosecutors.

The outside investigators conduct the investigation, including what evidence, if any, will be released to the public during the investigation.

- In the case of the investigation into the death of Mr. Sylville Smith, Sr., the outside agency is the Wisconsin Department of Justice.
- The Attorney General directed that body-worn camera footage and dash-camera footage would not be disclosed during its investigation.
- The Milwaukee Police Department has abided by the Attorney General's directive.
- The Milwaukee Fire and Police Commission does not have custody of any of the evidence and therefore has nothing to release.

What happens upon the Conclusion of the Outside Investigation?

The outside investigators conduct the investigation and at its conclusion, send a complete copy of the criminal investigation, including a written report, to the District Attorney's Office for review. The outside investigators also meet with the District Attorney for a formal review of the incident.

The investigation then transfers to the jurisdiction of the District Attorney at which time a decision is made on what charges, if any, will be brought. The Milwaukee County District Attorney has stated that it is his practice to include family members in his review.

- In the case of the investigation into the death of Mr. Sylville Smith, Sr., the Milwaukee County District Attorney has likewise directed that body-worn camera footage and dash-camera footage will not be disclosed during his review.
- The Milwaukee Police Department has abided by the District Attorney's directive and has not released any evidence.
- The Milwaukee Fire and Police Commission does not have custody of any of the evidence and therefore has nothing to release.

What if the District Attorney determines there is evidence to bring charges?

Charges will be filed and the matter will stay under the jurisdiction of the District Attorney's Office while it is being prosecuted.

Despite the Outside Agency's Investigation and the District Attorney's Review, may the MPD conduct its own internal (personnel) investigation into the incident?

Yes, and the MPD has advised the Fire and Police Commission that they have opened an internal file to conduct a personnel investigation.

What if the District Attorney decides not to prosecute the law enforcement officer involved in the officer-involved death?

In the event the District Attorney does not criminally charge the officer, the outside agency that did the investigation "shall release the report" based upon state law. In cases where the outside agency is the Wisconsin Department of Justice (DOJ), photographic and video evidence will be made available upon request to the DOJ's Communications Director at https://www.doj.state.wi.us/

Likewise, if the District Attorney chooses not to prosecute, open records requests may be made to the Milwaukee Police Department for video footage.

Signed this 17th day of October, 2016

MaryNell Regan, FPC Executive Director