

Department of Homeland Security

U.S. Customs and Border Protection

Interim Procedures on Notification of a Death in Custody

December 17, 2018

This policy memorandum provides policy and procedures to be followed for notifications related to the death of a subject in the custody of U.S. Customs and Border Protection (CBP) to internal program offices, the Department of Homeland Security (DHS), Congress, the public, international partners, and other stakeholders as appropriate.

To secure and maintain the public trust, CBP's intent is to be accessible and transparent by providing appropriate information to the Congress and the public regarding any death occurring in custody. Maintaining this trust is, in part, dependent on timely and sufficient notification to the extent permitted by law and CBP policy. To ensure timely notification and ongoing reporting as appropriate, related to the death of an individual in CBP custody, below are the notification procedures as they apply to any such death, whether taking place in a short-term holding facility, in a medical facility, in CBP transit between any such facilities, or any other location while the individual is in CBP custody.

These procedures apply to the death of any person in CBP custody. Separate procedures apply to any death resulting from a CBP use of force in the course of making an arrest or engagement in similar law enforcement operations.

NOTIFICATION PROCEDURES:

In all cases, sensitivity to the interests of the family of the deceased is paramount and all reasonable efforts should be undertaken to notify the family as soon as possible.

Nothing in these procedures should be construed to:

- Prohibit CBP personnel from providing additional notifications of the in-custody death if deemed necessary by senior CBP officials.
- Supersede reporting requirements included in the CBP Use of Force Policy or any other relevant policy related to deaths occurring in CBP custody.
- Abrogate any requirements under the Privacy Act or the privacy policies of CBP and DHS.

Immediately following the death of a subject in CBP custody, the following procedures will be implemented:

The Sector Chief Patrol Agent, Director of Field Operations, and Air and Marine Operations Regional Executive, for the area of responsibility where the death occurred, will ensure, as expeditiously as possible, that the following has been done:

1. Notification to headquarters is made with the relevant Executive Assistant Commissioner (EAC), the Chief of the U.S. Border Patrol, or their designee;
2. Report the individual's death as a "significant incident" to the Commissioner's Situation Room in accordance with current reporting requirements and timelines;
3. Coordinate with relevant State, Local, Tribal, and Territorial law enforcement entities as appropriate;
4. Telephonically notify the Office of Professional Responsibility (OPR) via the local duty agent through the National Law Enforcement Communications Center (NLECC); and

Upon notification from the Field Office, Sector, or Air or Marine Branch:

The EAC or Chief will:

1. Provide immediate notification to the Commissioner and Deputy Commissioner.
2. Provide email, telephonic, or in-person notification to:
 - o The Office of Chief Counsel (OCC);
 - o The Office of Public Affairs (OPA);
 - o The Office of Congressional Affairs (OCA);
 - o The Office of International Affairs (INA);
 - o The Office of Professional Responsibility (OPR);
 - o The Privacy and Diversity Office (PDO); and
 - o The Office of Intergovernmental Public Liaison (IPL)

OPR will:

1. Provide notification to the DHS Office of Inspector General (OIG), as appropriate; and
2. If a declination by OIG occurs, initiate a review into the circumstances surrounding the death of the detainee and taking all appropriate investigatory actions.

Within 4 hours of notification from the Field Office, Sector, or Air or Marine Branch:

Notification to CBP leadership:

The EAC or Chief (or their designee) will submit an initial report to CBP senior management including the Office of the Commissioner, OPA, OCA, INA, OPR, IPL, OCC, and PDO.

Notification to Consulate:

Once nationality/citizenship has been established, the EAC or Chief (or their designee) will confirm that the applicable consulate has been contacted and that support has been offered.

Within 12 hours of the death:

Notification to the Secretary and Deputy Secretary:

The Commissioner or designee will notify the Secretary and Deputy Secretary as soon as practicable after receiving the information from the relevant EAC or Chief.

Notification to the Department of State:

INA headquarters will provide notification to the Department of State headquarters and the CBP Attaché in the country of the individual's citizenship will provide notification to the Embassy.

Within 24 hours of the death:

Recognizing the need to provide accurate and timely information to CBP stakeholders, notifications and releases should be coordinated with the relevant CBP offices and leadership to the greatest extent possible.

Notification to Congress:

The Office of Congressional Affairs will provide email notification to the Chair and Ranking Member of the following Committees and Members:

- Senate Judiciary Committee;
- House Judiciary Committee;
- Senate Judiciary Committee, Subcommittee on Immigration and the National Interest;
- House Judiciary Committee, Subcommittee on Immigration and Border Security;
- Senate Homeland Security and Governmental Affairs Committee;
- House Homeland Security Committee;
- Senate Appropriations Committee;
- House Appropriations Committee; and
- House and Senate Members who represent the district and state where the death occurred.

Diplomatic Notification:

INA will provide additional telephonic or written notification to the appropriate foreign embassy as appropriate. To the extent practicable, this notification will be issued prior to the public notification by OPA.

Notification to the Media:

In coordination with the field component, subject to applicable privacy restrictions or limitations, OPA will notify the public of an individual's death in custody within one hour of CBP headquarters notification and Congressional notification by issuing a statement to the media and posting the statement on CBP.gov.

Notification to the DHS Office for Civil Rights and Civil Liberties (CRCL), Non-governmental Organizations (NGOs) and Other Stakeholders:

PDO will provide a secondary notification to DHS CRCL and serve as a liaison between DHS CRCL and the CBP program offices throughout the course of any CRCL investigations opened as a result of the individual's death in custody.

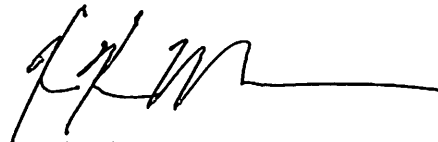
IPL will provide a copy of the media release to NGOs and other stakeholders, as appropriate.

REPORTING REQUIREMENT:

Annually, CBP will submit a report to the Attorney General containing information related to the death of any person who is:

1. Detained, under arrest, or is in the process of being arrested by any CBP law enforcement personnel;
2. En route to be incarcerated or detained, or is incarcerated or detained at:
 - a. Any CBP facility;
 - b. Any facility pursuant to a contract with CBP; or
 - c. Any state or local government facility used by CBP.

No Private Right Statement. This is a CBP internal policy statement. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.



Kevin K. McAleenan
Commissioner
U.S. Customs and Border Protection