

# What You Need to Know about the Wisconsin Department of Justice's New General Investigative Guidelines for Officer-Involved Death Investigations

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## WISCONSIN COUNTIES ASSOCIATION: EDUCATIONAL SEMINAR

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**I. DOJ INVESTIGATIVE GUIDELINES FOR OFFICER-INVOLVED DEATH INVESTIGATIONS.**

- A. Released on Monday, May 22, 2017
- B. Sets forth the process DCI will follow when serving as the lead agency in the investigation.
- C. Mechanics of the investigative process generally well done, if a bit bureaucratic.
- D. All investigative agencies should review and revise their own policies in light of these new guidelines.

**II. KEY CONCERNS FOR LOCAL LAW ENFORCEMENT AGENCIES**

- A. Control of your records
  - 1. Investigative reports
  - 2. Squad videos/audios
  - 3. Body cam videos/audios
- B. Treatment of your employees
  - 1. Who can be involved conflict of interest definition is very vague: “Casual Knowledge”
  - 2. Definition of who is an “involved officer”
- C. Interviews
  - 1. Can you attend?
  - 2. Voluntary vs. compelled questioning
  - 3. What evidence will be shared, and when
- D. Public statements/comments
  - 1. Timing of statement of support for your employees
  - 2. Release of video/audio evidence to the public
- E. Coordination with your internal.
  - 1. *Garrity*
  - 2. Timing
- F. Your input in reaching a conclusion

### III. PROS & CONS OF NEW GUIDELINES

#### A. Pros

1. Limits investigations solely to whether death is the result of criminal conduct.
2. Creates supportive environment for the accused officer (access to family, clergy, counsellors, legal counsel, time to reflect, etc.).
3. Controls release of information, with input from employing agency and prosecutor (especially access to video or audio recordings).

#### B. Cons

1. If DCI is not the lead agency, their “guidelines” will become the new “floor” for others.
2. Internal investigations into possible rule violations could be delayed, and perhaps undermined, by the OID investigation.
3. The “walk through” informal interview immediately after the incident is voluntary, which could lead to the loss of critical information, evidence and witnesses.
4. There are several gray areas related to use of internal department reports, who can be present during the interview of the officer, and whether an investigator is “too close” to the involved officer to be eligible to serve.
5. The officer’s legal counsel can manipulate the process to get access to evidence, and then refuse to provide a statement.