

SONOMA COUNTY LAW ENFORCEMENT CHIEF'S ASSOCIATION
RESPONSE TO THE 2007-2008 GRAND JURY REPORT

MOSES MCDOWALL FATAL INCIDENT (Pg. 10)

Requested Response to Finding Number 6, page 14.

F6 The Association of Joint Chief's Fatal Incident Protocol specified that this investigation be led by a division of the same law enforcement agency in which the fatal incident occurred (employer agency). The lead investigator was a former CO. The Grand Jury had to consider the obvious possibility that discrepancies in the investigation may have been intentionally overlooked. The appearance of, and possibly the actuality of, an impartial independent investigation is destroyed by this exception to the Fatal Incident Protocol.

RESPONSE: The respondent disagrees partially with this finding.

It is true that the Sonoma County Law Enforcement Chief's Association's Employee-Involved Fatal Incident Protocol provides that the Sheriff's Department investigate custodial deaths (inside Sheriff's detention facilities). However, these investigations are to be conducted in conjunction with the District Attorney's Office. Additionally, the protocol also provides that other qualified member agencies may lead or assist in these investigations depending upon the prevailing circumstances.

The Chief's Association agrees that this provision of the protocol could cause an appearance to some members of the public that these investigations may be less impartial. The Chief's Association disagrees that this provision results in an actual loss of impartiality. The history, reasoning, and benefit of this provision in the protocol is discussed in the Chief's Association's response to Grand Jury Recommendation number six, below.

The Chief's Association disagrees with the Grand Jury's speculation that noted discrepancies may have been overlooked due to the lead investigator's previous employment as a correctional officer. As documented in Sonoma County Sheriff's Department responses, some of the Grand Jury's noted discrepancies lacked foundation due a misinterpretation of information under the Grand Jury's review. This significantly reduces the basis for this finding. Furthermore, in-custody death investigations are performed not by one investigator, but rather, by an investigative team that includes members of the District Attorney's Office. Additionally, the investigation team's work is monitored and reviewed by layers of supervisors and managers, from both the Sheriff's Department and the District Attorney's office, making for a system of accountability that is likely more extensive than most other California counties.

Requested Response to Recommendation Number 6, page 16.

R6 "The Law Enforcement Chief's Association should amend the Law Enforcement Employee-Involved Fatal Incident Protocol to require that investigations of death in custody be led by an outside law-enforcement agency. The exceptions to this routine prohibition— the employer agency not lead or directly participate in the investigation— would be consistent with procedures mandated for other law-enforcement employee-involved fatal incidents".

RESPONSE: The recommendation will not be implemented because it is not warranted and is not reasonable.

The current manner of investigating in-custody deaths in Sonoma County, including the circumstances that the Grand Jury is recommending to change, is the result of continuous improvements to the Fatal Incident Protocol. The change that the Grand Jury is recommending was a previous practice that we have since altered to address misperceptions similar to those expressed by the Grand Jury's, to expedite the investigative process, and to clarify roles of the investigation team.

The Sonoma County Law Enforcement Chief's Association's Employee-Involved Fatal Incident Protocol, so far as we know, is the most progressive, regularly reviewed local law enforcement model in California for dealing with Law Enforcement related deaths. We know that our model is regularly cited throughout the State (and perhaps beyond) in various training events as a unique and innovative model for dealing with the multi-faceted concerns that come with a law enforcement related death.

We believe that the vast majority of local law enforcement agencies in California and beyond have direct involvement in the investigation of "their own" law enforcement related death incidents. This is not only lawful, it is also generally accepted by most communities and local governments as a wholly professional and ethical manner for handling these critical incidents. While we believe that Sonoma County law enforcement is at least as worthy of this trust given by other communities, in the early 1990's we became aware of a burgeoning fatal incident investigation model in Contra Costa County that involved multiple agencies. We sent staff to review Contra Costa County's ideas, and from them we began to develop a multi-agency model for Sonoma County.

There was never a concern on our part that such a change needed to be implemented to correct a problem; rather, we believe we *could* implement this change because we had a sufficient number of law enforcement agencies that had the investigative capacity needed to participate. We believe that we could make this change without decreasing the quality of these critical investigations, and at the same time provide even greater assurance to the Sonoma County community that these volatile incidents are treated in a very transparent, unbiased, and exceedingly professional manner.

The current practice here in Sonoma County is probably perceived by many to be a universal standard. Yet, the more common model in California is that which continues to

be professional investigations that directly involve the agency of the jurisdiction (which is usually the employer agency).

In earlier versions of our Countywide Protocol, we did not provide for any exception for the investigation of in-custody death incidents. This was because we anticipated that, just as in other law enforcement employee-involved fatal incidents, there would be no decrease in the quality of these investigations by an outside agency. Through experience however, we have found that city police agencies that come into Sheriff's Detention facilities are significantly hampered by their lesser awareness and investigative capacity inside the custodial environment. Unique difficulties include managing and securing a death scene in an active correctional facility; sequestering and managing an inmate population that are frequently either witnesses or involved parties (or suspects) in this unfamiliar environment; and, in gauging the actions of staff, having an adequate awareness of what is procedurally normal or acceptable in secure custodial environments. This recognition led to the provisions that the Grand Jury is now questioning.

As stated above, the Sonoma County Law Enforcement Chief's Association's development and implementation of this Countywide Protocol was primarily conditioned upon the premise that the quality of the investigations into these fatal incidents would not diminish. Through the experience of implementing this protocol we have found that in-custody death investigations in secure detention facilities are unique. Sheriff's detectives, due to their knowledge and experience with the custodial setting, have an advantage in their ability to manage and scrutinize these in-custody death investigations. Even so, these in-custody death investigations are always conducted with the assistance and oversight of the District Attorney's Office.