Office of Special Investigation

First Report Pursuant to Executive Law Section 70-b

October 1, 2021
This is the first report of the New York Attorney General’s Office of Special Investigation, issued October 1, 2021, pursuant to New York Executive Law Section 70-b.

**Attorney General’s Authority Regarding Deaths Caused by Police Officers and Peace Officers**

In 2015, in the wake of public concern over deaths of unarmed civilians caused by police officers, the Governor issued Executive Order 147 (“EO 147”), which appointed the Attorney General the special prosecutor to investigate such incidents and, if warranted, to prosecute related offenses. Under EO 147 the Attorney General’s authority in those incidents superseded that of the state’s district attorneys. The full text of EO 147 is attached as Exhibit 1.

In June of 2020, the Legislature passed, and the Governor signed, a new law, Section 70-b of the Executive Law, effective April 1, 2021, which confirms the Attorney General’s exclusive authority to investigate and prosecute incidents where police officers cause the deaths of unarmed civilians, and expands that authority to deaths of persons who are armed or who are not civilians, and to deaths caused by certain peace officers, including corrections officers.\(^1\) The law directs the Attorney General to establish an “office of special investigation” (“OSI”) to handle these matters. The full text of Section 70-b is attached as Exhibit 2.

As a result of this expanded scope, as well as increased law enforcement awareness of and compliance with EO 147 and Section 70-b over time, the number of incidents reported to the Attorney General has increased five-fold, from fewer than four per month under EO 147 (July 2015 through March 2021) to 19 per month under Section 70-b so far (April through August 2021). Almost half of the matters reported to the Attorney General under Section 70-b to date relate to incarceration, an area not encompassed within EO 147.

---

\(^1\) Subdivision 1 of Section 70-b specifies the categories of peace officers within its scope, including peace officers “employed or contracted by [a] ... corrections agency” and peace officers defined by Subdivision 25 of Criminal Procedure Law Section 2.10, which reads: “25. Officials, as designated by the commissioner of the department of corrections and community supervision pursuant to rules of the department, and correction officers of any state correctional facility or of any penal correctional institution.” In this report, the term “peace officer” is used solely to refer to the peace officers listed in Section 70-b, unless the context otherwise requires. EO 147 did not expressly address whether the Attorney General’s authority extended to deaths caused by off-duty police officers; Section 70-b explicitly confers authority “whether or not [the officer is] formally on duty.”
This Report

Subdivision 7 of Section 70-b requires the Attorney General to issue the first report concerning investigations and prosecutions under Section 70-b on October 1, 2021, and then annually on every succeeding October 1st. To permit time for drafting and analysis, this report includes OSI’s activity and data for the five-month period from April 1, 2021, the effective date of Section 70-b, through August 31, 2021. The next report will include OSI’s activity and data for the 12-month period, September 1, 2021, through August 31, 2022. This report also summarizes two indicted cases and lists 12 investigative reports concerning incidents occurring prior to April 1, 2021, which were not described in the Attorney General’s last biennial report under EO 147, issued in December 2019 (“2019 Biennial Report”), which may be found here: https://ag.ny.gov/sites/default/files/sipu-biennial-report-2019.pdf.
Transition from EO 147 to Section 70-b

Section 70-b, passed by the Legislature in June of 2020, and effective April 1, 2021, significantly expanded the scope of the Attorney General’s authority to investigate and prosecute deaths caused by police officers and peace officers, compared with the Attorney General’s authority under EO 147. Under the prior authority the Attorney General handled relevant matters through the Special Investigation and Prosecution Unit, or SIPU. After the passage of Section 70-b, the Attorney General developed a plan to increase staffing. At the time of the 2019 Biennial Report under EO 147, the Attorney General assigned six Assistant Attorneys General (“AAG’s”), one analyst, and two investigators to SIPU on a full-time basis. As of the date of this report, on a full-time basis, and including supervisors, the Attorney General assigns 12 AAGs, four analysts, two family liaisons, and 12 detectives to OSI. The Attorney General has allocated additional attorney and investigator positions to OSI, which we are seeking to fill by year’s end.

Due to the expanded scope of Section 70-b, the Attorney General’s personnel reached out to law enforcement-related agencies around the state to prepare them for the change, including sending letters to every district attorney and police chief; speaking at the Winter Conference of the District Attorneys Association of the State of New York; speaking at the New York State Chiefs of Police Annual Conference; speaking to the New York State Department of Corrections and Community Supervision and the New York State Commission of Correction; speaking to the New York City Department of Correction, the New York City Department of Investigation, and the New York City Office of the Chief Medical Examiner; and speaking to 18 Chiefs’ and Sheriffs’ associations around the state.

In addition, Attorney General personnel who would be working on matters arising under Section 70-b participated in a three-day training program in March 2021, which included 16 presentations from internal and external experts on topics including legal issues arising under Section 70-b, investigative protocols and resources, family and community relations, investigations in correctional facilities, investigating motor vehicle cases, investigating deaths following restraint, responding to persons in mental or physical distress, and special topics in autopsy and toxicology reports.

2 In addition, AAGs and investigators assigned to other units in the Attorney General’s office worked on SIPU matters part time. See 2019 Biennial Report, pages 51-56.
**OSI's Intake and Assessment Process**

All district attorney’s offices, law enforcement agencies, and corrections agencies in the state may call OSI’s hotline 24 hours a day, seven days a week, to report an incident potentially within OSI’s authority under Section 70-b. OSI distributes a one-page information guide on the hotline procedure to agencies around the state, which is attached as Exhibit 3. OSI receives almost all notifications of possible deaths caused by police officers or peace officers by way of the hotline.

When OSI receives notification of an incident, it conducts a preliminary assessment to determine whether the death was “caused by an act or omission” of a police officer or peace officer, or whether “there is a question as to whether the death was in fact caused by an act or omission of [a] police officer or peace officer [emphasis added].” Section 70-b, Subdivision 1. In some cases this preliminary determination is clear, as when a police officer causes a death by gunshot. However, in other cases this determination may require substantial investigation, as when, for example, an incarcerated person dies and there is a question whether neglect (“an act or omission”) by personnel in the institution was a contributing cause of death.

After the preliminary assessment, if OSI does not find reason to believe a police officer or peace officer caused the death, OSI closes the matter. When OSI closes a matter, the Attorney General notifies the district attorney for the county where the incident occurred, in writing, as required by Section 70-b, Subdivision 2, that the Attorney General has determined the incident does not meet the requirements for the Attorney General’s investigative authority or criminal jurisdiction under Section 70-b. See Exhibit 4, a table of all incidents arising from April 1 to August 31, which shows which incidents OSI closed in that period and which remained open at the end of the period.

A determination that an incident does not fall within the Attorney General’s authority under Section 70-b is not necessarily a determination that no criminal conduct occurred. After receiving the written notification from the Attorney General of the determination that a matter is not within Section 70-b, the district attorney takes over the matter and determines whether criminal charges are warranted.

On the other hand, if OSI finds reason to believe a police officer or peace officer did cause the death, or there remains “a question as to whether the death was in fact caused by an act or omission of [a] police officer or peace officer,” OSI continues to investigate to determine whether to seek charges against the police officer or peace officer. See below, section on Open Matters, subsection on Open Assessments and Investigations.

---

3 The hotline phone number and email address are redacted from Exhibit 3, as only law enforcement agencies are authorized to use them.

4 OSI receives some notifications where a person does not die, such as cases where a police officer shoots a person who is seriously wounded but survives. See, for example, Exhibit 4, Case 66. OSI also receives some notifications where a death occurs in a setting where no police officer or peace officer is employed, such as a death in a psychiatric institution. See, for example, Exhibit 4, Case 77. In such cases, OSI does not conduct an assessment of “cause,” as no death or no defined officer is involved, and the matter is by definition not within Section 70-b.
When, after OSI’s investigation, the Attorney General determines to seek charges in a matter, AAGs assigned to OSI present evidence to a grand jury in the county where the incident occurred, and, if the grand jury returns an indictment, AAGs assigned to OSI prosecute the case. See below, section on Open Matters, subsection on Indicted Cases, for the two pending cases being prosecuted by OSI; both concern deaths occurring prior to April 1, 2021.

If OSI determines not to seek charges because the evidence appears insufficient to sustain a prosecution, or if OSI presents the matter to a grand jury which does not return an indictment, OSI must issue a report, posted to the Attorney General’s public website, describing the investigation and the result, pursuant to Subdivision 6 of Section 70-b. OSI has not published any reports concerning deaths that occurred from April 1 to August 31, 2021. This report lists the 12 reports published by OSI, and by its predecessor, SIPU, after the 2019 Biennial Report; these 12 reports concern deaths that occurred prior to April 1, 2021. See section below, Published Reports of Closed Matters.

The data discussed in this section are also set forth in the table attached as Exhibit 4.

**Number of Notifications Received and Status**

In the five-month period covered by this report (April 1 through August 31, 2021), law enforcement agencies, incarceration authorities, and district attorney’s offices notified OSI of 95 incidents potentially coming within Section 70-b (Exhibit 4, column A). This is an average of 19 notifications per month. By contrast, for the 69-month period from July 8, 2015, the effective date of EO 147, through March 31, 2021, the day before Section 70-b became effective, our records indicate SIPU received an average of 3.78 notifications per month. The five-fold increase in the rate of reported incidents is likely the result of the expanded scope of Section 70-b over EO 147, as described above, as well as law enforcement agencies’ increased awareness of and compliance with the mandates of EO 147 and Section 70-b over time.
Of the 95 notifications OSI received from April 1 to August 31, OSI closed 70 in that period (Exhibit 4, column L). Of these closed matters, OSI:

» closed 13 because a person did not die;

» closed one because a police officer or peace officer, as defined, was not involved; and

» closed 56 because OSI’s preliminary assessment did not show reason to believe a police officer or peace officer caused the death by an act or omission.

The remaining 25 notifications were open as of August 31, pending preliminary assessment or investigation. Brief descriptions of OSI’s open matters are listed below, section on Open Matters, subsection on Open Assessments and Investigations.

**Selected Categories of Notifications**

**Shootings**

Of the 95 notifications OSI received from April 1 to August 31, 15 involved shootings by police officers. (Exhibit 4, column J). OSI closed six of these matters because there was no death. The other nine are under investigation and are described below, section on Open Matters, subsection on Open Assessments and Investigations. Preliminarily, the decedent had a weapon, or had what appeared to be a weapon, in all of the nine shooting incidents under investigation.\(^5\) The officers or their cars were equipped with video in 11 of the 14 shooting incidents (Exhibit 4, column K).

**Restraint**

Of the 95 notifications OSI received from April 1 to August 31, two involved deaths following restraint by police (Exhibit 4, column J). OSI closed these matters after preliminary reviews did not find reason to believe the restraint was the cause of death. We await final autopsy and toxicology reports and will reopen either matter if a report indicates the restraint was a cause of death. It appears the decedent was not armed in either of the restraint matters. The officers were equipped with video in one of the two restraint cases (Exhibit 4, column K).

---

\(^5\) These preliminary facts are subject to change as the investigations proceed. Under EO 147 the Attorney General did not have authority to investigate or prosecute matters where the decedent was armed, only authority in “matters involving the death of an unarmed civilian,” or where “there [was] a significant question as to whether the civilian was armed and dangerous at the time of his or her death.”
Incarcerated Persons

As noted, the Attorney General has authority under Section 70-b to investigate deaths caused by corrections officers and other peace officers who work in jails, prisons, and holding facilities throughout the state. This is a new authority, which the Attorney General did not have under EO 147. For perspective, New York State has an incarceration system overseen by the state's Department of Corrections and Community Services with more than 30,000 incarcerated persons; New York City has an incarceration system overseen by the city's Department of Correction with more than 5,000 incarcerated persons; and the 57 counties in the state outside New York City have local facilities which collectively hold more than 9,000 incarcerated persons.6

Of the 95 notifications OSI received from April 1 to August 31, 42 concerned incarcerated persons (Exhibit 4, column I). Of those, we classify 10 as apparent suicides (including one attempted suicide) and the remainder, 32, as medical emergencies (Exhibit 4, column J), including suspected drug overdoses.

We closed 31 of the 42 incarceration matters by August 31: in one instance no person died (Exhibit 4, Case 29), in one instance the institution was not staffed by police officers or peace officers (Exhibit 4, Case 77); in 29 instances our preliminary assessment did not find reason to believe a police officer or peace officer caused the death by an act or omission (Exhibit 4, column L). The remaining 11 incarceration matters were open as of August 31, pending preliminary assessment or investigation. The open matters are described in the section below on Open Matters, subsection on Open Assessments and Investigations.

Given the limited sample size to date, we do not know if suicide or attempted suicide will continue to account for almost a quarter (10 of 42) of the incarceration incidents reported to OSI. However, the numbers are a matter of concern, raising a question whether personnel in the state's jails, prisons, and holding facilities have the training, resources, and procedures they need to identify persons at risk of suicide or to protect them adequately. OSI will continue to examine these data and the underlying facts of the cases, as well as the existing training, resources, and procedures for the state's correctional facilities, with a view to making recommendations in our next annual report.

Of the 32 incarceration incidents we classify as medical emergencies, some appear to be the result of drug overdoses. In the absence of final autopsy and toxicology reports, which are often unavailable for months after the death of an incarcerated person, the causes of death in many of these cases are not yet known, and we do not know what proportion of the medical emergencies were in fact drug overdoses. A high number of drug overdoses would be a matter of concern, raising a question whether personnel in the state's jails, prisons, and holding facilities have the training, resources, and procedures they need to prevent incarcerated persons

---

from obtaining potentially lethal drugs in potentially lethal amounts. OSI will continue to examine these data and the underlying facts of the cases, as well as the existing training, resources, and procedures for the state’s correctional facilities, with a view to making recommendations in our next annual report.

Of the 42 incidents reported to OSI concerning jails, prisons, and holding facilities, there were 17 where some video capability was available (Exhibit 4, columns I and K), including seven in which officers were equipped with body-worn cameras. We will continue to review video capability and effectiveness in the incidents arising in jails, prisons, and holding facilities, with a view to making recommendations in our next report. We note, however, that fixed video installations in correctional settings will not capture relevant visuals or audio of every incident, because, for privacy reasons, those installations are set up to avoid views inside cells or shower or toilet areas. In addition, incarcerated persons or prison personnel may be aware of camera locations and intentionally evade being recorded.

**Rikers Island**

Of the 42 incarceration matters arising from April 1 to August 31, 2021, six involve deaths at Rikers Island, including two apparent suicides. Although the troubles at Rikers Island are not new recent local news stories describe deteriorating conditions. Responding to the number of notifications OSI has received concerning deaths at Rikers Island, and to the concerns expressed in the media and by people in affected communities, the Attorney General visited Rikers Island on September 21, 2021, to see the conditions first hand. Two days later, on September 23, the Attorney General's Civil Rights Bureau submitted a letter to the federal court overseeing the Rikers Island monitor. Citing the deaths under review by OSI, the letter states, “These tragic occurrences suggest the need for swift remedial action to improve security, access to medical care, and adequate working and living conditions for everyone at Rikers Island... even as our investigations are ongoing.” The letter to the court is Exhibit 5 to this report.

---

7 Three additional deaths occurred on Rikers Island (including one at the Vernon C. Bain Center jail boat anchored north of Rikers Island) after August 31, during the drafting of this report, for a total of nine since April 1.

8 In February of 2018 the New York State Commission of Correction issued a report called “The Worst Offenders: Report: The Most Problematic Local Correctional Facilities of New York State.” The report introduced the section on Rikers Island this way: “Rikers Island continues to be plagued by managerial failures, significant structural problems, regulatory compliance failures, identified deficiencies that remain unaddressed, and unabated harm to both staff and inmates alike. The Commission has sought to assist Rikers management in addressing these and many other deficiencies, and facilitate improvements, but those efforts have not been successful, further highlighting the need for closure of all jail facilities located on Rikers Island.” https://scoc.ny.gov/pdfdocs/Problematic-Jails-Report-2-2018.pdf.

Motor Vehicle Accidents

Of the 95 notifications OSI received from April 1 to August 31, 14 involved motor vehicle accidents (Exhibit 4, column J). OSI closed 10 of these 14 matters during the reporting period (Exhibit 4, column L): four because there was no death and six because we did not find reason to believe a police officer caused the death (for example, no evidence of physical contact between an officer’s car and the decedent, no evidence of a reckless high-speed chase, or the decedent caused the accident by driving into the officer’s car). Four motor vehicle accidents are being assessed or under investigation as of August 31 and are described in the section below on Open Matters, subsection on Open Assessments and Investigations. Three of the four open matters involved off-duty officers in their private cars.

Demographic Data

As shown in Exhibit 4, column G, of the 96\(^10\) subjects in the incidents reported to OSI from April 1 to August 31, 2021:

- 23 were Black, 43 were White, 21 were Hispanic, and three were Asian (we do not yet have the racial or ethnic identity of six subjects);
- 88 were male, six were female, and one was trans/non-binary (we do not yet have the gender of one subject);
- two were under 20 years old, 35 were 20 to 39 years old, 35 were 40 to 59 years old, and 19 were 60 years old or older (we do not yet have the ages of five subjects).

\(^{10}\) Although there were 95 reported incidents from April 1 to August 31, one incident had two subjects, for a total of 96 subjects. Of the 96 reported subjects, 13 did not die.
Open Matters

Indicted Cases

OSI is prosecuting one indicted cases:

People v. Allen

The defendant, who was an off-duty member of the New York City Police Department, is charged with Murder in the Second Degree and other crimes for shooting and killing Christopher Curro, who was 25 years old, in Farmingdale, Nassau County, on May 12, 2020. Curro was unarmed. The defendant was arraigned on the indictment on August 20, 2021, and was ordered remanded pending trial. The indictment is attached as Exhibit 6.

Open Assessments and Investigations Under Section 70-b (April 1 through August 31, 2021)

As of August 31, OSI is conducting a preliminary assessment or a full investigation in each of the 25 following matters, which arose from April 1, 2021, the effective date of Section 70-b, through August 31, 2021. The facts set forth below are based on information gathered to date by OSI. We note in each case whether OSI is engaged in (a) a preliminary assessment to determine whether a police officer or peace officer caused the death, or whether there is “a question as to whether the death was in fact caused by an act or omission of [a] police officer or peace officer” (“assessment”), or, (b) having found cause or a “question” of cause, is conducting a full investigation (“investigation”). As all the listed matters are open, and OSI's assessments and investigations are in progress, the facts as set forth below are subject to change.
**Tyler Green**
On April 6, 2021, in Oneonta, Otsego County, an officer of the Oneonta Police Department shot and killed Tyler Green, who was armed with a knife (investigation).

**Mark Gaskill**
On May 14, 2021, in Rochester, Monroe County, officers of the Rochester Police Department shot and killed Mark Gaskill, who was armed with a handgun (investigation).

**Jesse Bonsignore**
On May 20, 2021, in Manorville, Suffolk County, an officer of the Suffolk County Police Department shot and killed Jesse Bonsignore, who was armed with a knife (investigation).

**Lopamudra Desai**
On May 23, 2021, in Queens, an off-duty member of the New York City Police Department, driving her personal car, struck and killed Lopamudra Desai as she was crossing the street (investigation).

**Marcelo Palaez and Leonardo Rodriguez**
On May 24, 2021, in Queens, an off-duty member of the New York City Police Department, driving his personal car, struck Marcelo Palaez and Leonardo Rodriguez while they were crossing the street; Mr. Palaez died the next day, and Mr. Rodriguez died on July 14, 2021 (investigation).

**Timothy Flowers**
On June 4, 2021, in Rochester, Monroe County, officers of the Rochester Police Department shot and killed Timothy Flowers, who was armed with a handgun (investigation).

**Jose Mejia**
On June 10, 2021, in a facility on Rikers Island, Bronx County, inmates found Jose Mejia unresponsive in his cell and alerted corrections officers. Attempts to revive Mejia were unsuccessful (assessment).

**Christopher van Kleeck**
On June 12, 2021, in Wallkill, Orange County, officers of the Wallkill Police Department shot and killed Christopher van Kleeck, who was armed with a knife (investigation).

**Robert Jackson**
On June 30, 2021, in a facility on Rikers Island, Bronx County, corrections officers found Robert Jackson unresponsive in his cell and alerted medical. Attempts to revive Jackson were unsuccessful (assessment).

**Steven Leconte**
On July 8, 2021, in Brooklyn, New York City Police Department officers shot and killed Steven Leconte, who was armed with a handgun (investigation).
Daniyal Shaukat
On July 15, 2021, Daniyal Shaukat, who was riding an e-scooter, died in a collision with a personal car driven by an off-duty Nassau County Corrections Department officer in West Hempstead, Nassau County (assessment).

Eriberto Bisono
On July 26, 2021, Eriberto Bisono died in a hospital as a result of an act of apparent suicide, committed on May 31, 2021, while he was incarcerated at Sing Sing, in Westchester County (assessment).

Roger Lynch
On August 6, 2021, in Franklin, Delaware County, a member of the New York State Police shot and killed Roger Lynch, who was armed with a shotgun (investigation).

Ronald Pierce
On August 9, 2021, in the Oneida County jail, Ronald Pierce was found unresponsive, and efforts to revive him were unsuccessful (assessment).

Brandon Rodriguez
On August 10, 2021, in a facility on Rikers Island, Bronx County, Brandon Rodriguez died by apparent suicide (assessment).

David Kingsley

Mark Garrett
On August 21, 2021, Mark Garrett, incarcerated in the Fishkill Correctional Facility, Dutchess County, died during a procedure at a nearby hospital (assessment).

Sequoyah Woodberry
On August 24, 2021, in Buffalo, Erie County, Sequoyah Woodberry, a passenger in a car being pursued by Buffalo Police Department officers, died in a collision with a second car (assessment).

Su Kim
On August 24, 2021, at Midstate Correctional Facility, Oneida County, Su Kim died by apparent suicide (assessment).

Malek Rahman
On August 25, 2021, at a New York City Police Department holding facility in the 40th Precinct Station House in the Bronx, Malek Rahman was found unresponsive, and attempts to revive him were unsuccessful (assessment).
David Wandell
On August 27, 2021, in Elmira, Chemung County, officers of the New York State Police, Elmira Police Department, Chemung County Sheriff’s Office, and the New York State Parole Department shot at David Wandell, who was armed with a handgun, and who died from one or more of those shots (investigation).

Abel Rosas
On August 27, 2021, in Green Haven Correctional Facility, Dutchess County, Abel Rosas was found unresponsive, and attempts to revive him were unsuccessful (assessment).

Michael Rosado
On August 29, 2021, in the Bronx, two off-duty officers of the New York City Police Department shot at Michael Rosado, who died from at least one of those shots, and who was armed with a handgun (investigation).

Segundo Guallpa
On August 30, 2021, in a facility on Rikers Island, Bronx County, Segundo Guallpa died by apparent suicide (assessment).

Davidson Stinfill
On August 30, 2021, Spring Valley Police Department officers, Rockland County, responded to a medical emergency call for Davidson Stinfill, but were unable to revive him (assessment).

Open Investigations Arising Prior to April 1, 2021

OSI is conducting investigations in the six matters listed below, which arose prior to April 1, 2021. The facts set forth are based on information gathered to date by SIPU and OSI. As these matters are open, and OSI’s investigations are in progress, the facts as set forth below are subject to change.

Jeffrey McClure
On June 7, 2020, in Northport, Suffolk County, a member of the Suffolk County Police Department shot and killed Jeffrey McClure, who was armed with what appeared to be a rifle.

George Zapantis
On June 21, 2020, in Queens, George Zapantis died following Taser use and restraint by members of the New York City Police Department.

Delroy Morris
On July 25, 2020, in Brooklyn, Delroy Morris, who was riding a motorcycle, died in a collision with a marked patrol car driven by a member of the New York City Police Department.

Sofia Gomez
On October 5, 2020, in the Bronx, a member of the New York City Police Department, driving a marked patrol car, struck Sofia Gomez as she was crossing a street; she later died of her injuries.
Monica Goods
On December 22, 2020, on the New York Thruway in Ulster County, a New York State Trooper, driving a marked cruiser, struck a car, causing it to roll over and kill Monica Goods, a passenger.

Judson Albahm
On March 4, 2021, in Jamesville, Onondaga County, members of the DeWitt Police Department, the New York State Police, and the Onondaga County Sheriff’s Office shot at Judson Albahm, who was armed with what appeared to be a handgun, and who died from at least one of those shots.

Published Reports Of Closed Matters

Under EO 147, when the Attorney General determined not to seek charges in an incident where a police officer caused the death of an unarmed civilian, or where evidence was presented to a grand jury but no indictment was obtained, the Attorney General published a report explaining the result. Listed below are the reports published since the 2019 Biennial Report, giving the name of the decedent, date and place of death, and the involved agency, with a live link to the full report. OSI has not published any reports of closed investigations concerning deaths arising since April 1, 2021, the effective date of Section 70-b.

Dwayne Pritchett: January 28, 2018, New York City Police Department, Bronx County.
Evgeniy Lagoda: April 12, 2019, Port Authority of New York and New Jersey Police Department, Queens County.
Troy Hodge: June 16, 2019, Lockport Police Department, Niagara County.
DeWayne Watkins: June 18, 2019, Syracuse Police Department, Onondaga County.
Ferdy Jacinto-Martinez: July 25, 2019, Rockland County Correctional Facility, Rockland County.
Susan Harrington: August 19, 2019, Washington County Sherriff’s Office, Washington County.
Allan Feliz: October 17, 2019, New York City Police Department, Bronx County.
Tina Davis: January 5, 2020, Spring Valley Police Department, Rockland County.
Matthew Felix: February 25, 2020, Nassau County Police Department, Queens County.
Daniel Prude: March 23, 2020, Rochester Police Department, Monroe County.
Michael Wallace: March 24, 2020, Schenectady Police Department, Schenectady County.
Wenzola Rountree: July 19, 2020, Suffolk County Police Department, Suffolk County.
Recommendations

Section 70-b directs the Attorney General to include in this report “recommendations for any systemic or other reforms recommended as a result of [the] investigations” undertaken pursuant to that law. In the 2019 Biennial Report, and in a prior biennial report, issued in 2017, under EO 147, the Attorney General, similarly, listed recommendations for systemic reform. As Section 70-b has been in effect only six months, the recommendations set forth below take account of investigations conducted under the authority of EO 147 as well as current matters.

Body-Worn and Dashboard Cameras

The Attorney General’s 2019 biennial report under EO 147 recommended that:

“all police agencies outfit their officers with body-worn cameras with audio capability and police vehicle dashboard cameras. In addition, officers outfitted with body-worn cameras or operating vehicles equipped with dashboard cameras must be trained on the proper use of this equipment to ensure that all critical interactions with civilians are captured on video.”

As the Attorney General said at the time, research shows substantial benefits to police agencies who adopt body-worn and dashboard cameras, including transparency, improved performance, accountability, documentation of evidence, enhanced officer training, and the prevention and resolution of citizen complaints. Also, at “a time when police-civilian encounters are increasingly recorded by members of the public, body-worn and dashboard cameras provide the additional benefit of ensuring that events are captured from as many perspectives as possible.” 2019 Biennial Report, pages 48-49.

We note the Legislature recently passed, and the Governor signed, Executive Law Section 234 directing the New York State Police to equip all state police officers with body-worn cameras while on patrol. This is a significant achievement, which will, as the new law states, “increase accountability and evidence for law enforcement and the residents of the state.” According to news reports, the State Police will introduce the body-worn cameras on a rolling basis, with statewide deployment expected by the end of 2021; the 3,000 cameras will cost $7.6 million a year.12 Other large police departments in the state, including the New York City Police Department, now deploy body-worn or dashboard cameras.

---

However, state law does not mandate that all police departments and sheriff’s departments in the state deploy body-worn cameras or dashboard cameras. Our recent reports, cited above, indicate, for example, that the Port Authority Police Department (death of Evgeniy Lagoda), the Spring Valley Police Department (death of Tina Davis), and the Nassau County Police Department (death of Matthew Felix) did not equip their officers with body-worn cameras. Based on a survey conducted by the Attorney General’s Office in January 2021 of more than 500 police agencies in the state, only 112 of the responding agencies (about 35%) said they equip their officers with body worn cameras; 210 responding agencies (about 65%) said they do not equip their officers with body worn cameras, including the Suffolk County Police Department (2533 officers) and the Nassau County Police Department (2448 officers).

Therefore, we urge the Legislature to require by statute that all police and sheriff’s departments in the state deploy body-worn and dashboard cameras. We understand that the purchasing, deployment, and training involved in the use of such cameras are expensive and require expertise, and therefore the Legislature should include resources for funding and training together with the mandate to equip officers with cameras.

**Responding to Mental Health Crises**

In the 2019 Biennial Report, the Attorney General made two recommendations that touched on the need to train law enforcement personnel to respond to persons undergoing mental health crises, whether drug-induced or otherwise: the recommendation to train 911 operators and dispatchers to accurately record and transmit the facts conveyed to them, including those possibly indicating mental health crises, and the recommendation to train responding officers in de-escalation methods. 2019 Biennial Report, pages 43-45.

We note that the New York City Police Department, in June of this year, announced it would train all 35,000 of its members in de-escalation methods, using a program called Integrating Communications, Assessment and Tactics, or ICAT.13 Separately, the New York State Division of Criminal Justice Services offers a course for police trainers called Fundamental Crisis Intervention Skills for Law Enforcement, which is part of the mental health section of the Basic Course for Police and Peace Officers, and which “includes hands-on scenarios encountered by police when responding to calls for service involving a person experiencing a mental health crisis.”14

However, as in the case of cameras, without a legislative mandate it is not likely that every police and sheriff’s department in the state will provide training of this kind to its 911 operators and dispatchers and its responding officers. Our recent cases in fact suggest the need of such training in specific departments, including the cases cited above involving Tina Davis (Spring Valley Police Department), Evgeniy Lagoda (Port Authority Police Department), Ferdy Jacinto-Martinez (Rockland County Correctional Facility), and Daniel Prude (Rochester Police Department).

---


14 [https://www.criminaljustice.ny.gov/ops/training/calendar.htm](https://www.criminaljustice.ny.gov/ops/training/calendar.htm)
Therefore, we urge the Legislature to make such training mandatory by statute, and to provide the funding and other resources to make possible the universal implementation of such training across all police and sheriff’s departments in the state.

Deaths in Jails, Prisons, and Holding Facilities

As discussed above, the Attorney General has authority under Section 70-b to investigate and, if warranted, prosecute offenses arising from incidents where a death is caused by a police officer or peace officer in a jail, prison, or holding facility. This authority was not included in EO 147. In the five months of data included in this report, from the effective date of Section 70-b on April 1, 2021, through August 31, 2021, OSI received 42 notifications of deaths in jails, prisons, and holding facilities. Of those, 10 appear to be suicides or attempted suicides, and we classify 32 as “medical emergencies,” at least some of which appear to be drug overdoses, which we will only be able to confirm upon receipt of final autopsy and toxicology reports. For comparison, the New York State Commission of Correction reported in its most recent annual report, for the year 2019, that it conducted 73 mortality investigations and classified 27 deaths as suicides, 25 deaths as “medical deaths,” 19 deaths as overdoses, and two deaths as homicides.\(^5\)

Because of the limited sample size of OSI’s matters to date and the newness of OSI’s experience in this area, we do not make recommendations concerning incarceration matters in this report. However, the number of apparent suicides and drug overdoses are a matter of concern, and raise a question whether personnel in the state’s jails, prisons, and holding facilities have the training, resources, and procedures they need (a) to identify persons at risk of suicide and to protect them adequately, and (b) to prevent incarcerated persons from obtaining potentially lethal drugs in potentially lethal amounts. OSI will continue to examine these data and the underlying facts of the cases, as well as the existing training, resources, and procedures for the state’s correctional facilities, with a view to making recommendations in this area in our next annual report.

OCTOBER 1, 2021

Exhibit 1
EXECUTIVE ORDER

A SPECIAL PROSECUTOR TO INVESTIGATE AND PROSECUTE MATTERS RELATING TO THE DEATHS OF CIVILIANS CAUSED BY LAW ENFORCEMENT OFFICERS

WHEREAS, the Constitution of the State of New York obliges the Governor to take care that the laws of New York are faithfully executed; and

WHEREAS, I have solemnly sworn, pursuant to Article 13, Section 1 of the Constitution, to support the Constitution and faithfully discharge the duties of the office of Governor; and

WHEREAS, there have been recent incidents involving the deaths of unarmed civilians that have challenged the public's confidence and trust in our system of criminal justice; and

WHEREAS, public concerns have been raised that such incidents cannot be prosecuted at the local level without conflict or bias, or the public perception of conflict or bias; and

WHEREAS, it is necessary to ensure that a full, reasoned, and independent investigation and prosecution of any such incident is conducted without conflict or bias, or the perception of conflict or bias; and

WHEREAS, the foregoing compels me to conclude that my constitutional obligations provide that in cases where an issue of a real or perceived conflict of interest exists, and to ensure full confidence in our system of criminal justice, a special prosecutor should be appointed with respect to such incidents. Such appointment of a special prosecutor will supersede in all ways the authority and jurisdiction of a county district attorney to manage, interpret, prosecute or inquire about such incidents; and

NOW, THEREFORE, I, ANDREW M. CUOMO, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and Laws of the State of New York, and particularly by subdivision 2 of section 63 of the Executive Law, hereby require the Attorney General (hereinafter, the "special prosecutor") to investigate, and if warranted, prosecute certain matters involving the death of an unarmed civilian, whether in custody or not, caused by a law enforcement officer, as listed in subdivision 34 of section 1.20 of the Criminal Procedure Law. The special prosecutor may also investigate and prosecute in such instances where, in his opinion, there is a significant question as to whether the civilian was armed and dangerous at the time of his or her death;

FURTHER, for any matter covered herein, the special prosecutor shall have the powers and duties specified in subdivisions 2 and 8 of section 63 of the Executive Law for purposes of this Order, and shall possess and exercise all the prosecutorial powers necessary to investigate, and if warranted, prosecute the incident. The special prosecutor's jurisdiction will displace and supersede the jurisdiction of the county district attorney where the incident occurred, and such county district attorney shall have only the powers and duties designated to him or her by the special prosecutor as specified in subdivision 2 of section 63 of the Executive Law;
FURTHER, for any matter covered herein, the special prosecutor shall conduct a full, reasoned, and independent investigation including, but not limited to, (i) gathering and analyzing evidence, (ii) conducting witness interviews, and (iii) reviewing investigative reports, scientific reports, and audio and video recordings;

FURTHER, for any matter covered herein, the special prosecutor shall, (i) attend in person, a term or terms of the County or Supreme Court to be held in and for the County of such appropriate jurisdiction consistent with this Order, (ii) appear in person before any grand jury drawn for any term(s) of said court, for the purpose of conducting any and all proceedings, examinations, and inquiries, and (iii) bring any and all criminal actions and proceedings which may be had or taken before said grand jury and other grand juries concerning or relating to any and all alleged unlawful acts as described by this Order;

FURTHER, for any matter covered herein, the special prosecutor will provide to me, or my designee, a report on all cases where, (i) the special prosecutor declines to present evidence to a grand jury regarding the death of a civilian as described in this Order, whether in custody or not, allegedly caused by a law enforcement officer, or (ii) the grand jury declines to return an indictment on any charges. The report will include, to the extent possible and lawful, an explanation of that outcome and any recommendations for systemic reform arising from the investigation.

This Executive Order shall continue until modified, suspended or terminated by the Governor.

GIVEN under my hand and the Privy Seal of the
State in the City of Albany this eighth
day of July in the year two thousand
teen.

BY THE GOVERNOR

William J. Mahn
Secretary to the Governor
Exhibit 2
AN ACT to amend the executive law, in relation to creating an office of special investigation within the office of the attorney general.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The executive law is amended by adding a new section 70-b to read as follows:

§ 70-b. Office of special investigation. There shall be established within the office of the attorney general an office of special investigation. Notwithstanding any other provision of law, the office of special investigation shall investigate and, if warranted, prosecute any alleged criminal offense or offenses committed by a person, whether or not formally on duty, who is a police officer, as defined in subdivision thirty-four of section 1.20 of the criminal procedure law, or a peace officer as defined in section 2.10 of the criminal procedure law, provided that such peace officer is employed or contracted by an education, public health, social service, parks, housing or corrections agency, or is a peace officer, as defined in subdivision twenty-five of section 2.10 of the criminal procedure law, concerning any incident in which the death of a person, whether in custody or not, is caused by an act or omission of such police officer or peace officer or in which the attorney general determines there is a question as to whether the death

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [ ] is old law to be omitted.
was in fact caused by an act or omission of such person, officer or peace officer.

2. The attorney general has investigative authority and criminal jurisdiction under this section at the time of the death of the person and the attorney general retains investigative authority and criminal jurisdiction over the incident unless the attorney general determines that such incident does not meet the requirements of this section. If the attorney general determines the incident does not meet the requirements for the attorney general to have investigative authority and criminal jurisdiction pursuant to this section, the attorney general shall, as soon as practicable, provide written notice of such determination to the district attorney for the county in which the incident occurred.

3. In connection with any particular incident encompassed by this section, the attorney general shall conduct a full, reasoned and independent investigation, including but not limited to: (a) gathering and analyzing evidence; (b) conducting witness interviews; (c) reviewing and commissioning any necessary investigative and scientific reports; and (d) reviewing audio and video-recordings. The attorney general shall be empowered to subpoena witnesses, compel their attendance, examine them under oath before himself or herself or a magistrate and require that any books, records, documents or papers relevant or material to the inquiry be turned over to his or her for inspection, examination or audit, pursuant to the civil practice law and rules, in connection with such incident.

4. The attorney general shall have criminal jurisdiction over any criminal conduct arising from any incident herein and shall exercise all of the powers and perform all of the duties with respect to such actions or proceedings that a district attorney would otherwise be authorized or required to exercise or perform, including all the powers necessary to prosecute acts and omissions and allow acts and omissions to obstruct, hinder or interfere with any inquiry, prosecution, trial or judgment arising from the incident. The criminal jurisdiction of the office of special investigation shall displace and supersede the jurisdiction of the district attorney where the incident occurred; and such district attorney shall only have the powers and duties reserved to him or her in writing by the attorney general.

5. The attorney general shall designate a deputy attorney general for special investigation to exercise the powers and duties of the office of special investigation, who shall be in the exempt class of the civil service. The deputy attorney general may designate deputies or assistants, who shall be in the exempt class of the civil service, as necessary and appropriate. The other employees of the office of special investigation within the department of law, who are not otherwise exempt, shall all be in the competitive class of the civil service and shall be considered for purposes of article fourteen of the civil service law to be public employees in the civil service of the state, and shall be assigned to the appropriate collective bargaining unit. Employees serving in positions in newly created titles shall be assigned to the same collective bargaining units as they would have been assigned to were such titles created prior to the establishment of the office of special investigation within the department of law by this chapter. The deputy attorney general for special investigation may appear and conduct proceedings in person or by his or her deputy or assistant before any court or grand jury in connection with proceedings under this section.

6. (a) For any incident under this section, the office of special investigation shall issue a public report and post the report on its
website whenever the office of special investigation initiates an investi-
gation and (i) the office of special investigation declines to present
evidence to a grand jury or (ii) the office of special investigation
does present evidence to a grand jury but the grand jury declines to
return an indictment on any charges. The report will include, to the extent
possible and lawful, the results of the investigation of the incident.
(b) The report shall also include: (i) with respect to subparagraph
(i) of paragraph (a) of this subdivision, an explanation as to why the
office of special investigation declined to present evidence to a grand
jury; and (ii) any recommendations for systemic or other reforms arising
from the investigation.
7. Six months after this subdivision takes effect, and annually on
such date thereafter, the office of special investigation shall issue a
report, which shall be made available to the public and posted on the
website of the department of law, which shall provide information on the
matters investigated by such office during such reporting period. The
information presented shall include, but not be limited to: the county
and geographic location of each matter investigated; a description of
the circumstances of each case; racial, ethnic, age, gender and other
demographic information concerning the persons involved or alleged to be
involved; information concerning whether a criminal charge or charges
were filed against any person involved or alleged to be involved in such
matter; the nature of such charges; and the status or, where applicable,
outcome with respect to all such criminal charges. Such report shall
also include recommendations for any systemic or other reforms recom-
manded as a result of such investigations.
§2. Severability clause. If any clause, sentence, paragraph, subdivision,
section or part of this act shall be adjudged by any court of
compentent jurisdiction to be invalid, such judgment shall not affect,
impair, or invalidate the remainder thereof, but shall be confined in
its operation to the clause, sentence, paragraph, subdivision, section
or part thereof directly involved in the controversy in which such judg-
ment shall have been rendered. It is hereby declared to be the intent of
the legislature that this act would have been enacted even if such
invalid provisions had not been included herein.
§3. This act shall take effect April 1, 2021.

APPROVED
JUN 1 2 2020

FILED
STATE RECORDS
SEP 11 2020

DEPARTMENT OF STATE

PRINTED ON RECYCLED PAPER
Office of Special Investigations
Law Enforcement Guidelines

**When Calling the Hotline, Provide:**
- Name, rank/title and contact info of caller
- The agency, rank, name, and contact info for supervising POC
- Date/time of incident
- Type of incident
- Location of incident
- Brief details of incident

**First Responders Should:**
- Provide immediate medical assistance
- Address any ongoing threat to public safety
- Preserve and/or secure any evidence (vehicles should not be moved unless absolutely necessary)
- Identify, and if at all possible, hold witnesses for OAG personnel

**On Scene Guidelines:**
- Ensure supervisor is on scene or en route to take command of incident
- Establish an appropriate crime scene (an expanded crime scene can always be scaled down if necessary)
- Document everything – observations by responding officers, original 911 calls, anyone who entered crime scene, who responded (EMS and/or fire personnel)
- Determine if BWCs were used, if so, lock down all relevant videos
- Take photographs of involved officers at scene
- Obtain any possible information about the deceased
- Ensure no evidence is released without permission of OAG personnel
- Ensure no evidence is tampered with, and if evidence has been moved or manipulated in any fashion, document by whom and why
- If incident involved a firearm or taser, ensure firearm and/or taser is secured
- Notify OAG if any search warrants are needed
- Obtain signed consent forms for any seized evidence, where applicable
- Identify, and where possible, retrieve and safeguard potential electronic evidence (cell phones, EZ pass, GPS, etc)
- If there are any questions as to what steps should be taken, please contact the responding Detective and/or Assistant Attorney General for guidance

---

**The Office of Special Investigations Will Investigate Incidents Involving the Death of Persons Caused by a Police Officer or Peace Officer**

New York State Executive Law Section 70-b mandates the establishment of an Office of Special Investigation (OSI) within the Office of the New York State Attorney General (OAG), effective April 1, 2021. This legislation represents the codification – and the expansion – of the role currently performed by the Special Investigations and Prosecutions Unit (SIPU) since Executive Order 147 became effective on July 8, 2015.

The legislation requires OSI to “investigate and, if warranted, prosecute any alleged criminal offense or offenses committed by a person, whether or not formally on duty, who is a police officer...or a peace officer...concerning any incident in which the death of a person, whether in custody or not, is caused by an act or omission of such police officer or peace officer or in which the attorney general determines there is a question as to whether the death was in fact caused by an act or omission of such police officer or peace officer.” OSI will investigate every incident in which a police officer caused or may reasonably have caused the death of a person, whether the person is armed or unarmed, and whether the officer is on duty or not. The law further obligates OSI to investigate every incident in which certain state, county, or local peace officers caused or may reasonably have caused the death of a person or an incarcerated inmate.

**Please direct questions about these guidelines to:**

**Do not send incident notifications or incident followup to this email address**

(855) OSI-
Exhibit 5
By Electronic Submission

Hon. Laura Taylor Swain
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10006

Re: Nunez, et al. v. City of New York, et al., 11-cv-5845 (LTS) (JCF)

Dear Judge Swain:

I write on behalf of the New York State Office of the Attorney General (“OAG”) in connection with the Court’s continuing jurisdiction over the above-referenced action to ensure compliance with the consent judgement regarding operations at the New York City Department of Corrections (“DOC”).

By way of this letter motion, I respectfully request that the Court permit the OAG to file an amicus submission in this action, and if granted, to treat this letter as that amicus submission. My office has notified the parties of the OAG’s intent to file this letter.

The OAG has serious concerns about the conditions at the jails operated by the DOC on Rikers Island (“Rikers”) and the impact of those conditions on the health and safety of the people who work and are incarcerated at Rikers.

The conditions at Rikers implicate state interests for several reasons: New York Executive Law Section 70-b requires the OAG to investigate, and where warranted, prosecute deaths caused by the acts or omissions of corrections officers, including in local facilities; certain individuals in state custody are housed at Rikers; and the OAG has a general interest in ensuring that correctional facilities in New York operate safely and humanely within the boundaries of the law.

In the fewer than six months that have passed since April 1, 2021, when Section 70-b went into effect, the OAG has been notified of nine deaths of incarcerated individuals at Rikers and the DOC Vernon C. Bain Center (“VCBC”) jail boat anchored north of Rikers. We do not yet have final autopsy reports in any of these cases, and therefore have not reached final conclusions as to the causes of death at this time. Nevertheless, this pattern of incarceration-related mortality is extremely troubling.
Honorable Laura Taylor Swain  
Page 2 of 2  
September 23, 2021  

These tragic occurrences suggest the need for swift remedial action to improve security, access to medical care, and adequate working and living conditions for everyone at Rikers and VCBC, even as our investigations are ongoing.

The accounts of chaos, dysfunction, and violence that have been reported by incarcerated individuals and correctional staff are deeply disturbing.

I respectfully ask the Court to issue all appropriate remedial orders to address the conditions at Rikers for corrections officers, staff, and incarcerated individuals, including measures to relieve the intake backlog, incentivize the return of correctional staff to work, facilitate emergency repairs and other services to improve security and hygiene, and any other actions necessary to resolve the concerns at Rikers.

Respectfully submitted,

/s/ Conor Duffy

Conor Duffy  
Assistant Attorney General

Rick Sawyer  
Special Counsel

cc: Mary Lynne Werlwas, The Legal Aid Society  
Jonathan Abady, Emery Celli Brinkerhoff Abady Ward & Maazel  
Anna E. Friedberg, Deputy Monitor  
Kimberly Joyce, New York City Law Department  
Asim Rehman, General Counsel, New York City Department of Correction
Exhibit 6
SUPREME COURT: COUNTY OF NASSAU  
STATE OF NEW YORK  

THE PEOPLE OF THE STATE OF NEW YORK  

against -  

ERRICK ALLEN,  
Defendant.  

INDICTMENT  

Indictment No. 1017N-21  

FIRST COUNT  

THE GRAND JURY OF THE COUNTY OF NASSAU, by this indictment, accuses the defendant, ERRICK ALLEN, of the crime of MURDER IN THE SECOND DEGREE, in violation of Section 125.25 (1) of the Penal Law, committed as follows:  

The defendant, ERRICK ALLEN, on or about May 12, 2020 at approximately 8:08:44 PM, in front of 4 Langdon Road, in the County of Nassau, with intent to cause the death of Christopher Curro, caused the death of Christopher Curro by shooting him with a loaded firearm.  

SECOND COUNT  

THE GRAND JURY OF THE COUNTY OF NASSAU, by this indictment, accuses the defendant, ERRICK ALLEN, of the crime of MANSLAUGHTER IN THE FIRST DEGREE, in violation of Section 125.20 (1) of the Penal Law, committed as follows:  

The defendant, ERRICK ALLEN, on or about May 12, 2020 at approximately 8:08:44 PM, in front of 4 Langdon Road, in the County of Nassau, with the intent to cause serious physical injury to Christopher Curro, caused the death of Christopher Curro by shooting him with a loaded firearm.
THIRD COUNT

THE GRAND JURY OF THE COUNTY OF NASSAU, by this indictment, accuses the defendant, ERRICK ALLEN, of the crime of MENACING IN THE SECOND DEGREE, in violation of Section 120.14 (1) of the Penal Law, committed as follows:

The defendant, ERRICK ALLEN, on or about May 12, 2020 at approximately 8:06:48 PM, on or near the dirt path to the wooded area off the northern portion of Langdon Road, in the County of Nassau, intentionally placed or attempted to place Christopher Curro in reasonable fear of physical injury, serious physical injury or death, by displaying a deadly weapon, to wit, a firearm.

Dated: August 5, 2021
Mineola, New York

LETITIA JAMES
Attorney General of the State of New York

By: _______________________
Investigative Counsel