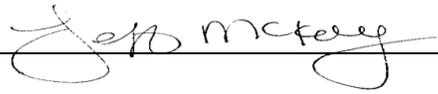


 <p style="text-align: center;">STATE OF NEW YORK DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION</p> <p style="text-align: center;"><b>DIRECTIVE</b></p>	TITLE <b>Inmate Deaths- Administrative Responsibility</b>		NO. 4013
			DATE 11/26/2013
SUPERSEDES DIR# 4013 Dtd. 06/28/2012	DISTRIBUTION A B	PAGES PAGE 1 OF 6	DATE LAST REVISED
REFERENCES (Include but are not limited to)	APPROVING AUTHORITY 		

**I. PURPOSE:** To prescribe the procedures to be followed by Department staff following the death of an inmate. A separate policy exists for releasees under Community Supervision.

**II. NOTIFICATION PROCEDURES**

A. Facility Health Services Director (or designee), upon discovery of or confirmation of the death of an inmate, shall notify the Watch Commander of the death.

NOTE: In the event of a death by homicide, suicide or accident, or under suspicious circumstances, the body may not be moved without the permission of the Coroner or Medical Examiner and District Attorney.

NOTE: Except for expected deaths in Department of Corrections and Community Supervision Regional Medical Units, a Physician, Physician's Assistant, or Nurse Practitioner is required to pronounce the death of any inmate occurring on facility property.

If one of these Health Services staff members is not at the facility when a death occurs, the Officer of the Day shall direct the facility Health Services Director (or designated "on-call" staff\*) to return to the facility to pronounce the death.

\*A small facility, such as a camp, which does not have a *Physician* "on-call" must develop a specific plan to ensure that an adequate death investigation will be carried out. This plan shall be submitted to the Deputy Commissioner/Chief Medical Officer for approval.

B. Watch Commander, upon receipt of notification of an inmate death, shall:

1. Notify the Superintendent/Officer of the Day immediately.
2. Notify the Department's Communications Control Center in Albany via telephone in accordance with provision of Directive #4004, "Unusual Incident Report." The Communications Control Center will make telephone notification to the Commission of Corrections Medical Review Board as soon as possible, no later than six hours following the discovery of death (Correction Law Section 47.2).
3. Notify the State Police, or the local police when homicide, suicide, accidental, or suspicious death is a possibility.

NOTE: A police agent will not be granted access to an inmate's medical records without a court-ordered subpoena.

C. Superintendent/Officer of the Day (or designee) shall:

1. Notify the appropriate County Coroner or Medical Examiner. County Law Section 674(5) mandates that the Coroner or Medical Examiner prepare an autopsy report with respect to any inmate death. However, if there is reason to believe that there exists a religious objection to an autopsy, Public Health Law Section 4210(c) prescribes that the decedent's next of kin or a friend be permitted to legally object within 48 hours of the inmate's death.

NOTE: A Coroner, Coroner's Physician, or Medical Examiner has the power to subpoena and examine witnesses under oath. This includes the power to subpoena medical records of the deceased. If it is known or suspected that the deceased inmate had an airborne infectious disease, that fact should be relayed to the Coroner or Medical Examiner before the body is handled.

2. Notify the appropriate facility Chaplain in order to initiate procedure for the notification of the next of kin or other pre-designated individual of the inmate's death.

NOTE: In carrying out this procedure, it may be determined that an autopsy may violate or offend the inmate's religious beliefs.

3. Have the facility Watch Commander notify the Communications Control Center when the facility Chaplain has been contacted and of the time the next of kin was contacted. The Communications Control Center will also be advised of any failed attempts to contact next of kin.
4. If the inmate is a foreign national and assistance is required to notify next of kin in the inmate's home country, contact the Executive Deputy Commissioner's Office (Foreign Consular Notification Coordinator) to obtain the name and telephone number of a consular services representative for the appropriate foreign consulate in New York City.

D. Facility Chaplain or Supervising Offender Rehabilitation Coordinator (SORC):

1. Notify the next of kin or other pre-designated individual of the inmate's death.
2. If an autopsy is religiously problematic, the next of kin or pre-designated individual is to be advised of their responsibility to immediately notify the County Coroner or Medical Examiner. They shall be further cautioned to fulfill all written notification or legal proceedings required by the Coroner or Medical Examiner in relation to an autopsy objection.
3. Explain the alternatives for funeral services, i.e., release for private burial, cremation or burial at a Department facility. Request that the next of kin or pre-designated individual make a decision within 48 hours. If the inmate is a foreign national and assistance is required to notify next of kin in the inmate's home country, contact the Executive Deputy Commissioner's Office (Foreign Consular Notification Coordinator) to obtain the name and telephone number of a consular services representative for the appropriate foreign consulate in New York City.
4. Advise the facility Superintendent or Officer of the Day that the next of kin or pre-designated individual has been notified. It is important to clearly document all efforts made by the Chaplain or SORC to contact the inmate's next of kin or pre-designated individual and must be recorded on Form #4013A, "Inmate Death Notification." This should be a chronological listing that notes the date and time for each entry since the time of notification of the inmate's death and should note all efforts made with regard to the case. The comments must be typed, or legibly hand written, and should include, at a minimum: Review of FPMS records such as visitation, phone log, packages, and emergency contacts listed in FPMS and KGNS Guidance records. In difficult cases it is recommended to outreach to local Parole/Probation Field Offices and State/Local Police Departments.
5. In order to demonstrate due diligence on the part of the Department in those cases for which a working phone number cannot be located, the facility shall send certified letters (return receipt) to at least two next of kin or pre-designated individuals, if such addresses can be located.
6. The facility Chaplain is to provide an initial notification to the Division of Ministerial, Family and Volunteer Services as soon as possible upon confirmation of the inmate's death. This notification shall be made via Outlook e-mail to the following address: [MFVS@doccs.ny.gov](mailto:MFVS@doccs.ny.gov), and should include the inmate's name, DIN, date of death, and religious designation.

### III. REPORT PROCEDURES

- A. Unusual Incident Report: An Unusual Incident Report must be completed and submitted in accordance with the provisions of Directive #4004, "Unusual Incident Report."
- B. Form #SCOC M187, "Report of Inmate Death"
  1. Information required in Section I must be reported by telephone to the State Commission of Correction (SCOC) Medical Review Board within six hours of death (Communications Control Center responsibility - see Section II-B-2).

2. Sections I and II must be subsequently completed, signed, and forwarded by the facility Health Services Director to the SCOC Medical Review Board within ten days of death.

**IV. SCOC INVESTIGATIONS:** The SCOC is authorized, pursuant to Correction Law Section 47, to investigate the cause and circumstances of any inmate death. Normally these investigations are conducted by SCOC investigators on site. SCOC investigators may, however, seek preliminary factual and medical information from facility personnel via telephone.

Only the Superintendent, First Deputy Superintendent, Deputy Superintendent for Security, the Medical Director, and the Nurse Administrator are authorized to release information, via telephone, to SCOC investigators.

Prior to release of any information, facility personnel must verify the SCOC investigator's credentials. This can be accomplished either by actual prior direct contact with the inquiring investigator, or by returning the telephone call to the unrecognized investigator at the appropriate SCOC office.

Immediately upon completion of a telephone inquiry, the facility staff person releasing information shall prepare a letter addressed to the SCOC investigator relaying all the information released by telephone. This letter shall also contain the following statement:

“The above written summary is an accurate account of our entire telephone conversation which occurred on (insert date). The subject information was released to you in your capacity as a State Commission of Correction investigator. If you do not agree with this summary, you are requested to immediately notify me in writing.”

A copy of this letter is to be maintained at the facility and another copy sent to the Deputy Commissioner for Correctional Facilities.

**V. DISPOSAL OF REMAINS**

A. Release to Family: In those cases where the family assumes responsibility the following applies:

1. The inmate's remains may only be released to a Funeral Director. It is necessary to record the name of the funeral home and the date the body was released to the funeral home in order to document the chain of custody of the remains.
2. The family is responsible for all funeral costs except for transportation of the remains to another location in New York State and a set of clothing.
3. In transporting a body, a hearse, air freight, or common carrier may be used. Where there are alternative means of transporting the body, the facility should determine the costs of various alternatives from the Funeral Director selected by the family.

The facility is responsible for ensuring that this service is provided at the “lowest possible cost” to the Department. Cost estimates for the alternative means of transportation must be set forth on the voucher to show that transportation was at the lowest cost. The facility should discuss the cost of transportation service with the Funeral Director selected by the family.

Consistent with transportation policy for discharged or paroled inmates, the State will only pay for transportation of a deceased inmate's body back to his or her respective county of conviction. A local Funeral Director's preparatory expenses, including transportation expenses to and from an airport on both ends of a flight, are not eligible for reimbursement. In the case where the closest drop off point of a common carrier (air, train, vehicle) is short of the county of conviction, then the additional transportation expense to the county of conviction is appropriate for State payment. In the event that the remains are not being shipped to the county of conviction, then an equal distance (within the State) of transportation expense is eligible for State payment.

Generally, fees should not exceed \$5,000. Fees exceeding \$5,000 require three quotes and the service will be provided in the most cost effective manner.

4. The Department will not supply a casket or pay for the rental of a container for transporting the inmate's remains. This is the responsibility of the Funeral Director.
  5. The Department will provide a complete set of clothing including undergarments. When consistent with the religious traditions of the deceased, white sheets or a simple shroud may be used to cover the inmate's remains.
- B. Facility Burial/Cremation: Prior to the burial/cremation of any deceased inmate, a minimal period of 48 hours must pass. In that period, the following must be accomplished prior to the selection of the desired burial method:

In those cases where the inmate's next of kin are located but are unable or unwilling to assume responsibility for the inmate's funeral, or if after being contacted, they do not advise the facility of a desired burial method within 48 hours, the Department will provide a suitable funeral.

When it becomes the sole responsibility of the Department to dispose of the inmate's remains and provide an appropriate burial, the next of kin, or pre-designated individual, will be asked to provide a signed statement (notary is not required) to indicate that they are relinquishing their claim to the remains. The notice must be provided to facility staff within 48 hours, consistent with Section II-D-3 of this directive. If the next of kin, or pre-designated individual, fails to provide the requested notification, the facility shall proceed with the State burial process and that shall be documented in the chronological listing/comments section of Form #4013A. If the signed statement is provided, it is to be attached to the completed Form #4013A.

Additional time may be allowed to pass prior to burial or cremation if a strong possibility for making contact exists. However, in no event shall more than seven days pass before disposal of an inmate's remains is accomplished. In addition to the above factors, the relative costs of cremation and facility burial should be considered in choosing a method for disposal of inmate remains.

Prior to making any arrangements to transport the deceased to the contracted funeral home for burial preparation, the "sending" facility Coordinating Chaplain shall notify the Coordinating Chaplain, Deputy Superintendent for Program Services, and Deputy Superintendent for Administrative Services at the "burial" facility of the inmate's death via Outlook e-mail. This will provide appropriate notification to the "burial" facility that a deceased inmate's remains are en route. The Division of Ministerial, Family and Volunteer Services must also be copied on this e-mail notification ([MFVS@doccs.ny.gov](mailto:MFVS@doccs.ny.gov)). The notification should contain, at a minimum: The inmate's name and DIN, date of death, faith designation, and any other information deemed necessary by the "sending" Chaplain that would assist the "burial" facility in conducting an appropriate burial service.

Once the "sending" facility has completed all preparations and the inmate's remains are ready to be sent out of the facility, the "sending" facility will submit the partially completed Form #4013A via Outlook e-mail to the "burial" facility and copy the same parties as noted above. The "burial" facility will complete Form #4013A upon burial of the inmate's remains and submit it via Outlook e-mail to the Division of Ministerial, Family and Volunteer Services at [MFVS@doccs.ny.gov](mailto:MFVS@doccs.ny.gov).

1. In these cases, the Department will provide:
  - a. Services of a Funeral Director for preparation of body;
  - b. A complete set of clothing including undergarments, or as appropriate, white sheets or a simple shroud to cover the remains;
  - c. Simple wood casket;
  - d. Grave in facility's cemetery;
  - e. Inmate burial detail, headed by a Correction Sergeant, to prepare a grave and inter the remains;
  - f. Chaplain to conduct an appropriate religious burial service, the specifics regarding Chaplain coverage shall be listed in the facility policy for the "burial" facility;

- g. Simple stone, metal, or concrete marker inscribed with the name of the deceased, dates of birth and death, and inmate DIN. (For Muslim inmates, this marker shall remain level with the ground surface; and
  - h. In the event of the death of a Muslim inmate (including Nation of Islam), an Islamic Chaplain shall be notified in order to attend to religious ritual needs associated with the preparation of the remains.
2. The inmate is to be buried/cremated as expeditiously as possible in accordance with the family notification time limits prescribed above. If a viewing is requested by the next of kin, it is to be held at the funeral home. All expenses related to such a viewing are the responsibility of the next of kin. If the family makes a request to be present for the burial or to visit the grave side, it is within the discretion of the facility Superintendent, or designee, to determine if the request can be honored.
  3. When an inmate dies at a facility that does not have a cemetery, or away from his assigned facility, interment is to be made at the closest facility having an inmate cemetery. The following facilities have cemetery plots:

Clinton	Fishkill	Sullivan
Eastern	Green Haven	Taconic
Elmira	Marcy	Washington

In the event that burial is not possible in the northern or western part of the State due to the fact that the ground is frozen, a facility having a cemetery in the southern part of the State should be contacted to see if burial at that cemetery is possible.

4. Whenever the Department assumes full responsibility for an inmate's burial, the death benefits normally afforded the next of kin are to be claimed by the Department and applied toward the cost of the funeral. These benefits include:
  - a. Veteran's Administration benefits; and
  - b. Social Security Administration benefits.

Should the above benefits or grants fail to satisfy burial expenses, monies from the inmate's account are to be applied to the funeral costs.

## **VI. DISTRIBUTION OF PROPERTY OF A DECEASED INMATE**

### **A. Estate Within the Purview of the Court**

1. **Legal Representative:** Whenever an inmate dies, his or her property vests in his or her estate, and his or her legal representative has the responsibility to distribute the assets. If the inmate left a valid will, the property should be turned over to the executor or administrator of the estate. If the inmate died intestate (without a will) then a court-appointed administrator handles the distribution of assets according to statute. Once an executor or administrator presents proof of the issuance of letters of testamentary or letters of administration to the Superintendent, the deceased inmate's property should be turned over to the legal representative and a receipt obtained.
2. **Voluntary Administrator:** In those instances where the inmate's personal property is valued at \$20,000 or less, an interested individual may apply to the court to become a voluntary administrator. To obtain the deceased inmate's funds or personal property, the voluntary administrator must present the Superintendent with a court certification along with completed Office of the State Comptroller Form AC-934, "Next of Kin Affidavit." The Superintendent is not liable for a payment made in good faith to a voluntary administrator.

In those instances where the inmate's personal property is valued at more than \$20,000, contact the Office of Counsel in Central Office to determine whether the Estates, Powers and Trusts Law, Section 5-3.1 applies and whether a voluntary administration is appropriate.

3. In the event more than one person claims to represent the estate or seeks benefits from the deceased inmate's estate, contact the Office of Counsel at Central Office.
- B. Surrogate's Court Procedure Act (SCPA) Section 1310
1. Background
    - a. Even where there is a probated will, a court-appointed administrator to handle intestate distribution of assets or a voluntary administrator, the Superintendent is authorized to release money under certain circumstances where no beneficiary has been designated by the inmate. It must be remembered it is possible for an inmate to leave a valid will naming no existing beneficiary.
    - b. Any payment made in good faith under Section 1310 discharges the Superintendent from liability as long as the specified number of days have elapsed and the affiant in fact bears the stated relationship to the decedent, that the affiant is in fact a distributee or creditor of the decedent, or that the affiant has in fact paid or incurred the funeral expenses of the decedent. The Superintendent will not be liable if the affidavit is false. The person who receives payment pursuant to SCPA Section 1310 is accountable to the fiduciary of the deceased inmate.
    - c. All payments made under Section 1310 are not to total more than set forth in subsections 2, 3, and 4 below.
  2. **Payments Only to the Spouse:** At any time after the death of the inmate, the surviving spouse may be paid up to \$30,000 by the Superintendent. The surviving spouse must file an affidavit attesting that the total of all payments to the spouse do not exceed \$30,000, proof of the inmate's death, and the relationship of the surviving spouse.
  3. **Payments to the Immediate Family:** Not less than 30 days after an inmate has died, up to \$15,000 may be paid to a spouse, one or more adult children, a father or mother, the brother or sister, or niece or nephew. Where more than one request is received, preference shall be given in the order listed above. Pursuant to a request from one of these persons, payment may be made to a creditor of the inmate or to a person who has paid the funeral expenses. The relative who makes the request must file an affidavit showing the date of the inmate's death, his or her relationship to the inmate, that no fiduciary has qualified or been appointed, the names and addresses of the persons entitled to and who will receive the money paid, and that such payment and all other payments made under this Section by all debtors, known to the affiant, after diligent inquiry do not in the aggregate exceed \$15,000.
  4. **Payments to a Distributee, Creditor, or a Person Who Paid Funeral Expenses:** Not less than six months after the death of an inmate, the Superintendent may pay up to \$5,000 to a distributee, a creditor, or a person who had paid the funeral expenses upon an affidavit which shows the date of the inmate's death, that no fiduciary has qualified or been appointed, that the decedent was not survived by a spouse or minor child, that the affiant is entitled to the payment, and that this and all other payments made under this Section do not in the aggregate exceed \$5,000. If any requests for payment are made under this provision, contact the Office of Counsel.
- C. Unclaimed Property: The deceased inmate's next of kin, as noted in facility records or as determined during inmate death notification procedures, should be advised of the inmate's property by the Superintendent or his or her designee. Six months after the death of an inmate the unclaimed property should be handled in accordance with Directive #2791, "Lost & Found/Abandoned Property." Property which is of little or no value may be destroyed following inventory. A copy of the inventory is to be maintained in the facility's Business Office.