
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 3092 **Hearing Date:** May 28, 2024
Author: Ortega
Version: February 16, 2024
Urgency: No **Fiscal:** Yes
Consultant: JD

Subject: *Attorney General: law enforcement agencies: reporting requirements: deaths*

HISTORY

Source: Attorney General Rob Bonta

Prior Legislation: AB 2761 (McCarty), Chapter 802, Statutes of 2022
SB 519 (Atkins), Chapter 306, Statutes of 2023
AB 439 (Bauer-Kahan), Chapter 53, Statutes of 2021
AB 242 (Arambula), Chapter 222, Statutes of 2017
AB 1577 (Atkins), Chapter 631, Statutes of 2014
AB 2302 (Burton), Chapter 529, Statutes of 1992

Support: California Public Defenders Association; Carceral Ecologies; Vera Institute of Justice

Opposition: None known

Assembly Floor Vote: 73 - 0

PURPOSE

The purpose of this bill is to require law enforcement agencies or agencies that report a death of a person in their custody to update its written report to the Attorney General within 10 days of when a change within the case occurs or when the new information becomes available.

Existing law provides the public access to meetings of public bodies and the writings of public officials and agencies. (California Constitution Art. I Sec. 3 (b)(7).)

Existing law provides that if a person dies while in the custody of any law enforcement agency or while in custody in a local or state correctional facility in California, the law enforcement agency or the agency in charge of the correctional facility shall report in writing to the DOJ, within 10 days after the death, all facts in the possession of the law enforcement agency or agency in charge of the correctional facility concerning the death. (Gov. Code, § 12525.)

Existing law provides that such in-custody death reports are public records within the meaning of the California Public Records Act and are open to public inspection. (Gov. Code, § 12525.)

Existing law defines “public records” as any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. (Gov. Code § 7920.530)

Existing law asserts that public records are open to inspection at all times during the office hours of state and local agencies and that every person has the right to inspect them, exempted as otherwise provided. (Gov. Code § 7922.525 (a).)

Existing law allows public agencies to also comply with Gov. Code § 7922.525 by posting any public record on its internet website and directing public requests to its website. (Gov. Code § 7922.545.)

Existing law provides that when a person in custody dies, the agency with jurisdiction over the state or local correctional facility with custodial responsibility for the person at the time of their death, shall post the following information on its website for the public to view within 10 days of the date of death.

- The full name of the agency with custodial responsibility at the time of death;
- The county in which the death occurred;
- The facility in which the death occurred, and the location within that facility where the death occurred;
- The race, gender, and age of the decedent;
- The date on which the death occurred;
- The custodial status of the decedent, including, but not limited to, whether the person was awaiting arraignment, awaiting trial, or incarcerated; and
- The manner and means of death. (Pen. Code, § 10008, subs. (a) & (b).)

Existing law does not permit the public disclosure of confidential medical information that may be submitted to the Attorney General as part of the report detailing the death of the person in custody. (Gov. Code, § 12525 (c).)

Existing law requires states receiving funds from the Edward Byrne Memorial Justice Assistant Grant Program and other specified grant programs to report to the U.S. Attorney General on a quarterly basis information regarding the death of any person who is detained, under arrest, in the process of being arrested, is en route to be incarcerated, or is incarcerated at a municipal or county jail, state prison, state-run boot camp prison, boot camp prison that is contracted out by the state, any state or local contract facility, or other local or State correctional facility (including any juvenile facility). This information must include:

- The name, gender, race, ethnicity, and age of the deceased;
- The date, time, and location of death;
- The law enforcement agency that detained, arrested, or was in the process of arresting the deceased; and
- A brief description of the circumstances surrounding the death. (34 U.S.C. § 60105, subs. (a) & (b).)

This bill requires law enforcement agencies or agencies in charge of correctional facilities that must submit in-custody death information to the DOJ within 10 days after the death, to update their initial written report to the DOJ if any of the previously provided information changes or if

new information becomes available regarding the death, such as the manner and means of the death.

This bill requires the update to be made within 10 days of the date that the in-custody death information that was previously provided changes or the date new information becomes available.

This bill asserts that making information concerning the death of a person while in custody available to the Attorney General is in the public interest and furthers the purposes of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution.

COMMENTS

1. Need for This Bill

According to the Author:

AB 3092 seeks to update current law by requiring DICRA reporting agencies provide follow-up death in custody information to the DOJ when it becomes available. This is crucial to maintain funding from the federal Edward Byrne Memorial Justice Assistance Grant (JAG), which provides states, tribes, and local governments with critical funding necessary to support a range of program areas including law enforcement, prosecution, indigent defense, courts, crime prevention and education. The bill addresses this issue by aligning DICRA reporting requirements in the Government Code with more recent precedent for reporting agencies enacted in the Penal Code. By enacting this change, it will improve the quality of death in custody data for both state and federal reporting requirements, and ensure that California continues to receive federal JAG funding.

2. California's High Jail Death Rate

Between 2006 and 2020, 185 people died in San Diego County jails – one of the highest totals among counties in the State. In February 2022, the State Auditor's Office released the results of an audit of the San Diego County Sheriff's Department – which oversees the jails – to determine the reasons for in-custody deaths and identify the steps the department took to address the deaths. The 126-page audit reached two overarching conclusions: 1) The San Diego County Sheriff's Department did not take sufficient steps to prevent the high number of deaths in its jails, and 2) neither the Sheriff's Department nor the Citizens Law Enforcement Review Board (CLERB)¹ has taken adequate action in response to the deaths of incarcerated individuals.² The audit also cited issues with legislation that allowed the Sheriff's Department to not ensure inmate safety, implying that similar problems may exist statewide. The report claimed that deficiencies within the Sheriff's Department are a result of "statewide corrections standards that are insufficient for maintaining the safety of incarcerated individuals"³ (California State Auditor's Office 2022).

¹ CLERB is a citizen-governed board approved by San Diego County voters in 1990 which is responsible for reviewing complaints of misconduct and investigating deaths arising in connection with the actions of officers employed by the Sheriff's Department or Probation Department.

² "San Diego County Sheriff's Department – It Has Failed to Adequately Prevent and Respond to the Deaths of Individuals in Its Custody." California State Auditor, Report 2021-109. 3 February 2022.
<http://www.auditor.ca.gov/reports/2021-109/index.html>

³ "Report on the California State Auditor Website." California State Auditor,
<https://information.auditor.ca.gov/reports/2021-109/index.html>.

Since 2005, over 2,700 people have died while under the custody of California county jails⁴, and despite jail populations being lower, deaths have reached record rates in the past few years.

Coverage surrounding jail deaths has also increased with many news outlets covering the rise of deaths and lack of sufficient action by the legislature. A recent CalMatters article⁵ analyzed how despite jail populations decreasing, jail deaths continue to remain at high levels. Past reporting by McClatchy and ProPublica⁶ revealed how state inspections of jails documented many violations but faced resistance from sheriffs who disagreed with the state's findings. This bill seeks to maintain current information for oversight purposes surrounding deaths of people under custody.

3. Current Reporting of Deaths While Under Custody

Federal law requires states receiving grant funding from the Edward Byrne Memorial Justice Assistant Grant (JAG) to make quarterly reports to the U.S. DOJ regarding the death of persons detained, under arrest, or incarcerated in municipal or county jails and state prisons. Beginning in Fiscal Year 2023, states were required to submit Death in Custody Reporting Act (DICRA) implementation plans demonstrating their understanding of DICRA reporting requirements and the State's plan to collect the necessary in-custody death information that is required to be reported. (Bureau of Justice Assistance, *U.S. Department of Justice, Death in Custody Reporting Act (DCRA) Data Collection*. (March 14, 2024). Available at <https://bja.ojp.gov/program/dcra/state-implementation-plans> [as of March 26, 2024].) California's August 2023 Federal DICRA Implementation Plan has been approved. (*Id.*)

California law requires law enforcement agencies to report in-custody deaths that occur in local or state correctional facilities to the California DOJ within 10 days after the death. Additionally, the agency with custodial responsibility for the person at the time of their death must also post information on their website related to the death within 10 days of the death. If any of the in-custody death related information that the responsible agency is required to post on their website changes, such as manner and means of the death, the agency must update the posting within 30 days of the change. Notably, while responsible agencies are required to update the in-custody death information that is posted on their website, there is no such requirement to affirmatively update the written reports provided to the California DOJ.

This can result in vague and/or inaccurate reporting to the California DOJ. This is most applicable in situations where there is a prolonged death in custody investigation or where the responsible agency does not have all the information that they need to report to the California DOJ within 10 days of the death. In their letter of support, the California DOJ notes that 15-20% of death in custody incidents data within the last five years listed the manner of deaths as 'pending investigations' suggesting that law enforcement agencies, in a significant portion of instances, need more than 10 days to accurately collect and report the necessary in-custody death information to the California DOJ. This places California's receipt of federal JAG funding at risk, given that such funding is conditioned on the accurate reporting of state in-custody death

⁴ "OpenJustice Data." OpenJustice, California Department of Justice, openjustice.doj.ca.gov/data.

⁵ "California jails are holding thousands fewer people, but far more are dying in them." Calmatters, 2024, calmatters.org/justice/2024/03/death-in-california-jails/?utm_medium=email&utm_source=ActiveCampaign&utm_medium=email&utm_content=Did%20Tulare%20County%20find%20a%20way%20to%20reduce%20California%20jail%20deaths%3F&utm_campaign=WhatMatters.

⁶ "California's Jails Are in a Deadly Crisis. Here's How Experts Suggest Fixing Them." ProPublica, <https://www.propublica.org/article/californias-jails-are-in-a-deadly-crisis-heres-how-experts-suggest-fixing-them>.

information, This also creates the potential for inconsistent information between state and local agencies surrounding in-custody deaths since local agencies must update their in-custody death information on their websites if new information becomes available but this is not the case for the information provided to California DOJ.

Given that responsible law enforcement agencies are already required to update the in-custody death information they post on their websites within 30 days of the date of the death, this bill would make reasonable conforming changes to also require the updating of the in-custody death information that is provided to the DOJ. Ensuring accurate reporting and maintaining receipt of federal JAG funding is critical given the significant increase in-custody deaths across the state in recent years. This bill opts to require the information provided to the DOJ to be updated within 10 days of the date that information changes or new information becomes available, while the current requirement that law enforcement agencies update their websites with newly available in-custody death information only applies within 30 days of any change in information. In order to promote uniform in-custody death updating obligations among law enforcement agencies it may be prudent to align the deadline to update information given to the DOJ with the existing 30 day requirement that applies to information posted on law enforcement agency websites. That being said, a shorter deadline to update the in-custody death information provided to the California DOJ promotes improved public transparency and greater accuracy of the in-custody death information given to the U.S. DOJ.

4. Argument in Support

According to the Attorney General Rob Bonta:

[...] As one of the departments with an implementation role in DICRA reporting, the Criminal Justice Statistics Center (CJSC) at DOJ collects and reports statistical data that allow for valid assessments of crime and the criminal justice process in California. To achieve its mandate, the CJSC maintains several statewide data systems containing specific criminal justice data, which are also available through the Attorney General's Open Justice website, and through annual published reports.

Under DICRA reauthorization via Public Law 113-242, California must report specified death in custody data on a quarterly basis to the U.S. Department of Justice. Additionally, state law requires that law enforcement agencies and correctional facilities report a DICRA incident to the DOJ within the first 10 days after the death (Government Code § 12525). However, Government Code section 12525 does not require DICRA reporting agencies to affirmatively update DOJ in situations where there is an ongoing death in custody investigation. This is problematic because over the last five years, DICRA data on average reflects 15 to 20 percent of the manner of deaths listed as “pending investigation.” While this is not the only data field that is incomplete, it is the most important in understanding death in custody incidents. In some years, these incomplete data fields can represent over 150 pending investigation deaths. DICRA data is also generally the most requested data set at DOJ.

Last but not least, California’s multi-year, federal Edward Byrne Memorial Justice Assistance Grant (JAG) supports critical public safety operations statewide, and is contingent on timely and complete DICRA submissions. However, the State of California is currently at risk of losing its JAG grant funding due to its incomplete

DICRA reporting, comprising approximately \$19.3 million annually from 2020-23, on average.

AB 3092 would update Government Code section 12525 to require that reporting agencies provide follow-up information to DOJ when it becomes available, aligning DICRA reporting requirements in the Government Code with more recent precedent for reporting agencies enacted in the Penal Code. Making this change will improve the quality of death in custody data for both state and federal reporting requirements, and ensure the state continues to receive federal JAG funding. [...]

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