
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair
2023 - 2024 Regular

Bill No: AB 2531 **Hearing Date:** June 11, 2024
Author: Bryan
Version: May 30, 2024
Urgency: No **Fiscal:** Yes
Consultant: JD

Subject: *Deaths while in law enforcement custody: reporting*

HISTORY

Source: Justice2jobs Coalition and Racial Justice Coalition of San Diego

Prior Legislation: AB 2761 (McCarty), Chapter 802, Statutes of 2022
SB 519 (Atkins), Chapter 306, Statutes of 2023

Support: ACLU California Action; California Immigrant Policy Center; California Public; Defenders Association; Californians United for A Responsible Budget; Carceral Ecologies; Care First Kern; Justice2jobs Coalition; Racial Justice Coalition of San Diego; Vera Institute of Justice

Opposition: None known

Assembly Floor Vote: 73 - 0

PURPOSE

The purpose of this bill is to add the definition of “in-custody death,” as used in federal law, to a state statute requiring agencies to post on their website when an in-custody death occurs, and to clarify that juveniles must be included in the posting requirement.

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).)

Existing law requires administrators of juvenile facilities to develop written policies and procedures in the event a youth dies while detained, including notifications to necessary parties, which may include the Juvenile Court, the parent, guardian, or person standing in loco parentis, and the youth's attorney of record. (Cal. Code Regs., tit. 15, § 1341, subd. (1)(a).)

Existing law requires health administrators of juvenile facilities to develop written policies and procedures to assure there is medical and operational review of every in-custody death of a youth. (Cal. Code Regs., tit. 15, § 1341, sub.d (1)(c).)

Existing law requires the administrator of juvenile facilities to provide to the Board of State and Community Corrections (BSCC) a copy of the report submitted to the DOJ within 10 calendar days after the death. (Cal. Code Regs., tit. 15, § 1341, subd. (1)(c).)

This bill clarifies that juveniles must also be included in the agency's posting requirement.

This bill requires the date of death be determined by the medical examiner or similar entity.

This bill defines "in-custody death" as the death of a person who is detained, under arrest, or is 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. Would also include deaths that occur in medical facilities as a result of harm experienced while in law-enforcement custody.

COMMENTS

1. Need for This Bill

According to the Author:

AB 2531 is a positive step towards increasing transparency and accountability within California's correctional system. Currently, the framework for reporting in-custody deaths in California is insufficient, leading to inconsistent and incomplete disclosure of critical information to the public. Unanswered questions regarding the accuracy and completeness of reported data further exacerbate concerns about the integrity of the reporting system.

This bill will improve transparency and accountability by mandating the reporting of deaths of youth in custody, defining in-custody deaths in line with the federal Death In-custody Reporting Act, and clarifying required metrics

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). 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.

While there has been a significant increase in in-custody deaths in county jails more generally, it is less clear if there has also been an increase in in-custody deaths in juvenile detention facilities.

3. Definition of In-Custody Death

Recent amendments taken by the author changed the bill's definition of an "in-custody death" to match the definition provided by the Death In-Custody Reporting Act of 2013 (34 U.S. Code § 60105 subd. (a)). This federal act mandates states to report in-custody death information to the U.S. Department of Justice on a quarterly basis to remain eligible to receive funds from the Edward Byrne Memorial Justice Assistant Grant Program and other specified grant programs. The law requires California's DOJ to report 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. By adopting this definition of "in-custody death", AB 2531 clarifies and expands the existing in-custody death reporting requirement to include deaths that occur not just when a person is "in custody" but persons who are detained, under arrest, or in the process of being arrested. This bill would create uniformity between state and federal law surrounding in-custody deaths.

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>.

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>.

4. Argument in Support

According to Justice2jobs Coalition:

Currently California law does require law enforcement agencies to notify the public of deaths that occur in custody. This law (AB 2761) went into effect January 2023, emphasizing the importance of public disclosure of in-custody deaths but implementation challenges surfaced, with inconsistencies observed in reporting practices across counties, resulting in inconsistent, incomplete or non-disclosure of critical information surrounding these deaths. Additionally, AB 2761 only mandated reporting for adult in custody deaths, leaving the number of youth in custody deaths unknown to the public.

Through an audit conducted by community-based organizations, at least 174 in-custody deaths were publicly reported in 2023 by a Sheriff's Department or local news outlets. Of the deaths, 21 were not reported to the state Attorney General's Office. An additional 19 deaths were reported to the California Attorney General's Office, but were not publicly reported; these were uncovered through a Public Records Act Request. Furthermore, many agencies reported incomplete information: 12 counties did not provide the location of death, 11 did not provide the race of the deceased, and nine (9) did not report the custody status of the deceased. Of all deaths that occurred while in the custody of a Sheriff's department, only 115 deaths across 14 counties were reported in compliance with AB 2761.

The lack of standardized reporting procedures led to disparities in data collection, hindering comprehensive understanding and accountability. Despite efforts to enforce reporting requirements, gaps remained, raising concerns about the accuracy and completeness of information provided to the public. As communities grapple with the number of deaths and unanswered questions regarding the circumstances of these deaths, AB 2531 is a critical step toward enhancing transparency and accountability in California's correctional system.

AB 2531 proposes necessary revisions to the current statute to enhance the reporting requirements for in-custody deaths including mandating the reporting of youth in-custody deaths, clarifying required metrics, and defining in-custody deaths in alignment with the federal Death In-custody Reporting Act.

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