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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** AB 1864                      **Hearing Date:** June 14, 2016  
**Author:** Cooley  
**Version:** March 17, 2016  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** JRD

**Subject:** *Inquests: Sudden Unexplained Death In Childhood*

## HISTORY

**Source:** Sudden Unexplained Death in Childhood Foundation

**Prior Legislation:** AB 2029 (Cooley) – 2013-2014, vetoed by Governor

**Support:** Several individuals

**Opposition:** California State Coroners' Association

**Assembly Floor Vote:** 78 - 0

## PURPOSE

*The purpose of this bill is to define “sudden unexplained death in childhood” (SUDC), and require a coroner to notify the parents or responsible adult of a child that comes within the definition of the importance of taking tissue samples, as specified.*

*Existing law* requires a coroner to investigate the circumstances, manner, and cause of specified types of deaths, including violent, sudden, or unusual deaths; unattended deaths; and deaths where the deceased has not been attended to by a physician within 20 days before the death occurred. Existing law affords the coroner with the discretion to determine the extent of the inquiry into a death occurring under natural circumstances, and allows the coroner to authorize a physician to sign the certificate of death if the physician has sufficient knowledge to reasonably state the cause of a death occurring under natural circumstances. (Government Code § 27491.)

*Existing law* provides that a coroner shall within 24 hours, or as soon as feasible thereafter, where the suspected cause of death is sudden infant death syndrome, take possession of the body, and make or cause to be made a postmortem examination or autopsy thereon, and the detailed medical findings resulting from an examination of the body or autopsy by an examining physician must either be reduced to writing, or permanently preserved, as specified. (Government Code § 27491.4(a).)

*Existing* defines “sudden infant death syndrome” (SIDS) to mean the sudden death of an infant that is unexpected by the history of the infant and where a thorough postmortem fails to demonstrate an adequate cause of death. (Government Code § 27491.49(a).)

*Existing law* requires that an autopsy conducted where it is suspected that the cause of death is SIDS be conducted pursuant to a standardized protocol developed by the State Department of Public Health. The protocol shall be developed and approved by July 1, 1990. (Government Code § 27491.41(d).)

*Existing law* requires that all coroners, throughout the state, follow the established protocol when conducting autopsies where the suspected cause of death is SIDS, and requires a coroner to state on the certificate of death that sudden infant death syndrome was the cause of death when the findings are consistent with the definition of SIDS. (Government Code § 27491.41(e).)

*Existing law* requires a coroner to perform or arrange for an autopsy on a decedent upon a written request of the surviving spouse, or in certain circumstances, a child, parent, or other legal next-of-kin; and requires the cost of the autopsy to be borne by the person requesting the autopsy. (Government Code § 27520.)

*This bill* defines “sudden unexplained death in childhood” as the sudden death of a child one year of age or older but under 18 years of age that is unexplained by the history of the child and where a thorough post mortem exam fails to demonstrate adequate cause for the death.

*This bill* requires the coroner to notify the parents or responsible adult of a child that comes within the SUDC definition of the importance of taking tissue samples.

*This bill* states that a coroner shall not be liable for damages in a civil action for any act or omission in compliance with the above provision.

#### RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state’s ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its “ROCA” policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as “of December 9, 2015, 112,510 inmates were housed in the State’s 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015.” (Defendants’ December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State’s 34 adult institutions, which amounted to 140.0% of design bed

capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

## COMMENTS

### 1. Need for This Legislation

According to the author:

In any case where an infant dies and the suspected cause of death is Sudden Infant Death Syndrome, existing law requires a coroner to perform an autopsy within twenty-four hours, or as soon as is feasibly possible. The coroner is allowed to take samples, but is also required to inform the infant's parent or guardian about the importance of taking tissue samples for the purpose of further investigation.

Similar laws do not exist to require rapid investigation or encourage proper management of the sudden and unexplained deaths of child no longer in infancy.

### 2. Effect of This Legislation

According to the Sudden Unexplained Death in Childhood Program's (SUDCP) website, SUDC is a rare condition that occurs in children over the age of 12 months. According to the SUDCP, SUDC is a diagnosis of exclusion that is given when all known and possible causes of death have been ruled out. The SUDCP states that the incidence of SUDC is approximately 1.3 deaths per 100,000 children, compared to 57 deaths per 100,000 live births for SIDS in 2002. (<http://sudc.org/About/FAQs>.) The website additionally, states, with regard to the collection of tissue:

If available to you, SUDC encourages the banking of your child's DNA to provide you with options to pursue more information about your child's death. As clinical testing advances

and research options improve, you may want to access these opportunities. Securing a genetic specimen (DNA) from your child may provide:

- the opportunity for genetic testing to uncover specific cause of death and appropriate testing of family
- the opportunity for genetic testing to provide negative results - which may assist in decreasing some anxiety
- the opportunity for storing a genetic specimen -banking DNA
  - Instill hope for cases that currently defy understanding
  - Allow for participation in present or future research
  - Allow families to benefit from potential benefit of future discoveries

(<http://sudc.org/Research/Securing-and-Banking-DNA-after-SUDC.>)

According to the author, “reasons to take samples in SUDC cases include observing tissues for abnormalities or damage, and banking DNA for further investigation.” To this end, this legislation would require the coroner to notify the parents of the importance of taking tissue samples.

### **3. Veto Message**

AB 2029 (Cooley) of the 2013-2014 Legislative Session was identical to this bill in that it required a coroner to advise the parents of a child who has died of SUDC of the importance of taking tissue samples. AB 2029 was vetoed by the Governor:

The bill would add a statutory definition of ‘sudden unexplained death in childhood’ and require coroners to notify parents or responsible parties about the importance of taking tissue samples when such an unexplained death occurs.

Rather than creating a state mandate at this juncture, we should rely on coroners to use their best professional judgment to provide appropriate and relevant information to next of kin for this difficult circumstance.

### **4. Argument in Opposition**

According to the California State Coroners’ Association:

The death of a child is always handled as one of our highest priority cases. Regardless of age, all undetermined causes of death are taken extremely seriously and investigated accordingly by the attending coroner. Adding “sudden unexpected death in childhood” (SUDC) to statute suggest it, like SIDS, is a syndrome and creates a new label absent scientific vetting or validation. There is no syndrome of this type—it is a broad label given to unidentified cause of death. While well intentioned, we see this as problematic.

When a coroner or medical examiner signs a death certificated, what appears in the certificate for cause of death needs to be able to be coded to a “standard” contained in the ICD-10 manual. The ICD-10 is used to code and classify mortality dates from death certificated. The ICD-10 is copyrighted by the World Health Organization which owns and publishes the classification. The ICD-10 was developed following a thorough

evaluation by a Technical Advisory Panel and extensive additional consultation with physician groups, clinical coders, and other to assure clinical accuracy and utility.

It is important to note that Sudden Infant Death Syndrome (SIDS) appears as an ICD-10 code. No such code appears for the newly proposed Sudden Unexplained Death in Childhood (SUDC). Therefore, it is extremely problematic to define it as a new “standard” in statute without it having been vetted for purposes of inclusion in the ICD-10. Consequently, this bill establishes a definition in statute which puts us at odds with existing international classifications of diseases and causes of death.

**-- END --**