
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 2761 **Hearing Date:** June 21, 2022
Author: McCarty
Version: April 21, 2022
Urgency: No **Fiscal:** Yes
Consultant: AB

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

HISTORY

Source: Solis Policy Institute
Anti-Recidivism Coalition
California Families United For Justice
Young Women's Freedom Center
Stable, Secure and Strong

Prior Legislation: AB 439 (Bauer-Kahan), Ch. 53, Stats. of 2021
AB 242 (Arambula), Ch. 222, Stats. of 2017
AB 1577 (Atkins), Ch. 631, Stats. of 2014

Support: ACLU California Action; Cal Aware; California Academy of Family Physicians; California Attorneys for Criminal Justice; California Black Media; California Medical Association; California News Publishers Association; California Public Defenders Association; Californians for Safety and Justice; Californians United for a Responsible Budget; Communities United for Restorative Youth Justice; Do No Harm Coalition; Ella Baker Center for Human Rights; End Police Violence Collective; Essie Justice Group; Fresno Barrios Unidos; Human Impact Partners; Immigrant Legal Resource Center; Initiate Justice; Innocence Project; National Association of Social Workers, California Chapter; Physicians for Human Rights; Public Health Justice Collective; Sister Warrior Freedom Coalition

Opposition: California State Sheriffs Association; Los Angeles Professional Peace Officers Association; Peace Officers Research Association of California

Assembly Floor Vote: 48 - 9

PURPOSE

The purpose of this bill is to require that the content of a death certificate include information regarding whether the decedent died through use of force by a peace officer, or while in custody of a peace officer, state, or local law enforcement agency, if the death was precipitated by law enforcement conduct. Additionally, this bill requires a state or local correctional facility to post specified information on its website within 10 days after the death of a person in custody.

Existing law requires each death to be registered with the local registrar of births and deaths in the district in which the death was officially pronounced or the body was found, within eight calendar days after death and prior to any disposition of the human remains. (Health & Saf. Code, § 102775.)

Existing law requires a certificate of death to include items necessary the fact of death, including:

- Full name, sex, color or race, marital status, name of spouse, date of birth and age at death, birthplace, usual residence, occupation and industry or business, and whether the decedent was ever in the Armed Forces of the United States.
- Date of death, including month, day, and year.
- Place of death
- Full name of father and birthplace of father, and full name of mother and birthplace of mother.
- Informant
- Disposition of body information, including information regarding the embalmer, funeral director, and the date accepted for registration and signature of local registrar.
- Certification and signature of attending physician and surgeon or certification and signature of coroner when required to act by law, as specified. (Health & Saf. Code, § 102875, subd. (a).)

Existing law includes various requirements regarding the recordation of a decedent's gender identity. (Health & Saf. Code, § 102875, subd. (a)(1).)

Existing law provides that the second section of a death certificate shall contain those items relating to medical and health data, including all of the following and other items as the State Registrar may designate:

- Disease or conditions leading directly to death and antecedent causes.
- Operations and major findings thereof.
- Accident and injury information.
- Information indicating whether the decedent was pregnant at the time of death, as specified. (Health & Saf. Code, § 102875, subd. (b).)

Existing law provides that the funeral director shall prepare the certificate of death and register it with the local registrar. (Health & Saf. Code, § 102780.)

Existing law provides that the funeral director shall obtain the required information other than medical and health section data from the person or source best qualified to supply this information. (Health & Saf. Code, § 102790.)

Existing law provides that in any case in which a person dies while in the custody of any law enforcement agency or while in custody in a local or state correctional facility in this state, the law enforcement agency or the agency in charge of the correctional facility shall report in writing to the Attorney General, 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 records by law enforcement reporting deaths in custody to the Attorney General are public records within the meaning of the California Public Records Act and are open to public inspection. (Gov. Code, § 12525.)

Existing law requires each law enforcement agency to report to the Department of Justice on a monthly basis a report of all instances when a peace officer employed by that agency is involved in specified incidents, including an incident in which the use of force by a peace officer against a civilian results in serious bodily injury or death. (Gov. Code, § 12525.2, subd. (a)(3).)

This bill requires a death certificate to state whether the person died through use of force by a peace officer, while in the custody of a peace officer, or while in the custody of state or local law enforcement, including a city or county jail or state prison, if the death was precipitated by law enforcement conduct.

This bill requires a state or local correctional facility to post the following information on its website within 10 days after the death of a person who died while in custody:

- The full name of the agency;
- 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.

This bill provides that if any of the information changes, including, but not limited to, the manner and means of death, the agency shall update the posting within 30 days of the change.

COMMENTS

1. Need for This Bill

According to the Author:

Death certificate information is the primary data source used by government for monitoring morbidity and mortality, scientific study, legislative change, research and, public health strategies and public safety initiatives. Because the data provided on death certificates provides valuable information, the importance of accurate and complete death certificate information cannot be overstated.

Recent high-profile killings by police in the USA have prompted calls for government officials to implement laws that will reduce police violence. Lawmakers need accurate data in order to evaluate whether policies effectively address the issue of police violence. However, research has shown that law enforcement-related deaths are undercounted in government data. According to data provided by Public Policy Institute of California, half of deaths by law enforcement officers are misclassified in the California Department of Public Health's system. The absence of accurate and complete information on the number of individuals who die by law enforcement stifles the public trust and the ability to hold law enforcement accountable. [...]

Death certificates inconsistently capture whether deaths are officer-involved and do not capture when the death occurred while in custody. The process for coding deaths relies on the medical examiner or coroner completing the death certificate form to include the mention of law enforcement. However, the form does not specifically ask if law enforcement was involved and it does not record if the death occurred while the person was in custody, so the person completing the form may omit this information.

The absence of accurate and complete information on the number of people who die in custody and the nature of such deaths stifles policymakers' ability to examine the underlying causes, let alone determine what can be done to lower the incidences. [...]
A designated field on the death certificate to record when the death occurred while the person was in custody and was precipitated by a law enforcement officer or through officer involvement and timely public notification of deaths will help California's metrics and ensure deaths are more accurately reported and that deaths involving peace officers or those occurring in custody don't continue to go uncounted. This will also improve investigative transparency and community confidence in the medical examinations, as well as help to give more peace to families that have lost loved ones.

2. This Bill Requires Additional Information to Be Included on Death Certificates

Functionally, death certificates are both a legal document stating the facts of death and a record of the disposition of the decedent, and are used to understand trends of disease and mortality as well as prioritize and allocate funding. In 2002, to facilitate the completion and tracking of death certificates, the Legislature passed AB 2550 (Nation, Ch. 587, Stats of 2002), which established the California Electronic Death Registration System (CA-EDRS). CA-EDRS is a Web-based system that provides the ability for coroners, funeral directors, doctors, and hospitals to submit electronic death certificates.

Under existing law, a death certificate consists of two sections which require personal information, medical and health data, and coroner's information regarding death. The first section is usually completed by a funeral director/home in coordination with the individual best qualified to provide the deceased's personal information. The second section must be completed by a physician/surgeon, medical examiner, or coroner to provide the medical and health data necessary, including information on the manner of death and investigation determinations.

This bill requires the second section of a death certificate to indicate whether the decedent died through use of force by a peace officer, while in custody of a peace officer, or while in the custody of state or local law enforcement, including a jail or state prison. This indication would only be required if the death was precipitated by law enforcement conduct. Supporters of the measure argue that because the current process for coding deaths relies on the discretion of the medical examiner or coroner, indications of law enforcement involvement can be inconsistently recorded or omitted altogether (see Comment 4).

3. This Bill Requires Correctional Facilities to Post Information about Deaths in Custody

Existing law requires law enforcement agencies to report any deaths in custody to the DOJ within 10 days after the death, and specifies that these reports are public records subject to the California Public Records Act.¹ When the details of a death in custody are not readily available during this 10-day time frame, the deaths are listed as "pending investigation," and DOJ requests updates from DOJ twice a year, at which time the case is updated if it has been resolved. Information required under existing law is readily accessible on the DOJ's OpenJustice Web portal, which currently displays an interactive dashboard representing data on 7,542 deaths collected between 2011 and 2020.² According to the website, "these data are utilized to assist in policy development and to inform the public on the nature and volume of death in custody in California."³

This bill requires law enforcement agencies with jurisdiction over a state or local correctional facility to post on their websites specified information regarding the death of an individual in custody at such a facility, including the name of the agency, the date and county of death, the name and location of the facility, information about the deceased (race, age, gender) and manner of death, and the custodial status of the decedent. The information must be posted within 10 days of the death, and if there are changes to the information, updates to the posting must be made within 30 days of the change. Opponents argue that this requirement is duplicative of the existing requirement that law enforcement agencies report deaths in custody to the DOJ. However, 10 and 30 day requirements in this bill, and the apparent frequency with which DOJ posts its in-custody death data, this bill would make such data available to the public more quickly than existing law. Additionally, supporters argue that public health organizations developing mortality-based research and policy can more easily access and process death certificate data, presumably through the CA-EDRS system, than data collected by the DOJ.

¹ Govt. Code §12525.

² <https://openjustice.doj.ca.gov/data-stories/deathincustody>

³ *Ibid.*

4. Argument in Support

According to ACLU California Action:

California death certificate forms include a cause of death section, completed by either the doctor who last attended to the decedent or the Medical Examiner/Coroner's office. The cause of death section includes fields to record the immediate cause of death and any underlying causes. Currently, no field denotes when a death occurs while in the custody of public safety officials or through the use of force by, or through contact with a peace officer. The process for coding deaths relies on the discretion of the medical examiner or coroner completing the death certificate form, which means that their mention of law enforcement can be inconsistently recorded or even omitted altogether.

As a result, about half of deaths that occur through contact with a law enforcement officer are misclassified in California's public health system. In 2018, the California Department of Public Health reported 86 deaths caused by "legal intervention." Yet, that same year, researchers examining national data on deaths by law enforcement estimated that 163 people were killed by law enforcement in California. Similarly, a 2021 report from the Public Policy Institute of California estimates that closer to 195 people are killed by law enforcement in California each year. As an example of this type of misclassification, Mario Gonzalez's death made national headlines when he died after being restrained by Alameda police on his stomach. However, the reported cause of death on the death certificate was that he died from the toxic effects of methamphetamine.

AB 2761 would ensure greater transparency in the recording and noticing of deaths that occur as a result of interaction with law enforcement. This bill would require medical examiners and coroners to record this information on the decedent's death certificate at the time they determine the cause of death. Furthermore, this bill would require state and local correctional facilities to notify the public within ten days after a death occurs while an individual was in custody. By improving California's data collection practices and transparency practices, this bill will enhance community trust and ensure officer-involved deaths do not go uncounted.

5. Argument in Opposition

According to the California State Sheriff's Association:

Records from a death investigation, attendant disciplinary investigation, any potential criminal matter, and the existing requirement that in-custody deaths be reported to the Attorney General demonstrate the information that appears to be sought by the proponents of the bill can already be accessed. Further, requiring this information to be included in the death certificate could slow the completion of that document, and timely release of the death certificate is a paramount goal for death investigators. We note that no deaths involving other professions would trigger an analogous inclusion in the death certificate.

Additionally, existing law provides that in any case in which a person dies while in the custody of any law enforcement agency or while in custody in a local or state correctional facility, the law enforcement agency or the agency in charge of the correctional facility shall report in writing to the Attorney General, 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, and provides that these writings are public records. The bill's requirement to post certain facts about an in-custody death on the agency's website is a duplicative, costly, and unnecessary unfunded mandate that is unlikely to provide any information that is not already public or obtainable.

-- END --