

Date of Hearing: April 19, 2022

Chief Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 2761 (McCarty) – As Amended April 7, 2022

As Proposed to be Amended in Committee

SUMMARY: Requires that the content of a death certificate include information noting if the decedent died through use of force by a peace officer, or while in custody of a peace officer, state, or local law enforcement if the death was precipitated by law enforcement conduct.

Specifically, **this bill:**

- 1) 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.
- 2) 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:
 - a) The full name of the agency;
 - b) The county in which the death occurred;
 - c) The facility in which the death occurred and the location within that facility where the death occurred;
 - d) The race, gender, and age of the decedent;
 - e) The date on which the death occurred;
 - f) The custodial status of the decedent, including, but not limited to, whether the person was awaiting arraignment, awaiting trial, or incarcerated; and,
 - g) The manner and means of death.
- 3) Provides that if any of the information to be posted, including the manner and means of death, the agency shall update the posting within 30 days of the change.

EXISTING LAW:

- 1) 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.)

- 2) Requires a certificate of death to include items necessary to establish the fact of death, including:
 - a) Full name, sex, color or race, marital status, name of spouse, date of birth and age at death, birthplace, usual residence, and occupation and industry or business of decedent;
 - b) Date of death, including month, day, and year;
 - c) Place of death;
 - d) Full name of father and birthplace of father and mother;
 - e) Informant; and,
 - f) Information related to the disposition of body, including information regarding the embalmer, funeral director, and the date accepted for registration and signature of local registrar. (Health & Saf. Code, § 102875, subd. (a).)
- 3) Provides that the funeral director shall prepare the certificate of death and register it with the local registrar. (Health & Saf. Code, § 102780.)
- 4) States 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.)
- 5) 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.)
- 6) 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.)
- 7) 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).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Law enforcement agencies are not required to be transparent about law enforcement-related deaths or deaths that occur in custody. The

absence of accurate and complete information on the number of individuals who die by law enforcement stifles public trust and the ability to hold peace officers accountable. AB 2761 will require county coroners to record law enforcement involvement on a death certificate, as well as require public notification of deaths in custody. This will improve transparency and provide more information to families who have lost loved ones.”

- 2) **Death Certificate Process.** 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 California Electronic Death Registration System, is a Web-based system that provides the ability for coroners, funeral directors, doctors, and hospitals to submit electronic death certificates. 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 would require a death certificate to indicate whether the person died because of police use of force or while in the custody of law enforcement, but only if the death was precipitated by law enforcement conduct.

- 3) **Reporting Deaths in Custody:** 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 posting information about the death on their website. If there are changes, to the information, this bill would require the agency to update the posting within 30 days.

It should be noted that law enforcement agencies already report any death in custody to the California Department of Justice (DOJ) and that this information is available to the public on the DOJ’s Open Justice portal. ([State of California Department of Justice - OpenJustice](#)) A death in custody is any death that occurs while an individual is: (1) in the process of arrest; (2) killed by use-of-force by law enforcement; (3) in the temporary custody of a law enforcement agency; or (4) incarcerated in a city, county, or state correctional facility. This information is searchable by local law enforcement agencies. For the California Department of Corrections and Rehabilitation, the information is broken down by prison. The data provides detailed information about the circumstances of each death in custody as well as the personal characteristics of the victim. (*Ibid.*)

The DOJ Open Portal website notes that while death-in-custody reporting is mandated within 10 days of the death, when the details for a manner and means of death are not readily available during this time frame, these fields are listed as “Pending Investigation.” DOJ requests updated information from law enforcement agencies twice a year, and these designations are adjusted if and when new information becomes available. (See [State of California Department of Justice - OpenJustice](#))

- 4) **Argument in Support:** According to *Public Health Justice Collective*, “Law enforcement violence and the violence and and (sic) medical neglect that occur in the carceral system are critical health equity issues. Because communities of color and other structurally marginalized communities are particularly overpoliced and over-incarcerated, they are more likely to be killed during police encounters and die while incarcerated, making this an issue of racial justice as well. In order to develop policies to reduce and eliminate these deaths,

public health officials and policy makers must have access to a full and complete count of these deaths. For these reasons, we strongly support AB 2761.

“Death certificates are the primary data source used by the California Department of Public Health (CDPH) and the National Vital Statistics System (NVSS) to track mortality statistics. CDPH and NVSS use completed death certificate forms to code the underlying cause of death.

“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 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....

“Furthermore, the public currently does not have timely access to data on deaths that occur while in the custody of state or local correctional facilities. While existing law requires law enforcement agencies and correctional facilities to report deaths in custody to the California Department of Justice (DOJ), it does not require these agencies to publicly share this information to (sic) public.

“AB 2761 would ensure greater transparency in the recording and noticing of deaths that occur as a result of interaction with law enforcement.”

- 5) **Argument in Opposition:** According to the *California State Sheriffs’ 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."

6) Related Legislation:

- a) AB 1608 (Gipson), separates the duties of the Coroner's Office from the duties of the Sheriff's Office across all counties in California. AB 1608 will be heard in this Committee today.
- b) AB 2436 (Bauer Kahan), revises the information required on death certificates to include the full names, including all legal names, and birthplaces of both parents, without reference to the parents' gender. AB 2436 is pending in the Assembly Appropriations Committee.

7) Prior Legislation:

- a) AB 439 (Bauer-Kahan), Chapter 53, Statutes of 2021, specifies that gender identity includes female, male, or nonbinary for purposes of completing a death certificate.
- b) AB 242 (Arambula), Chapter 222, Statutes of 2017, requires a certificate of death to indicate whether the deceased person was a member of the Armed Forces so that the Department of Public Health may compile data on veteran suicides.
- c) AB 1577 (Atkins), Chapter 631, Statutes of 2014, requires a person completing a death certificate to record the decedent's sex reflecting the decedent's gender identity as reported by the person or source best qualified to supply this information, unless presented with specified legal documents identifying the decedent's gender.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action
 California Academy of Family Physicians
 California Attorneys for Criminal Justice
 California Coalition for Women Prisoners
 California for Safety and Justice
 California Medical Association
 California News Publishers Association
 California Public Defenders Association
 Do No Harm Coalition
 Ella Baker Center for Human Rights
 Essie Justice Group
 Faith in Action East Bay
 Fresno Barrios Unidos
 Human Impact Partners
 Initiate Justice
 Legal Services for Prisoners With Children

National Association of Social Workers, California Chapter
Public Health Justice Collective
Secure Justice
Showing Up for Racial Justice (SURJ) Bay Area
Sister Warriors Freedom Coalition
The Young Women's Freedom Center

Opposition

California State Sheriffs' Association
Peace Officers Research Association of California (PORAC)

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744