

Date of Hearing: May 4, 2022

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

AB 2761 (McCarty) – As Amended April 21, 2022

Policy Committee: Public Safety

Vote: 5 - 0

Urgency: No

State Mandated Local Program: Yes

Reimbursable: Yes

SUMMARY:

This bill requires a death certificate to reflect when the decedent 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, and the death was precipitated by law enforcement conduct. Specifically, this bill:

- 1) 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.
 - g) The manner and means of death.
- 2) Provides that if any of the information to be posted changes, including the manner and means of death, the agency shall update the posting within 30 days of the change.

FISCAL EFFECT:

- 1) Costs (General Fund (GF)) possibly in the low- to mid-hundreds of thousands of dollars to the California Department of Public Health (CDPH) to the extent this bill requires CDPH to update certain fields on a standardized death certificate. CDPH generates a template death certificate that includes all relevant information related to the cause of death. If CDPH is required to add additional fields to a death certificate, like whether a died person at the hands of law enforcement, it may require information technology (IT) data schema changes to the California Integrated Vital Records System (Cal-IVRS) to incorporate the new fields.

- 2) Possibly reimbursable costs (Local Funds and General Fund (GF)) in the hundreds of thousands of dollars for county coroners to determine and report if a person died at the hands of law enforcement and for local law enforcement agencies to post on its website specific information about the death of a person in custody. GF costs will depend on whether the duties imposed by this bill are considered a state reimbursable mandate by the Commission on State Mandates.
- 3) Likely minor costs to the California Department of Corrections and Rehabilitation (CDCR) to post information about in-custody deaths on its website. Although CDCR was unable to provide a fiscal estimate, CDCR likely has existing resources to periodically update its website. Additionally, CDCR is already required to report in-custody deaths to the Department of Justice (DOJ) and DOJ posts it on its website.

COMMENTS:

- 1) **Purpose.** According to the author:

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) **Background.** Under existing law, a death certificate consists of two sections that require personal information, medical and health data, and coroner's information regarding death. The California Electronic Death Registration System⁷ 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-or other staff 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.

DOJ currently reports on in-custody deaths on its OpenJustice portal. Law enforcement agencies are required to report an in-custody death within 10 days of the death. If the manner and means of death are not readily apparent, local law enforcement is required to report it 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.

- 3) **Argument in Support.** According to California Attorneys for Criminal Justice:

The cause of death section [in a death certificate] 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 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.

- 4) **Argument in Opposition.** According to the Police Officers Research Association of California:

The Attorney General requires all law enforcement agencies or local or state correctional facilities to report any records and information relating to in-custody death investigations, as well as disciplinary investigations and potential criminal matters, to their office. Because this information is public record, we believe the unfunded mandate requiring the posting of this information on an agency's website is unnecessary and costly.

- 5) **Related Legislation.** 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 this committee.

Analysis Prepared by: Kimberly Horiuchi / APPR. / (916) 319-2081