



6915 ANTOINE, SUITE E
HOUSTON, TEXAS 77091
713-683-6363

State of Texas
House of Representatives
SYLVESTER TURNER
STATE REPRESENTATIVE

P.O. BOX 2910
AUSTIN, TEXAS 78768-2910
512-463-0554

April 24, 2003

RQ-0047-GA

RECEIVED
APR 25 2003
OPINION COMMITTEE

Ms. Nancy Fuller
Director, Opinions Committee
Office of the Attorney General
209 W. 14th
Austin, TX 78701

FILE # ML-43073-03
I.D. # 43073

Dear Ms. Fuller:

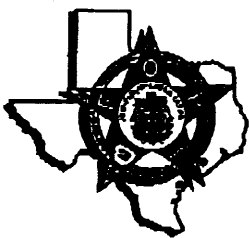
I would like to respectfully request an Attorney General's opinion regarding what is or is not considered a "Death in Custody" concerning loss of life while law enforcement is present. Please find enclosed material from the Texas Fraternal Order of Police who has brought this issue to my attention.

Thank you very much for your consideration and response to my request. Please do not hesitate to contact me if you have any questions at 512.463.0554.

Sincerely,

Sylvester Turner

DISTRICT 139
HARRIS COUNTY



TEXAS STATE LODGE
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April 15, 2003

State Representative Sylvester Turner
District 139
6915 Antoine Suite E
Houston, Texas 77091

Honorable Sylvester Turner,

It has been brought to my attention by our organizations General Counsel, Mr. Richard Cobb, that a great deal of confusion has existed in the past among law enforcement agencies throughout Texas concerning the issue of what is, or is not considered a "Death in Custody" concerning loss of life while law enforcement is present.

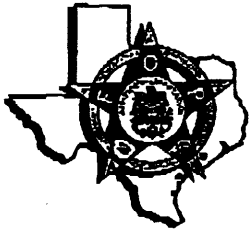
I have discussed this issue with Attorney General Greg Abbott in detail. I have been assured that your request for an Attorney General opinion concerning a definition of "Death in Custody" would be honored.

With no clear definition at hand a large degree of uncertainty exists among cities and counties when responding to and reporting deaths when law enforcement is present. In the accompanying letter I received from Mr. Cobb he has clearly defined the issue.

Your assistance in this matter will certainly be appreciated by all of the members of the Texas Fraternal Order of Police and law enforcement collectively as a whole. Thank you for your dedication and service to your community.

Dennis L. Ward, President
Texas State Lodge
Fraternal Order of Police

• PROUD TO BE FOP •



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April 4, 2003

Dennis-L. Ward
State Lodge President
Fraternal Order of Police

RE: DEATH IN CUSTODY

Dear President Ward,

In reference to your inquiry concerning *Death in Custody* situations. I have enclosed the appropriate statute (Texas Code of Criminal Procedure 49.18) governing when a report must be filed. Unfortunately, the statute does not define a *death in custody*.

This issue arose when The Harris County District Attorney's office believed there was an Attorney General's Opinion requiring all fatalities to be treated as a death in custody if police were present regardless of their having no causation in the persons demise (i.e. suicides, etc.). I have spoken with Nancy Fuller of The Attorney General's Office and she did an exhaustive search to see if any prior Attorney General Opinions addressed this issue. She informed me that none existed. I spoke with Craig Farrell, head of Legal Services for The City of Houston Police Department, and he informed me that The Department, to avoid the penalty under the above mentioned statute, files a report regardless of the nature of death. He further states that if there was an Attorney General Opinion on what constitutes *death in custody*, his department would gladly amend its procedures thus saving countless man hours and tax payer money.

I have written a rough draft of a proposed definition, which may be a starting place from which the Attorney General may further define and qualify what exactly is a *death in custody*.

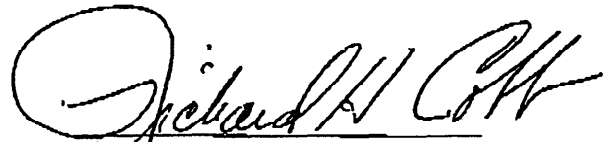
Proposed Definition of "Death in Custody"

• PROUD TO BE FOP •

Death in Custody is defined, as any death occurring while the deceased is in actual physical custody of a peace officer, sheriff, or other person in charge of a penal institution, jail, or prison. Actual custody means under physical control or incarcerated.

I wish to express to you the splendid, professional assistance of Ms. Nancy Fuller of The Attorney Generals Office. I realize how valuable her time is and I appreciate her research of prior opinions and her calling me to discuss this issue.

Fraternally Yours,

A handwritten signature in black ink, appearing to read "Richard H. Cobb". The signature is written in a cursive style with a large, prominent initial "R".

Richard H. Cobb
General Counsel
Fraternal Order of Police
State Lodge