



PHIL SORRELLS
Criminal District Attorney
Tarrant County

March 21, 2025

Honorable Ken Paxton
Texas Attorney General
Post Office Box 12548
Austin, Texas 78711-2548

Re: Does the term, "the death of a prisoner in a county jail," as stated in Tex. Gov't Code § 511.021(a), apply only to those inmates who die within the premises of a county jail but not to those inmates who die in custody but outside the premises of a county jail?

Dear General Paxton:

Pursuant to Tex. Gov't Code § 402.042, the Tarrant County Criminal District Attorney seeks an opinion regarding a matter involving the investigation of prisoner deaths within a county jail. The question presented has significance to all sheriffs who operate county jails throughout Texas, and the resolution of this question will be welcomed by all law enforcement agencies, including the Texas Commission on Jail Standards, that depend on an accurate interpretation of the applicable statutory language.

I. QUESTION:

- 1) Does the term, "the death of a prisoner in a county jail," as stated in Tex. Gov't Code § 511.021(a) -- which gives rise to a duty for a law enforcement agency, other than the local law enforcement agency that operates the county jail, to investigate the death as soon as possible -- apply only to those prisoners who die within the premises of a county jail, but not to those prisoners who die *in custody* of the local law enforcement agency but outside the premises of a county jail, such as in a hospital?

Sheriff's Office Must Investigate Custodial Deaths

Every Texas county sheriff's office has a statutory duty to conduct an investigation into the death of any inmate who was in the sheriff's custody. That duty is imposed by Article 49.18(a) of the Texas Code of Criminal Procedure:

First, the sheriff has a duty to inform a justice of the peace or medical examiner:

"If a person confined in a penal institution dies, the sheriff or other person in charge of the penal institution shall as soon as practicable inform the justice of the peace of the precinct where the penal institution is located of the death." Tex. Code Crim. Proc., art. 49.18(a); see also Tex. Code Crim. Proc., art. 49.25, §12 (for a county in which an office of the medical examiner is established, transferring "all powers and duties of justices of the peace in such county relating to the investigation of deaths" to the office of medical examiner).

Second, the sheriff has a duty to investigate the inmate's death and file a report:

". . . [I]f a person incarcerated in a jail, correctional facility, or state juvenile facility dies, the director of the law enforcement agency of which the officer is a member or of the facility in which the person was incarcerated (i.e., county sheriff) shall investigate the death and file a written report of the cause of death with the attorney general no later than the 30th day after the date on which the person in custody or the incarcerated person died." Tex. Code Crim. Proc., art. 49.18(b).

Additional Duty to Notify Texas Commission on Jail Standards

In addition to this statutory duty to investigate a prisoner's death and file a report with the Attorney General's Office, a county sheriff has a duty to notify the Texas Commission on Jail Standards ("TCJS") of the death of a prisoner. TCJS previously issued a "Technical Assistance Memorandum" on December 21, 2017, in which TCJS set forth a new protocol for appointing an outside law enforcement agency to investigate a custodial death. *See* TCJS Technical Assistance Memorandum, attached hereto as Exhibit "A." This change in protocol was issued in conjunction with enactment of the Sandra Bland Act, S.B. 1849, and it specifically required that a custodial death investigation – for purposes of the TCJS – would have to be conducted by an *outside* law enforcement agency:

"Effective January 1, 2018, Custodial Death Investigations shall be conducted by agencies other than the local law enforcement agency that operates the county jail or facility that is under the purview of the Texas Commission on Jail Standards." See TCJS Technical Assistance Memorandum, Exhibit "A" hereto (emphasis added).

TCJS issued its Technical Assistance Memorandum shortly after the Legislature had enacted this new statutory protocol defining TCJS's role in jail death investigations:

“On the death of a prisoner in a county jail, the [Texas Commission on Jail Standards] shall appoint a law enforcement agency, other than the local law enforcement agency that operates the county jail, to investigate the death as soon as possible.” Tex. Gov’t Code § 511.021(a) (emphasis added) (effective on September 1, 2017).

Section 511.021(c) requires TCJS to “adopt any rules necessary relating to the appointment of a law enforcement agency under Subsection (a), including rules relating to cooperation between law enforcement agencies and to procedures for handling evidence.” Pursuant to this statute, TCJS has adopted 37 Texas Administrative Code § 269.1(5), which requires notification to TCJS of “all deaths of inmates while in the custody of sheriff/operator within 24 hours of the death;” it requires TCJS to appoint a law enforcement agency other than the agency operating the jail to investigate the death; and it requires the law enforcement agency to submit its report to TCJS. *Id.*

A county sheriff has no statutory obligation under Tex. Gov’t Code § 511.021(a) to *appoint* another law enforcement agency to conduct a jail death investigation, but in compliance with TCJS’s instructions, a county sheriff currently must *identify* the outside law enforcement agency that has agreed to conduct the investigation and obtain approval for that outside agency from TCJS.

TCJS and Sheriffs Disagree Over Scope of Section 511.021(a)

A discrepancy exists in the application of the terms “death in custody,” which arises from Article 49.18 of the Code of Criminal Procedure, and a “death in the county jail,” which arises from Section 511.021(a) of the Texas Government Code. According to the express language of Section 511.021, an *outside* law enforcement agency must conduct the investigation only for an investigation into the death of a prisoner *in a county jail*. For an investigation required by Art. 49.18, the law enforcement agency that operates the county jail may conduct its own investigation into the prisoner’s death in custody. *Compare* Tex. Code Crim. Proc., art. 49.18(b) *with* Tex. Gov’t Code § 511.021(a).

As defined by Chapter 511, “county jail” means “a facility operated by or for a county for the confinement of persons accused or convicted of an offense,” so it would not include a hospital or medical facility located outside of the physical premises of the county jail. *See* Tex. Gov’t Code § 511.001(3). “Prisoner,” as defined in the same statute, means “a person **confined in a county jail**.” *See* Tex. Gov’t Code § 511.001(3) (emphasis added). Therefore, the term “prisoner,” as used in Section 511.021(a), does not include someone in a sheriff’s custody who is housed off-premises from the county jail itself. Tex. Gov’t Code § 511.021(a).

All parties agree that, if a prisoner is injured within the premises of a county jail and later dies at a hospital, the prisoner’s death would need to be investigated by an outside law enforcement agency in compliance with Section 511.021(a). However, a dispute exists over whether a prisoner’s death must be investigated by an *outside* law enforcement agency when the prisoner’s death occurs outside of the county jail premises, such as from a terminal illness at a hospital.

The TCJS currently interprets Section 511.021(a) to require that an outside law enforcement agency must investigate *all* prisoner deaths, no matter where they occur. Therefore, according to TCJS, if an inmate who is in the custody of a county sheriff but is being treated for

cancer dies at the hospital and not while confined within the actual county jail, Section 511.021(a) still requires that an *outside* law enforcement agency must investigate the prisoner's death. Similarly, if a prisoner dies of a heart attack while serving on work release but not while confined in the county jail, TCJS's interpretation would require that an outside law enforcement agency must conduct an investigation pursuant to Tex. Gov't Code § 511.021(a).

TCJS's interpretation that all prisoner deaths must be investigated by an outside law enforcement agency pursuant to Section 511.021(a) has created debilitating staffing challenges not only for Texas sheriffs but also for outside law enforcement agencies that must conduct the investigations into prisoner deaths. As a result, scarce law enforcement resources are being diverted needlessly to the investigation of non-controversial custodial deaths that occur outside of county jails.

Former Texas State Representative John Cyrier authored House Bill 1545, which amended Section 511.021 in 2021, and Former Rep. Cyrier has stated that it was never the Legislature's intent for outside law enforcement agencies to be required to investigate prisoner deaths that occur outside of the jail, such as in a hospital.

In 2023, Senator Brian Birdwell introduced C.S.S.B. 1896, the purpose of which was to amend Section 511.021(a) to "reform regulations regarding the natural or unexpected death of an inmate in the custody of law enforcement or in incarceration to ensure that lawful or natural deaths and deaths that do not indicate wrongdoing do not require a full criminal investigation." According to this proposed bill, Section 511.021(a) would be amended to exclude from a mandatory *outside* investigation any "death from natural causes as determined by a physician during an autopsy or examination of the deceased prisoner," See Bill Analysis, attached hereto as Exhibit "B."

Therefore, Senator Birdwell's proposed C.S.S.B. 1896 would have clarified that an outside law enforcement agency's investigation of a jail death pursuant to Section 511.021(a) did not apply to the death of every inmate, such as those who died of natural causes or who died of common causes of death, "such as cardiac arrest or cancer." See Exhibit "B" hereto.

Because proposed C.S.S.B. 1896 ultimately did not become enacted to amend Section 511.021(a), Texas sheriffs remain adversely impacted by the current application of Section 511.021(a).

Request for an Opinion

TCJS's statutory interpretation of Section 511.021(a), which requires an *outside* law enforcement agency to investigate *every* prisoner's death, imposes an unnecessary and unfair burden on county sheriffs and outside law enforcement agencies to investigate routine or non-controversial deaths that do not occur within county jails but happen to befall inmates when they are merely in a sheriff's custody. The plain language of Section 511.021(a) confines the mandatory *outside agency* investigations only to those deaths that occur *within the premises of a county jail*, but it was never intended to apply to every death of a prisoner, no matter where the prisoner was located at the time of death. See Tex. Code Crim. Proc., art 49.18(b) (Section 511.021(a)

investigations are far more limited than the prisoner's death investigation required by the Code of Criminal Procedure).

The Tarrant County Criminal District Attorney requests that the Attorney General issue an opinion to clarify whether Section 511.021(a) of the Texas Government Code applies only to those prisoner deaths that occur within the physical premises of a county jail, or whether it also applies to an illness, disease or medical condition that causes the death of any inmate who was in custody but housed, at the time of death, outside the physical premises of a county jail, such as at a hospital or other medical facility.

Respectfully submitted,

Phil Sorrells
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Tarrant County, Texas



Enclosures as stated

TEXAS COMMISSION ON JAIL STANDARDS

EXECUTIVE DIRECTOR
Brandon S. Wood



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TECHNICAL ASSISTANCE MEMORANDUM

To: Sheriffs and Jail Administrators
From: Brandon S. Wood, Executive Director
Date: December 21, 2017
Subject: Investigation Requirements for Custodial Deaths (as required by SB 1849)

Effective January 1, 2018, Custodial Death Investigations shall be conducted by agencies other than the local law enforcement agency that operates the county jail or facility that is under the purview of the Texas Commission on Jail Standards.

This new rule does not prohibit the local law enforcement agency from assisting in the Custodial Death Investigation. However, the local law enforcement agency should ensure that they establish a protocol with the investigating branch to prevent any contamination of a scene or duplication of services.

For those local law enforcement agencies who currently contact the Texas Rangers for ALL Custodial Death Investigations, this practice may be continued but official notification of this arrangement shall still be made to the Commission.

For those local law enforcement agencies who have historically conducted their own Custodial Death Investigations, the following is effective January 1, 2018:

All deaths shall be investigated by another law enforcement agency/entity (such as the Texas Rangers, District Attorney's Office, Medical Examiner's Office, local police department, etc.) as long as no conflicts of interest exist. A primary and secondary investigating agency/entity shall be submitted for review and approval by the Commission.

The local law enforcement agency is still responsible for notifying the Commission of all deaths of inmates within 24 hours of the death and will still be responsible for providing all supporting documentation necessary to the Commission.

If your agency does not have a policy in place regarding procedures for notification in the event of a Custodial Death, it is recommended that one is implemented as soon as possible, but in no case later than January 1, 2018.

The attached Custodial Death Notification Roster will need to be completed and submitted to the Commission on Jail Standards for approval no later than December 31, 2017. Please include the name of the County on the notification form. This form will be kept on file at the Commission for future reference. If there are any changes made to the contact names or numbers, the notification form will need to be resubmitted to the Commission for additional review and approval.

Email notification roster to: wendy.wisneski@tcjs.state.tx.us

or

Fax notification roster to 512-463-3185, Attention: Wendy Wisneski



Judge Bill Stoudt, Longview, Chair
Jerry W. Lowry, New Caney, Vice Chair
Larry S. May, Sweetwater

Sheriff Dennis D. Wilson, Groesbeck
Sheriff Kelly Rowe, Lubbock
Dr. Esmail Porsa, M.D., Parker

Commissioner Ben Perry, Waco
Duane Lock, Southlake
Melinda E. Taylor, Austin

"The Commission on Jail Standards welcomes all suggestions and will promptly respond to all complaints directed against the agency or any facilities under its purview"
To empower local government to provide safe, secure and suitable local jail facilities through proper rules and procedures while promoting innovative programs and ideas

BILL ANALYSIS

Senate Research Center
88R24780 MZM-D

C.S.S.B. 1896
By: Birdwell
Criminal Justice
4/25/2023
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, if an inmate dies while in custody of a law enforcement agency, the agency must immediately notify a justice of the peace. From there, an inquiry into the cause of death will begin to determine if the evidence indicates any wrongdoing. Generally, the death of an inmate requires a full investigation by an outside law enforcement agency. There are two exceptions where that does not apply: if the individual dies of natural causes while attended by a physician or is lawfully executed. There are instances, however, when an inmate's death does not indicate wrongdoing nor does it fall within the two exceptions. Unexpected, natural deaths, such as cardiac arrest or cancer, often occur outside the supervision of a doctor and should not require a full scale investigation by a district attorney, law enforcement agency, or a grand jury.

C.S.S.B. 1896 would reform regulations regarding the natural or unexpected death of an inmate in the custody of law enforcement or in incarceration to ensure that lawful or natural deaths and deaths that do not indicate wrongdoing do not require a full criminal investigation.

Committee Substitute:

C.S.S.B. 1896 would limit the bill to ensure that natural deaths in a county jail do not require a full criminal investigation. Although a full investigation would not be required, the cause of death would still need to be determined by a physician.

C.S.S.B. 1896 amends current law relating to the investigation of the death of a prisoner in county jail.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 511.021(a), Government Code, as follows:

(a) Requires the Texas Commission on Jail Standards, on the death of a prisoner in a county jail, other than a death from natural causes as determined by a physician during an autopsy or examination of the deceased prisoner, to appoint a law enforcement agency, other than the local law enforcement agency that operates the county jail, to investigate the death as soon as possible.

SECTION 2. Effective date: September 1, 2023.

