

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 826
By: Whitmire
Criminal Justice
3/27/2003
Committee Report (Substituted)

DIGEST AND PURPOSE

Currently, state and local law enforcement and correctional agencies must report custodial deaths to both the State Attorney General's Office and the U.S. Department of Justice. State and federal reporting requirements mandate the use of different forms with duplicate data elements and follow different definitions for what constitutes a reportable death in custody. The Texas Code of Criminal Procedure requires superintendents or general managers of institutions, including nursing homes, extended care facilities, and retirement homes, to notify the local justice of the peace if a person residing in an institution dies and there is no attending physician or the physician is not able to certify the cause of death. As proposed, S.B. 826 changes state reporting requirements to match those of the federal government. This bill also requires notification of the attorney general, in addition to the justice of the peace, if a person residing in an institution dies and there is no attending physician or the physician is not able to certify the cause of death.

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 Article 49.18, Code of Criminal Procedure, by amending Subsections (b) and (c) and adding Subsection (d), as follows:

(b) Requires the director of a law enforcement agency of which an officer is a member or of a facility in which a person was incarcerated to investigate the death if a person dies while in the custody of a peace officer or as a result of a peace officer's use of force or if a person incarcerated in a jail, correctional facility, or state juvenile facility dies and file a written report of the cause of death with the attorney general no later than the 30th, rather than the 20th, day after the date on which the person in custody or the person incarcerated died.

(c) Changes the reference to Section 501.055(b), Government Code, to include Subdivision (2).

(d) Defines "correctional facility," "in the custody of a peace officer," and "state juvenile facility."

SECTION 2. Amends Chapter 49A, Code of Criminal Procedure, by adding Article 49.24, as follows:

Art. 49.24. NOTIFICATION AND REPORT OF DEATH OF RESIDENT OF INSTITUTION. (a) Requires a superintendent or general manager of an institution who is required by Article 49.04 to report to a justice of the peace the death of an individual under the care, custody, or control of or residing in the institution to notify the office of the attorney general (OAG) of the individual's death within 24 hours of the death and prepare and submit to OAG a report containing all facts relevant to the individual's death within 72 hours of the death.

(b) Requires the superintendent or general manager of the institution to make a good faith effort to obtain all facts relevant to an individual's death and to include those facts in the report submitted under Subsection (a)(2).

(c) Authorizes OAG to investigate each death reported to OAG by an institution that receives payments through the medical assistance program provided under Chapter 32 (Medical Assistance Program), Human Resources Code.

(d) Requires OAG to make the report submitted pursuant to Subsection (a)(2) available to any interested person, when requested in writing, except as provided by Subsection (e).

(e) Authorizes OAG to deny a person access to a report or a portion of a report filed under Subsection (a)(2) if OAG determines that the report or a portion of the report is privileged from discovery or exempt from required public disclosure under Chapter 552 (Public Information), Government Code.

(f) Provides that this article does not relieve a superintendent or general manager of an institution of the duty of making any other notification or report of an individual's death as required by law.

SECTION 3. Amends Section 7, Article 49.25, Code of Criminal Procedure, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Includes the general manager of an institution in the list of individuals required to report a death under circumstances set out in Section 6(a) of this article.

(c) Requires a superintendent or general manager of an institution who reports a death under Subsection (a) to comply with the notice and reporting requirements of Article 49.24. Provides that OAG has the same powers and duties provided OAG under that article regarding the dissemination and investigation of the report.

SECTION 4. Amends Chapter 38, Penal Code, by adding Section 38.19, as follows:

Sec. 38.19. FAILURE TO PROVIDE NOTICE AND REPORT OF DEATH OF RESIDENT OF INSTITUTION. (a) Provides that a superintendent or general manager of an institution commits an offense if, as required by Article 49.24 or 49.25, Code of Criminal Procedure, the person fails to provide notice of the death, fails to file the report as required, or fails to include in a filed report facts known or discovered by the person.

(b) Provides that an offense under this section is a Class B misdemeanor.

SECTION 5. Effective date: September 1, 2003.

SUMMARY OF COMMITTEE CHANGES

Amends the relating clause by condensing the information.

SECTION 1. Amends As Filed S.B. 826, to add this section to amend Article 49.18, Code of Criminal Procedure, by amending Subsections (b) and (c) and adding Subsection (d).

SECTION 2. Redesignated from proposed SECTION 1 in the original. Redefines the chapter being amended as 49A, Code of Criminal Procedure, rather than Chapter 49. Deletes some of the former proposed language to rephrase the language. Subsections (b)-(c) redesignated as Subsections (c)-(d) with some changes in the phrasing. Creates new Subsections (e)-(f).

SECTION 3. Existing SECTION 3 deleted and proposed SECTION 3 added.

SECTION 4. Proposed SECTION 2 redesignated as SECTION 4. Changes the title of Section

38.19, Penal Code. Includes Article 49.25, Code of Criminal Procedure, along with 49.24.

SECTION 5. Redesignates proposed SECTION 4 as SECTION 5.