

SUBJECT: Requiring institutions to notify attorney general when residents die

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Keel, Riddle, Ellis, Denny, Hodge, Pena
0 nays
3 absent — Dunnam, P. Moreno, Talton

SENATE VOTE: On final passage, April 10 — 31-0, on Local and Uncontested Calendar

WITNESSES: *(On House companion bill, HB 1424:)*
For — None
Against — None
On — Scott Stephenson, Office of the Attorney General, Medicaid Fraud Control Unit

BACKGROUND: Code of Criminal Procedure (CCP), art. 49.18 requires the director of a law enforcement agency to investigate the death of a person who dies while in the custody of a peace officer, or while confined in jail or prison, and to file a written report of the cause of death with the attorney general within 20 days of the death. However, that requirement does not apply to a death that occurs in a facility operated by or under contract with the Texas Department of Criminal Justice (TDCJ) if the inmate dies of natural causes while attended by a physician or a registered nurse, or is lawfully executed.

CCP, art. 49.04 requires the superintendent or general manager of a hospital or institution in which a person dies, if an attending physician cannot certify the cause of death, to report the death to the justice of the peace of the precinct where the hospital or institution is located. Institution means any place where health-care services are rendered, including a hospital, clinic, health facility, nursing home, extended-care facility, outpatient facility, foster-care facility, and retirement home.

CCP, art. 49.25 requires a medical examiner to hold an inquest when:

- a person dies within 24 hours after admission to a hospital, institution, prison, or jail;
- any person is killed or dies an unnatural death; or
- the body of a person is found and the cause or circumstances of death are unknown.

Any police officer, superintendent of an institution, physician, or private citizen who becomes aware of a death under any of the above circumstances must report the death immediately to the medical examiner or to the city or county police department.

DIGEST:

SB 826 would include a person who dies as a result of a peace officer's use of force or while incarcerated in a correctional facility or state juvenile facility among the people whose deaths must be investigated by the director of a law enforcement agency and reported to the attorney general. It also would change the time frame for filing a written report with the attorney general from 20 to 30 days after the death of the incarcerated person.

The bill would define correctional facility as a confinement facility or halfway house operated by or under contract with any division of TDCJ. State juvenile facility would mean any facility or halfway house operated by or under contract with the Texas Youth Commission (TYC), any secure correctional facility, or any secure detention facility.

SB 826 would add Code of Criminal Procedure, art. 49.24, requiring a superintendent or general manager of an institution who is required to report to the justice of the peace the death of a person under its care, custody, or control to do the following:

- notify the attorney general of the person's death within 24 hours of the death, and
- prepare and submit to the attorney general a report containing all facts relevant to the person's death within 72 hours of the death.

The superintendent or general manager of the institution would have to make a good-faith effort to obtain all relevant facts and to include those facts in its

report. The bill would not relieve a superintendent or general manager of the duty of making any other notification required by law.

The attorney general could investigate each death reported by an institution that received payments through the state Medicaid program. The attorney general would have to make the report submitted by an institution available to any interested person who submitted a written request for access to the report. However, the attorney general could deny a person access to a report or part of the report if the attorney general determined that it was privileged from discovery or exempt from required disclosure under the Public Information Act.

The bill would include the general manager of an institution among those who must report certain deaths. Also, the superintendent or general manager of an institution who reported a death would have to comply with the notice and reporting requirements of CCP, art. 49.24.

SB 826 would make it a Class B misdemeanor (punishable by up to 180 days in jail and/or a maximum fine of \$2,000) for a superintendent or general manager of an institution to fail to:

- provide notice of the death of a person under the care, custody, or control of or residing in the institution;
- submit a report on the person's death; or
- include in the report material facts known or discovered by the person at the time the report was filed.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

SB 826 would aid the attorney general in prosecuting Medicaid fraud. Current law requires the superintendent or general manager of a health-care institution to notify the local justice of the peace when a resident of the institution dies and an attending physician cannot certify the cause of death. However, there is no similar requirement that such notice be given to the attorney general. Thus, evidence that might be relevant to an investigation of possible Medicaid fraud, physical abuse, and criminal neglect could be lost to state investigators. Timely notice is essential so that the attorney general immediately may begin

to gather evidence and interview witnesses, before physical evidence spoils or the institution has a chance to cover up evidence of any wrongdoing.

SB 826 also would amend state reporting requirements for custodial deaths to match federal reporting requirements. Currently, state and local law enforcement and correctional agencies must report custodial deaths to both the attorney general and the U.S. Department of Justice. State and federal reporting requirements mandate the use of different forms and follow different definitions of what constitutes a reportable death in custody. SB 826 would streamline the process by bringing state reporting requirements in line with federal mandates.

The bill would impose criminal penalties on a general manager or superintendent of an institution who failed to provide notice and submit a complete report on the death of a person in the institution's care. This would deter institutions from withholding information from the attorney general that might be essential to timely prosecution of Medicaid fraud. The criminal provisions would mirror Penal Code, sec. 39.05, which makes it a Class B misdemeanor to fail to report the death of a prisoner.

**OPPONENTS
SAY:**

SB 826 is unnecessary. Current law requires a superintendent or general manager of an institution to report the death of a person, if an attending physician is unable to certify the cause of death, to the local justice of the peace. The justice of the peace can verify whether any misconduct caused the death, and additional reporting requirements would serve no purpose. Furthermore, the circumstances in which there is not an attending physician who can certify the cause of death are rare.

Adding reporting requirements and a criminal penalty for superintendents or general managers of institutions would be counterproductive. Nursing homes already are heavily regulated, and the turnover rate for personnel and administrators is very high. The bill would deter even more qualified people from entering this field, and for little benefit.

NOTES:

The companion bill, HB 1424 by Keel, was reported favorably, without amendment, by the House Criminal Jurisprudence Committee on April 8.