

MEETING DATE: April 11, 2024

AGENDA ITEM: C

TO: BSCC Chair and Members

FROM: Allison Ganter, Deputy Director allison.ganter@bscc.ca.gov

SUBJECT: Section 1046 (Death in Custody) of Title 15 of California Code of Regulations Final Approval of Proposed Regulations for Submission to Office of Administrative Law: **Requesting Approval**

Summary

This agenda item requests that the Board approve the final proposed regulations for adult local detention facilities to report in-custody deaths. This regulation is needed in connection with the upcoming appointment of the Director of In-custody Death Review, a new position created by Senate Bill (SB) 519 (Chapter 306, Statutes of 2023).

The proposed revisions in this report, approved by the Board in November 2023, have proceeded through the Administrative Procedures Act process, including a 45-day public comment period. BSCC staff received comments during the public comment period that were related to the proposed revisions; however, after considering comments, staff determined that no reasonable alternatives were presented that would improve the proposed revisions or correct any perceived problems.

BSCC staff is providing the Final Express Terms of the regulations and Final Statement of Reasons, including public comments received, and requesting approval to complete the rulemaking activities pursuant to the Administrative Procedures Act.

Background

On October 4, 2023, Governor Newsom signed SB 519, which establishes the Director of In-Custody Death Review (Director) and, beginning July 1, 2024, requires the Director to “review investigations of any death incident... occurring within a local detention facility.” Following these reviews, the Director shall “make specific and customized recommendations to the sheriff or administrator of the local detention facility who operates the local detention facility regarding those incidents, including changes to policies, procedures, and practices, facility upgrades, staffing considerations, the delivery of medical and behavioral health services within local detention facilities, and operational and capital funding requirements to address the director’s recommendations.” (Pen. Code, § 6034, subd. (b).)

The BSCC is in the initial planning stages of preparing for these new requirements. Part of this preparation is anticipating regulation revisions that may be necessary to facilitate the Director’s review of investigations of death incidents.

Government Code section 12525 requires correctional and law enforcement agencies to report in writing to the Attorney General within 10 days following any death that occurs while a person in the agency’s custody. Existing section 1046 of Title 15 of the California Code of

Regulations requires each facility administrator to conduct an initial review of each in-custody death within 30 days. The regulation also requires that if a minor housed in an adult facility dies while in custody, that a copy of the report submitted to the Attorney General pursuant to Government Code Section 12525 is submitted to the BSCC within 10 calendar days of the death.

BSCC staff anticipates that the Director will need timely access to the initial review of each in-custody death and a copy of the Government Code section 12525 report to the Attorney General. BSCC staff is proposing to add language to Section 1046 of Title 15 that would require the facility administrator to provide a copy of each initial review of death in custody to the BSCC within 60 days of the death, and require that a copy of the Attorney General's report is submitted for all deaths, adult and juvenile, within 10 days of the death. The regulation would also specify the minimum contents of the review, including information on the time, place, and circumstances surrounding the in-custody death.

At the November 16, 2023 meeting, the BSCC Board approved draft regulations, which proceeded through a 45-day public comment period beginning February 2, 2024 and closing March 20, 2024. Public comments were received and considered by BSCC staff. No reasonable alternatives were identified that would improve the proposed revisions or correct any perceived problems with the text as proposed. The public comments are summarized in Attachment C-2.

Staff is requesting that the Board approve the final Title 15 proposed regulation revisions and direct staff to complete the Administrative Procedures Act process for regulation adoption.

Recommendation/Action Needed

BSCC Staff recommends the following:

1. The Board approve the final regulation revisions to Title 15, Section 1046, requiring facility administrators to provide reports of deaths in custody to the BSCC pursuant to specified time frames.
2. The Board direct staff to complete the rulemaking activities for adoption of the regulation revisions, pursuant to the Administrative Procedures Act.

Attachments

- C-1: Proposed Revisions to Title 15, Section 1046, Death in Custody
C-2: Final Statement of Reasons