

**MEETING DATE:** November 16, 2023

**AGENDA ITEM:** I

**TO:** BSCC Chair and Members

**FROM:** Allison Ganter, Deputy Director [allison.ganter@bscc.ca.gov](mailto:allison.ganter@bscc.ca.gov)

**SUBJECT:** Proposed Revisions to Section 1046 (Death in Custody) of Title 15 of California Code of Regulations: **Requesting Approval**

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### Summary

This agenda item requests that the Board begin the process of revising regulations for adult local detention facilities to report in-custody deaths in advance of the appointment of the Director of In-custody Death Review, a new position created by Senate Bill (SB) 519 (Chapter 306, Statutes of 2023).

### Background

On October 4, 2023, Governor Newsom signed SB 519, which establishes the Director of In-Custody Death (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 any 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 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 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 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.

BSCC is requesting approval to begin the rulemaking process for revisions to Section 1046 to ensure that final revisions are effective by July 1, 2024. Beginning the rulemaking process will include providing notice to the Office of Administrative Law and opening a 45-day public comment process.

Staff is also requesting that if no changes result from the public comment process, that the Board provide approval to file the final revision as drafted in this report to the Office of Administrative Law.

### **Recommendation/Action Needed**

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BSCC Staff recommends the following:

1. That the Board direct staff to begin the rulemaking process for revisions to Title 15, Section 1046 as proposed.
2. That the Board direct staff to bring a final package for approval if substantive revisions are made to the draft language during the regulatory making process; and
3. That if no substantive changes are made to the draft regulatory language that staff is directed to file the final regulatory package with the Office of Administrative Law and that this Board action constitute the final approval.

### **Attachments**

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I-1: Proposed Revisions to Title 15, Section 1046, Death in Custody