

1-1 By: Whitmire S.B. No. 826  
1-2 (In the Senate - Filed March 3, 2003; March 10, 2003, read  
1-3 first time and referred to Committee on Criminal Justice;  
1-4 March 31, 2003, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 4, Nays 0; March 31, 2003,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 826 By: Whitmire

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to reporting the deaths of certain individuals; providing  
1-11 a criminal penalty.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Article 49.18, Code of Criminal Procedure, is  
1-14 amended by amending Subsections (b) and (c) and adding Subsection  
1-15 (d) to read as follows:

1-16 (b) If a person dies while in the custody of a peace officer  
1-17 or as a result of a peace officer's use of force or if a person  
1-18 incarcerated [~~prisoner dies while confined~~] in a jail, correctional  
1-19 facility, or state juvenile facility dies [~~prisoner~~], the director of  
1-20 the law enforcement agency of which the officer is a member or of  
1-21 the facility in which the person [~~prisoner~~] was incarcerated  
1-22 [~~confined~~] shall investigate the death and file a written report of  
1-23 the cause of death with the attorney general no later than the 30th  
1-24 [~~20th~~] day after the date on which the person in custody or the  
1-25 incarcerated person [~~prisoner~~] died. The director shall make a  
1-26 good faith effort to obtain all facts relevant to the death and  
1-27 include those facts in the report. The attorney general shall make  
1-28 the report, with the exception of any portion of the report that the  
1-29 attorney general determines is privileged, available to any  
1-30 interested person.

1-31 (c) Subsection (a) does not apply to a death that occurs in a  
1-32 facility operated by or under contract with the Texas Department of  
1-33 Criminal Justice. Subsection (b) does not apply to a death that  
1-34 occurs in a facility operated by or under contract with the Texas  
1-35 Department of Criminal Justice if the death occurs under  
1-36 circumstances described by Section 501.055(b)(2), Government Code.

1-37 (d) In this article:

1-38 (1) "Correctional facility" means a confinement  
1-39 facility or halfway house operated by or under contract with any  
1-40 division of the Texas Department of Criminal Justice.

1-41 (2) "In the custody of a peace officer" means:

1-42 (A) under arrest by a peace officer; or  
1-43 (B) under the physical control or restraint of a  
1-44 peace officer.

1-45 (3) "State juvenile facility" means any facility or  
1-46 halfway house:

1-47 (A) operated by or under contract with the Texas  
1-48 Youth Commission; or

1-49 (B) described by Section 51.02(13) or (14),  
1-50 Family Code.

1-51 SECTION 2. Subchapter A, Chapter 49, Code of Criminal  
1-52 Procedure, is amended by adding Article 49.24 to read as follows:

1-53 Art. 49.24. NOTIFICATION AND REPORT OF DEATH OF RESIDENT OF  
1-54 INSTITUTION. (a) A superintendent or general manager of an  
1-55 institution who is required by Article 49.04 to report to a justice  
1-56 of the peace the death of an individual under the care, custody, or  
1-57 control of or residing in the institution shall:

1-58 (1) notify the office of the attorney general of the  
1-59 individual's death within 24 hours of the death; and

1-60 (2) prepare and submit to the office of the attorney  
1-61 general a report containing all facts relevant to the individual's  
1-62 death within 72 hours of the death.

1-63 (b) The superintendent or general manager of the

2-1 institution shall make a good faith effort to obtain all facts  
2-2 relevant to an individual's death and to include those facts in the  
2-3 report submitted under Subsection (a)(2).

2-4 (c) The office of the attorney general may investigate each  
2-5 death reported to the office by an institution that receives  
2-6 payments through the medical assistance program under Chapter 32,  
2-7 Human Resources Code.

2-8 (d) Except as provided by Subsection (e), the office of the  
2-9 attorney general shall make a report submitted under Subsection  
2-10 (a)(2) available to any interested person who submits a written  
2-11 request for access to the report.

2-12 (e) The office of the attorney general may deny a person  
2-13 access to a report or a portion of a report filed under Subsection  
2-14 (a)(2) if the office determines that the report or a portion of the  
2-15 report is:

2-16 (1) privileged from discovery; or

2-17 (2) exempt from required public disclosure under  
2-18 Chapter 552, Government Code.

2-19 (f) This article does not relieve a superintendent or  
2-20 general manager of an institution of the duty of making any other  
2-21 notification or report of an individual's death as required by law.

2-22 SECTION 3. Section 7, Article 49.25, Code of Criminal  
2-23 Procedure, is amended by amending Subsection (a) and adding  
2-24 Subsection (c) to read as follows:

2-25 (a) Any police officer, superintendent or general manager  
2-26 of an institution, physician, or private citizen who shall become  
2-27 aware of a death under any of the circumstances set out in Section  
2-28 6(a) of this Article, shall immediately report such death to the  
2-29 office of the medical examiner or to the city or county police  
2-30 departments; any such report to a city or county police department  
2-31 shall be immediately transmitted to the office of the medical  
2-32 examiner.

2-33 (c) A superintendent or general manager of an institution  
2-34 who reports a death under Subsection (a) must comply with the notice  
2-35 and reporting requirements of Article 49.24. The office of the  
2-36 attorney general has the same powers and duties provided the office  
2-37 under that article regarding the dissemination and investigation of  
2-38 the report.

2-39 SECTION 4. Chapter 38, Penal Code, is amended by adding  
2-40 Section 38.19 to read as follows:

2-41 Sec. 38.19. FAILURE TO PROVIDE NOTICE AND REPORT OF DEATH OF  
2-42 RESIDENT OF INSTITUTION. (a) A superintendent or general manager  
2-43 of an institution commits an offense if, as required by Article  
2-44 49.24 or 49.25, Code of Criminal Procedure, the person fails to:

2-45 (1) provide notice of the death of an individual under  
2-46 the care, custody, or control of or residing in the institution;

2-47 (2) submit a report on the death of the individual; or

2-48 (3) include in the report material facts known or  
2-49 discovered by the person at the time the report was filed.

2-50 (b) An offense under this section is a Class B misdemeanor.

2-51 SECTION 5. This Act takes effect September 1, 2003.

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