

April 26, 2025

Honorable Ken Paxton
Texas Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

Via E-mail: opinion.committee@oag.texas.gov

Re: Request No. 0590-KP – Does the term, “the death of a prisoner in a county jail,” as stated in Tex. Gov’t Code § 511.021(a) apply only to those inmates who die within the premises of a county jail but not to those inmates who die in custody but outside the premises of a county jail?

Dear General Paxton:

On March 21, 2025, the Tarrant County Criminal District Attorney (“District Attorney”) submitted the above-referenced request for an advisory opinion from your office construing section 511.021(a) of the Government Code. The District Attorney proposes a narrowing construction that he suggests would limit the duty of county sheriffs and local jail operators to report prisoner deaths to the Texas Commission on Jail Standards (“TCJS” or “Commission”). Texas Jail Project, a nonprofit organization whose mission is to advocate for people incarcerated in Texas county jails and their loved ones, submits this brief in response to that request. We respectfully argue that neither section 511.021(a), nor an administrative rule promulgated by the Commission under its express rulemaking authority, should be interpreted to limit the Commission’s authority to require that all custodial deaths be reported to the Commission and independently investigated.

I. The Tarrant County Criminal District Attorney’s Interpretation of Government Code § 511.021(a) is Incorrect.

a. Government Code § 511.021 Serves the Purposes of the Sandra Bland Act by Performing an Essential Public Accountability Function.

In 2017, the 85th Texas Legislature passed S.B. 1849, known as the Sandra Bland Act. As then-Senator Whitmire explained when he introduced the bill, “[t]he events leading up to Sandra Bland’s unnecessary jailing and tragic death sparked a statewide and national discussion regarding criminal justice reform. S.B. 1849 aims to improve and correct Texas’ criminal justice system to

make it better for both law enforcement and the public and prevent future tragedies like Sandra Bland's." Tex. C.S.S.B. 1849, 85th Leg., R.S. (2017) (Bill Analysis).¹

Upon its passage, the Sandra Bland Act codified a number of vital reforms to the criminal justice system, all aimed at reducing the number of preventable deaths in Texas jails. Among the slate of changes enacted through S.B. 1849, the Act now requires improved training for jailers, expanded and faster access to mental health professionals for those experiencing a mental health crisis, and increased training for law enforcement in de-escalation tactics. *Id.*

Relevant here, the Act also imposed new data collection, reporting, and investigation requirements which would ensure the State could collect the information necessary to continue making improvements in the future, and to identify jail facilities in particular need of additional oversight. Among those provisions, the legislature created a new requirement, codified at section 511.021(a) of the Government Code, mandating an independent investigation when "a prisoner in a county jail" dies while in the jail's custody. *Id.*

Specifically, section 511.021(a) instructs that "[o]n the death of a prisoner in a county jail," the Texas Commission on Jail Standards "shall appoint a law enforcement agency, other than the local law enforcement agency that operates the county jail, to investigate the death as soon as possible." *Id.* The legislature also granted the Commission rulemaking authority to "adopt any rules necessary relating to the appointment of a law enforcement agency" under section 511.021(a). *Id.* § 511.021(c).

Consistent with that grant of authority, the Commission promulgated 37 Admin. Code § 269.1(5). That rule requires the operator of a county jail to "notif[y]" the Commission "of all deaths of inmates ... within 24 hours of the death." *Id.* § 269.1(5)(A). The Commission then "shall appoint a law enforcement agency, other than the local law enforcement agency that operates the county jail, to investigate the death." *Id.* § 269.1(5)(B).

That rule is necessary and consistent with the plain language of section 511.021(a), for two reasons: (1) because people who are in the custody of a county sheriff or operator of a county jail—no matter where they are physically—are "prisoner[s] in a county jail," *id.*; *cf. Ex parte Newell*, 582 S.W.2d 835, 836 (Tex. Crim. App. 1979) (en banc) (prisoner held on detainer in Tennessee still under constructive custody of Texas Department of Corrections); and (2) a broad rule requiring the reporting of all custodial deaths ensures that the Commission can satisfy the basic duties imposed on it by section 511.021(a).

¹ Available at <https://capitol.texas.gov/tlodocs/85R/analysis/pdf/SB01849S.pdf>.

By requiring county sheriffs and jail operators to notify it of *every* custodial death, the Commission ensures that an important threshold question—*whose* death should receive an independent investigation—is not controlled (even partially) by the entity to be investigated. That makes good practical sense: the Commission’s regulation reduces the appearance of potential conflicts of interest or other forms of impropriety, by removing the discretion from a county sheriff or jail operator to decide whose death to report. *See also id.* § 511.021(b) (creating procedures to mitigate conflicts of interest with a law enforcement agency appointed to conduct an independent investigation).

b. Section 511.021(a) Covers All Custodial Deaths, Not Just Those on the Premises of a County Jail.

Despite this background, the District Attorney seeks a narrowing construction of section 511.021(a), which would interpret the provision to apply only to those deaths that occur on the physical premises of a county jail. Request Letter at 4. But section 511.021(a) should be read to cover *all* custodial deaths, because when read in the context of the statute as a whole, it is clear that the legislature intended for section 511.021(a) to reach more broadly than other provisions of Chapter 511.

Specifically, while Chapter 511 generally defines a “prisoner” to mean “a person *confined* in a county jail,” Gov’t Code § 511.001(7) (emphasis added), section 511.021(a) adopts a broader definition to establish its scope—“a prisoner in a county jail[.]” *Id.* That definition replaces the narrower definition used elsewhere in the chapter by removing the requirement that the death occur in the place where the prisoner is physically held—“confined”—and instead requires that the Commission appoint an independent investigator for any custodial death for a broad class of prisoners—“prisoner[s] in a county jail[.]”²

This is the most natural reading of the statute under two canons of statutory construction. *First*, “[w]hen the legislature uses a word or phrase in one portion of a statute but excludes it from another, the term should not be implied where it has been excluded.” *Railroad Comm’n of Tex. v. Tex. Citizens for a Safe Future and Clean Water*, 336 S.W.3d 619, 629 (Tex. 2011). By omitting

² This accords with the Commission’s interpretation of another provision of Chapter 511 that uses identical language. Section 511.020 requires county sheriffs to provide a monthly “serious incident report” to the Commission for all incidents, including deaths, “involving a prisoner in the county jail[.]” Gov’t Code § 511.020(a); *accord id.* § 511.021(a). A Technical Assistance Memorandum issued by the Commission likewise interprets this provision to require a county sheriff to report on “*any* custodial death, other than suicide,” not just those that occur for prisoners “confined” within the physical premises of the jail. *See* Texas Commission on Jail Standards, Technical Assistance Memorandum: Serious Incident Reports (Jan. 31, 2018), <https://www.tcjs.state.tx.us/wp-content/uploads/2019/08/TAMemo-SeriousIncidentsReport1-31-2018.pdf>. *See also id.* § 511.0098 (requiring the Commission to adopt procedures concerning the collection of certain information by a “local mental health authority or other mental health services provider providing services to a prisoner in a county jail”) (emphasis added).

the word “confined” from section 511.021(a), the legislature intended for the provision’s reach to extend beyond those who die on the physical premises of a county jail.

A contrary reading would betray the *second* relevant canon of statutory construction: the canon against surplusage. Applying the general definition of “prisoner” in section 511.001(7) to section 511.021(a) would force the more specific provision to take on an unnatural and illogical meaning: “a [person confined in a county jail] in a county jail[.]” That would make the phrase “in a county jail” redundant, and undermine the legislature’s intent in applying a more specialized meaning to section 511.021(a). See *Fireman’s Fund Cnty. Mut. Ins. Co. v. Hidi*, 13 S.W.3d 767, 769 (Tex. 2000) (per curiam) (“When the Legislature has employed a term in one section of a statute and excluded it in another, we presume that the Legislature had a reason for excluding it.”); *State v. Shumake*, 199 S.W.3d 279, 287 (Tex. 2006) (“In construing a statute, we give effect to all its words and, if possible, do not treat any statutory language as mere surplusage.”).

The District Attorney ignores the surplusage that his reading of the statute would create, and fails to address the fact that section 511.021(a) omits the term “confined” in establishing its scope. Request Letter at 4. By contrast, no reasonable reading of the statute supports the District Attorney’s desired interpretation—that the statute does not apply to “an illness, disease or medical condition that causes the death of any inmate who was in custody but housed, at the time of death, outside the physical premises of a county jail, such as at a hospital or other medical facility.” Request Letter at 5.

c. A Narrower Interpretation of Section 511.021(a) Would Not Alter a County Sheriff’s Duty to Report Under 37 Admin. Code § 269.1(5), because the Administrative Rule is Consistent with the Statute and Therefore Lawful.

Even if you agree that section 511.021(a) applies only to those who die on the physical premises of a county jail, the effect of that interpretation would nominally alter the *Commission’s* responsibilities under the statute. See *id.* (imposing duties on the Commission). What it would not do, however, is limit the duty of a county sheriff to report all custodial deaths to the Commission—a duty that is imposed through an agency rule, 37 Admin. Code § 269.1(5), which the Commission lawfully promulgated under the express rulemaking authority granted to it by the legislature. See Gov’t Code § 511.021(c).

The District Attorney does not seek any clarification of a sheriff’s obligations under the Commission’s rule. Indeed, the question he presents is narrow and does not challenge the regulation promulgated by the Commission, which is the direct source of a county sheriff’s duty to report. See Request Letter at 1 (only seeking an interpretation of section 511.021(a)). Rather, the District Attorney asks for an opinion that would reduce the “unnecessary and unfair burden” he believes the statute imposes on county sheriffs—a request that lies outside of the scope of your

authority to issue advisory opinions. *See* OFFICE OF THE TEXAS ATTORNEY GENERAL, ABOUT ATTORNEY GENERAL OPINIONS (Attorney General may not issue advisory opinion to “correct unintended, undesirable effects of the law.”).³

Nor should the District Attorney’s Request Letter be interpreted as an oblique challenge to the administrative rule. The District Attorney offers no argument—other than his narrowing construction of section 511.021(a)—that would call into question the Commission’s express authority to promulgate 37 Admin. Code § 269.1(5). *See* Gov’t Code § 551.021(c). Nor could it. Where the legislature has expressly conferred rulemaking authority by statute, “[t]he only requirement is that an agency’s rules must be consistent with the laws of this state.” *Dallas Cnty. Bail Bond Bd. v. Stein*, 771 S.W.2d 577, 580 (Tex. App.—Dallas 1989, writ denied). The “determining factor . . . is that the rule’s provisions must be in harmony with the general objectives of the Act involved.” *Gerst v. Oak Cliff Sav. & Loan Assoc.*, 432 S.W.2d 702, 706 (1968); *see also Stein*, 771 S.W.2d at 580 (“By conferring upon an agency the power to make rules and regulations necessary to carry out the purposes of an act, the Legislature forecloses the argument that it intended to spell out the details of regulating an industry.”)

Here, section 269.1(5) harmonizes with the objectives of the Sandra Bland Act. As discussed above, the Act is intended to codify a host of changes to the Texas criminal justice system which collectively aid in reducing the occurrence of preventable deaths in county custody across the state. Consistent with that objective, and the Act’s emphasis on increasing the amount of data available to agency decisionmakers to further that goal, the Commission promulgated section 269.1(5) to require that county sheriffs report all custodial deaths—whether on or off premises. That requirement ensures that the Commission can maximize its own effectiveness in ensuring that all eligible deaths under section 511.021(a) receive an independent investigation.

The Commission’s rule would be reasonable, and harmonious with the statute, regardless of whether you adopt the narrower or broader construction of section 511.021(a). That is precisely because the Commission—as the agency expert on these matters—could reasonably believe it was necessary to impose a broader reporting requirement to ensure that no “on premises” deaths fall through the cracks.

³ <http://www2.texasattorneygeneral.gov/opinion/about-attorney-general-opinions> (last accessed Apr. 15, 2025). At any rate, the “burdens” raised by the District Attorney are a straw man. The duty to *report* every custodial death to the Commission is minimal, and county sheriffs are already obligated to keep track of all custodial deaths under a separate provision of the Sandra Bland Act. *See* Gov’t Code § 511.020. And regardless of the proper interpretation of section 511.021(a), the county sheriff must still investigate every instance of the death of a prisoner in his custody and report it to the Attorney General. *See* Code Crim. Proc. § 49.18. The burdens that might be imposed on a county sheriff to comply with an independent investigation would thus be marginal in relation to his own duty to investigate and report on the death of every person who dies while in his custody, whether on- or off-premises.

The District Attorney’s own example of a reportable death bears this out. The District Attorney claims that “a prisoner injured within the premises of a county jail and later dies at a hospital” would need to be investigated under section 511.021(a), even under his narrowing construction. Request Letter at 3. But it is not at all clear how a death under that scenario would still trigger the notification requirement, if it did not “occur within the premises of a county jail.” Request Letter at 4. The District Attorney’s own interpretation thus actually sows doubt about the true reach of section 511.021(a), by giving county sheriffs and jail operators just enough room to decide when to notify the Commission of a custodial death, and when not to notify. But this manufactured uncertainty is not an excuse to rewrite the statute. *Cf. Paxton v. Longoria*, 646 S.W.3d 532, 540 (Tex. 2022) (“alleged uncertainty” in an undefined statutory term is not a reason to “add words to the portion of the statute that unambiguously describes” its object).

The Commission was fully within the bounds of its rulemaking authority to promulgate a rule that closes off the possibility that each of the sheriffs of Texas’s 254 counties could interpret “death of a prisoner in a county jail” differently, and then selectively decide which prisoner deaths to report. The rule eliminates this discretion, so that the Commission can meet its own statutory duties to ensure that every “death of a prisoner in a county jail” receives an independent investigation. A contrary result would undermine the Commission’s oversight role, and the broader intent of the Sandra Bland Act—to ensure that every custodial death, no matter the circumstances, is given independent scrutiny by a third-party law enforcement agency.

II. Statistics and Several Alarming Examples of Custodial Deaths Reinforce the Need for a Broad Reporting and Independent Investigation Requirement.

The Commission’s rule is particularly necessary to achieve the purposes of the Sandra Bland Act given the prevalence of custodial deaths that occur outside the physical premises of a jail. An analysis of custodial deaths conducted by Texas Jail Project using data obtained from TCJS through an open records request shows that the majority of prisoner deaths occur outside the jailhouse walls—typically in hospitals or while a prisoner is in transit to a hospital or other off-premises facility.⁴ Since 2019, 75% of custodial deaths statewide occurred outside jails. That percentage is even greater in Tarrant County, where 85% of custodial deaths reportedly occurred outside of the County’s jail facilities.

These statistics demonstrate how a narrow reading of section 511.021(a) would *undermine* the purposes of the Sandra Bland Act, because an “on premises” reporting requirement could insulate all but 15-25% of custodial deaths from independent review. That would include the types of

⁴ The significant number of deaths that are recorded while a person is being transported to an off-premises location is troubling, and underscores how a requirement that only “on premises” deaths be reported can be manipulated—by removing the body of a deceased person from the physical confines of the jail prior to a formal declaration of death. A rule requiring all custodial deaths to be reported closes off this loophole.

deaths for which the Sandra Bland Act is most concerned: homicides and suicides. Texas Jail Project’s review of statewide custodial deaths in 2024 found that of 134 custody deaths, 12 of 17 reported suicides were pronounced dead in the hospital, as were 3 of 4 reported homicides. Most alarmingly, 30 of 31 deaths where the manner of death was ruled as “unknown” or “undetermined” were pronounced off jail premises.⁵ The Sandra Bland Act was passed to bring some level of independent oversight to precisely these kinds of deaths, and yet the District Attorney’s desired interpretation of section 511.021(a) would result in most of them not receiving the independent scrutiny the legislature intended them to receive.

But these statistics don’t tell the full story. Indeed, the facts of the many deaths that would likely escape review under the District Attorney’s preferred reading of the statute are often troubling, and exhibit indicia of foul play. That is true even of deaths initially ruled “natural causes,” or where the manner of death is not readily determinable.

For example, on June 19, 2020, Javonte Myers, a 28-year-old, died in his jail cell.⁶ The Tarrant County Medical Examiner’s Office concluded that Mr. Myers died from a natural cause—a seizure disorder. *Id.* However, an independent review of Mr. Myers’s death by the Texas Rangers found that two jail guards lied more than 20 times about checking on Mr. Myers, and falsified records to cover up their deceit. *Id.*⁷ Because the jail guards failed to perform the required routine checks on Mr. Myers, he lay dead for hours before being discovered.⁸

Earlier this year, 56-year-old Kimberly Phillips was placed in around-the-clock medical observation while in Tarrant County Jail but was later taken to John Peter Smith Hospital (“JPS Hospital”) on February 15, 2025.⁹ Ms. Phillips died at JPS Hospital three days later, on February 18, 2025. *Id.* Although the Tarrant County Medical Examiner’s Office has yet to release the cause and manner of Ms. Phillips’s death, preliminary records obtained from JPS Hospital may suggest

⁵ Data going back to 2019 accords with these statistics. Between January 1, 2019 and April 5, 2025, 887 custody deaths were reported in Texas county jails. Of 30 homicides during that time, 18 were pronounced dead in a hospital; and of 151 suicides, 97 were pronounced dead in a hospital.

⁶ Kaley Johnson, *Tarrant County to Pay \$1 Million to Family of Man Who Lay Dead in Jail Cell for 6 Hours*, FT. WORTH STAR-TELEGRAM (Sept. 19, 2023), <https://www.star-telegram.com/news/local/crime/article279517219.html>.

⁷ See also Miranda Suarez, *State Says Tarrant County Violated Law Requiring Independent Jail Death Investigations*, FT. WORTH REPORT (Oct. 17, 2024), <https://fortworthreport.org/2024/10/17/state-says-tarrant-county-violated-law-requiring-independent-jail-death-investigations/>.

⁸ Johnson, *supra* note 5.

⁹ Harriet Ramos, *56-Year-Old Tarrant County Inmate Dies in JPS Hospital’s Intensive Care Unit*, FT. WORTH STAR-TELEGRAM (Feb. 20, 2025), <https://www.star-telegram.com/news/local/fort-worth/article300678089.html>.

that Ms. Phillips had not eaten since either January 27, 2025, or February 11, 2025.¹⁰ Additionally, while the custodial report prepared by the Tarrant County Sheriff's Office states that Ms. Phillips was refusing treatment, her family contends that Tarrant County jail staff knew that she was vegetarian yet failed to provide her with options that adhered to her dietary restrictions. *Id.*

Just last year, Chasity Bonner, a 35-year-old, died at JPS Hospital after Tarrant County jail staff found her unresponsive in her cell on May 27, 2024.¹¹ Before transporting Ms. Bonner to the hospital, medical staff had administered two doses of Narcan—a life-saving drug used for opioid overdoses.¹² However, upon the release of Ms. Bonner's autopsy results, the medical examiner ruled her death as natural, listing the cause of death as atherosclerotic cardiovascular disease, or the buildup of plaque on artery walls reducing blood flow.¹³ The autopsy report noted that it is uncommon for a woman of Ms. Bonner's age to die of heart disease and suggested that it was due to a hereditary disorder.¹⁴ However, Ms. Bonner's family claims that no one in their family has been diagnosed with atherosclerotic cardiovascular disease. *Id.* Therefore, as it stands, it is unclear why hospital staff at the jail administered Narcan to Ms. Bonner, and an independent investigation could better explain the discrepancies surrounding her death.¹⁵

¹⁰ Cody Copeland, *Woman 'Essentially Starved to Death' in Tarrant County Jail in February, Family Says*, DALLAS MORNING NEWS (Mar. 21, 2025), <https://www.dallasnews.com/news/courts/2025/03/20/woman-essentially-starved-to-death-in-tarrant-county-jail-in-february-family-says/>.

¹¹ Matt Kyle, *Woman's Cause of Death in Tarrant County Jail Released*, DALL. MORN. NEWS (Sept. 3, 2024), <https://www.dallasnews.com/news/crime/2024/09/03/womans-cause-of-death-in-tarrant-county-jail-released/>.

¹² Cody Copeland, *Tarrant DA Asks Family of Woman Who Died in County Jail to Withdraw Request for Autopsy*, FT. WORTH STAR-TELEGRAM (Sept. 13, 2024), <https://www.star-telegram.com/news/local/fort-worth/article292205500.html>. Through an open records request, the Star-Telegram received JPS records and found that the date of Ms. Bonner's death does not appear on a list of all naloxone (Narcan) applications administered by JPS Hospital staff to people in custody at Tarrant County Jail. *Id.*

¹³ Kyle, *supra* note 10.

¹⁴ Cody Copeland, *Jail Death Autopsy Report Said Family Should be Warned. Tarrant County Blocked it From Them*, FT. WORTH STAR-TELEGRAM (Mar. 26, 2025), <https://www.star-telegram.com/news/politics-government/article302840549.html>.

¹⁵ The Tarrant County Sheriff's Office conducted its own custodial death investigation into Ms. Bonner's death and then assigned the Fort Worth Police Department's Major Case Unit to conduct its own review. However, a Fort Worth police spokesperson for the Unit confirmed that the Unit waits for the Tarrant County Sheriff's Office to complete its investigation and then merely reviews the completed investigation packet. The Commission rightly found this process likely violated the Sandra Bland Act, because the plain terms of the Act requires a fulsome independent investigation, not simply a rubber stamp. Miranda Suarez, *State Says Tarrant County Violated Law Requiring Independent Jail Death Investigations*, KERA (Oct. 17, 2024), <https://www.keranews.org/criminal-justice/2024-10-17/tarrant-county-jail-death-investigation>.

In 2020, Abdullahi Mohamed, a bipolar man with a history of manic episodes, died in custody of the Tarrant County Sheriff's Office.¹⁶ Mr. Mohamed, who had been placed on a food log after being observed failing to eat, was brought in for medical evaluation after jail staff found him lying nude on a mattress on the floor next to an uneaten tray of food. While being transported for his evaluation, Mr. Mohamed urinated on himself and stopped breathing. He was transported to JPS Hospital, where he was pronounced dead just an hour later. The Tarrant County Medical Examiner's Office later determined that Mr. Mohamed died of dehydration.¹⁷

Georgia Kay Baldwin, a 52-year-old woman with a history of severe mental illness, died on September 14, 2021, also of severe dehydration, while detained at the Tarrant County Jail. Ms. Baldwin had been incarcerated for several months following her arrest for leaving threatening voicemails—behavior her family's attorney argued required immediate treatment, not incarceration.¹⁸ Though she was declared incompetent to stand trial and was ordered to be transferred to a state psychiatric facility, she remained in jail due to long waitlists for hospital beds. Like Mr. Mohamed, Ms. Baldwin likely died of dehydration, despite having access to water in her cell.¹⁹ Shortly before her death, jail staff found her on the floor of her cell, partially unclothed and apparently experiencing a mental health crisis. It is unclear from jail records if any attempt at aid was rendered until several hours later, when she was declared dead. In September 2024, Tarrant County agreed to a \$750,000 settlement with Ms. Baldwin's family, acknowledging the failures in her care while in custody.²⁰

Paul Aaron French died in the Dallas County Jail on December 8, 2020.²¹ While in the County's custody, he was physically restrained and placed on suicide watch after “behaving erratically and threatening to kill himself.” *Id.* Despite the need for increased monitoring in response to these warning signs, French's family alleged—and a Dallas County investigation appeared to confirm—that jail staff failed to continually monitor French after he was removed from his restraints in the

¹⁶ Tanya Eiserer, *Three Prisoners Died of Thirst. All Had Water Fountains in Their Cells. How Could This Happen?*, WFAA (May 21, 2024), <https://www.wfaa.com/article/news/local/investigates/three-prisoners-died-thirst-all-had-water-fountains-in-cells/287-241f9c2b-f762-44ea-99fe-921f8c70a691>.

¹⁷ Tarrant County Medical Examiner's Office, *Autopsy Report: Abdullahi Mohamed*, <https://mepublic.tarrantcounty.com> (last visited Apr. 25, 2025).

¹⁸ Miranda Suarez, *Tarrant County Offers \$750,000 Payout for Death of Prisoner with Mental Illness*, KERA (Oct. 01, 2024), <https://www.keranews.org/criminal-justice/2024-10-01/tarrant-county-jail-lawsuit-georgia-kay-baldwin>.

¹⁹ Miranda Suarez, *Tarrant County Inmate's 'Unnecessary Death' Spotlights Mental Health Crisis in Jails Nationwide*, TEX. STANDARD (Aug. 18, 2023), <https://www.texasstandard.org/stories/tarrant-county-tx-inmate-death-spotlights-mental-health-crisis-jails/>.

²⁰ Suarez, *supra* note 17.

²¹ Marina Trahan Martinez, *Dallas County Reaches \$1 Million Settlement After 2020 Jail Death*, KERA (Sep. 04, 2024), <https://www.keranews.org/news/2024-09-04/1-million-awarded-in-case-of-man-who-died-in-2020-while-at-dallas-county-jail>.

early morning of December 8. Later that night, he was found unresponsive in his cell with white foam around his mouth, and was pronounced dead at Parkland Hospital. The Dallas County Medical Examiner determined the cause of death to be acute water intoxication, with the manner of death listed as undetermined. In September 2024, Dallas County commissioners approved a \$1 million settlement to Mr. French's family, acknowledging the failures in his care while in the County's custody.

Regardless of whether section 511.021(a) is interpreted narrowly to cover only "on premises" deaths, or broadly to cover all custodial deaths, these examples all make clear that the Commission's administrative rule is necessary to ensure that every eligible "death of a prisoner in a county jail" is reported and receives an independent investigation. Gov't Code § 511.021(a). Indeed, under either interpretation, even off-premises deaths require some form of independent review to verify the location of the actual death, at a minimum.

Without the administrative rule's broad reporting and independent investigation requirements, the circumstances surrounding these (and many other) deaths would likely go unexamined. That result is inevitable under the District Attorney's proposed construction of section 511.021(a). Not only is there no textual support for a construction that would authorize a county sheriff to withhold the reporting of "routine or non-controversial deaths," Request Letter at 4; but that interpretation would also undermine the purposes of the Sandra Bland Act: to ensure the most preventable deaths—homicides, suicides, and accidental deaths—receive independent scrutiny from a neutral observer. By contrast, the Commission's rule fulfills those very objectives by removing the discretion to decide whose death to report from the hands of a county sheriff, thus reducing any appearance of impropriety in the process. That alone makes it likely that the Commission's rule would likely survive judicial review. *See Stein*, 771 S.W.2d at 580-81.

III. Conclusion.

For the foregoing reasons, Texas Jail Project respectfully requests that you issue an opinion to clarify that section 511.021(a) of the Texas Government Code applies to all custodial deaths, both on and off the physical premises of a jail.

Alternatively, if you adopt the narrower view—that deaths "in a county jail" apply only to on-premises deaths—you should nonetheless conclude that 37 Admin. Code § 269.1(5) is valid for two reasons: (1) because it serves the objectives of the Sandra Bland Act; and (2) because it is necessary to ensure the Commission can fully satisfy its statutory burden to appoint an independent law enforcement agency to investigate every qualifying death under section 511.021(a).

Respectfully submitted,

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²³ The views expressed in this brief do not necessarily reflect the views of Southern Methodist University or of SMU Dedman School of Law.