

AN ACT relating to the establishment of the External Detainee Fatality Review Panel.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 441 IS CREATED TO READ AS FOLLOWS:

(1) The External Detainee Fatality Review Panel is hereby created and established for the purpose of conducting comprehensive reviews of all fatalities of individuals who were detained in county or regional jails, any facility operated by the Department of Corrections, any facility operated by the Department of Juvenile Justice, or any facility operated by a private entity contracted with either the Department of Corrections or the Department of Juvenile Justice at the time of death or at the time medical assistance was sought for a condition that led to the individual's death. The External Detainee Fatality Review Panel shall be attached to the Justice and Public Safety Cabinet for staff and administrative purposes, but shall operate as an independent investigative entity designed to promote carceral safety throughout the Commonwealth.

(2) The External Detainee Fatality Review Panel shall be composed of:

(a) The following thirteen (13) ex officio nonvoting members:

- 1. The chairperson of the House Judiciary Committee of the Kentucky General Assembly;*
- 2. The chairperson of the Senate Judiciary Committee of the Kentucky General Assembly;*
- 3. The Attorney General or designee;*
- 4. The secretary of the Justice and Public Safety Cabinet or designee;*
- 5. The commissioner of the Department for Corrections;*
- 6. The Public Advocate of the Department of Public Advocacy or designee;*

7. The State Medical Examiner or designee;
 8. A representative from Kentucky Jailers' Association;
 9. A representative from the Kentucky Association of Counties;
 10. A representative from the Kentucky County Attorneys' Association;
 11. A representative from the Kentucky Commonwealth's Attorneys Association;
 12. A representative from the Kentucky County Judge/Executive Association;
 13. A retired peace officer who possesses experience investigating detainee deaths that occurred while in state or local custody appointed by the commissioner of the Department of Kentucky State Police; and
- (b) The following seven (7) voting members:
1. Two (2) retired judges appointed by the Governor who may be chosen from a list of six (6) possible candidates supplied by the Chief Justice of the Supreme Court of Kentucky;
 2. Two board-certified pathologists appointed by the Governor;
 3. A qualified mental health care professional as defined in KRS 202A.011 who shall be appointed by the Attorney General;
 4. A citizen of the Commonwealth who shall be appointed by the Governor who may be chosen from a list of three (3) possible candidates supplied by the President of the Kentucky Senate; and
 5. A citizen of the Commonwealth who shall be appointed by the Governor who may be chosen from a list of three (3) possible candidates supplied by the Speaker of the Kentucky House of Representatives.
- (3) The seven (7) voting members appointed under subsection (2)(b) of this section shall vote to elect a chairperson who shall be chosen from among the voting

members. The voting member chosen as chairperson shall serve as chairperson for the entirety of his or her term.

- (4) (a) By August 1, 2016, the appointing authorities shall have appointed panel members. Initial terms of members, other than those serving ex officio, shall be staggered to provide continuity. Initial appointments shall be: two (2) members for terms of one (1) year, two (2) members for terms of two (2) years, and three (3) members for terms of three (3) years, these terms to expire, in each instance, on June 30 and thereafter until a successor is appointed and accepts appointment.
- (b) Upon the expiration of the initial staggered terms, successors shall be appointed by the respective appointing authorities for terms of two (2) years, and until successors are appointed and accept their appointments. Members shall be eligible for reappointment. Vacancies in the membership of the panel shall be filled in the same manner as the original appointments.
- (c) At any time, a panel member shall recuse himself or herself from the review of a case if the panel member believes he or she has a personal or private conflict of interest.
- (d) If a voting panel member is absent from two (2) or more consecutive, regularly scheduled meetings, the member shall be considered to have resigned and shall be replaced with a new member in the same manner as the original appointment.
- (e) If a voting panel member is proven to have violated subsection (14) of this section, the member shall be removed from the panel and replaced with a new member in the same manner as the original appointment.
- (5) The panel shall meet at least quarterly unless a detainee fatality has not occurred within the two (2) quarters prior to the current quarter. The panel may meet upon the call of the chairperson of the panel.

(6) Members of the panel shall receive no compensation for their duties related to the panel, but may be reimbursed for expenses incurred in accordance with state guidelines and administrative regulations.

(7) Each panel member shall be provided copies of all information set out in this subsection, including but not limited to records and information, upon request, to be gathered, unredacted, and submitted to the panel within thirty (30) days by the county or regional jail, the Office of the Kentucky State Medical Examiner, the Department of Corrections, the Department of Juvenile Justice, or any agency, organization, or entity involved with providing services or investigating incidents pertaining to deceased detainees:

(a) County or regional jail, Department of Corrections, or Department of Juvenile Justice records and documentation regarding the deceased detainee at the time of booking, during detention, at the time of the incident leading to the fatality, and subsequent to the incident, including all records and documentation set out in this paragraph:

1. All actions taken by the county jail or regional detention center, Department of Corrections, or Department of Juvenile Justice on behalf of or regarding the deceased detainee during booking;
2. Any and all records of services to the detainee provided by county jail or regional detention center, Department of Corrections, or Department of Juvenile Justice staff, or any agencies or individuals contracted to provide services by the county or regional jail, Department of Corrections, or Department of Juvenile Justice;
3. All documentation relating to any investigation of the fatality, including all extraordinary occurrence reports relating to the detainee; and
4. All documentation of actions taken as a result of the detainee fatality;

- (b) Reports from the Cabinet for Health and Family Services, Office of Inspector General, if an incident occurred due to actions of a licensed healthcare provider while providing services in a county jail or regional detention center, state prison, or youth development center;
- (c) All available records from the Administrative Office of the Courts regarding the deceased detainee's history of arrests and convictions;
- (d) All available records from the Department of Kentucky State Police regarding the deceased detainee's history of arrests;
- (e) Autopsy reports;
- (f) Emergency medical service, fire department, law enforcement, coroner, and other first responder reports regarding the deceased detainee, including but not limited to photos and interviews with witnesses; and
- (g) Records of medical and behavioral health services provided to the deceased detainee during detention in the county jail or regional detention center, including but not limited to all records and documentation set out in this paragraph:
1. Primary care records, including progress notes; assessment of behavioral health problems; assessment of detainee suicidal thinking or attempts, to be completed by the county jail, regional detention center, or by a statewide suicide prevention program; descriptions of all medical or behavioral health services provided to the deceased detainee during the detention episode at issue and all previous detention episodes of the deceased detainee;
 2. Notes and records of all law enforcement officers who detained or had physical contact with the deceased detainee relating to the incarceration during which the fatality occurred prior to the booking of the detainee in the county or regional jail;

3. Hospitalization and emergency department records regarding the deceased detainee and actions subsequent to the fatality;
 4. Dental records;
 5. Specialist records; and
 6. All photographs of injuries of the deceased detainee that are available.
- (8) The panel may seek the advice of experts, such as persons specializing in the fields of psychiatric and forensic medicine, nursing, psychology, social work, education, law enforcement, family law, or other related fields, if the facts of a case warrant additional expertise.
- (9) The panel shall post updates after each meeting to the Web site of the Justice and Public Safety Cabinet regarding case reviews, findings, and recommendations.
- (10) The panel chairperson or other requested persons shall report a summary of the panel's discussions and proposed or actual recommendations to the Interim Joint Committees on Judiciary, and on State Government monthly or at the request of a committee co-chair. The goal of each committee shall be to ensure impartiality regarding the operations of the panel during its review process.
- (11) The panel shall publish an annual report by December 1 of each year consisting of case reviews, findings, and recommendations for system and process improvements to help prevent detainee fatalities. The report shall be submitted to the Governor, the secretary of the Justice and Public Safety Cabinet, the Chief Justice of the Supreme Court, the Attorney General, and the director of the Legislative Research Commission for distribution to the appropriate committees.
- (12) (a) Information and record copies that are confidential under state or federal law and are provided to the External Detainee Fatality Review Panel by the Justice and Public Safety Cabinet, the Department for Corrections, county jails or regional detention centers, or any agency, organization, or entity for review shall not become the information and records of the panel and shall

not lose their confidentiality by virtue of the panel's access to the information and records.

(b) The original information and records used to generate information and record copies provided to the panel in accordance with subsection (7) of this section, shall be maintained by the appropriate agency in accordance with state and federal law and shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. All open records requests shall be made to the appropriate agency and not to the External Detainee Fatality Review Panel or any of the panel members.

(c) Information and record copies provided to the panel for review shall be exempt from the Kentucky Open Records Act, KRS 61.870 to 61.884. At the conclusion of the panel's examination, all copies of information and records provided to the panel involving an individual case shall be destroyed by the Justice and Public Safety Cabinet.

(13) Notwithstanding any provision of law to the contrary, the portions of the External Detainee Fatality Review Panel meetings during which an individual detainee fatality case is reviewed or discussed by panel members may be a closed session, subject to KRS 61.815(1), and may only occur following the conclusion of an open session. At the conclusion of the closed session, the panel shall immediately convene an open session and give a summary of what occurred during the closed session.

(14) Each member of the External Detainee Fatality Review Panel, any person attending a closed panel session, and any person presenting information or records on an individual detainee fatality shall not release information or records not available under the Kentucky Open Records Act, KRS 61.870 to 61.884, to the public.

(15) A member of the External Detainee Fatality Review Panel shall not be prohibited

from making a good-faith report to any state or federal agency of any information or issue that the panel member believes should be reported or disclosed in an effort to facilitate effectiveness and transparency in Kentucky's detainee protective services.

(16) A member of the External Detainee Fatality Review Panel shall not be held liable for any civil damages or criminal penalties as a result of any action taken or omitted in the performance of the member's duties pursuant to this section, except for violations of subsection (12), (13), or (14) of this section.

(17) Beginning in 2017, the Legislative Program Review and Investigations Committee of the Kentucky General Assembly shall conduct an annual evaluation of the External Detainee Fatality Review Panel established pursuant to this section to monitor the operations, procedures, and recommendations of the panel and shall report its findings to the General Assembly.