

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

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

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

6 *(1) The External Detainee Fatality Review Panel is hereby created and established*
7 *for the purpose of conducting reviews of all fatalities of individuals who were*
8 *committed to a county jail or regional detention center, any facility operated by*
9 *the Department of Corrections, any facility operated by the Department of*
10 *Juvenile Justice, or any facility operated by a private entity contracted with either*
11 *the Department of Corrections or the Department of Juvenile Justice at the time*
12 *of death or at the time medical assistance was sought for a condition that led to*
13 *the individual's death. The External Detainee Fatality Review Panel shall not*
14 *review the death of an individual occurring in a nonresidential community-based*
15 *program, house arrest program, day reporting program, private work program, or*
16 *involving an individual who was deemed to be absent without leave, an escapee,*
17 *on long-term transfer to another jurisdiction, or individuals in custody who die*
18 *before being booked into a county jail or regional detention center. The External*
19 *Detainee Fatality Review Panel shall be attached to the Justice and Public Safety*
20 *Cabinet for staff and administrative purposes, but shall operate as an*
21 *independent entity designed to promote carceral safety throughout the*
22 *Commonwealth.*

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

24 *(a) The following fourteen (14) ex officio nonvoting members:*

25 *1. The chairperson of the House Judiciary Committee of the Kentucky*
26 *General Assembly;*

27 *2. The chairperson of the Senate Judiciary Committee of the Kentucky*

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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 of Corrections;
6. The commissioner of the Department of Juvenile Justice;
7. The public advocate of the Department for Public Advocacy or designee;
8. The state medical examiner or designee;
9. A representative from the Kentucky Jailers' Association;
10. A representative from the Kentucky Association of Counties;
11. A representative from the Kentucky County Attorneys Association;
12. A representative from the Kentucky Commonwealth's Attorneys Association;
13. A representative from the Kentucky County Judge/Executive Association;and
14. A 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(2) board-certified pathologists appointed by the Governor;
3. A qualified mental health 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

1 candidates supplied by the President of the Kentucky Senate; and
2 5. A citizen of the Commonwealth who shall be appointed by the
3 Governor who may be chosen from a list of three (3) possible
4 candidates supplied by the Speaker of the Kentucky House of
5 Representatives.

6 (3) The seven (7) voting members appointed under subsection (2)(b) of this section
7 shall vote to elect a chairperson from among the voting members. The voting
8 member chosen as chairperson shall serve as chairperson for the entirety of his
9 or her term. The voting members shall also vote to establish procedures for the
10 panel, including the votes necessary to take actions authorized by this section.

11 (4) (a) By August 1, 2017, the appointing authorities shall have appointed panel
12 members. Initial terms of members, other than those serving ex officio,
13 shall be staggered to provide continuity. Initial appointments shall be: three
14 (3) members for terms of one (1) year, and four (4) members for terms of
15 two (2) years, these terms to expire, in each instance, on June 30, and
16 thereafter until a successor is appointed and accepts appointment.

17 (b) The appointed panel members shall be appointed in the following order:
18 1. One (1) retired judge pursuant to subsection (2)(b)1. of this section to
19 a term of one (1) year;
20 2. One (1) pathologist pursuant to subsection (2)(b)2. of this section to a
21 term of one (1) year;
22 3. One (1) citizen of the Commonwealth pursuant to subsection (2)(b)4.
23 of this section to a term of one (1) year;
24 4. One (1) retired judge pursuant to subsection (2)(b)1. of this section to
25 a term of two (2) years;
26 5. One (1) pathologist pursuant to subsection (2)(b)2. of this section to a
27 term of two (2) years;

- 1 6. One (1) qualified mental health professional pursuant to subsection
2 (2)(b)3. of this section to a term of two (2) years; and
- 3 7. One (1) citizen of the Commonwealth pursuant to subsection (2)(b)5.
4 of this section to a term of two (2) years.
- 5 (c) Upon the expiration of the initial staggered terms, successors shall be
6 appointed by the respective appointing authorities for terms of two (2) years,
7 and until successors are appointed and accept their appointments. Members
8 shall be eligible for reappointment. Vacancies in the membership of the
9 panel shall be filled in the same manner as the original appointments.
- 10 (d) At any time, a panel member shall recuse himself or herself from the review
11 of a case if the panel member believes he or she has a personal or private
12 conflict of interest.
- 13 (e) If a voting panel member is absent from two (2) or more consecutive,
14 regularly scheduled meetings, the member shall be considered to have
15 resigned and shall be replaced with a new member in the same manner as
16 the original appointment.
- 17 (f) If a voting panel member is proven to have violated subsection (17) of this
18 section, the member shall be removed from the panel and replaced with a
19 new member in the same manner as the original appointment.
- 20 (5) The panel shall meet at least quarterly. In addition to the required quarterly
21 panel meeting, the panel may meet upon the call of the chairperson of the panel.
- 22 (6) Members of the panel shall receive no compensation for their duties related to the
23 panel, but shall be reimbursed for expenses incurred in accordance with state
24 guidelines and administrative regulations.
- 25 (7) Each jailer, the commissioner of the Department of Corrections, and the
26 commissioner of the Department of Juvenile Justice shall submit, as appropriate,
27 the following documents to the panel within thirty (30) days of the death of a

1 detainee:

2 (a) Any coroner's report generated in response to the death;

3 (b) Any initial investigation report conducted by the entity that had custody
4 over the deceased detainee; and

5 (c) Any extraordinary occurrence report related to the death of a detainee.

6 (8) Administrative staff assigned to the panel shall use the information collected
7 pursuant to subsection (7) of this section to compile a list of detainee deaths from
8 the preceding quarter which shall be presented to the panel in advance of a
9 meeting of the panel, along with unredacted copies of the information collected
10 pursuant to subsection (7) of this section.

11 (9) After review of the list and information compiled pursuant to subsection (8) of
12 this section, the panel may vote to request further information or records relating
13 to any detainee fatality. Upon a request by the panel, any county jail or regional
14 detention center, the Office of the Kentucky State Medical Examiner, the
15 Department of Corrections, the Department of Juvenile Justice, or any agency,
16 organization, or entity involved with providing services or investigating incidents
17 pertaining to deceased detainees shall provide to the panel any requested
18 information or records within a reasonable time period established by the panel.

19 The requested information or records may include but are not limited to:

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

25 1. Any actions taken by the county jail or regional detention center,
26 Department of Corrections, or Department of Juvenile Justice on
27 behalf of or regarding the deceased detainee during booking;

- 1 2. Any records of services to the detainee provided by county jail or
2 regional detention center, Department of Corrections, or Department
3 of Juvenile Justice staff, or any agencies or individuals contracted to
4 provide services by the county jail or regional detention center,
5 Department of Corrections, or Department of Juvenile Justice;
- 6 3. Any documentation relating to any investigation of the fatality,
7 including all extraordinary occurrence reports relating to the
8 detainee; and
- 9 4. Any documentation of actions taken as a result of the detainee
10 fatality;
- 11 (b) Any reports from the Cabinet for Health and Family Services, Office of
12 Inspector General, if an incident occurred due to actions of a licensed
13 healthcare provider while providing services in a county jail or regional
14 detention center, state prison, or youth development center;
- 15 (c) Any available records from the Administrative Office of the Courts
16 regarding the deceased detainee's history of arrests and convictions;
- 17 (d) Any available records from the Department of Kentucky State Police
18 regarding the deceased detainee's history of arrests;
- 19 (e) Any autopsy reports;
- 20 (f) Any emergency medical service, fire department, law enforcement, coroner,
21 and other first responder reports regarding the deceased detainee, including
22 but not limited to photographs and interviews with witnesses; and
- 23 (g) Any records of medical and behavioral health services provided to the
24 deceased detainee during detention in the county jail or regional detention
25 center, state prison, or youth development center, including but not limited
26 to all records and documentation set out in this paragraph:
- 27 1. Primary care records, including progress notes; assessment of

- 1 behavioral health problems; assessment of detainee suicidal thinking
2 or attempts, to be completed by the county jail, regional detention
3 center, state prison, or youth development center, or by a statewide
4 suicide prevention program; descriptions of all medical or behavioral
5 health services provided to the deceased detainee during the detention
6 episode at issue and all previous detention episodes of the deceased
7 detainee;
- 8 2. Notes and records of all law enforcement officers who detained or had
9 physical contact with the deceased detainee relating to the
10 incarceration during which the fatality occurred prior to the booking
11 of the detainee in the county jail or regional detention center;
- 12 3. Hospitalization and emergency department records regarding the
13 deceased detainee and actions subsequent to the fatality;
- 14 4. Dental records;
- 15 5. Specialist records; and
- 16 6. All photographs of injuries of the deceased detainee that are available.
- 17 (10) Each panel member shall be provided unredacted copies of all information or
18 records submitted pursuant to subsection (9) of this section.
- 19 (11) The panel may seek the advice of experts, such as persons specializing in the
20 fields of psychiatric and forensic medicine, nursing, psychology, social work,
21 education, law enforcement, family law, or other related fields, if the facts of a
22 case warrant additional expertise.
- 23 (12) The panel shall post updates after each meeting to the Web site of the Justice and
24 Public Safety Cabinet regarding findings and recommendations.
- 25 (13) The panel chairperson or other requested persons shall report a summary of the
26 panel's discussions and proposed or actual recommendations to the Interim Joint
27 Committees on Judiciary and State Government at the request of a committee co-

1 chair. The goal of each committee shall be to ensure impartiality regarding the
2 operations of the panel during its review process.

3 (14) The panel shall publish an annual report by December 1 of each year consisting
4 of findings and recommendations for system and process improvements to help
5 prevent detainee fatalities. The report shall be submitted to the Governor, the
6 secretary of the Justice and Public Safety Cabinet, the Chief Justice of the
7 Supreme Court, the Attorney General, and the director of the Legislative
8 Research Commission for distribution to the appropriate committees.

9 (15) (a) Information and record copies that are confidential under state or federal
10 law and are provided to the External Detainee Fatality Review Panel by the
11 Justice and Public Safety Cabinet, the Department of Corrections, the
12 Cabinet for Health and Family Services, county jails or regional detention
13 centers, or any agency, organization, or entity for review shall not become
14 the information and records of the panel and shall not lose their
15 confidentiality by virtue of the panel's access to the information and
16 records.

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

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

1 by the Justice and Public Safety Cabinet.

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

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

14 (18) A member of the External Detainee Fatality Review Panel shall not be prohibited
15 from making a good-faith report to any state or federal agency of any
16 information or issue that the panel member believes should be reported or
17 disclosed in an effort to facilitate effectiveness and transparency in Kentucky's
18 detainee protective services.

19 (19) A member of the External Detainee Fatality Review Panel shall not be held liable
20 for any civil damages or criminal penalties as a result of any action taken or
21 omitted in the performance of the member's duties pursuant to this section,
22 except for violations of subsection (15), (16), or (17) of this section.

23 (20) Beginning in 2018, the Legislative Program Review and Investigations
24 Committee of the Kentucky General Assembly shall conduct an annual
25 evaluation of the External Detainee Fatality Review Panel established pursuant
26 to this section to monitor the operations, procedures, and recommendations of the
27 panel and shall report its findings to the General Assembly.