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User Notes

This *Inquests Deskbook* (4th ed. November 2023) represents the Texas Justice Court Training Center's ongoing commitment to provide resources, information, and assistance on issues of importance to Texas justices of the peace and constables and their court personnel, and continues a long tradition of support for judicial education in the State of Texas by the Justices of the Peace and Constables Association of Texas, Inc.

We hope you will find it to be a valuable resource in providing fair and impartial justice to the citizens of Texas.

This deskbook is intended to offer a practical and readily accessible source of information relating to issues you are likely to encounter handling your inquest duties. It is not intended to replace original sources of authority, such as the Code of Criminal Procedure or the Health and Safety Code. We strongly recommend that you refer to the applicable statutory provisions and rules when reviewing issues discussed in this book.

Rather than including the citations to cases in the text, we have listed only the case name in the text but have included the entire citation in the Appendix of Cases.

Please do not hesitate to contact us should you have any questions or comments concerning any of the matters discussed in the *Inquests Deskbook*.

Texas Justice Court Training Center
November 2023

Chapter 1: What is an Inquest?

The word “inquest” refers to the investigation of a death.

Inquests were first used in Scandinavia in the 1000’s. Most people today are familiar with the term being used in England where much of American law has its roots.

Some states use coroners or medical examiners, others use juries or prosecutors. In Texas, the duty of performing an inquest **in most counties** falls on the justice of the peace. Fifteen counties have medical examiners and do not use a justice of the peace: Bexar, Collin, Dallas, Denton, Ector, El Paso, Fort Bend, Galveston, Harris, Johnson, Lubbock, Nueces, Tarrant, Travis, and Webb.

The official definition of inquest from Texas law is: “an investigation into the cause and circumstances of the death of a person and a determination made with or without a formal court hearing, as to whether the death was caused by an unlawful act or omission.” *Code of Criminal Procedure Art. 49.01(2)*.



COMMON
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The justice of the peace does **not** “pronounce” someone dead. This is a common mistake. It makes sense, if you think about it – a judge should only be called when it is known that the person is in fact dead. Some of this confusion comes from the fact that a judge will need to state a time of death in the death certificate. We will talk about death certificates and what information is contained in them on [page 43](#).

A. Why Does Texas Have Inquests?

Texas is a big state with a large population, but many of the people are concentrated in the counties listed above who have medical examiners. Medical examiners can be a large expense to the county and finding a qualified professional may also be a challenge in more rural areas. For Texas, an inquest process that includes justices of the peace works best for the citizens to have timely death investigations. Even though a county does not have a medical examiner, a justice of the peace may refer a case to one for their help.



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The authority to conduct a death inquest is found in Chapter 49 of the Code of Criminal Procedure. Chapter 49 “applies to the inquest into a death occurring in a county that does not have a medical examiner's office or that is not part of a medical examiner's district.” *Code of Criminal Procedure Art. 49.02.* Justices of the peace have authority to perform inquests only on bodies in the county where they serve unless a bench exchange agreement exists ([see page 11](#)). *Code of Criminal Procedure 49.04(a).* It goes on to say that there are times that a justice of the peace must conduct an inquest and explains that judges have an independent authority to investigate. *Code of Criminal Procedure Arts. 49.03, 49.04.*

Inquests are not necessarily criminal proceedings even though some of the basic law about inquests is in the Code of Criminal Procedure. The investigation into a death may become criminal, or the death may be caused by natural causes or an accident. We will explain many of the questions that come up when conducting inquest investigations and what resources are available.

Chapter 2: When is an Inquest Required?

The Code of Criminal Procedure outlines eight situations when an inquest is required to be performed by a justice of the peace. Each of these instances will be discussed in detail in this chapter. The eight deaths requiring an inquest are:

- The person dies in prison or in jail (unless dies of natural causes and attended by a physician or lawful execution);
- The person dies an unnatural death from a cause other than a legal execution;
- An identified body (or part of a body) is found, and the cause or circumstances of the death are unknown;
- An unidentified body or body part is found, regardless of whether the cause or circumstances of the death are known;
- A death that might have been caused by unlawful means (for example, murder);
- Suicide is (or may be) the cause of death;
- The person dies without having been attended by a physician;
- The person dies while attended by a physician who is unable to certify the cause of death;
- The person is a child younger than six years of age and the death was unexpected (except for a neoplastic disease) or abuse or neglect are suspected.

Code of Criminal Procedure Art. 49.04.



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This does not mean that an **autopsy** is required in these cases – only an investigation into the death.

A. Prisons and Jails

Individuals who die in a penal institution require an inquest. Penal institution means: “a place designated by law for confinement of persons arrested for, charged with, or convicted of an offense.” *Penal Code § 1.07(a)(37)*. In those instances, the person in charge of that jail or prison will contact that justice of the peace. *Code of Criminal Art. 49.18*.

Does the penal institution itself have a duty to investigate a death? **Yes**. Generally, a report must be filed with the attorney general within 30 days of the death of the individual in custody. The report is made by the head of the law enforcement agency that housed or was holding the person when they died. The Attorney General must make the report available.

Tip for Dealing with Jail and Prison Deaths

“Visit your TDCJ Wardens, and other penal institution leaders ahead of time to work out details of how you bring the tools you might need to complete your inquest into their facility. (These items may include: cameras, iPads or tablets, laptops, or cell phones.)”

-Gary Jackson, Justice of the Peace, Potter County, Pct. 3

B. Unnatural Death

Unnatural death means a death that is not simply from old age or a disease. These deaths are most commonly an accident of some sort, the most obvious being an auto collision. Other instances may be an accidental overdose or drowning.

C. Unknown Cause of Death

Deaths that fall into this category are often less mysterious than the heading of this section suggests. For example, an elderly person who is found a few days after dying in their sleep technically fits this category. The cause of death may not be unique or complicated, but this type of death simply requires an investigation – was it a heart attack? A stroke? Congestive heart failure? A brief discussion with family or the primary care physician may be all that it takes to come to a reasonable conclusion.

1. Body Parts and Unidentified Bodies

Sometimes only a body part remains from an accident or only part of a body is discovered. As an example, one justice of the peace performed an inquest on a head that was found in the local garbage dump. Most body parts that are found are also unidentified. A person or body is considered unidentified if the person's legal name is unknown and there is no known person with the duty to inter the remains under Health and Safety Code § 711.002(a). *Code of Criminal Procedure Art. 49.01(b)*.



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Unidentified bodies can be found anywhere but are a continual issue on the border with Mexico. If you are attempting to identify the body, a great resource is the University of North Texas Center for Human Identification's Forensic Services Unit. Visit their website to submit DNA: <https://www.unthsc.edu/center-for-human-identification/>

An unidentified body **may not** be cremated, and if it is buried, the "justice of the peace shall record and maintain for not less than 10 years all information pertaining to the body and the location of burial." *Code of Criminal Procedure Art. 49.09(e)*. If an autopsy is ordered, certain tests must be performed. *Code of Criminal Procedure Art. 49.10(l)*.



KEY
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You must report deaths of unidentified persons to DPS and the National Crime Information Center (NCIC), as well as the National Missing and Unidentified Persons System (NamUs). [See pages 52-53 for reporting details.](#)

D. Unlawful Means

These deaths are murder / homicide / manslaughter investigations. Law enforcement will most certainly be involved from the beginning. The district attorney may also be involved early on during the inquest procedure.

E. Suicide

Many judges are shocked at the number of suicide inquests they see. Many are clearly a suicide by the way in which the death occurred and the fact that a note or electronic message (sometimes on a computer) was left by the deceased. However, there are instances where it may not be clear. For example, was an overdose intentional or by

accident? It can be challenging to handle the family's expectations in these cases. Often the family does not want to believe a loved one committed suicide. They may claim the person was "happy," or was even "doing better."

Many people never let on what they are feeling or planning. The paradox is that the people who are most intent on committing suicide know that they have to keep their plans to themselves if they are to carry out the act."

-Dr. Michael Miller, Assistant Professor of Psychiatry at Harvard Medical School.

"Suddenly becoming calm after a period of depression or moodiness can be a sign that the person has made a decision to end his or her life."

-The Cleveland Clinic Foundation

F. No Attending Physician

Many deaths are a simple heart attack or stroke. These are natural deaths that a physician *could* sign the death certificate for. However, if the individual dies at home or somewhere away from medical attention, a justice of the peace will need to be called.

G. Attending Physician Cannot Certify the Death

Often, even if a person was under the care of a doctor at a hospital or other institution, a justice of the peace may be called to perform an inquest. There are several possible reasons for this. The first is that the doctor cannot complete the death certificate if the death is anything but a natural death. If there is a poisoning, for example, they will not be allowed to properly categorize the cause of death in the state system ([For information on death](#)

What is considered an institution?

"Institution" means any place where health care services are rendered, including a hospital, clinic, health facility, nursing home, extended-care facility, out-patient facility, foster-care facility, and retirement home. *Code of Criminal Procedure Art. 49.01.*

certificates, see page 43). In these cases, the justice of the peace is the correct person to decide cause and manner of death.

Another reason can be more a matter of policy. A hospital may discourage their doctors from signing death certificates. People frequently die in emergency rooms. Many hospitals do not consider these people to have been admitted to the hospital. Without being admitted, the hospital might not have officially assigned an “attending physician” and therefore would not consider the death to have occurred with a physician attending to them.

When a hospital calls, it is not the time to try and get technical about the law. There is a doctor who is unwilling to sign the death certificate claiming that they cannot certify the death. That means that the deceased and their family is relying on a justice of the peace to complete the death certificate and inquest. It is true that in many cases the judge will simply review the medical chart completed by the doctor at the hospital and use those findings to complete the death certificate. However, it is the duty of the justice of the peace to perform this task even when it appears that a medical doctor could have done it just as easily.

Hospice Deaths

The JP will not be involved in most hospice deaths. If the patient was terminal, but fell, a JP would need to perform an inquest and sign the death certificate. But in most cases, they are attended by a physician and die of natural causes. If you are called by hospice, be sure to determine if there were other factors that contributed to the death.



H. Child Younger Than Six

Because of their age, the law requires an investigation as to the cause and manner of death of children under the age of six, unless the death is an expected death. These can be complicated, particularly if there are some difficult family dynamics, and are some of the most emotional investigations for a justice of the peace to handle. *Family Code § 264.513(a)-(c) and Code of Criminal Procedure Art. 49.04(a)(8)*.



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The justice of the peace **must** determine if the death was unexpected or the result of abuse or neglect. If the judge determines that the death was either, they **must**

immediately notify an appropriate law enforcement agency and, within 120 days, notify the appropriate child fatality review board. *Family Code § 264.514(b)*.

See Sections 261.001 (1) and (4) of the Family Code for definitions of “abuse” and “neglect.”

1. What is an Expected Death?

If the child’s death is expected and is due to a congenital or neoplastic disease, an inquest is not required. The death may also be considered expected if caused by an infectious disease, if the disease was not acquired as a result of trauma or poisoning, is identified using standard medical procedures, and is not reportable to the Department of State Health Services under Chapter 81, Health and Safety Code. *Family Code § 264.514(a)*.

What if there should have been an inquest, but the person was already buried? The justice of the peace may request the body or body part be exhumed (dug back up from the grave) and conduct a proper inquest. *Code of Criminal Procedure Art. 49.09(a)*.

Child Fatality Review Team

You may be asked by your county to serve on the child fatality review team committee. *Family Code 264.502(b)*.

The Department of Health Services should provide training to help the review teams carry out their duties.



KEY
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Chapter 3: Death Notification

A. When will the JP be Notified of an Inquest and by Whom?

Most of the sections below will state that the justice of the peace in the precinct where the body was located will be contacted. However, most counties have a rotation or “on call” system where the justices of the peace take turns being available for inquest duty. This helps ensure that there is someone who will be available and allows for better planning.

It is a Class C misdemeanor if a person is required by this article to give notice and intentionally or knowingly fails to give the notice. *Code of Criminal Procedure Art. 49.07(d)*.

How Death Occurred	Notification	Law
Attended by a physician who is unable to certify	Doctor, the hospital, superintendent, or general manager of the hospital	<i>Code of Criminal Procedure Art. 49.04(7)(b), (c), 49.07.</i>
Penal institution	Sheriff or other person in charge of the penal institution	<i>Code of Criminal Procedure Art. 49.18.</i>
Death requiring an inquest	Peace officer	<i>Code of Criminal Procedure Art. 49.07.</i>



KEY
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If a death occurred more than a year ago, it can still be recorded through the inquest process, but the death record must be submitted to the county probate court in the county in which the death occurred. *Health and Safety Code § 193.007.*

B. What if the JP is not Available to Conduct an Inquest?

Texas is a large state. Many counties are large in geography, but not high in population. This means that all deaths that require an inquest in a particular county may fall to only one or two judges. One judge may be out of town and the other one sick or very far away from the scene of the death. In these situations, there are a couple options to ensure that an inquest is performed in a timely manner.

One is that the county judge can perform the inquest. Code of Criminal Procedure Art. 49.07(c)(1) says that the county judge should investigate the death just as a justice of the peace would with all the same authority. Within five days of starting the inquest, the county judge will return the information that they have gathered to the justice of the peace in the precinct where the body was found. That judge will then complete the inquest for what the law calls “final disposition.” TJCTC believes that means to complete the death certificate, maintain the records, and make any reports necessary.

A second option is to have what is called a “bench exchange” with other justices of the peace in neighboring counties. This allows those judges to be included in the list of who could be called if the judges in your county are not available. *Government Code § 27.0545 and Code of Criminal Procedure Art. 49.07(c)(3).*



KEY POINT

In order for a bench exchange to be an option, there must be a plan in place. First, reach out to the other counties to come to an agreement. Then make that agreement official by signing the bench exchange agreement for inquests.

TJCTC has a bench exchange form under Inquest Forms on the forms page. This form allows a judge to exchange benches with as many judges as will agree (simply add more signature spaces if needed). It can be used for selected periods of time, or it can be open for a longer period. The agreement could also be used for specific deaths. Bench exchanges can be extremely helpful during a mass fatality (numerous deaths from the same incident) to help process the large scene. For more resources on mass fatalities, please see [page 17](#).

When an out-of-county judge conducts an inquest, they will handle it in the same manner as if the county judge conducted the inquest. The other judge must return the

information they have gathered within five days to the JP in the precinct where the body was found.

Many counties have an “on call” rotation, and so the precinct where the death occurred may not be the judge that was on duty during that inquest. The inquest will still need to be returned to the precinct where the body was found. The law could not accommodate local schedules, so this is a consistent way to handle these cases.

C. Death of a Foreign National

Like when a foreign national is arrested, there is a requirement that government officials inform foreign consulates when one of their citizens dies in the United States. Many times, this duty will be fulfilled by an involved law enforcement agency, but it is important for a justice of the peace conducting an inquest to coordinate with the law enforcement agency, as they both have the duty to make sure this happens. A medical examiner who works for the county may also be obligated to make consular notification and might be involved if they are assisting in the identification of a body or performing an autopsy. See Section 37(a) of the [Vienna Convention on Consular Relations](#).

It might make more sense for the justice of the peace to contact the consulate regarding the death if they are also trying to find next of kin as part of the inquest.

1. Who is a Foreign National?

A foreign national is anyone who is not a United States citizen. This includes people who have work visas or are lawful permanent residents (commonly known as green card holders or LPRs) in the United States.

Who has Jurisdiction?

What happens when a car crash happens near a county line, so law enforcement doesn't know which JP to call?

This can be a tricky situation, and both JPs should work with law enforcement to determine which county the body was found in.

It is common practice in counties where this frequently occurs for JPs in adjoining counties to have inquest bench exchange agreements.



BEST
PRACTICE

2. How Does a JP Complete the Consular Notification Process?

First, the JP must determine the nationality. Most often this can be accomplished by coordinating with law enforcement and/or a medical examiner involved in the case. Once the proper country is identified, the JP should look up the most up-to-date contact information for the appropriate consulate on the Department of State website (linked below). The consulate then may be notified via fax, mail, or email. The proper information required is included in a form on the Department of State website as well.

The United States Department of State provides resources for government officials related to consular notification including contact information for foreign embassies and consulates, a handbook, and forms on their website: [U.S. Department of State Website](#).

In addition, The Attorney General's Office also provides resources related to consular notification in their [Vienna Guidebook](#).



CLICK
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Chapter 4: How Does the JP Conduct an Inquest?

A. Inquest Procedure Flowchart

[Click Here to Open the Inquest Procedure Flowchart](#)

B. When and Where

“A justice of the peace shall conduct an inquest immediately or as soon as practicable after the justice receives notification of the death.” *Code of Criminal Procedure Art. 49.05(a)*.

The investigation can be where the death occurred, where the body was found, or a place the justice of the peace “determined to be reasonable.” *Code of Criminal Procedure Art. 49.05(b)(4)*.



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A “reasonable” place is somewhere like a funeral home. Requesting the body be brought to you at an inappropriate place, like a restaurant parking lot, is not a good practice.

We understand that sometimes a judge may gather information related to the inquest electronically because of a busy schedule or a far distance. Some judges have used FaceTime to view a scene and others have used “apps” to gain access to information and people. However, TJCTC’s position, other than as specifically authorized above, is that best practice generally requires the judge to attend the scene in person.

Additionally, if the death is one where the person dies without having been attended by a physician or the attending physician cannot certify the cause of death, the justice of the peace may designate a person to visit the scene and videoconference with the judge so that the judge may determine the cause and manner of death. *Code of Criminal Procedure Art. 49.05(b)(3)*. Note that this authority excludes several types of deaths, including those that may be suicide or may have been caused by unlawful means.



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The commissioner's court shall pay a reasonable fee for the transportation of a body to a place where an autopsy can be performed if you order the body to be transported to that place. *Code of Criminal Procedure Art. 49.10(h)*.

1. What is a Death Investigator?

Some counties have chosen to employ specially trained individuals to assist with the inquest load. These individuals are called death investigators. They are paid by the commissioner's court and serve at their will. A death investigator works on an inquest when requested by the justice of the peace. A finalized report containing activities, findings, and conclusions shall be provided to the justice of the peace within eight hours of the death being investigated by a death investigator. *Code of Criminal Procedure Art. 49.23*.

2. Interacting with Law Enforcement

Law enforcement is often involved in an inquest. The justice of the peace has equal and independent investigation rights. *Code of Criminal Procedure Art. 49.03*.



KEY
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A judge must wait until law enforcement is finished with an investigation before directing the body to be moved, but law enforcement also may not move the body or the surroundings (unless it is an emergency like a car collision blocking a roadway) until getting permission from the judge. *Code of Criminal Procedure Arts. 49.05(c), (e)*.

Because of the need for the criminal investigation and inquest to move efficiently and effectively, it is a good idea to build a positive working relationship with local law enforcement agencies, so there is no confusion or conflict when the judge and agency have to work at the same death scene.

3. Interacting with Families

a. Can a Parent View Their Child's Body?

The short answer is yes. It is important to note that a parent under this section is any person who has established a parent-child relationship, even if the child is now an adult.

Once you assume control of the body during the inquest, the parents **must have your permission** to view, have contact with, remove a medical device, or alter the condition in any way of the child's body. Any of these actions must be supervised by the judge. *Code of Criminal Procedure Arts. 49.51, 49.52(a),(b).*



KEY
POINT

You may designate someone (like the staff at a hospital) to act on your behalf to supervise the viewing. That individual cannot be compensated by the commissioners court. *Code of Criminal Procedure Art. 49.52(d).*

Tips for Interacting with Families

"I call on my experience as a funeral director to ease families through the inquest process. These are my top four tips:

- **Speak in simple language to everyone involved.**
- **Explain everything to them.**
I tell them exactly what is going to happen to their loved one. If I am ordering an autopsy and why or why not, who will transport them to the Medical Examiner's Office, and why law enforcement is involved. Remember, if they are in shock you may have to explain it to them repeatedly.
- **Be patient.**
Grief affects everyone differently. Some people are very upset, and others are cool and calm. Just be patient if they need to vent let them vent.
- **Give everyone their private time.**
I allow every family the opportunity to view their loved one. I try to explain to them all about what they are going to see. If the body is going to be sent for autopsy, I explain that they are not allowed to touch the body. Sometimes if the body is going for autopsy, I will allow the family to touch the face only but give them their space to grieve with the body."

BJ Teer, Justice of the Peace, Hopkins County; Pct. 1

4. Mass Fatalities

Mass fatalities – or death scenes with multiple bodies – can happen anywhere for many different reasons such as a multi-vehicle collision, a small plane crash, and victims from flooding, or a mass shooting.



CLICK
HERE

[Online Mass Fatality Module from Texas A&M University](#)

Mass Fatality Planning

- *Do you have the resources needed?*
- *Who will transport the deceased? Do they have the vehicles and equipment needed?*
- *Will you need other funeral homes? Have you had a conversation with these funeral homes to assist with your plan if needed? Do you have refrigeration to hold the deceased, if needed? Can your Medical Examiner handle the number of deceased that you have, or do the deceased need to be split between multiple medical examiners?*

- Matt Kiely, Justice of the Peace who handled the hot air balloon crash of July 2016 in Caldwell County

C. Fetal Death

There may be times that a justice of the peace is called to a hospital or other location because a baby has died. Sometimes that child may be stillborn. If there was not a live birth, the law does not consider the child to have been “born,” and there would not be a birth certificate. Therefore, no death certificate would be required either because – technically, and as heartless as this may seem – there was no legal death. What would instead be required is a fetal death certificate. Registration of a fetal death is not required in Texas if the weight is under 350 grams or if the weight is unknown, the period of gestation is less than 20 completed weeks.



KEY
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The justice of the peace is usually not involved in fetal deaths, but they could still be called. For that reason, it is good to understand what qualifies as a live birth vs. a fetal death and when the judge would need to continue with an inquest.

1. When is a JP Involved in a Fetal Death?

Generally, the physician who delivers the baby will certify the death. However, a justice of the peace or medical examiner could still be called. An inquest will generally be requested if:

- The fetus is abandoned, and the cause and circumstances of the death are unknown;
- The death is believed to be due to an accident, suicide, or homicide;
- The death occurred in prison or jail;
- There is no attending physician;
- The attending physician is unable or unwilling to certify the cause of fetal death; **or**
- Circumstances of the fetal death are otherwise properly referable for an inquest.

If arrangements for disposition of the fetus are made through a funeral home, the funeral director should complete the fetal death certificate, with medical certification from the institution where the death occurred and the attending physician and/or justice of the peace if an inquest is conducted. Remember, the medical certification should be completed not later than five days after receiving the fetal death certificate. *Health and Safety Code § 193.002.*



CLICK
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DSHS has a handbook on Fetal Death Certification that can be found online: [DSHS Fetal Death Handbook](#).

2. Determining Fetal Death vs. Stillborn

To determine a fetal death, the length of the pregnancy does not matter. The death must happen prior to the complete “expulsion or extraction” from its mother – in other words, it must have occurred before labor or during labor or delivery.



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It is a “fetal” death if after separation, there is:

- *no breath, and*
- *no other evidence of life.*
 - *no beating of the heart,*
 - *no pulsation of the umbilical cord, or*
 - *no definite movement of voluntary muscles.*

25 Texas Administrative Code §181.1(10).

It is a “live birth” if after separation, the child:

- *Breathes, or*
- *shows any other evidence of life.*
 - *beating of the heart,*
 - *pulsation of the umbilical cord, or*
 - *definite movement of voluntary muscles.*

25 Texas Administrative Code §181.1(17).

These observations determine life regardless of whether the umbilical cord has been cut or the placenta is attached.



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If the judge is at the hospital interacting with the family of a stillborn child, the judge can notify them that there is a commemorative option that allows them to officially name the stillborn child. It is called a “Certificate of Birth Resulting in Stillbirth”. There is a fee, and the parents need to contact the office of vital statistics. They will need to complete form VS-301:



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The VS-301 Form can be found on the DSHS website: [VS-301 form](#)



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There are new laws that explain how fetal tissue must be disposed of. These laws are directed only at medical facilities. If the judge was called out to a miscarriage (which would not require an inquest because there was not a live birth), the judge has no obligation to ensure the fetal burial rule is followed. *Health and Safety Code Ch. 697.*

D. The Inquest Scene

1. Using Special Lighting in a Vehicle En Route to Scene

A justice of the peace operating a vehicle in the performance of inquest duties may equip the vehicle with mounted signal lamps that comply with Transportation Code § 547.702(c) or a signal lamp that is temporarily attached to the roof and flashes red and blue lights visible from at least 500 feet in normal sunlight. *Transportation Code § 547.752(a)*.

However, the lights cannot be used at all times when traveling to or from a scene. The lights may only be used when necessary to warn other vehicles or pedestrians of the approach of the vehicle. *Transportation Code § 547.752(b)*. For example, if there is a motor vehicle collision and the judge needs to bypass cars who are unable to move beyond the wreckage, the judge could use this lighting when passing these vehicles on the shoulder.

2. Protecting the Scene

If the scene needs to be protected for further investigation, the justice of the peace may lock and seal the premises. This is only an option if the property was under the “sole control” of the deceased. Only a peace officer may enter this scene after sealing. The deceased’s estate can be charged any rent, utility charges, taxes, or other reasonable costs while the property is under seal. It is a Class B misdemeanor to tamper with or remove the seal. *Code of Criminal Procedure Art. 49.22*.

3. What Should be Done with Items Found at the Scene?

The judge will find many items at a scene, from personal items to medication that may tend to show either the cause of the death or identity of the person who caused the death. The proper way to handle these items is to turn them over to the correct law enforcement agency for storage in their property room for safekeeping. *Code of Criminal Procedure Art. 49.17*.

Do not remove items and hold them at your office or otherwise dispose of them. What if there are dangerous items? Even dangerous items should be turned over to law



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enforcement who have special training and procedures in place to properly document and store evidence. Not turning the evidence over to law enforcement as required under the law could create liability for the judge and county. *Code of Criminal Procedure 49.17.*

4. Crimes That May Occur During an Inquest

It is a Class B misdemeanor to intentionally or knowingly “hinder” an inquest. Examples of this conduct include blocking access to an inquest scene or behaving in an unruly manner that keeps the justice of the peace from performing their inquest duty. *Code of Criminal Procedure Art. 49.06.*

Individuals who are required to notify a justice of the peace of an inquest ([see chart on page 10](#)) and intentionally fail to do so commit a Class C misdemeanor. *Code of Criminal Procedure Art. 49.07(d).* Cremating a body subject to an inquest without the certificate from the justice of the peace is a Class B misdemeanor. *Code of Criminal Procedure 49.09(d).* A justice of the peace may seal the premises of the inquest. It is a Class B misdemeanor for someone other than a peace officer to remove or tamper with this seal. *Code of Criminal Procedure Art. 49.22(d).*

5. Dealing With Death Scenes

Attending and viewing a death scene is a duty unique to justice courts. Situations where a judge arrives at a traffic collision to learn it is a friend or must speak with families at their darkest hour are not uncommon. The judge may need extra support to process the effects of these situations.

Tips on how to handle stressful situations from County Judge Bill Gravell, Williamson County (former justice of the peace):

- *Take note of your own mental health and know when you need to talk to someone.*
- *Have that someone to talk to - a fellow JP, your pastor, a therapist - someone other than your spouse who may be doing their best to understand and support you but may not be able to relate.*
- *Communicate with your staff. Let them know when you have had a particularly difficult inquest. Let them know it's ok to ask how you are doing. Everyone reacts to trauma differently and your mood could be affected, and your staff should know why.*



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For help and resources handling judicial related stress, please visit the State Bar of Texas' confidential Texas Lawyers Assistance Program. The program is open to all judges including non-attorneys:

Click here to visit the Texas Lawyers Assistance Program:

<https://www.tlaphelps.org/judges>

E. Inquest Hearings

The typical inquest is completed informally – the justice of the peace uses resources and information discussed in Chapter 5 to determine the cause and manner of death. But sometimes the inquest needs to be conducted formally – with a hearing. The choice to hold a hearing is up to the judge unless the District Attorney requests that one be held. *Code of Criminal Procedure Art. 49.14(a)*.

1. Formal Inquest Procedure Flowchart

[Click Here to Open the Formal Inquest Flowchart](#)

2. Formal Inquest Hearing Procedure

A jury may be summoned if the judge decides one is necessary (again, if the DA requests that one be called, then a jury must be called). The jury for an inquest should be composed of six people and summoned as any other jury would be in county court. *Code of Criminal Procedure Arts. 49.14(b), (c)*.

The hearing should be similar to most other hearings or trials in justice court – there will be witnesses and evidence. Any witness testifying should be sworn in, and the court may subpoena a witness to make sure they appear. The only people who may question the witnesses are the judge, the prosecutor, the person accused of causing the death (if applicable), or the accused's attorney. *Code of Criminal Procedure Arts. 49.14(e), (g), (h)*.

If someone is disrupting the proceedings, they may be held in contempt and removed by a peace officer. The fine for contempt during an inquest hearing is up to \$100.00. *Code of Criminal Procedure Art. 49.14(i).*

3. What if Someone is Suspected of Causing the Death?

While conducting an inquest, the judge may issue a warrant for the person suspected of causing the death if:

- The justice has knowledge that the person caused the death of the deceased;
- The justice receives an affidavit stating that the person caused the death; **or**
- Evidence is presented at an inquest hearing that shows probable cause to believe the person caused the death.

Code of Criminal Procedure Art. 49.19.

The warrant must be styled in the name of the State of Texas, identify the defendant, state the offense in plain language, and signed by the judge. A peace officer is to execute the warrant without delay and detain the suspect until a proper authority discharges them. *Code of Criminal Procedure Arts. 49.19, 49.20.*

After an inquest, a justice of the peace can commit a person suspected of contributing to or causing the death, require the person to post bail, and have that person report to the correct court to answer the charges. *Code of Criminal Procedure Art. 49.21.*



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How often are these tools used? Rarely if ever. Some inquest law is old-fashioned. Typically, any death that results in someone being charged with causing the death already has law enforcement and the prosecutor involved when the judge is performing the inquest. The law enforcement and prosecutor will generally handle warrants and arrests.

Chapter 5: Determining Cause and Manner of Death

Because an inquest is an independent investigation, the justice of the peace may use various resources to determine the cause and manner of death.

A. What Exactly are Cause and Manner of Death?

Manner of death is the category of death – natural, accident, suicide, homicide, or undetermined.

Cause of death is specifically how someone died. The World Health Organization also defines cause of death as “all those diseases, morbid conditions or injuries which either resulted in or contributed to death and the circumstances of the accident or violence which produced any such injuries.”

Usually there is not one single cause of death, but instead a chain of events or “underlying causes,” that lead up to the “immediate cause,” the specific condition or disease that happened right before the person’s death. This chain of events tells a story of how the death happened. There are not always underlying causes, or chains of events, but it is very common. Some examples of this are below.

Example 1: A woman who has breast cancer that ultimately spreads and causes her heart to stop.

- a. (Immediate cause) Deceased died of heart failure.
- b. (Underlying Cause) The cancer spread (metastases).
- c. (Underlying Cause) Deceased had breast cancer.

Top 5 Best Resources of Information to Determine Cause and Manner of Death

- medical records (even from their medical history),
- samples from the body,
- police and accident reports,
- friends and family statements (take your own!), **and**
- criminal records.

- David Cobos, Justice of the Peace, Midland County, Pct. 2

Example 2: A man who has asthma dies after inhaling smoke during the Possum Kingdom Wildfire.

- a. (Immediate Cause) asphyxia (suffocation).
- b. (Underlying Cause) smoke inhalation from Possum Kingdom Wildfire.



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What about his asthma? Well, his asthma wasn't an underlying cause, but rather an "other significant condition." These are things that contribute to a death but aren't part of the chain of events.

1. Resources for Determining Cause and Manner of Death

There are many resources available to help a justice of the peace determine the correct description (including medical terms) to include on the death certificate to describe cause and manner of death appropriately. Death certificates will be discussed further in [Chapter 7](#).

From Texas Department of State Health Services

[Texas Vital Statistics Handbook on Death Registration](#)

[TxEVER Guides and Videos](#)

From the Center for Disease Control

[Physicians' Handbook on Medical Certification of Death](#)

[ME and Coroners Handbook on Death Registration and Fetal Death Reporting](#)

[Improving Cause of Death Reporting](#)

From the World Health Organization

[Classification of Diseases \(ICD\)](#)

B. What is an Autopsy and When Should One be Ordered?

An autopsy is an examination of a dead body by a medical doctor to help determine cause and manner of death. An autopsy will give the judge medical information necessary to describe the cause and manner of death as is required on the death certificate. The official definition is: “a postmortem examination of the body of a person, including X-rays, and an examination of the internal organs and structures after dissection, to determine the cause of death or the nature of any pathological changes that may have contributed to the death.” *Code of Criminal Procedure Art. 49.01(1)*.

Generally, the decision to perform an autopsy is up to the justice of the peace conducting the inquest. If help is needed to determine if an autopsy should be ordered, the judge may consult a county health officer or a physician. If an expert is consulted, the commissioners will need to pay a reasonable fee to the doctor. *Code of Criminal Procedure Art. 49.10(a)*.

Once the decision is made regarding an autopsy, the justice of the peace shall either direct an autopsy to be performed or certify that an autopsy is not needed. *Code of Criminal Procedure Art. 49.10(c)*.

There are a few limitations on the judge’s discretion to order an autopsy. An autopsy **may not** be ordered if the person dies from a communicable disease during a health disaster, or if the person died from Asiatic cholera, bubonic plague, typhus fever, or smallpox. *Code of Criminal Procedure Art. 49.10(d)*.

An autopsy **must** be ordered if the prosecutor directs the judge to order one. An autopsy **must** be ordered for any death of a child younger than six if the death is unexpected or abuse or neglect is suspected. *Code of Criminal Procedure Art. 49.10(e)*. For more information on unexpected deaths of children, see [page 9](#) of this volume.



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A felony prosecutor may request a justice of the peace in another county to order an autopsy on a body of a person who died in that county but was injured in the prosecutor’s county. For example, a person could be injured in a car crash in one county and be transported and later die at a hospital in an adjoining county. If law enforcement or the prosecutor in the original county suspect the death was caused by injuries sustained in the crash and the crash resulted from another person’s criminally negligent or intentional



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conduct, they may request that an autopsy be performed to provide evidence in their case. The county where the injury occurred must cover the autopsy costs. *Code of Criminal Procedure Art. 49.10(o)*.



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A justice of the peace may only order an autopsy in a situation where they performed an inquest. Only individuals with expressed legal authority may order an autopsy. [Attorney General Opinion LO 97-101](#).

The commissioners court pays for the autopsy as well as any reasonable transportation fees for moving the body to the location for the autopsy to be performed. *Code of Criminal Procedure 49.10(g), (h)* and [Attorney General Opinion KP – 0083](#).

TJCTC has a form to order an autopsy under the Inquest Forms section on the forms page.

Autopsy Ordered		
Circumstances	Mandated?	Who Pays?
The judge's district attorney orders an autopsy	Yes	The judge's county
A district attorney from another county requests an autopsy	No	The other county
A child under 6 dies and the death is determined under <i>Family Code § 264.514</i> to be unexpected or the result of abuse or neglect	Yes	The judge's county
A child under 1 dies of SIDS	Yes	The judge's county-state reimburses \$500.00

1. Sudden Infant Death Syndrome (SIDS)

A death of a child under 12 months old must be reported to you immediately. If the child died suddenly or the cause of death is unknown, the judge must inform the parents that an autopsy must be performed. The judge must notify the parents of the autopsy results.

SIDS may be used as the cause of death and in those cases, the state shall reimburse the county for the autopsy costs. *Health and Safety Code §§ 673.003, 673.002.*

The executive commissioner of the Health and Human Services Commission must establish rules to define SIDS and outline the reimbursement process. *Health and Safety Code §§ 673.001(3), 673.002(b).*

The CDC has published a voluntary SIDS reporting form, which can also be a good tool for collecting information for the medical examiner as well. [CDC SIDS reporting form link.](#)

2. Death Related to Pregnancy

Health and Safety Code § 1001.241 requires the Department of State Health Services to post guidelines on its website, once they are determined, related to:

- Determining when toxicology screenings should be performed on someone whose death was related to pregnancy.
- Determining when an inquest is needed in maternal mortality cases.
- Completing death certificates related to pregnancy.

C. What if Testing is Needed, But Not a Full Autopsy?

The justice of the peace can direct a physician to test only fluid, tissue, or an organ to help determine cause and manner of death rather than perform a full autopsy.

The judge may also order chemical analysis from a chemist, toxicologist, pathologist, or other medical expert. This can be used to determine if the cause of death was by the “ingestion, injection, or introduction into the body of a poison or other chemical substance.” The justice of the peace **must** order this analysis if the doctor performing the autopsy requests it. The commissioner's court will pay the testing fees. *Code of Criminal Procedure Art. 49.11.*



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A justice of the peace may order a physician, qualified technician, paramedic, chemist, registered professional nurse, or licensed vocational nurse to take a blood sample of the decedent if:

- there is a motor vehicle collision and a driver who died as a result of the collision is suspected of driving while intoxicated (this would not apply if the driver survived);
or
- in any other situation when it is needed to confirm or determine the cause or manner of death. *Code of Criminal Procedure Art. 49.10(j).*

The University of North Texas Center for Human Identification’s (UNTCHI) Forensic Unit provides screening for, and DNA testing services of biological evidence related to criminal investigations. The laboratory currently has funding through the National Institute of Justice to process cases in Texas. This means that they are able to provide standard DNA testing services to law enforcement agencies in some North Texas counties at no charge. They are also able to do specialty testing services for law enforcement agencies statewide.

Click here to visit the UNTCHI’s Forensic Unit website: <https://www.unthsc.edu/center-for-human-identification/>

1. What if the Body is Unidentified?

A justice of the peace may order a laboratory test to determine the identity of a body. Also, “someone specially trained in identification work” could be ordered to complete tests to identify the body. If this is ordered, very specific information must be obtained (listed below). *Code of Criminal Procedure Arts. 49.10(k), (l).* Also, specific reporting requirements must be followed for unidentified bodies. See [page 52](#) for details.

A medical examination on an unidentified person must include the following information to enable a timely and accurate identification of the person:

Tip for Investigating the Role Prescription Drugs May Have in a Death

“A procedure I always follow at a scene if the death occurs in the home is to ask if the person was under the care of a doctor. If they are under the doctor’s care, I consult directly with the doctor and ask their opinion as to prognosis or any diseases present. Next, I examine any medications that they have been taking and count the number of pills and determine if there is a possibility that an excess amount have been taken. Then, I have a better idea if a toxicology screen is needed.”

– David Cobos, Justice of the Peace, Midland County; Pct. 2



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- all available fingerprints and palm prints,
- dental charts and radiographs (X-rays) of the person’s teeth,
- frontal and lateral facial photographs with scale indicated,
- notation and photographs, with scale indicated, of a significant scar, mark, tattoo, or item of clothing or other personal effect found with or near the body,
- notation of the ante-mortem medical conditions,
- notation of observations pertinent to the estimation of time of death, **and**
- precise documentation of the location of burial of the remains.

Code of Criminal Procedure Arts. 49.10(k), (l).

A medical examination on an unidentified person may also include the following information:

- full body radiographs (X-rays), **and**
- hair specimens with roots.



An unidentified body may not be cremated. *Code of Criminal Procedure Art. 49.09(e).*

A qualified forensic anthropologist may also be used to assist with an unidentified body. The anthropologist could help determine cause and manner of death. They must “attempt to establish whether the body or body part is of a human or animal, whether evidence of childbirth, injury, or disease exists, and the sex, race, age, stature, and physical anomalies of the body or body part.” *Code of Criminal Procedure Art. 49.10(n).*

D. Private Autopsies

When a justice of the peace determines that an autopsy is not necessary to complete an inquest, a deceased’s family or a physician may choose to have a private autopsy performed on the body of the deceased.

The justice of the peace, in limited circumstances, may become involved in this process in one of two ways. First, if a justice of the peace determines that an autopsy is not required, but a physician wishes to perform an autopsy, the physician may seek the authorization of the justice of the peace if he or she cannot contact a family member or guardian authorized to consent to the autopsy.

Second, if a family dispute exists regarding whether an autopsy should be performed, the family members objecting to the autopsy may file an objection with the justice of the peace. If an objection is filed, the autopsy may be authorized only if a majority of the family members, who are reasonably available, give their consent.

If the results of a private autopsy allow the justice of the peace to determine that reopening the inquest may reveal a different cause or different circumstances of death, the justice of the peace may reopen the inquest. The Code of Criminal Procedure does not describe a specific process for reopening an inquest. TJCTC recommends simply restarting the process from the beginning.

Re-opening an Inquest

There may be a time that you get information from a credible person, **and** you think the outcome may be different if re-investigated. You may reopen the inquest and take the latest information into consideration. *Code of Criminal Procedure Art. 49.041.*

E. Medical Records

The judge may review medical records and subpoena those records if they are not readily available. The judge may act on information from a credible source, which can mean asking family members and friends about the deceased. *Code of Criminal Procedure 49.08.*



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If a justice of the peace needs an EMS “run sheet” or similar document for an inquest, the proper way to obtain the document is by issuing a subpoena. [Attorney General Opinion DM 97-033](#).

1. What about HIPAA?

The HIPAA privacy rule protects individually identifiable health information about a person who has died for 50 years after the date of their death. However, the HIPAA privacy rule has special disclosure provisions related to information about deceased for certain purposes. An entity covered by HIPAA is allowed to release protected health information to coroners, medical examiners, and funeral directors. *See 45 CFR §§ 160.103, 164.512.* This means, a covered entity may release protected health information about a deceased person to the justice of the peace conducting an inquest.

If a covered entity is reluctant to give information regarding the deceased, the judge may want to use the Letter Requesting Medical Records form found on the TJCTC forms page in addition to a subpoena to explain the HIPAA exemption for coroners.

Chapter 6: Transportation, Burial, and Cremation

A. What Happens to the Body After the Inquest?

The justice of the peace is “in charge of the body,” so when it is time to decide where the body goes, the judge sends the body to the funeral home chosen by the next of kin. How do you know who is the correct person to make that decision? There is a list, in order of priority:

- Specific written directions from the deceased;
- The person designated in a written instrument signed by the deceased;
- The deceased's surviving spouse;
- Any one of the deceased's surviving adult children;
- Either one of the deceased's surviving parents;
- Any one of the deceased's surviving adult siblings;
- Any one or more of the duly qualified executors or administrators of the deceased's estate; **or**
- Any adult person in the next degree of kinship in the order named by law to inherit the estate of the deceased.

The right to decide what to do with the body passes to the next in line if a decision is not made either six days from being notified or by the 10th day after the death. *Health and Safety Code § 711.002.*

Any dispute among the people listed above as to who has right to control the disposition of the body must be resolved by a court with jurisdiction over probate proceedings for the person who died, regardless of whether or not those proceedings are ongoing.

Body Transportation: Permission to Move

If a family is not immediately available to make funeral arrangements, the decision on which funeral home the body will initially be transported to is made by the JP and cost of transferring the body is a cost to the county. Counties handle this in several ways: a rotation of funeral homes, a competitive bid process, or a designation of one funeral home who handles these cases. The family can later arrange to transport the body – at their expense – to their desired funeral home.



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A justice of the peace does not have jurisdiction to resolve these matters. *Health and Safety Code § 711.002(k)*.

1. Restrictions on Who Can Control Disposition of the Remains

A person listed above may not control disposition of the remains if:

- In connection with the person's death, they have been arrested for or have had an arrest warrant issued for a crime under Chapter 19 of the Penal Code that involves family violence against the decedent; **or**
- The decedent had filed an application for a protective order against the person or a protective order has been issued against the person, including a Magistrate's Order for Emergency Protection under Art. 17.292 of the Code of Criminal Procedure. *Health and Safety Code § 711.002(l)*.

2. What if No One Ever Claims the Body?

If no one in the list above claims the body after an inquest, the justice of the peace shall determine how the remains are buried. If there was no inquest and no next of kin as noted above, the county shall determine burial. *Health and Safety Code § 711.002*.



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The Anatomical Board of the State of Texas may have directives for the county to notify them if an unclaimed or pauper body is part of an inquest. If the judge is to notify them, the judge must follow their instruction to transport the body to allow the body to be used for the advancement of medical or forensic science. The judge should check with the county, or the Board, if they are unsure if this relationship exists. *Health and Safety Code § 691.023*.

If the justice of the peace determines the disposition of the remains, the costs of interment will be paid either by the deceased's estate or the county.

The justice of the peace has no role in deciding what happens with a pauper's burial. The commissioners court of each county shall pay for the burial or cremation of a pauper. *Health and Safety Code § 694.002(a)*.

a. What if There is No Next of Kin, but a Friend Wants to Claim the Body?

If no one in the next of kin list in Health and Safety Code § 711.002 claims the body, and an inquest was performed, then the justice of the peace is in charge of determining how the remains will be buried. However, the justice of the peace may release the body to someone who falls into the category of a “bona fide friend.”

In addition, if there is a bona fide friend claiming the body, then the judge does not have to notify the Texas Anatomical Board.

A bona fide friend means a person who is like one of the family, and does not include:

- an ordinary acquaintance,
- an officer, employee, or representative of the state, of a political subdivision, or of an institution having charge of a body not claimed for burial or a body required to be buried at public expense,
- an employee of an entity with which the deceased was associated, **or**
- a patient, inmate, or ward of an institution with which the deceased was associated (unless the friendship existed before the deceased entered the institution).

Additionally, a claimant alleging to be a bona fide friend or a representative of an organization to which the deceased belonged must present a written statement of the relationship under which the claimant qualifies as a bona fide friend or organization representative. *Health and Safety Code § 691.024.*

3. Costs of Transporting the Body

A county will be responsible for the transport costs of a body from the death scene to the autopsy if that autopsy was ordered as part of an inquest. However, the county is not authorized to pay the costs of transporting the body back to a funeral home and its final destination after the autopsy unless that body has not been claimed by next of kin, making the interment of the body the responsibility of the justice of the peace and the county.

[Attorney General Opinion KP – 0083](#); *Health and Safety Code §§ 691.023, 694.002, 711.002.*

The reason behind this is that the transportation to the location where the autopsy is performed furthers the justice of the peace’s duty to determine cause of death, so the commissioners court is authorized to fund it. Once the autopsy is complete, the transportation back to the funeral home for the body to be buried does nothing to further the determination of cause of death, and it has no purpose that the commissioners court can fund (*unless the justice of the peace and county are responsible for the burial*).

[Attorney General Opinion KP – 0083.](#)

As a practical matter, most counties have contracts with either a transport service or a particular funeral home to transport bodies from death scenes to the location where the autopsy will be performed.

“A commissioners court is authorized to pay the cost of transporting a body to its final destination following an autopsy ordered by a justice of the peace only if a body is not claimed for burial or is to be buried at public expense and if the Anatomical Board of the State of Texas does not require the body. Otherwise, the cost of transporting the body to its final destination is the responsibility of the person with the legal duty to inter the deceased, or that person's agent.” [Attorney General Opinion KP – 0083.](#)

B. What Paperwork is Needed to Transport the Body to a Funeral Home?

A “burial transit permit” is a state document that is required for a body to be removed from the state, cremated, or transported by common carrier in Texas. It is up to the funeral director to obtain the burial transit permit from the Local Registrar (**[which may be the justice of the peace, see page 47](#)**) or from the State Registrar electronically through the Vital Statistics Unit Texas Electronic Vital Events Registrar (TxEVER) system. The burial transit permit cannot be issued until a certificate of death is completed “in so far as possible.” *Texas Administrative Code Title 25, Part 1, Chapter 181, Rule 181.2(b)*.

View burial transit permits in TxEVER online: **[TxEVER site.](#)**



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C. Cremation

There are two situations that involve a justice of the peace and cremation: certification for cremation during an inquest and waiving a waiting period.

If a justice of the peace performs an inquest on a body, the death certificate must state if the body may be cremated. The certification must state that an autopsy was performed, or that an autopsy was not necessary. **A judge cannot make this certification if they did not perform an inquest.** The body cannot be cremated until a funeral home receives this death certificate and a cremation authorization form from the family. *Health and Safety Code § 716.051.*

TJCTC has a Cremation Authorization form under Inquest Forms on the forms page.

Cremation cannot occur until 48 hours after the death. However, if a party would like that waiting period waived, they must get it waived by the justice of the peace, the medical examiner, or another court having jurisdiction in the county where the death occurred. The justice of the peace is required to make this decision if they performed the inquest. *Health and Safety Code § 716.004(a).*

Each judge's office must have a written policy available for the public regarding procedures for a person to waive the 48-hour waiting period and how the judge will ensure to process the requests quickly. The policy must also address how to place a request both during and after business hours. *Health and Safety Code § 716.004.*

Cremation Order Requests

Some funeral homes ask the judge to sign off on **all** deaths prior to cremation – even if the judge did not perform an inquest initially.

This is often done so that if there was a death that **should** have been reported (say a broken hip from a fall, but the person was elderly, so the “accident” was missed) the judge may conduct an inquest.

If an inquest is needed, then the judge should proceed with the inquest.



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D. Organ Donation

Organ donation is called “organ procurement” in Texas law. Most inquests will not require any involvement with organ donation. If an inquest does involve organ donation, the first step is often a request from an organ donation organization. Some of the common organizations that a judge may hear from are: Texas Organ Sharing Alliance, Southwest Transplant Alliance, Unite 4 Life Partners, and Life Gift. After receiving the request, the justice of the peace may permit removal of the organs if: 1) it was a death requiring an inquest, and 2) proper consent is given (*described below*).



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It is the family’s decision to donate or not. The judge should follow their wishes and only hold back an organ if it is related to the death and needed for further investigation.

In general, the individuals who may consent to organ donation are as follows:

- **An agent of the deceased at the time of death who could have made an anatomical gift under Section 692A.004(2) immediately before the deceased's death;**
- **The spouse of the deceased;**
- **Adult children of the deceased;**
- **Parents of the deceased;**
- **Adult siblings of the deceased;**
- **Adult grandchildren of the deceased;**
- **Grandparents of the deceased;**
- **An adult who exhibited special care and concern for the deceased;**
- **The persons who were acting as the guardians of the person of the deceased at the time of death;**
- **The hospital administrator; and**
- **Any other person having the authority to dispose of the deceased's body.**

Health and Safety Code § 692A.009.



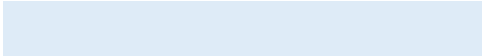
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What if someone was an organ donor and now the family refuses to donate?

Family dynamics and difficult personal decisions are common after someone’s death. The role of the justice of the peace is simply to process the inquest. There is no authority or reason to become involved with the family’s wishes. Those disputes are for other courts to handle if the disagreement goes that far. The consent laws can become even more complicated than noted above, so if this is an issue on an inquest, please also review Health and Safety Code §§ 692A.005 – 692A.010 and 693.003.

Three ways the donation can happen:

- **There was no autopsy** - the organs must be released in a timely manner to the requesting donation organization.
- **There was an autopsy and no organs need to be withheld** - the organs must be released in a timely manner to the requesting donation organization.
- **There was an autopsy - but it is not being performed by a medical examiner** (for example if a private pathologist was used) **and a justice of the peace decides to withhold an organ** – then the judge **must** be at the autopsy to request testing or deny donation of the organ. If donation is denied, the judge **must** make a written explanation to the donation organization and any consenting party listed above stating why they denied the donation of the organ. The person removing the organs in this case will need to prepare a report to file with the justice of the peace explaining the “condition of the organs removed and their relationship, if any, to the cause of death.” The same process is



*Consenting Party
Cannot be Located.*

If a person listed in Section 692A.009 cannot be identified and contacted within four hours after death is pronounced and the county court determines that no reasonable likelihood exists that a person can be identified and contacted during the four-hour period, the county court may permit the removal of a non-visceral organ or tissue.

"Visceral organ" means the heart, kidney, liver, or other organ or tissue that requires a patient support system to maintain the viability of the organ or tissue.

-Health and Safety Code § 693.003.



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followed if the initial request comes from a tissue bank or an eye bank for corneal tissue.

If the judge must oversee an autopsy because of an organ procurement organization request, the organ donation organization must pay up to \$1000 for the judge's time to oversee the autopsy. The funds will be deposited in the county general fund to offset the costs of this duty. *Health and Safety Code §§ 693.002(a)(5), (6).*

If the organs to be removed are eyes, only a licensed physician, a licensed doctor of dental surgery or medical dentistry, a licensed embalmer, or technician supervised by a physician who has completed specific training can remove them. *Health and Safety Code §§ 693.002, 693.006, 693.022.*



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The justice of the peace has immunity from civil liability for removal of an organ if the person who could have given permission under 692A.002 failed to object. *Health and Safety Code § 693.005.*

The revised Uniform Anatomical Gift Act provides a long list of definitions that apply to the law. Any terms that were necessary in this deskbook have been explained. For a full list of definitions, review the Health and Safety Code Section 692A.002.

1. Donate Life Organization Resources

Donate Life Texas is the official organ and tissue donor registry of Texas. The button below will take you to the various organizations that are available across the state of Texas.

[Click Here to Open the Organ Procurement Resource Chart](#)



CLICK
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More information about organ donation in Texas and additional resources may be found at the Donate Life Texas website: <https://www.donatelifetexas.org/>.

Chapter 7: Death Certificate and Other Records

A. What Records Need to be Kept?

The justice of the peace who performs an inquest is the official record keeper of that inquest. The first step is that a record **must** be made of the inquest. Each inquest must be given a case number that is clearly numbered and indexed with other inquests and records. These records are often requested from outside parties and other government officials.

Each record must include:

- a report of the events and proceedings,
- findings and conclusions of the inquest,
- any autopsy prepared in the case, **and**
- “all other papers of the case” (for example, often the judge takes photographs).



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An inquest record is subject to inspection by the public. This means if a citizen requests a copy, the court must provide it, unless there is a court order sealing the record. Under the common law right to privacy, certain personal information (social security numbers, driver’s license numbers, financial information, etc.) may be redacted from court case records before they are released to the requestor. *Government Code § 27.004(a)*.

A judge may **not** withhold an autopsy report from public inspection even if a prosecutor determines that its release could hinder a murder investigation. [*Attorney General Opinion JC-0542*](#). In this instance, the prosecutor would need to get the district court to seal the record.

What about HIPAA?

Another common misconception is that the Health Insurance Portability and Accountability Act (HIPAA) prohibits any medical information of any kind from being shared by anyone. The HIPAA rules apply to covered entities and business associates.

Individuals, organizations, and agencies that meet the definition of a covered entity under HIPAA must comply with the Rules' requirements to protect the privacy and security of

health information and must provide individuals with certain rights with respect to their health information.

If an entity does not meet the definition of a covered entity or business associate, it does not have to comply with the HIPAA rules. See definitions of “business associate” and “covered entity” at 45 CFR § 160.103.

Courts clearly do not meet the requirement of covered entities or business associates under the federal statutes and regulations; therefore, the HIPAA rules do not apply to them.

1. Are There Additional Records to Maintain if There is a Formal Hearing?

Yes. The record of a formal inquest hearing must include the type of information that would have occurred during the hearing. This includes:

- the name of the deceased person or, if the person is unidentified, a description of the body,
- the time, date, and place where the body was found,
- the time, date, and place where the inquest was held,
- the name of every witness who testified at the inquest,
- the name of every person who provided to the justice information pertinent to the inquest,
- the amount of bail set for each witness and person charged in the death,
- the transcript of the testimony given by each witness at the inquest hearing,
- the autopsy report, if an autopsy was performed, **and**
- the name of every person arrested as a suspect in the death who appeared at the inquest and the details of that person's arrest.

The commissioners court shall pay a reasonable fee to a person who records or transcribes sworn testimony during an inquest hearing. *Code of Criminal Procedure Art. 49.15.*

The justice court must keep a copy of the inquest summary report. *Code of Criminal Procedure Art. 49.15.*

B. How Long are Inquest Records Kept?

The short answer is that the records are maintained forever. The Texas State Library and Archives Commission is a state agency that provides records retention policies. These guides state what records need to be kept, for how long, and why.



CLICK
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Click here for the Local Government Retention Schedule LC: Records of Justice and Municipal Court.: <https://www.tsl.texas.gov/slrml/localretention#LC>.

More information can be found in Chapter 1 of the *Recordkeeping and Reporting Deskbook*.



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The justice of the peace is only responsible for inquest records. Burial records are the responsibility of the funeral home. *Health and Safety Code § 193.009*.

C. Death Certificates

A death certificate is required for every death. The person in charge of interment or removal of the body is responsible for generating the death certificate. This is usually the funeral home. The Justice of the Peace conducting the inquest will sign and date the death certificate or fetal death certificate and all orders that were part of the inquest. *Code of Criminal Procedure Art. 49.16, Health and Safety Code §§ 193.002, 193.005(e)*.

What kind of information is on the death certificate? Death certificates include information to identify the deceased as well as the cause and manner of death. The trickiest part of completing the death certificate can be figuring out exactly how to phrase and what to include in the cause of death. The cause of death, examples of how to list it, and resources can be found on [pages 24-25](#).

1. How Are Death Certificates Filed?

Death certificates are filed through the Texas Electronic Vital Events Registrar (TxEVER) system. This is a division of the Texas Department of State Health Services (DSHS) in the Texas Health and Human Services agency. The TxEVER system went live on January 1, 2019

to support all vital events operations, including reporting, registration, and amendments of births and deaths.

TxEVER is an electronic portal. A user must have specific clearance to access this and it is part of the responsibility of the justice of the peace to get this clearance. Specifically, only authorized individuals may access the vital statistics records. This requires a background check and fingerprinting. *Health and Safety Code § 191.071.*



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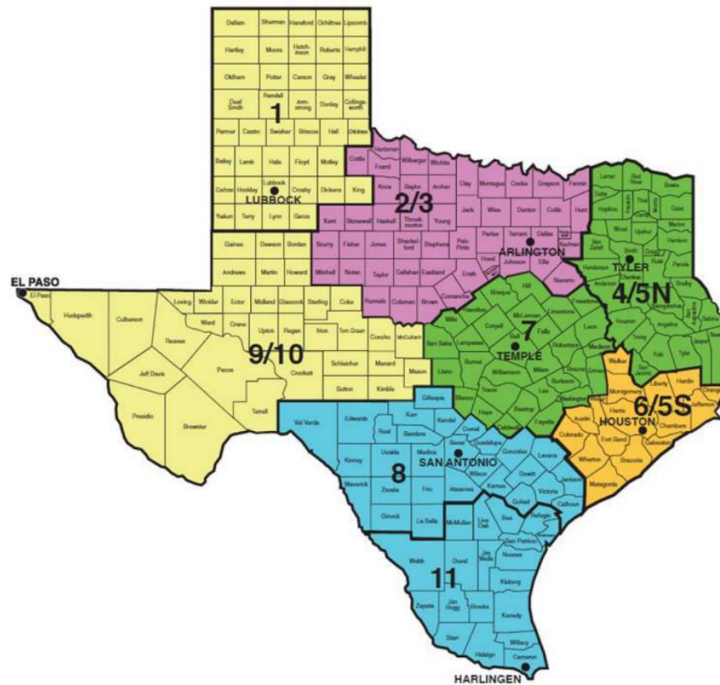
View [TxEVER online training and guides](#).

TxEVER Support	
For TxEVER support, first:	
<ol style="list-style-type: none">1. Contact your TxEVER local administrator2. Review TxEVER user and training guides3. <u>Contact Help Desk</u>	
Online: Submit Help Request	
Email: Help-TxEVER@dshs.texas.gov	
Phone: 1-888-963-7111	
At the prompt, press 1 for English, then press 2 for the TxEVER help desk.	
Call volumes are 15 minutes or less.	

DSHS, who operates TxEVER, also has field representatives who will provide training for justices of the peace and who are available to help with any difficulty or question the judge may have about death certificate reporting.

The representatives are assigned into different regions, depicted on the map below.

Texas Vital Statistics Field Services Region Map



Field Services Main Number: (512) 776-3010

Field Services Fax Number: (512) 776-7538

Field Services E-Mail Address: fieldservices@dshs.texas.gov



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View [contact information](#) for the Field Service Representative assigned to a particular area.

2. When and Where is the Death Certificate Filed?

The death certificate shall be completed not later than the 10th day after the death occurs. *Health and Safety Code § 193.003(a).*

If there is an inquest, the justice of the peace must complete the medical certificate portion of the death certificate not later than five days after receiving the death certificate. *Health and Safety Code § 193.005(e).*



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The judge may not have all the information necessary. They may file a death certificate as “pending” and then amend it later to complete the information.

The funeral home will file the death certificate with the local registrar (which may be the justice of the peace, see below) where:

- the death occurs, **or**
- the body is found, if the place of death is not known.

Health and Safety Code § 193.003.

The Texas Department of State Health Services (DSHS) makes sure death certificates include the information necessary to keep adequate records and collect important statistics on Texas deaths. This information includes proper entry of the date of death (month [*spelled-out*], day, year), social security number, and where the remains are located. The Department (or the justice of the peace, if they are a local registrar – see below) also makes sure these records are available to the public for a fee. *Health and Safety Code § 193.001.*

The judge shall make sure the personal information used to complete the death certificate is from someone who is competent and knows the facts. *Health and Safety Code § 193.004(a).* Medical information shall come from the personal attending physician if the death happened while under the care of that doctor. *Health and Safety Code §§ 193.004(a), 193.005.*



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View the [Handbook on Death Registration from the DSHS](#).

View the [TxEVER Justice of the Peace Training Toolkit](#).

3. Amending Death Certificates

Once the funeral home has completed the death certificate, the funeral home is responsible for any amendments that would be necessary. Additionally, the justice of the peace has no authority to order the funeral home to make modifications. The person requesting the amendments would need to go through Vital Stats. DSHS has published an [amendment form](#) for this purpose.

4. Fentanyl and Death Certificates

Effective September 1, 2023, if the circumstances indicate that fentanyl contributed to a death, the death certificate must reflect “fentanyl poisoning” or “fentanyl toxicity.” *Health*

and Safety Code § 193.005. The same bill also allows someone who provides fentanyl to someone which causes that person's death to be criminally charged with homicide. This does not impact the inquest process, though it may make it more likely that the prosecutor requests a full autopsy to be done ([see page 26](#)).

D. Local Registrar

Is the justice of the peace the precinct's local registrar for birth and death certificates?

The default is that the justice of the peace is the local registrar, however in most counties, the authority of the local registrar has been transferred to the county clerk with the agreement of the commissioners court. If this has occurred, the justice of the peace is not responsible for the local registrar duties. *Health and Safety Code § 191.022*.

There is a full discussion of all local registrar duties in the *Officeholding Deskbook*.

E. What if a Body is Never Found, but a Person is Missing?

1. Generally

If a person is missing or presumed dead, a justice of the peace will not issue the death certificate. A district judge must first declare the person dead based on evidence presented to their court. After a court order is issued, a county probate judge will then sign a Court-Ordered Delayed Certificate of Death. This order will then be filed with the local county clerk and the DSHS Vital Statistics Section. See the [DSHS Death Registration Handbook](#).

2. After a Natural Disaster or Other Major Accident

If a natural disaster or another type of incident happens, a certificate of death by catastrophe may be issued. These types of occurrences are floods, earthquakes, tornadoes, explosions, fires, and motor vehicle, train, or airplane crashes involving more than one person. For this type of death certificate to issue, there must be:

- an affidavit from an individual, **and**
- a written statement from the governmental authority that conducted the search.



If these two requirements are met, then the local registrar shall issue a certificate of death by catastrophe.

The person signing the affidavit must state that it has been 10 days since the person was last seen, and they were located at the scene of the catastrophe. The catastrophe must not have been caused by the affiant, and a government authority must have made a diligent search. The affiant must not know if the person is dead or alive and must have no reason to believe that anything other than the catastrophe killed the person. *Health and Safety Code § 193.010(a)*.



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"Catastrophe" means the occurrence of a substantial force that causes widespread or severe damage, injury, or loss of life or property and from which it is not reasonable to assume that a person could survive. *Health and Safety Code § 193.010(a)*.

Chapter 8: Reports to Other Agencies Related to Inquests

A. Injury Reporting

From the Texas Department of State Health Services:

“The mission of the Injury Epidemiology and Surveillance Branch is to improve the health of Texans by reducing morbidity and mortality resulting from unintentional and intentional injuries.

Our vision is to continually improve the surveillance of reportable events through the use of the EMS and Trauma Registries and other population-based data sources, assess Texas’ EMS and trauma care systems utilizing epidemiological principles and public health best practices, and to share knowledge through data dissemination, presentations, and reports for the benefit of public health.”



BEST
PRACTICE

Justices of the peace must submit certain injury reports. It is best practice to report monthly, but these reports **must** be made within 90 days of the death. The reporting must be made through the Texas EMS and Trauma Registries. Judges may serve as account managers or their duties may be assigned to staff, including data entry of reports. The login link is below. *Texas Administrative Code Title 25 Part 1 Chp.103 § 103.6.*



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View the [Texas EMS & Trauma Registries Webpage](#). Requests for accounts, questions, or customer service requests may be submitted to injury.web@dshs.texas.gov.

Reportable injuries are:

- **Submersion injuries:** The fatal process of experiencing respiratory impairment from submersion/immersion in liquid. *This is basically drowning. There is a specific reporting form for this type of death.*



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[View the reporting requirements and instructions for submersion deaths from DSHS.](#)

- **Traumatic brain injuries (TBI):** An acquired injury to the brain, including brain injuries caused by anoxia due to submersion incidents. *This could be a physical blow or hit to the head that caused death or a suffocation that prevented enough oxygen going to the brain and causing death, like drowning.*
- **Spinal cord injuries (SCI):** An acute, traumatic lesion of the neural elements in the spinal canal, resulting in any degree of sensory deficit, motor deficits, or bladder/bowel dysfunction. *This generally means the person was paralyzed in some way from the injury that killed them.*

Texas Administrative Code Title 25 Part 1 Chp.103 §§ 103.2, 103.4.

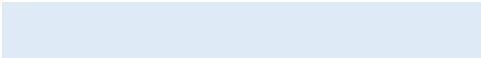
Some other definitions to help you understand what the DSHS is looking for:

Trauma: An injury or wound to a living body caused by the application of an external force, including but not limited to violence, burns, poisonings, submersion incidents, traumatic brain injuries, traumatic spinal cord injuries, and suffocations.

Significant trauma injuries: Other severely injured trauma patients whose injury meets the department’s inclusion criteria based on the data dictionaries and is admitted to a hospital inpatient setting for more than 48 hours, or died after receiving any evaluation or treatment, or was dead on arrival, or transferred into or out of a hospital.

Suspected case: A case in which an injury is assumed, but a diagnosis is not yet made.
Texas Administrative Code Title 25 Part 1 Chp.103 § 103.2.

View the [DSHS Justice of the Peace Resource Page.](#)



Injury Reporting

[DSHS Webinar for Injury Reporting Monthly Updates](#)

[DSHS Injury Reporting Helpful Links](#)



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B. TxDOT Reports

A report must be submitted to TxDOT by the 11th of every month indicating if any deaths were because of motor vehicle collision or a bridge collapse.

If there were no deaths, a report does not need to be made.

If there were deaths, then the report needs to include:

- the name of the deceased,
- if they were the passenger in the car or a pedestrian/outside of the car,
- the date of the collision,
- the name of the county (where the collision or bridge collapse occurred),
- the location of the bridge collapsed (if applicable),
- the name of any laboratory, medical examiner's office, or facility conducting toxicology testing related to the deceased, **and**
- the results of any toxicology testing.

Transportation Code §§ 550.081(b), (c)(1)-(4).



If toxicological lab results are not available by the date the report is due, you must state "toxicological test results unavailable" and submit a supplement to the report as soon as practicable once the lab results are available. *Transportation Code § 550.081(e).*

These reports help DPS collect data to determine if a stretch of highway is dangerous. Justices of the peace have noted that they have seen changes to their area roadways after reporting multiple deaths in the area.

These reports shall be made on a specific form (*see link below*) and sent to the Crash Records Bureau of DPS, or any other office that DPS designates. *Transportation Code § 550.081(d).* In this case, DPS has designated the Crash Data and Analysis Section of the Texas Department of Transportation (TxDOT).



The CR-1001 Reporting Form can be found on the TxDOT website here:

<https://www.txdot.gov/government/enforcement/crash-records.html>.

The form may be mailed to:

Texas Department of Transportation
Traffic Operations Division – Crash Data and Analysis Section
P.O. Box 149349
Austin, TX 78714

The form may also be emailed to TRF_FatalityData@txdot.gov.

C. Child Abuse

If a JP determines the death of a child was unexpected or the result of abuse or neglect you must **immediately** notify:

- an appropriate law enforcement agency, **and**
- the appropriate county child fatality review team of the child's death within 120 days of when the death was reported to the judge.

Family Code § 264.514(b).

D. Unidentified Person

A person or body is considered unidentified if the person's legal name is unknown and there is no known person with the duty to inter the remains under Health and Safety Code § 711.002(a). *Code of Criminal Procedure Art. 49.01(b).*

When investigating the death of an unidentified person, the judge must report the death to the Missing Persons Clearinghouse (MPCH) of DPS and the National Crime Information Center (NCIC) by the 10th working day after the investigation began. *Code of Criminal Procedure Art. 49.04(d).*

DPS requires a report on unidentified bodies. The report must include:

- the deceased's fingerprints,
- the deceased's hair color, eye color, height, weight, deformities, and tattoo marks, **and**
- other facts required for assistance in identifying the deceased.

Health and Safety Code § 193.005(f).



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The Missing Persons Clearinghouse (MPCH) will accept the report of the required information in email form at mpch@dps.texas.gov. They are also able to enter the information into NCIC on behalf of the justice of the peace. MPCH can be contacted via email or telephone at (512) 424-5074 with any questions. In addition to the required reporting, MPCH works in conjunction with the DPS Unidentified Persons/DNA Unit and the University of North Texas Center for Human Identification (UNTCHI) to assist in the identification of the unknown person. UNTCHI is also discussed on [page 29](#).

There are more resources, including forms, on the [MPCH page of the DPS website](#).

Additionally, a justice of the peace investigating a death of an unidentified person shall enter all available identifying features of the unidentified body (fingerprints, dental records, any unusual physical characteristics, and a description of the clothing found on the body) into the National Missing and Unidentified Persons System (NamUs). This report must be made no later than the 10th working day after the date that one or more identifying features of the unidentified body are determined, or the 60th day after the date the investigation began, **whichever is earlier**. *Code of Criminal Procedure Art. 49.04(e)*.

NamUs is administered and funded by the National Institute of Justice and managed through a cooperative agreement with UNTCHI. They provide an online clearinghouse, free forensic services, investigative support, victim services, and training and outreach services.



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More information about NamUs can be found on their website:

<https://www.namus.gov>. There is overlap in MPCH and NamUs, as they share information and resources.

E. Communicable Disease

"Communicable disease" means an illness that occurs through the transmission of an infectious agent or its toxic products from a reservoir to a susceptible host, either directly, as from an infected person or animal, or indirectly through an intermediate plant or animal host, a vector, or the inanimate environment. *Health and Safety Code § 81.003*.



If the judge conducts an inquest where they believe that the cause of death may be related to a communicable disease, they must immediately report it to the health authority in their county or the Texas Department of Health. *Health and Safety Code § 81.045(c)*.

View the [list of communicable and other diseases](#).

F. Suicide

A justice of the peace may – as either a “political subdivision (a county)” or if they are the local registrar – enter a “memorandum of understanding” with another authorized entity to share suicide data that does not name a deceased individual.

The shared data may include:

- the deceased’s date of birth, race or national origin, gender, and zip code of residence,
- any school or college the deceased was attending at the time of death,
- the suicide method used by the deceased,
- the deceased’s status as a veteran or member of the armed services, **and**
- the date of the deceased individual's death.

Health and Safety Code § 193.011(b).

The justice of the peace or their employee is not civilly or criminally liable for participating in this exchange of information if the deceased is not named. The justice of the peace is also not prohibited from sharing this data as authorized by other law. *Health and Safety Code §§ 193.011(e), (f)*.

The suicide data the justice of the peace receives or provides is not confidential. An authorized entity that receives suicide data under a memorandum of understanding authorized by this section may periodically release suicide data that does not name a deceased individual to an agency or organization with recognized expertise in suicide prevention. The agency or organization may use suicide data received by the agency or organization under this subsection only for suicide prevention purposes. *Health and Safety Code §§ 193.011(c), (d)*.

G. Aviation Accidents

All aviation accidents must be reported to The National Transportation Safety Board (NTSB). Accidents are defined as an occurrence associated with the operation of an aircraft that takes place between the time any person boards the aircraft with the intention of flight and all such persons have disembarked, and in which any person suffers death or serious injury, or in which the aircraft receives substantial damage. *See 49 CFR § 830.*



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This reporting may be completed by the operator of the aircraft (if there is one surviving), airport officials, law enforcement, or the justice of the peace. Like other reporting, the justice of the peace should coordinate with those involved to make sure the incident is reported properly.



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The regulations require that the NTSB be notified about aviation accidents. For detailed information on how to notify NTSB and to read the federal regulations, please see [the NTSB website](#).

Chapter 9: Fire Inquests

Fire inquests are extremely rare. The justice of the peace will become involved if they receive an affidavit made by a credible person that they think a building has been set on fire intentionally or unlawfully. The process is similar to a death inquest. Please see Code of Criminal Procedure, Chapter 50 for further reference.

Appendix of Cases

Attorney General Opinion LO 97-101(1997).

Attorney General Opinion KP – 0083(2016).

Attorney General Opinion DM 97-033 (1997).

Attorney General Opinion JC-0542 (2002).