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SENATE BILL 5270

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State of Washington

62nd Legislature

2011 Regular Session

By Senator Kline

Read first time 01/19/11. Referred to Committee on Judiciary.

1 AN ACT Relating to inquests for deaths involving a member of a law  
2 enforcement agency; amending RCW 36.24.020; adding a new section to  
3 chapter 36.24 RCW; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** It is the intent of the legislature to  
6 encourage counties to conduct an inquest into the causes and  
7 circumstances of any death within the state of Washington involving a  
8 member of any law enforcement agency while in the performance of his or  
9 her duties.

10 NEW SECTION. **Sec. 2.** A new section is added to chapter 36.24 RCW  
11 to read as follows:

12 (1)(a) The county prosecuting attorney shall inform the county  
13 executive, or in those counties where an elected county executive does  
14 not exist, the county coroner or medical examiner, whenever an  
15 investigation into a death involving a member of any law enforcement  
16 agency in the county is complete and shall also make a recommendation  
17 as to whether an inquest is advised under this section.

1 (b) The county executive, coroner, or medical examiner shall  
2 determine whether or not an inquest should be conducted.

3 (c)(i) When determining whether an inquest shall be conducted, the  
4 county executive, coroner, or medical examiner shall consider whether  
5 a decision to prosecute has been made; whether the death was the result  
6 of a condition existing prior to and/or apart from the police  
7 involvement; whether the deceased was in custody at the time of the  
8 death; whether the family of the deceased desire an inquest; and any  
9 other factor that touches on the connection between the manner of death  
10 and the actions of law enforcement.

11 (ii) If an inquest is to be held, the county executive, coroner, or  
12 medical examiner shall request that the county superior court or the  
13 district court conduct the inquest. If the superior court or the  
14 district court, as applicable, accepts the responsibility, the inquest  
15 shall be conducted in accordance with the procedures provided in  
16 subsection (2) of this section.

17 (2)(a) An inquest shall be held in a trial courtroom selected by  
18 the judge designated to conduct the inquest. The inquest shall be an  
19 open public hearing.

20 (b) The participating parties shall be:

21 (i) The family of the deceased, who may have an attorney present.

22 (ii) The person or persons involved in the death, if known, who may  
23 have an attorney present.

24 (iii) The employing government department or departments who may be  
25 represented by its/their statutory attorney or lawfully appointed  
26 designee.

27 (iv) The prosecuting attorney or designee whose role shall be to  
28 assist the court.

29 (c)(i) The court shall maintain the traditional judicial role of  
30 presiding over the inquest.

31 (ii) The court shall determine the scope of the issues to be  
32 inquired into at the inquest, after consultation with the participating  
33 parties.

34 (iii) The court shall determine who shall be called as witnesses,  
35 after consultation with the participating parties.

36 (d)(i) Discoverable material shall be exchanged among the judge,  
37 the prosecuting attorney, the attorney representing the person involved

1 in the death, the attorney representing the family of the deceased, and  
2 the attorneys for the participating parties.

3 (ii) Discovery materials are to be used solely by the attorneys for  
4 participation in the inquest. Discovery materials include the police  
5 investigative file of the incident that resulted in the death. They  
6 also include the report of the medical examiner, crime laboratory  
7 reports, and the names, addresses, and summaries and/or copies of  
8 statements of any witnesses obtained by any party.

9 (iii) In the event confidential materials in the possession of any  
10 person or agency are sought for use in the inquest, the court, upon a  
11 prima facie showing of necessity, relevancy, and lack of an alternative  
12 source for the materials, shall examine the materials in camera. The  
13 legal representative of the person or agency in possession of the  
14 materials shall have the right to participate in all proceedings which  
15 concern these materials.

16 (iv) Following an in camera review, the judge may order discovery  
17 of the materials if he or she finds that the interest sought to be  
18 protected by the claim of confidentiality is clearly outweighed by the  
19 interest of the requesting party in using the materials in the inquest.

20 (v) Protective orders may be used to limit discovery, and the court  
21 may order the return of all discretionarily ordered discovery.

22 (e)(i) The inquest shall commence within ninety days after  
23 designation of the inquest judge. The commencement date should not be  
24 extended unless the inquest judge finds good cause warranting  
25 extension.

26 (ii) One or more mandatory preinquest conferences shall be held at  
27 which all the participating parties shall be represented. The  
28 participating parties shall submit proposed voir dire questions, jury  
29 instructions and interrogatories, witness lists, and proposed narrative  
30 statements of background facts, and advise the judge of any other  
31 matters relating to the timely and efficient scheduling and  
32 administration of the inquest.

33 (iii) The judge shall prepare a preinquest order that schedules the  
34 date and length of the inquest, and decides any voir dire issues, the  
35 narrative statement of background facts, if the judge elects to make a  
36 statement under (i)(ii) of this subsection, jury instructions and  
37 interrogatories, which may be revised during the course of the inquest

1 as appropriate, the scope of the inquest, and any other matters  
2 relating to the timely and efficient scheduling and administration of  
3 the inquest.

4 (f)(i) Inquest jurors shall be selected from the regular superior  
5 court juror pool.

6 (ii) Voir dire shall be by the judge with questions submitted by  
7 the participating attorneys. There shall be no set limit to the number  
8 of jurors who may be excused by the judge.

9 (iii) Inquest jurors shall be allowed to submit questions in  
10 writing to the judge, who shall review such questions in camera with  
11 the participating parties. The judge shall determine whether or not  
12 the questions will be submitted to the witness and the manner of  
13 submission.

14 (g) The inquest proceedings shall be recorded, either  
15 electronically or by a court reporter.

16 (h) Electronic media participation, television cameras, and tape  
17 recorders shall be permitted only in accordance with code of judicial  
18 conduct 3. The Washington bench-bar-press principles and guidelines  
19 shall apply to inquests to the extent applicable.

20 (i)(i) There shall be no opening statements or closing arguments by  
21 counsel. The judge's introduction shall include an instruction in  
22 substantially the following form:

23 "You have been empaneled as members of a coroner's jury in this  
24 inquest. This is not a trial. The purpose of the inquest is to  
25 provide a public inquiry into the causes and circumstances surrounding  
26 the death of [decedent]. It is not the purpose of this inquest to  
27 determine the criminal or civil liability of any person or agency.  
28 Your role will be to hear the evidence and answer questions according  
29 to instructions given to you at the close of the proceedings.

30 The prosecuting attorney's role is solely to assist the court in  
31 presenting the evidence. This court has determined who will be called  
32 as witnesses and the issues which you will be asked to consider."

33 (ii) To focus the proceeding on the issues to be inquired into at  
34 the inquest, the judge's introduction may also include a narrative  
35 statement of background facts.

36 (j) The rules of evidence, as amended, shall apply at inquests.  
37 The judge shall not comment on the evidence.

1 (k) Witnesses shall be excluded from the courtroom upon request  
2 from any participating attorney, except any law enforcement officer or  
3 person whose actions are being reviewed, and at least one  
4 representative of the family of the deceased shall be allowed to remain  
5 in the courtroom during the entire proceeding.

6 (l)(i) The prosecuting attorney shall ordinarily conduct the  
7 initial examination of each witness, provided that the judge may  
8 determine that another attorney for a participating party may conduct  
9 the initial examination of a witness.

10 (ii) The attorney for the participating parties shall be allowed  
11 follow-up questions within the scope of the inquest.

12 (iii) The attorneys for the parties shall rotate the initial  
13 opportunity for follow-up questions.

14 The attorney representing the person involved in the death shall  
15 have the prerogative of first asking follow-up questions of such  
16 person, when desired. The attorney representing the family of the  
17 deceased shall have the prerogative of first asking follow-up questions  
18 of the family, when desired.

19 (m) Interrogatories to the jury must deal with questions of fact.  
20 They must not deal with questions of law, policy, or recommendations.  
21 The purpose of the interrogatories is to give the jury an opportunity  
22 to judge credibility and determine the significant factual issues  
23 involved in the inquest. To this end, it is expected that the jury  
24 will decide what actions occurred and, where appropriate, what the  
25 actors thought or knew. Interrogatories shall not answer whether any  
26 person or agency is civilly or criminally liable.

27 (n) The jury shall be given written instructions by the judge. The  
28 jury shall be told to indicate the number of yes/no findings for each  
29 interrogatory.

30 (o) At the conclusion of the inquest, the judge shall promptly  
31 transmit the jury's findings and its responses to interrogatories to  
32 the county executive or county legislative authority in those counties  
33 where no county executive exists.

34 **Sec. 3.** RCW 36.24.020 and 2009 c 549 s 4032 are each amended to  
35 read as follows:

36 ((Any)) (1) A coroner, in his or her discretion, may hold an  
37 inquest if the coroner suspects that the death of a person was

1 unnatural, or violent, or resulted from unlawful means, or from  
2 suspicious circumstances, or was of such a nature as to indicate the  
3 possibility of death by the hand of the deceased or through the  
4 instrumentality of some other person: PROVIDED, That, except under  
5 suspicious circumstances, no inquest shall be held following a traffic  
6 death.

7 (2) An inquest may be held pursuant to section 2 of this act by a  
8 county to investigate the causes and circumstances of any death within  
9 the county involving a member of a law enforcement agency while in the  
10 performance of his or her duties. Any inquest conducted under this  
11 subsection shall be conducted by the county executive, or in those  
12 counties in which an elected county executive does not exist, by the  
13 county coroner or medical examiner.

14 (3) The coroner, county executive, or medical examiner in the  
15 county where an inquest is to be convened pursuant to this chapter  
16 shall notify the superior court to provide persons to serve as a jury  
17 of inquest to hear all the evidence concerning the death and to inquire  
18 into and render a true verdict on the cause of death. Jurors shall be  
19 selected and summoned in the same manner and shall have the same  
20 qualifications as specified in chapter 2.36 RCW. The prosecuting  
21 attorney having jurisdiction shall be notified in advance of any such  
22 inquest to be held, and at his or her discretion may be present at and  
23 assist the coroner, county executive, or medical examiner in the  
24 conduct of the same. The coroner, county executive, or medical  
25 examiner may adjourn the inquest from time to time as he or she may  
26 deem necessary.

27 The costs of inquests shall be borne by the county in which the  
28 inquest is held.

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