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**SECOND SUBSTITUTE SENATE BILL 6204**

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**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Darneille, Hasegawa, Keiser, Nguyen, Stanford, Das, and Wilson, C.)

READ FIRST TIME 02/06/20.

1 AN ACT Relating to unexpected fatality reviews for persons in  
2 total confinement in the custody of the department of corrections;  
3 adding a new section to chapter 72.09 RCW; and adding a new section  
4 to chapter 43.06C RCW.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 72.09  
7 RCW to read as follows:

8 (1)(a) The department shall conduct an unexpected fatality review  
9 in any case in which the death of an incarcerated individual is  
10 unexpected, or any case identified by the office of the corrections  
11 ombuds for review.

12 (b) The department shall convene an unexpected fatality review  
13 team and determine the membership of the review team. The team shall  
14 comprise of individuals with appropriate expertise including, but not  
15 limited to, individuals whose professional expertise is pertinent to  
16 the dynamics of the case. The unexpected fatality review team shall  
17 include the office of the corrections ombuds or the ombuds' designee.  
18 The department shall ensure that the unexpected fatality review team  
19 is made up of individuals who had no previous involvement in the  
20 case.

1 (c) The primary purpose of the unexpected fatality review shall  
2 be the development of recommendations to the department and  
3 legislature regarding changes in practices or policies to prevent  
4 fatalities and strengthen safety and health protections for prisoners  
5 in the custody of the department.

6 (d) Upon conclusion of an unexpected fatality review required  
7 pursuant to this section, the department shall, within one hundred  
8 eighty days following the fatality, issue a report on the results of  
9 the review, unless an extension has been granted by the governor.  
10 Reports must be distributed to the appropriate committees of the  
11 legislature, and the department shall create a public web site where  
12 all unexpected fatality review reports required under this section  
13 must be posted and maintained. An unexpected fatality review report  
14 completed pursuant to this section is subject to public disclosure  
15 and must be posted on the public web site, except that confidential  
16 information may be redacted by the department consistent with the  
17 requirements of applicable state and federal laws.

18 (e) The department shall develop and implement procedures to  
19 carry out the requirements of this section.

20 (2) In any review of an unexpected fatality, the department and  
21 the unexpected fatality review team shall have access to all records  
22 and files regarding the person or otherwise relevant to the review  
23 that have been produced or retained by the agency.

24 (3) (a) An unexpected fatality review completed pursuant to this  
25 section is subject to discovery in a civil or administrative  
26 proceeding, but may not be admitted into evidence or otherwise used  
27 in a civil or administrative proceeding except pursuant to this  
28 section.

29 (b) A department employee responsible for conducting an  
30 unexpected fatality review, or member of an unexpected fatality  
31 review team, may not be examined in a civil or administrative  
32 proceeding regarding (i) the work of the unexpected fatality review  
33 team; (ii) the incident under review; (iii) his or her statements,  
34 deliberations, thoughts, analyses, or impressions relating to the  
35 work of the unexpected fatality review team or the incident under  
36 review; or (iv) the statements, deliberations, thoughts, analyses, or  
37 impressions of any other member of the unexpected fatality review  
38 team, or any person who provided information to the unexpected  
39 fatality review team relating to the work of the unexpected fatality  
40 review team or the incident under review.

1 (c) Documents prepared by or for an unexpected fatality review  
2 team are inadmissible and may not be used in a civil or  
3 administrative proceeding, except that any document that exists  
4 before its use or consideration in an unexpected fatality review, or  
5 that is created independently of such review, does not become  
6 inadmissible merely because it is reviewed or used by an unexpected  
7 fatality review team. A person is not unavailable as a witness merely  
8 because the person has been interviewed by, or has provided a  
9 statement for, an unexpected fatality review, but if the person is  
10 called as a witness, the person may not be examined regarding the  
11 person's interactions with the unexpected fatality review including,  
12 without limitation, whether the person was interviewed during such  
13 review, the questions that were asked during such review, and the  
14 answers that the person provided during such review. This section may  
15 not be construed as restricting the person from testifying fully in  
16 any proceeding regarding his or her knowledge of the incident under  
17 review.

18 (d) The restrictions set forth in this section do not apply in a  
19 licensing or disciplinary proceeding arising from an agency's effort  
20 to revoke or suspend the license of any licensed professional based  
21 in whole or in part upon allegations of wrongdoing in connection with  
22 an unexpected fatality reviewed by an unexpected fatality review  
23 team.

24 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.06C  
25 RCW to read as follows:

26 (1) The ombuds or the ombuds' designee shall serve as a member of  
27 the unexpected fatality review team convened under chapter 72.09 RCW.

28 (2) The department shall:

29 (a) Permit the ombuds or the ombuds' designee physical access to  
30 state institutions serving incarcerated individuals and state-  
31 licensed facilities or residences for the purposes of carrying out  
32 its duties under this chapter; and

33 (b) Upon the ombuds' request, grant the ombuds or the ombuds'  
34 designee the right to access, inspect, and copy all relevant  
35 information, records, or documents in the possession or control of  
36 the department that the ombuds considers necessary in an  
37 investigation.

1           (3) The office shall issue an annual report to the legislature on  
2 the status of the implementation of unexpected fatality review  
3 recommendations.

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