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**SUBSTITUTE SENATE BILL 6428**

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**State of Washington 57th Legislature**

**2002 Regular Session**

**By** Senate Committee on Judiciary (originally sponsored by Senators B. Sheldon, Johnson, Kline, Costa, McCaslin, Gardner, Long and Kohl-Welles; by request of Governor Locke and Attorney General)

READ FIRST TIME 02/08/2002.

1 AN ACT Relating to state agency loss prevention; adding new  
2 sections to chapter 43.41 RCW; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** The legislature intends that when the death  
5 of a person, serious injury to a person, or other substantial loss is  
6 alleged or suspected to be caused at least in part by the actions of a  
7 state agency, a loss prevention review shall be conducted. The  
8 legislature recognizes the tension inherent in a loss prevention review  
9 and the need to balance the prevention of harm to the public with state  
10 agencies' accountability to the public. The legislature intends to  
11 minimize this tension and to foster open and frank discussions by  
12 granting members of the loss prevention review teams protection from  
13 having to testify, and by declaring a general rule that the work  
14 product of these teams is inadmissible in civil actions or  
15 administrative proceedings.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.41 RCW  
17 to read as follows:

1       (1) The director of financial management shall appoint a loss  
2 prevention review team when the death of a person, serious injury to a  
3 person, or other substantial loss is alleged or suspected to be caused  
4 at least in part by the actions of a state agency, unless the director  
5 in his or her discretion determines that the incident does not merit  
6 review. When the director decides not to appoint a loss prevention  
7 review team he or she shall issue a statement of the reasons for the  
8 director's decision. The statement shall be made available on the web  
9 site of the office of financial management. The director's decision  
10 pursuant to this section to appoint or not appoint a loss prevention  
11 review team shall not be admitted into evidence in a civil or  
12 administrative proceeding.

13       (2) A loss prevention review team shall consist of at least three  
14 but no more than five persons, and may include independent consultants,  
15 contractors, or state employees, but it shall not include any person  
16 employed by the agency involved in the loss or risk of loss giving rise  
17 to the review, nor any person with testimonial knowledge of the  
18 incident to be reviewed. At least one member of the review team shall  
19 have expertise relevant to the matter under review.

20       (3) The loss prevention review team shall review the death, serious  
21 injury, or other incident and the circumstances surrounding it,  
22 evaluate its causes, and recommend steps to reduce the risk of such  
23 incidents occurring in the future. The loss prevention review team  
24 shall accomplish these tasks by reviewing relevant documents,  
25 interviewing persons with relevant knowledge, and reporting its  
26 recommendations in writing to the director of financial management and  
27 the director of the agency involved in the loss or risk of loss within  
28 the time requested by the director of financial management. The final  
29 report shall not disclose the contents of any documents required by law  
30 to be kept confidential.

31       (4) Pursuant to guidelines established by the director, state  
32 agencies must notify the office of financial management immediately  
33 upon becoming aware of a death, serious injury, or other substantial  
34 loss that is alleged or suspected to be caused at least in part by the  
35 actions of the state agency. State agencies shall provide the loss  
36 prevention review team ready access to relevant documents in their  
37 possession and ready access to their employees.

1        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 43.41 RCW  
2 to read as follows:

3        (1) The final report from a loss prevention review team to the  
4 director of financial management shall be made public by the director  
5 promptly upon receipt, and shall be subject to public disclosure. The  
6 final report shall be subject to discovery in a civil or administrative  
7 proceeding. However, the final report shall not be admitted into  
8 evidence or otherwise used in a civil or administrative proceeding  
9 except pursuant to subsection (2) of this section.

10       (2) The relevant excerpt or excerpts from the final report of a  
11 loss prevention review team may be used to impeach a fact witness in a  
12 civil or administrative proceeding only if the party wishing to use the  
13 excerpt or excerpts from the report first shows the court by clear and  
14 convincing evidence that the witness, in testimony provided in  
15 deposition or at trial in the present proceeding, has contradicted his  
16 or her previous statements to the loss prevention review team on an  
17 issue of fact material to the present proceeding. In that case, the  
18 party may use only the excerpt or excerpts necessary to demonstrate the  
19 contradiction. This section shall not be interpreted as expanding the  
20 scope of material that may be used to impeach a witness.

21       (3) No member of a loss prevention review team may be examined in  
22 a civil or administrative proceeding as to (a) the work of the loss  
23 prevention review team, (b) the incident under review, (c) his or her  
24 statements, deliberations, thoughts, analyses, or impressions relating  
25 to the work of the loss prevention review team or the incident under  
26 review, or (d) the statements, deliberations, thoughts, analyses, or  
27 impressions of any other member of the loss prevention review team, or  
28 any person who provided information to it, relating to the work of the  
29 loss prevention review team or the incident under review.

30       (4) Any document that exists prior to the appointment of a loss  
31 prevention review team, or that is created independently of such a  
32 team, does not become inadmissible merely because it is reviewed or  
33 used by the loss prevention review team. A person does not become  
34 unavailable as a witness merely because the person has been interviewed  
35 by or has provided a statement to a loss prevention review team.  
36 However, if called as a witness, the person may not be examined  
37 regarding the person's interactions with the loss prevention review  
38 team, including without limitation whether the loss prevention review  
39 team interviewed the person, what questions the loss prevention review

1 team asked, and what answers the person provided to the loss prevention  
2 review team. This section shall not be construed as restricting the  
3 person from testifying fully in any proceeding regarding his or her  
4 knowledge of the incident under review.

5 (5) Documents prepared by or for the loss prevention review team  
6 are inadmissible and may not be used in a civil or administrative  
7 proceeding, except that excerpts may be used to impeach the credibility  
8 of a witness under the same circumstances that excerpts of the final  
9 report may be used pursuant to subsection (2) of this section.

10 (6) The restrictions set forth in this section shall not apply in  
11 a licensing or disciplinary proceeding arising from an agency's effort  
12 to revoke or suspend the license of any licensed professional based in  
13 whole or in part upon allegations of wrongdoing in connection with the  
14 death, injury, or other incident reviewed by the loss prevention review  
15 team.

16 (7) Within one hundred twenty days after completion of the final  
17 report of a loss prevention review team, the agency under review shall  
18 issue to the office of financial management a response to the report.  
19 The response will indicate (a) which of the report's recommendations  
20 the agency hopes to implement, (b) whether implementation of those  
21 recommendations will require additional funding or legislation, and (c)  
22 whatever other information the director may require. This response  
23 shall be considered part of the final report and shall be subject to  
24 all provisions of this section that apply to the final report,  
25 including without limitation the restrictions on admissibility and use  
26 in civil or administrative proceedings and the obligation of the  
27 director to make the final report public.

28 (8) Nothing in section 2 of this act or this section is intended to  
29 limit the scope of a legislative inquiry into or review of an incident  
30 that is the subject of a loss prevention review.

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