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**SUBSTITUTE SENATE BILL 6204**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Senate Human Services, Reentry & Rehabilitation (originally sponsored by Senators Darneille, Hasegawa, Keiser, Nguyen, Stanford, Das, and Wilson, C.)

AN ACT Relating to prisoner fatality and near fatality reviews for persons in the custody of the department of corrections; adding a new section to chapter 72.09 RCW; and adding a new section to chapter 43.06C RCW.

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

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

(1)(a) The department shall conduct a prisoner fatality review in the event of a fatality of any person in the custody of the department.

(b) The department shall convene a prisoner fatality review team and determine the membership of the review team. The team shall comprise of individuals with appropriate expertise including, but not limited to, individuals whose professional expertise is pertinent to the dynamics of the case, a law enforcement officer with investigative experience, and a representative from a county or state health department. The prisoner fatality review team shall include the office of the corrections ombuds or the ombuds' designee. The department shall ensure that the fatality review team is made up of individuals who had no previous involvement in the case.

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

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

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

(2)(a) In the event of a near fatality of a prisoner in the custody of the department, the department shall promptly notify the office of the corrections ombuds. The department may conduct a review of the near fatality at its discretion or at the request of the office of the corrections ombuds.

(b) For purposes of this section, "near fatality" means an act that, as certified by a physician, places the prisoner in serious or critical condition.

(3) In any review of a prisoner fatality or near fatality, the department and the fatality review team shall have access to all records and files regarding the person or otherwise relevant to the review that have been produced or retained by the agency.

(4)(a) A prisoner fatality or near fatality review completed pursuant to this section is subject to discovery in a civil or administrative proceeding, but may not be admitted into evidence or otherwise used in a civil or administrative proceeding except pursuant to this section.

(b) A department employee responsible for conducting a prisoner fatality or near fatality review, or member of a prisoner fatality or near fatality review team, may not be examined in a civil or administrative proceeding regarding (i) the work of the prisoner fatality or near fatality review team; (ii) the incident under review; (iii) his or her statements, deliberations, thoughts, analyses, or impressions relating to the work of the prisoner fatality or near fatality review team or the incident under review; or (iv) the statements, deliberations, thoughts, analyses, or impressions of any other member of the prisoner fatality or near fatality review team, or any person who provided information to the prisoner fatality or near fatality review team relating to the work of the prisoner fatality or near fatality review team or the incident under review.

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

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

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

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

(2) The department shall:

(a) Allow the ombuds or the ombuds' designee to communicate privately with any prisoner in the custody of the department, or any prisoner who is part of a near fatality investigation by the department, for the purposes of carrying out its duties under this chapter;

(b) Permit the ombuds or the ombuds' designee physical access to state institutions serving prisoners and state-licensed facilities or residences for the purposes of carrying out its duties under this chapter; and

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

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

(4) For purposes of this section, "near fatality" means an act that, as certified by a physician, places the prisoner in serious or critical condition.

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