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**HOUSE BILL 2473**

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**State of Washington 68th Legislature 2024 Regular Session**

**By** Representatives Farivar, Fosse, Walen, Thai, Macri, Peterson, Pollet, Kloba, Nance, Ramel, and Davis

AN ACT Relating to transparency, public safety, and independent oversight of the city, county, and regional jail system in Washington state; amending RCW 70.48.510; and adding a new chapter to Title 43 RCW.

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

NEW SECTION. **Sec.**  LEGISLATIVE FINDINGS. The legislature finds that independent oversight of correctional systems encourages public trust, supports safe and humane conditions for correctional employees and incarcerated people, enhances public safety, and promotes reform towards more rehabilitative and therapeutic correctional systems.

The legislature established the joint legislative task force on jail standards to study and make recommendations regarding jail conditions and oversight. This act reflects many of the findings and recommendations of that task force, whose members represented the senate and house of representatives, prosecutors, defense attorneys, law enforcement, courts, jail administrators, counties and cities, medical and mental health services providers, persons with lived experience, and others interested in the operation of jails.

The legislature further finds that the jail system has a significant impact on the people of Washington. In 2022, more than 130,000 people were booked into Washington jails and that, on any given day in 2022, more than 8,000 people were detained in Washington jails.

Until 1987, Washington jails were overseen by the Washington corrections standards board. This body was eliminated over the opposition of stakeholders including jail administrators, advocates, and the department of corrections.

The legislature further finds that an increasing number of states are establishing independent oversight of their correctional systems. At least 29 states have established independent correctional oversight to promote transparency and improve their correctional systems. Washington has already established independent oversight of juvenile detention facilities and state prisons.

The legislature declares that oversight and transparency are integral components of Washington state government, and data collection is one essential tool to allow the public, correctional administrators and staff, and policymakers to analyze existing practices. Independent oversight and data-driven decision-making help identify and solve problems and make the government accountable to the people of Washington state.

Therefore, the legislature resolves to establish independent oversight of Washington's jail system to ensure transparency, support safe and humane conditions for jail employees and incarcerated individuals, promote reform towards a more rehabilitative and therapeutic jail system, reduce jails' exposure to litigation, and promote cost savings.

NEW SECTION. **Sec.**  DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means the jail oversight board.

(2) "Director" means the director of the jail oversight board.

(3) "Health care information" has the same meaning as in RCW 70.02.010.

(4) "Health care provider" has the same meaning as in RCW 70.02.010.

(5) "Incarcerated individual" means a person committed to the custody of a jail, including but not limited to persons residing in a jail and persons released from such facility on furlough, work release, or community custody, and persons received from another state, state agency, county, federally recognized tribe, federal jurisdiction, or other entity or jurisdiction.

(6) "Jail" means any holding, detention, special detention, or correctional facility as defined in RCW 70.48.020.

(7) "Jail administrator" means a city or county department of corrections or chief law enforcement officer responsible for the operation of a jail pursuant to RCW 70.48.090.

NEW SECTION. **Sec.**  CREATION OF BOARD—PURPOSE. Subject to the availability of funds appropriated for this specific purpose, there is hereby created the jail oversight board within the office of the governor to ensure transparency and independent oversight of Washington's jail system, support safe and humane conditions for jail employees and incarcerated individuals, and promote reform towards a more rehabilitative and therapeutic jail system.

NEW SECTION. **Sec.**  APPOINTMENT AND REMOVAL OF BOARD MEMBERS. (1) The board shall be composed of five members as follows:

(a) One person who is a current or former jail administrator;

(b) One person who is a current or former medical provider familiar with the needs of patients who have experienced incarceration and has not been employed by a state or county correctional or law enforcement agency in the last 10 years;

(c) One person who is a current or former behavioral health service provider familiar with the needs of patients who have experienced incarceration and has not been employed by a state or county correctional or law enforcement agency in the last 10 years;

(d) One person with lived experience being incarcerated in a Washington jail; and

(e) One person who is a licensed attorney with a background in investigating or advocating matters related to enhancing Washington jail practices or conditions and has not been employed by a state or county correctional or law enforcement agency in the last 10 years.

(2) Members shall be appointed by the governor. One of the initial members of the board shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years. Successors to the initial members shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom the individual succeeds.

(3) Members shall be eligible for reappointment.

(4) The board shall elect a chair and vice chair from among its members.

(5) A vacancy on the board shall be filled by similar appointment for the remainder of the unexpired term, with the remaining members exercising all powers of the board during the period of vacancy.

(6) Any member of the board may only be removed by the governor for neglect of duty, misconduct, or the inability to perform duties, after being given a written statement of the charges and an opportunity to be heard at a public hearing thereon.

NEW SECTION. **Sec.**  ADVISORY COUNCILS. The board has the power to create such advisory councils as, in its judgment, will advise and support the work of the board. Such a council or councils may include currently and formerly incarcerated individuals and their families, jail administrators of urban and rural jails from east and west of the crest of the Cascade mountains, jail employees, individuals from a historically underrepresented community or communities, representatives from law enforcement, advocates for a more rehabilitative and therapeutic jail system, victims' advocates, prosecutors, defense attorneys, judicial officers, and others involved with or interested in the operation of local jails.

NEW SECTION. **Sec.**  COMPENSATION AND REIMBURSEMENT FOR BOARD AND ADVISORY COUNCILMEMBERS. (1) Members of the board shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for their travel expenses incurred in the performance of their duties in accordance with RCW 43.03.050 and 43.03.060.

(2) Members of any advisory council appointed by the board shall be compensated in accordance with RCW 43.03.220 and shall be reimbursed for their travel expenses incurred in the performance of their duties in accordance with RCW 43.03.050 and 43.03.060.

NEW SECTION. **Sec.**  BOARD DIRECTOR. (1) Subject to the availability of funds appropriated for this specific purpose, the governor shall appoint a full-time director from a list of no fewer than three nominees submitted by the board unless the governor declines to select any of the candidates provided, in which case the governor may request additional candidates from the board or suggest candidates to the board for consideration.

(2) The director shall be a person of recognized judgment, integrity, and independence.

(3) The director shall hold office for a term of five years and shall continue to hold office until reappointed or until the appointment of their successor. The director may only be removed by the governor for neglect of duty, misconduct, or the inability to perform duties. Any vacancy must be filled by similar appointment for the remainder of the unexpired term.

(4) The director reports directly to the board.

(5) Subject to the appropriation of funds by the legislature, the director shall employ staff and make other expenditures necessary to complete the purposes of this chapter.

NEW SECTION. **Sec.**  POWERS AND DUTIES OF THE BOARD. (1) The board shall meet not less than once each quarter to make recommendations, receive reports from the director, and transact business properly brought before the board.

(2) The board or its staff shall:

(a) Establish priorities for use of the limited resources available to the board;

(b) Maintain a website, mailing address, toll-free telephone number, and a collect telephone number for the receipt of complaints and inquiries and the sharing of information;

(c) Administer a statewide uniform jail reporting system for the collection and reporting of information relating to jails;

(d) Maintain a database that is publicly searchable, machine readable, exportable, and accompanied by a complete plain language dictionary of information maintained in the statewide uniform jail reporting system;

(e) Monitor each jail in Washington state at least once every three years to monitor and report on jail compliance with applicable state and federal legal and constitutional requirements, rules, regulations, policies, and best practices related to the health, safety, welfare, and reentry of incarcerated individuals;

(f) Write and publish reports within two months of such monitoring visits that shall include nonidentifiable case studies or other information necessary to support any findings and any written response from a jail administrator or their designee to such reports;

(g) Serve as a member of all unexpected fatality review teams convened under RCW 70.48.510;

(h) Investigate and report on specific and systemic issues relating to jails including issues and trends identified through monitoring, complaints, fatality reviews, and the statewide uniform jail reporting system;

(i) Provide technical assistance and consultation including informational support to jail administrators or their designees;

(j) Share information with jail administrators or their designees regarding individual complaints or concerns within the discretion of the director or their designee and with the consent of the complainant;

(k) Provide public comment and testimony, write and issue reports and recommendations, share information, and make recommendations for statutory changes as appropriate to effectuate the purposes of this chapter;

(l) Adopt rules, policies, and procedures necessary to implement this chapter; and

(m) Submit an annual report to the governor and the legislature, in compliance with RCW 43.01.036, that includes a statement of actions taken by the board for the preceding year, and recommendations for any statutory changes that the board deems necessary or desirable to accomplish the purposes of this chapter.

(3) The board is not required to investigate complaints or notify complainants of decisions or actions taken in response to a complaint. This chapter does not require incarcerated individuals to file a complaint with the board in order to exhaust available remedies for the purpose of the prison litigation reform act of 1995, P.L. 104-134.

NEW SECTION. **Sec.**  STATEWIDE UNIFORM JAIL REPORTING SYSTEM. (1) The board shall develop and administer a statewide uniform jail reporting system for the reporting and dissemination of jail data. Such data may include but is not limited to information relating to: Medical, mental health, or dental care; operational policies; population trends and capacity; commissary, visitation, or telecommunications; discipline; grievance procedures; use of force and assault incidents; deaths in custody; self-harm and suicidality; staffing, training, or supervision; programming and reentry services; substance use disorder services; restrictive housing; and incidents of sexual assault and harassment.

(2) The board shall consult with interested stakeholders including jail administrators to develop the uniform jail reporting system.

(3) The board may, consistent with its general authority and this chapter, provide assistance to jail administrators to develop new sources of data and to compile and effectively report data.

(4) The board may collaborate, consult, or contract with outside entities in implementing the uniform jail reporting system.

NEW SECTION. **Sec.**  ACCESS TO FACILITIES, INCARCERATED INDIVIDUALS, AND INFORMATION. (1) The director and the director's designees shall have:

(a) Reasonable access to all areas of jails accessible to or used by incarcerated individuals. Access by such individuals may be subject to reasonable security and background investigation requirements of the jail, provided that such access shall not be unreasonably withheld. Denial of access to such individuals with lived experience, including conviction or incarceration histories, who do not present active security concerns, shall be deemed unreasonable. Further, any initial background investigation of an individual under this section must be completed within 48 hours, and any subsequent investigation of the same individual must be performed promptly and shall not result in a delay of more than two hours;

(b) Reasonable opportunity to survey or interview privately and confidentially any incarcerated individual, jail employee, or other persons by mail, telephone, and in person;

(c) The ability to make audio and visual recordings of areas of jails accessible to or used by incarcerated individuals, provided that such visual recordings shall not depict the location or angles of security cameras; and

(d) The right to access, inspect, and copy any information, records, or documents in the possession or control of jail administrators, their agents, or a state or local government agency that the board considers necessary to carry out its purpose or to support its recommendations.

(2) Following a written demand from the director or the director's designees for access to information, records, or documents, the entity from whom information is requested must provide the information not later than 20 business days after the written demand. Where information pertains to a death, threats of bodily harm including, but not limited to, sexual or physical assaults, or the denial of necessary medical treatment, the information shall be provided within five days.

(3) A jail administrator or their designee shall provide a written response to a monitoring report issued by the board within one month of receiving the report.

(4) A jail administrator or their designee shall provide accurate, complete, and timely information and data for the uniform jail reporting system.

NEW SECTION. **Sec.**  INFORMATION PROTECTION AND DISCLOSURE. (1) The board is a "health oversight agency" so that the federal health insurance portability and accountability act and chapter 70.02 RCW do not preclude jails, health care providers, or others from providing the information required by this section when requested by the board and, pursuant to these laws, jails, health care providers, and others are not required to seek or obtain consent from incarcerated individuals prior to providing the information required by this section in accordance with the requirements of this section.

(2) The information required by this section, when provided by a jail, health care provider, or other entity, becomes property of the board and is subject to all state and federal laws governing the confidentiality and disclosure of the files, records, and information maintained by the board. Information in the possession of the board shall be protected or disclosed according to state and federal law to the same extent as is required of the entity from whom the files, records, or information was received, including jails and providers of medical, mental health, and behavioral health services except as provided in this section.

(3) The board shall maintain the confidentiality of all matters under investigation, complaints, and the identities of complainants, informants, or witnesses except so far as disclosures may be determined necessary by the director or their designees to enable the board to carry out its duties or to support its recommendations. Such information shall be exempt from public disclosure under chapter 42.56 RCW.

(4) Neither the board or an employee of the board may be compelled, in any judicial or administrative proceeding, to testify or to produce evidence regarding the exercise of the official duties of the board or its employees. All related memoranda, work product, notes, and case files of the board are confidential, are not subject to discovery, judicial or administrative subpoena, or other method of legal compulsion, and are not admissible in evidence in a judicial or administrative proceeding.

(5) Nothing in this section shall prevent the board from publishing a report or database which maintains the confidentiality of the identities of incarcerated individuals.

(6) Nothing in this section shall prevent the board from reporting the results of an investigation which maintains the confidentiality of the identities of incarcerated individuals to responsible investigative or enforcement agencies should an investigation reveal information concerning a jail, its staff, or agents warranting possible sanctions or corrective action. Such information may be reported to agencies responsible for facility licensing or accreditation, employee discipline, employee licensing or certification, law enforcement, or criminal prosecution.

NEW SECTION. **Sec.**  CIVIL IMMUNITY—RETALIATORY ACTIONS. (1) A civil action may not be brought against any employee of the board for good faith performance of responsibilities under this chapter.

(2) No discriminatory, disciplinary, or retaliatory action may be taken against a jail employee, subcontractor, volunteer, incarcerated individual, or family member or representative of an incarcerated individual for any communication made, or information given or disclosed, to aid the office in carrying out its responsibilities.

(3) Every individual, legal entity, and agency of federal, state, or local government is immune from civil liability, whether direct or derivative, for providing information to the board in good faith.

(4) This section is not intended to infringe on the rights of an employer to supervise, discipline, or terminate an employee for other reasons.

**Sec.**  RCW 70.48.510 and 2021 c 139 s 3 are each amended to read as follows:

(1)(a) A city or county department of corrections or chief law enforcement officer responsible for the operation of a jail shall conduct an unexpected fatality review in any case in which the death of an individual confined in the jail is unexpected.

(b) The city or county department of corrections or chief law enforcement officer shall convene an unexpected fatality review team and determine the membership of the review team. The team shall comprise of the director of the jail oversight board or their designee in accordance with section 8 of this act and individuals with appropriate expertise including, but not limited to, individuals whose professional expertise is pertinent to the dynamics of the case. The city or county department of corrections or chief law enforcement officer shall ensure that the unexpected fatality review team is made up of individuals who had no previous involvement in the case.

(c) The primary purpose of the unexpected fatality review shall be the development of recommendations to the governing unit with primary responsibility for the operation of the jail and legislature regarding changes in practices or policies to prevent fatalities and strengthen safety and health protections for individuals in custody.

(d) Upon conclusion of an unexpected fatality review required pursuant to this section, the city or county department of corrections or chief law enforcement officer shall, within 120 days following the fatality, issue a report on the results of the review, unless an extension has been granted by the chief executive or, if appropriate, the county legislative authority of the governing unit with primary responsibility for the operation of the jail. Reports must be distributed to the governing unit with primary responsibility for the operation of the jail and appropriate committees of the legislature, and the ((~~department of health~~)) jail oversight board shall create a public website where all unexpected fatality review reports required under this section must be posted and maintained. An unexpected fatality review report completed pursuant to this section is subject to public disclosure and must be posted on the ((~~department of health~~)) jail oversight board public website, except that confidential information may be redacted by the city or county department of corrections or chief law enforcement officer consistent with the requirements of applicable state and federal laws.

(e) The city or county department of corrections or chief law enforcement officer shall develop and implement procedures to carry out the requirements of this section.

(2) In any review of an unexpected fatality, the city or county department of corrections or chief law enforcement officer and the unexpected 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.

(3)(a) An unexpected 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) An employee of a city or county department of corrections or law enforcement employee responsible for conducting an unexpected fatality review, or member of an unexpected fatality review team, may not be examined in a civil or administrative proceeding regarding: (i) The work of the unexpected fatality review team; (ii) the incident under review; (iii) his or her statements, deliberations, thoughts, analyses, or impressions relating to the work of the unexpected fatality review team or the incident under review; or (iv) the statements, deliberations, thoughts, analyses, or impressions of any other member of the unexpected fatality review team, or any person who provided information to the unexpected fatality review team relating to the work of the unexpected fatality review team or the incident under review.

(c) Documents prepared by or for an unexpected 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 an unexpected fatality review, or that is created independently of such review, does not become inadmissible merely because it is reviewed or used by an unexpected 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, an unexpected fatality review, but if the person is called as a witness, the person may not be examined regarding the person's interactions with the unexpected 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 an unexpected fatality reviewed by an unexpected fatality review team.

(4) No provision of this section may be interpreted to require a jail to disclose any information in a report that would, as determined by the jail, reveal security information about the jail.

(5) For the purposes of this section:

(a) "City or county department of corrections" means a department of corrections created by a city or county to be in charge of the jail and all persons confined in the jail pursuant to RCW 70.48.090.

(b) "Chief law enforcement officer" means the chief law enforcement officer who is in charge of the jail and all persons confined in the jail if no department of corrections was created by a city or county pursuant to RCW 70.48.090.

(c) "Unexpected fatality review" means a review of any death that was not the result of a diagnosed or documented terminal illness or other debilitating or deteriorating illness or condition where the death was anticipated, and includes the death of any person under the care and custody of the city or county department of corrections or chief local enforcement officer, regardless of where the death actually occurred. A review must include an analysis of the root cause or causes of the unexpected fatality, and an associated corrective action plan for the jail to address identified root causes and recommendations made by the unexpected fatality review team under this section.

NEW SECTION. **Sec.**  Sections 1 through 12 of this act constitute a new chapter in Title 43 RCW.

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