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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.)

READ FIRST TIME 01/24/20.

1 AN ACT Relating to prisoner fatality and near fatality reviews  
2 for persons in the custody of the department of corrections; adding a  
3 new section to chapter 72.09 RCW; and adding a new section to chapter  
4 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 a prisoner fatality review in  
9 the event of a fatality of any person in the custody of the  
10 department.

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

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

6 (d) Upon conclusion of a prisoner 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 prisoner fatality review reports required under this section must  
13 be posted and maintained. A prisoner fatality review report completed  
14 pursuant to this section is subject to public disclosure and must be  
15 posted on the public web site, except that confidential information  
16 may be redacted by the department consistent with the requirements of  
17 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)(a) In the event of a near fatality of a prisoner in the  
21 custody of the department, the department shall promptly notify the  
22 office of the corrections ombuds. The department may conduct a review  
23 of the near fatality at its discretion or at the request of the  
24 office of the corrections ombuds.

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

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

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

37 (b) A department employee responsible for conducting a prisoner  
38 fatality or near fatality review, or member of a prisoner fatality or  
39 near fatality review team, may not be examined in a civil or  
40 administrative proceeding regarding (i) the work of the prisoner

1 fatality or near fatality review team; (ii) the incident under  
2 review; (iii) his or her statements, deliberations, thoughts,  
3 analyses, or impressions relating to the work of the prisoner  
4 fatality or near fatality review team or the incident under review;  
5 or (iv) the statements, deliberations, thoughts, analyses, or  
6 impressions of any other member of the prisoner fatality or near  
7 fatality review team, or any person who provided information to the  
8 prisoner fatality or near fatality review team relating to the work  
9 of the prisoner fatality or near fatality review team or the incident  
10 under review.

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

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

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

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

39 (2) The department shall:

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

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

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

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

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

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