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**SENATE BILL 5119**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senator Darneille

Prefiled 01/08/21.

1 AN ACT Relating to individuals in custody; adding a new section  
2 to chapter 72.09 RCW; adding a new section to chapter 43.06C RCW; and  
3 adding a new section to chapter 70.48 RCW.

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

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

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

11 (b) The department shall convene an unexpected fatality review  
12 team 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. The unexpected fatality review team shall  
16 include the office of the corrections ombuds or the ombuds' designee.  
17 The department shall ensure that the unexpected fatality review team  
18 is made up of individuals who had no previous involvement in the  
19 case.

20 (c) The primary purpose of the unexpected fatality review shall  
21 be the development of recommendations to the department and

1 legislature regarding changes in practices or policies to prevent  
2 fatalities and strengthen safety and health protections for prisoners  
3 in the custody of the department.

4 (d) Upon conclusion of an unexpected fatality review required  
5 pursuant to this section, the department shall, within 180 days  
6 following the fatality, issue a report on the results of the review,  
7 unless an extension has been granted by the governor. Reports must be  
8 distributed to the appropriate committees of the legislature, and the  
9 department shall create a public website where all unexpected  
10 fatality review reports required under this section must be posted  
11 and maintained. An unexpected fatality review report completed  
12 pursuant to this section is subject to public disclosure and must be  
13 posted on the public website, except that confidential information  
14 may be redacted by the department consistent with the requirements of  
15 applicable state and federal laws.

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

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

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

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

39 (c) Documents prepared by or for an unexpected fatality review  
40 team are inadmissible and may not be used in a civil or

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

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

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

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

26 (2) The department shall:

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

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

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

1        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 70.48  
2    RCW to read as follows:

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

7        (b) The city or county department of corrections or chief law  
8    enforcement officer shall convene an unexpected fatality review team  
9    and determine the membership of the review team. The team shall  
10   comprise of individuals with appropriate expertise including, but not  
11   limited to, individuals whose professional expertise is pertinent to  
12   the dynamics of the case. The city or county department of  
13   corrections or chief law enforcement officer shall ensure that the  
14   unexpected fatality review team is made up of individuals who had no  
15   previous involvement in the case.

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

21       (d) Upon conclusion of an unexpected fatality review required  
22   pursuant to this section, the city or county department of  
23   corrections or chief law enforcement officer shall, within 180 days  
24   following the fatality, issue a report on the results of the review,  
25   unless an extension has been granted by the governor. Reports must be  
26   distributed to the governing unit with primary responsibility for the  
27   operation of the jail and appropriate committees of the legislature,  
28   and the department of health shall create a public website where all  
29   unexpected fatality review reports required under this section must  
30   be posted and maintained. An unexpected fatality review report  
31   completed pursuant to this section is subject to public disclosure  
32   and must be posted on the department of health public website, except  
33   that confidential information may be redacted by the city or county  
34   department of corrections or chief law enforcement officer consistent  
35   with the requirements of applicable state and federal laws.

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

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

1 unexpected fatality review team shall have access to all records and  
2 files regarding the person or otherwise relevant to the review that  
3 have been produced or retained by the agency.

4 (3) (a) An unexpected fatality review completed pursuant to this  
5 section is subject to discovery in a civil or administrative  
6 proceeding, but may not be admitted into evidence or otherwise used  
7 in a civil or administrative proceeding except pursuant to this  
8 section.

9 (b) An employee of a city or county department of corrections or  
10 law enforcement employee responsible for conducting an unexpected  
11 fatality review, or member of an unexpected fatality review team, may  
12 not be examined in a civil or administrative proceeding regarding:

13 (i) The work of the unexpected fatality review team; (ii) the  
14 incident under review; (iii) his or her statements, deliberations,  
15 thoughts, analyses, or impressions relating to the work of the  
16 unexpected fatality review team or the incident under review; or (iv)  
17 the statements, deliberations, thoughts, analyses, or impressions of  
18 any other member of the unexpected fatality review team, or any  
19 person who provided information to the unexpected fatality review  
20 team relating to the work of the unexpected fatality review team or  
21 the incident under review.

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

39 (d) The restrictions set forth in this section do not apply in a  
40 licensing or disciplinary proceeding arising from an agency's effort

1 to revoke or suspend the license of any licensed professional based  
2 in whole or in part upon allegations of wrongdoing in connection with  
3 an unexpected fatality reviewed by an unexpected fatality review  
4 team.

5 (4) For the purposes of this section:

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

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

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