
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: Z-0090.1/23

ATTY/TYPIST: MW:jlb

BRIEF DESCRIPTION: Concerning unexpected fatality reviews.

1 AN ACT Relating to unexpected fatality reviews; and amending RCW
2 72.09.770.

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

4 **Sec. 1.** RCW 72.09.770 and 2021 c 139 s 1 are each amended to
5 read as follows:

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

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

19 (c) The primary purpose of the unexpected fatality review shall
20 be the development of recommendations to the department and
21 legislature regarding changes in practices or policies to prevent

1 fatalities and strengthen safety and health protections for prisoners
2 in the custody of the department.

3 (d) Upon conclusion of an unexpected fatality review required
4 pursuant to this section, except those requested by the office of the
5 corrections ombuds, the department shall, within 120 days following
6 the fatality, issue a report on the results of the review(~~((, unless~~
7 ~~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) Upon conclusion of an unexpected fatality review requested by
17 the office of the corrections ombuds pursuant to this section, the
18 department shall, within 120 days following the date of the ombuds'
19 written request, issue a report on the results of the review.

20 (f) Reports must be distributed to the appropriate committees of
21 the legislature, and the department shall create a public website
22 where all unexpected fatality review reports required under this
23 section must be posted and maintained. An unexpected fatality review
24 report completed pursuant to this section is subject to public
25 disclosure and must be posted on the public website, except that
26 confidential information may be redacted by the department consistent
27 with the requirements of applicable state and federal laws.

28 (g) Within 10 days of completion of an unexpected fatality review
29 under this section, the department shall develop an associated
30 corrective action plan to implement any recommendations made by the
31 review team in the unexpected fatality review report. Corrective
32 action plans shall be implemented within 120 days(~~((, unless an~~
33 ~~extension has been granted by the governor))~~). Corrective action plans
34 are subject to public disclosure, and must be posted on the
35 department's website in accordance with ~~((d))~~ (f) of this
36 subsection, except that confidential information may be redacted by
37 the department consistent with the requirements of applicable state
38 and federal laws.

39 ~~((f))~~ (h) The department shall develop and implement procedures
40 to carry out the requirements of this section.

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

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

10 (b) A department employee responsible for conducting an
11 unexpected fatality review, or member of an unexpected fatality
12 review team, may not be examined in a civil or administrative
13 proceeding regarding: (i) The work of the unexpected fatality review
14 team; (ii) the incident under review; (iii) his or her statements,
15 deliberations, thoughts, analyses, or impressions relating to the
16 work of the unexpected fatality review team or the incident under
17 review; or (iv) the statements, deliberations, thoughts, analyses, or
18 impressions of any other member of the unexpected fatality review
19 team, or any person who provided information to the unexpected
20 fatality review team relating to the work of the unexpected fatality
21 review team or 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) The time frames under this section may be extended if:

6 (a) The office of the governor grants an extension; or

7 (b) The office of the corrections ombuds, the department, and the
8 department of health agree in writing to an extension and post a
9 notice describing the extension on the public unexpected fatality
10 review website.

11 (5) For the purposes of this section:

12 (a) "Unexpected fatality ((review))" means ((a review of any
13 death that was not the result of a diagnosed or documented terminal
14 illness or other debilitating or deteriorating illness or condition
15 where the death was anticipated, and includes the death of any person
16 under the jurisdiction of the department, regardless of where the
17 death actually occurred. A review must include an analysis of the
18 root cause or causes of the unexpected fatality, and an associated
19 corrective action plan for the department to address identified root
20 causes and recommendations made by the unexpected fatality review
21 team under this section.

22 (b)) the death of any person under the jurisdiction of the
23 department, regardless of where the death occurred, if there is
24 reasonable cause to believe it resulted from:

25 (i) Suicide;

26 (ii) Homicide;

27 (iii) Accident; or

28 (iv) A natural process that may have been substantially
29 accelerated by an act or omission of the department or its agent.

30 (b) A review must include an analysis of the root cause or causes
31 of the unexpected fatality, and an associated corrective action plan
32 for the department to address identified root causes and
33 recommendations made by the unexpected fatality review team under
34 this section.

35 (c) "Jurisdiction of the department" does not include persons on
36 partial confinement or community custody ((under the supervision of
37 the department)).

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