**5294-S.E AMH GOOD H2641.5 - NOT FOR FLOOR USE**

**ESSB 5294** - H AMD **540**

By Representative Goodman

**NOT CONSIDERED 01/05/2018**

Strike everything after the enacting clause and insert the following:

**"PART 1**

**CREATING THE DEPARTMENT OF CORRECTIONS OMBUDS**

NEW SECTION. **Sec.**  The legislature intends to create an independent and impartial office of the corrections ombuds to assist in strengthening procedures and practices that lessen the possibility of actions occurring within the department of corrections that may adversely impact the health, safety, welfare, and rehabilitation of offenders, and that will effectively reduce the exposure of the department to litigation.

NEW SECTION. **Sec.**  Subject to the availability of amounts appropriated for this specific purpose, the office of the corrections ombuds is created for the purpose of providing information to inmates, family members, representatives of inmates, department employees, and others regarding the rights of inmates; providing technical assistance to support inmate self-advocacy; identifying systemic issues and responses for the governor and the legislature to act upon; reporting to the legislature; and ensuring compliance with relevant statutes, rules, and policies pertaining to conditions of correctional facilities, services, and treatment of inmates under the jurisdiction of the department.

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

(1) "Abuse" means any act or failure to act by a department employee, subcontractor, or volunteer which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an inmate.

(2) "Corrections ombuds" or "ombuds" means the corrections ombuds, staff of the corrections ombuds, and volunteers with the office of the corrections ombuds.

(3) "Council" means the ombuds advisory council established in section 4(1) of this act.

(4) "Department" means the department of corrections.

(5) "Inmate" means a person committed to the physical custody of the department, including persons residing in a correctional institution or facility and persons received from another state, another state agency, a county, or the federal government.

(6) "Neglect" means a negligent act or omission by any department employee, subcontractor, or volunteer which caused, or may have caused, injury or death to an inmate.

(7) "Office" means the office of the corrections ombuds.

(8) "Organization" means the private nonprofit organization that operates the office of the corrections ombuds.

NEW SECTION. **Sec.**  (1) Subject to the availability of amounts appropriated for this specific purpose, no later than August 1, 2017, the governor shall convene an ombuds advisory council with several purposes in support of the ombuds function. The council shall participate in a priority setting process for the purpose of developing priority recommendations to the ombuds, review data collected by the ombuds, review reports issued by the ombuds prior to their release, and make recommendations to the ombuds regarding the accomplishment of its purposes. The council also has authority to issue its own reports and recommendations. The council must biannually review the ombuds' performance, including its compliance with its internal bylaws and other adopted standards of practice, reporting to the governor and the legislature regarding its findings. The council must provide the legislature with recommendations regarding the ombuds budget and changes in the law that would enhance the effectiveness of the ombuds.

(2) The council consists of the following members, appointed by the governor:

(a) Two former inmates who have successfully reintegrated into the community and are no longer in the custody of the department;

(b) Two family members of current inmates;

(c) One expert with significant criminal justice or correctional experience who is not an employee or contractor with the state of Washington;

(d) A community member with extensive knowledge and experience in issues related to racial, ethnic, or religious diversity within the correctional system;

(e) A community member with extensive knowledge and experience in the accommodation needs of individuals with disabilities; and

(f) A community member with dispute resolution training who has experience working in the criminal justice or corrections field.

(3) The council also includes:

(a) The department staff serving as the internal ombuds, if any;

(b) A bargaining unit representative; and

(c) A representative of the governor's office.

(4) After the full membership is attained, the council shall develop a process for replacing members in case of resignation or expiration of terms.

(5) Councilmembers serve a term of two years, except that the council shall create and implement a system of staggered terms, and no member other than the department staff serving as the internal ombuds may serve more than two consecutive terms. The council shall convene at least quarterly. Councilmembers will serve without compensation, except that funds appropriated for the implementation of this chapter may be used to reimburse members who are not employees of Washington state for expenses necessary to the performance of their duties.

NEW SECTION. **Sec.**  (1) Subject to the availability of amounts appropriated for this specific purpose, the department of commerce shall designate, by a competitive bidding process, the nonprofit organization that will contract to operate the office of the corrections ombuds. The contract must last for a period of two years and shall be renewed by the department of commerce at the end of the term except upon a showing of: Neglect of duty; misconduct; inability or failure to perform duties in good faith; failure to perform duties in a manner consistent with this chapter, including failure to attempt to resolve concerns at the lowest appropriate level of intervention; or failure to perform within the scope of the contract or other material breach of contract. During an investigation or inquiry by the department of commerce for neglect of duty, misconduct, inability to perform duties, failure to perform duties in a manner consistent with this chapter, or breach of contract, the organization must provide any documentation necessary for the investigation.

(2) The department of commerce shall conduct a request for proposals process every six years unless an investigation as outlined in subsection (1) of this section has resulted in the termination of the organization's designation, in which case the department of commerce shall conduct the request for proposals process within six months of the termination.

(3) The department of commerce shall select an organization that possesses, directly or through subcontracts, significant legal expertise, competence with mediation and alternative dispute resolution, and experience working within criminal justice and correctional environments. Other relevant experience may include, but is not limited to, addressing issues relating to chemical dependency treatment, disability and disability-related accommodation, respect for racial, ethnic, and religious diversity, and other civil rights and conditions issues. The selected organization must have experience and the capacity to communicate effectively regarding criminal justice issues with policymakers, stakeholders, and the general public, and must be prepared and able to provide all program and staff support necessary, directly or through subcontracts, to carry out all duties of the office.

(4) The organization and its subcontractors, if any, are not state agencies or departments, but instead are private, independent entities operating under contract with the state.

(5) Employees of the office must receive training from the Washington state executive ethics board within sixty days of commencing full-time employment with the office.

(6) The office must be an objective, nonbiased entity that will impartially investigate complaints.

(7) The office is subject to financial and other audits by the state auditor's office.

NEW SECTION. **Sec.**  (1) The ombuds shall:

(a) Establish priorities for use of the limited resources appropriated to implement this chapter;

(b) Establish professional standards and bylaws that govern its activities. The standards must ensure that the office operates in an objective, nonbiased manner, and that the ombuds' activities will support self-advocacy skills among inmates and their families and promote collaborative problem solving within the correctional system, resolving issues at the lowest possible level. Prior to implementation, the standards are subject to final approval by the Washington state executive ethics board;

(c) Maintain a statewide toll-free telephone number, a collect telephone number, a web site, and a mailing address for the receipt of complaints and inquiries;

(d) Provide information, as appropriate, to inmates, family members, representatives of inmates, department employees, and others regarding the rights of inmates;

(e) Provide technical assistance to support inmate participation in self-advocacy;

(f) Monitor department compliance with applicable federal, state, and local laws, rules, regulations, and policies with a view toward the appropriate health, safety, welfare, and rehabilitation of inmates;

(g) Monitor and participate in legislative and policy developments affecting correctional facilities;

(h) Establish a statewide uniform reporting system to collect and analyze data related to complaints regarding the department;

(i) Establish procedures to receive, investigate, and resolve complaints at the lowest appropriate level of intervention;

(j) Submit annually to the council, the governor's office, and the legislature, by November 1st of each year, a report analyzing the work of the office, including any recommendations; and

(k) Adopt and comply with rules, policies, and procedures necessary to implement this chapter.

(2)(a) The ombuds may initiate and attempt to resolve an investigation upon his or her own initiative, or upon receipt of a complaint from an inmate, a family member, a representative of an inmate, a department employee, or others, regarding:

(i) Abuse or neglect;

(ii) Department decisions or administrative actions;

(iii) Inactions or omissions;

(iv) Policies, rules, or procedures; or

(v) Alleged violations of law by the department that may adversely affect the health, safety, welfare, and rights of inmates.

(b) Prior to filing a complaint with the ombuds, a person shall have reasonably pursued resolution of the complaint through the internal grievance, administrative, or appellate procedures with the department. However, in no event may an inmate be prevented from filing a complaint more than ninety business days after filing an internal grievance, regardless of whether the department has completed the grievance process. This subsection (2)(b) does not apply to complaints related to threats of bodily harm including, but not limited to, sexual or physical assaults or the denial of necessary medical treatment.

(c) The ombuds may decline to investigate any complaint as provided by the rules adopted under this chapter.

(d) If the ombuds does not investigate a complaint, the ombuds shall notify the complainant of the decision not to investigate and the reasons for the decision.

(e) The ombuds may not investigate any complaints relating to an inmate's underlying criminal conviction.

(f) The ombuds may not investigate a complaint from a department employee that relates to the employee's employment relationship with the department.

(g) The ombuds may refer complainants and others to appropriate resources, agencies, or departments.

(h) The ombuds may not levy any fees for the submission or investigation of complaints.

(i) At the conclusion of an investigation of a complaint, the ombuds must render a public decision on the merits of each complaint, except that the documents supporting the decision are subject to the confidentiality provisions of section 8 of this act. The ombuds must communicate the decision to the inmate, if any, and to the department. The ombuds must state their recommendations and reasoning if, in the ombuds' opinion, the department or any employee thereof should:

(i) Consider the matter further;

(ii) Modify or cancel any action;

(iii) Alter a rule, practice, or ruling;

(iv) Explain in detail the administrative action in question;

(v) Rectify an omission; or

(vi) Take any other action.

(j) If the ombuds so requests, the department must, within the time specified, inform the ombuds about any action taken on the recommendations or the reasons for not complying with the recommendations.

(k) If the ombuds believes the issues that gave rise to its initial investigation have not been substantially resolved through the process outlined in this subsection (2), the ombuds must report its finding to the governor and the appropriate committees of the legislature. Following such report, the ombuds shall consult with the council regarding what additional measures are appropriate to address the ombuds' continuing concerns. Following such consultation, the ombuds may take reasonable steps to resolve the concerns raised by its investigation. State resources may not be used to support litigation.

(l) Before announcing a conclusion or recommendation that expressly, or by implication, criticizes a person or the department, the ombuds shall attempt to consult with that person or the department. The ombuds may request to be notified by the department, within a specified time, of any action taken on any recommendation presented. The ombuds must notify the inmate, if any, of the actions taken by the department in response to the ombuds' recommendations.

(3) This chapter does not require inmates to file a complaint with the ombuds in order to exhaust available administrative remedies for purposes of the prison litigation reform act of 1995, P.L. 104-134.

NEW SECTION. **Sec.**  (1) The department must permit the ombuds to enter and inspect, at any reasonable time, any correctional facility for the purpose of carrying out its duties under this chapter. The ombuds may inspect, view, photograph, and video record all areas of the facility that are used by inmates or are accessible to inmates. Before releasing any photographs or video recordings taken within a correctional facility, the ombuds must consult with the department concerning any safety or security issues.

(2) The department must allow the ombuds reasonable access to inmates, which includes the opportunity to meet and communicate privately and confidentially with individuals regularly, both formally and informally, by telephone, mail, and in person.

(3) If the ombuds requests access to inmates or facilities and the secretary of the department determines that the requested access is not reasonable due to an immediate and serious security concern, the secretary must notify the ombuds of that determination in writing, and the reasons that support the determination.

(4) Upon the ombuds' request, the department shall grant the ombuds 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 of a complaint filed under this chapter, and must assist the ombuds in obtaining the necessary releases of documents that are specifically restricted or privileged for use by the ombuds.

(5)(a) Following notification from the ombuds with a written demand for access to department records, the delegated department staff must respond to the ombuds within five business days of the department's receipt of a request by:

(i) Making the requested documentation available in cases where the ombuds is investigating an inmate death or threats of bodily harm including, but not limited to, sexual or physical assaults or the denial of necessary medical treatment;

(ii) Acknowledging receipt of the request and providing a reasonable estimate of the time needed to respond, provided that the requested documentation must be produced no later than twenty business days after the department's receipt of a request; or

(iii) Denying the request for good cause.

(b) The ombuds may consent to an extension of the time frames in this subsection (5) if the ombuds determines that such an extension is reasonable under the circumstances.

(6) A state or local government agency or entity that has records that are relevant to a complaint or an investigation conducted by the ombuds must provide the ombuds with access to such records, unless providing access to the records would be in violation of federal or state law.

(7) The department may not hinder the lawful actions of the ombuds, or willfully refuse to comply with lawful demands of the office.

(8) The ombuds must work with the department to minimize disruption to the operations of the department due to the ombuds' activities, and must comply with the department's security clearance processes, provided these processes do not impede the activities outlined in this chapter.

NEW SECTION. **Sec.**  (1) Correspondence and communication with the office is confidential and must be protected as privileged correspondence in the same manner as legal correspondence or communication.

(2) The office shall establish confidentiality rules and procedures for all information maintained by the office.

(3) The ombuds shall treat all matters under investigation, including the identities of recipients of ombuds services, complainants, and individuals from whom information is acquired, as confidential, except as far as disclosures may be necessary to enable the ombuds to perform the duties of the office and to support any recommendations resulting from an investigation. Upon receipt of information that by law is confidential or privileged, the ombuds shall maintain the confidentiality of such information and shall not further disclose or disseminate the information except as provided by applicable state or federal law or as authorized by subsections (4) and (5) of this section. Investigative records of the office are confidential and are exempt from public disclosure under chapter 42.56 RCW.

(4) To the extent the ombuds reasonably believes necessary, the ombuds:

(a) Must reveal information obtained in the course of providing ombuds services to prevent reasonably certain death or substantial bodily harm; and

(b) May reveal information obtained in the course of providing ombuds services to prevent the commission of a crime.

(5) If a majority of the members on the council have reasonable cause to believe that the ombuds is not operating in a manner consistent with this chapter in relation to an investigation, the council may request records that would otherwise be confidential under this chapter for the sole purpose of determining whether the ombuds is operating in a manner consistent with this chapter; however, prior to disclosing records to the council the ombuds shall redact information that would otherwise be protected by state or federal law, including protected health care information.

(6) If the ombuds receives personally identifying information about individual corrections staff during the course of an investigation that the ombuds determines is unrelated or unnecessary to the subject of the investigation or recommendation for action, the ombuds will not further disclose such information. If the ombuds determines that such disclosure is necessary to an investigation or recommendation, the ombuds will contact the staff member as well as the bargaining unit representative before any disclosure.

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

(2) No discriminatory, disciplinary, or retaliatory action may be taken against a department employee, subcontractor, or volunteer, an inmate, or a family member or representative of an inmate for any communication made, or information given or disclosed, to aid the office in carrying out its responsibilities, unless the communication or information is made, given, or disclosed maliciously or without good faith.

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

**PART 2**

**DEPARTMENT OF CORRECTIONS**

**Sec.**  RCW 72.09.010 and 1995 1st sp.s. c 19 s 2 are each amended to read as follows:

It is the intent of the legislature to establish a comprehensive system of corrections for convicted law violators within the state of Washington to accomplish the following objectives.

(1) The ((~~system should~~)) highest duty of the department and the secretary is to ensure the public safety. The system should be designed and managed to provide the maximum feasible safety for the persons and property of the general public, the staff, and the inmates.

(2) The system should punish the offender for violating the laws of the state of Washington. This punishment should generally be limited to the denial of liberty of the offender.

(3) The system should positively impact offenders by stressing personal responsibility and accountability and by discouraging recidivism.

(4) The system should treat all offenders fairly and equitably without regard to race, religion, sex, national origin, residence, or social condition.

(5) The system, as much as possible, should reflect the values of the community including:

(a) Avoiding idleness. Idleness is not only wasteful but destructive to the individual and to the community.

(b) Adoption of the work ethic. It is the community expectation that all individuals should work and through their efforts benefit both themselves and the community.

(c) Providing opportunities for self improvement. All individuals should have opportunities to grow and expand their skills and abilities so as to fulfill their role in the community.

(d) Linking the receipt or denial of privileges to responsible behavior and accomplishments. The individual who works to improve himself or herself and the community should be rewarded for these efforts. As a corollary, there should be no rewards for no effort.

(e) Sharing in the obligations of the community. All citizens, the public and inmates alike, have a personal and fiscal obligation in the corrections system. All communities must share in the responsibility of the corrections system.

(6) The system should provide for prudent management of resources. The avoidance of unnecessary or inefficient public expenditures on the part of offenders and the department is essential. Offenders must be accountable to the department, and the department to the public and the legislature. The human and fiscal resources of the community are limited. The management and use of these resources can be enhanced by wise investment, productive programs, the reduction of duplication and waste, and the joining together of all involved parties in a common endeavor. Since most offenders return to the community, it is wise for the state and the communities to make an investment in effective rehabilitation programs for offenders and the wise use of resources.

(7) The system should provide for restitution. Those who have damaged others, persons or property, have a responsibility to make restitution for these damages.

(8) The system should be accountable to the citizens of the state. In return, the individual citizens and local units of government must meet their responsibilities to make the corrections system effective.

(9) The system should meet those national standards which the state determines to be appropriate.

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

To ensure public safety and the administration of justice, if the department has actual knowledge or reason to believe that a computer calculation error is or has caused an error in the calculation of the release date for any prisoner, the department shall immediately manually calculate the release date of that prisoner as well as the release dates of any similarly sentenced prisoners.

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

On December 1st of each year, and in compliance with RCW 43.01.036, the department must submit a report to the governor and relevant policy and fiscal committees of the legislature that details any information technology backlog at the department along with specific requirements and plans to address such backlog.

**PART 3**

**JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE**

NEW SECTION. **Sec.**  (1) Pursuant to chapter 43.09 RCW, the joint legislative audit and review committee must conduct a performance audit of the information technology and records related units at the department of corrections, including:

(a) The administrative structure of the units, including whether the units should be restructured to respond efficiently to changes in sentencing laws and other emergent issues;

(b) The sufficiency of staffing levels and expertise at each of the units; and

(c) An evaluation of the advance corrections project's impact on workload and staff resources at each of the units.

(2) The joint legislative audit and review committee shall report its findings to the governor and relevant policy and fiscal committees of the legislature by December 1, 2018.

**PART 4**

**SENTENCING REFORM**

NEW SECTION. **Sec.**  A new section is added to chapter 9.94A RCW to read as follows:

In consultation with the administrative office of the courts, superior court judges' association, Washington association of prosecuting attorneys, Washington association of criminal defense lawyers, Washington public defenders' association, and Washington association of county clerks, the department shall develop a mandatory sentencing elements worksheet. The worksheet shall be used to identify and record the elements of the court's order that are required by the department to calculate an offender's confinement term, and community custody term when ordered. The Washington administrative office of the courts must include the mandatory sentencing elements worksheet in a specific section within its felony judgment and sentence forms.

**Sec.**  RCW 9.94A.480 and 2011 1st sp.s. c 40 s 27 are each amended to read as follows:

(1) A current, newly created or reworked judgment and sentence document for each felony sentencing shall record any and all recommended sentencing agreements or plea agreements and the sentences for any and all felony crimes kept as public records under RCW 9.94A.475 shall contain the clearly printed name and legal signature of the sentencing judge. The judgment and sentence document as defined in this section shall also provide additional space for the sentencing judge's reasons for going either above or below the presumptive sentence range for any and all felony crimes covered as public records under RCW 9.94A.475. In addition, each felony judgment and sentence document must contain in a specific section the mandatory sentencing elements worksheet developed by the department of corrections in section 14 of this act. Both the sentencing judge and the prosecuting attorney's office shall each retain or receive a completed copy of each sentencing document as defined in this section for their own records.

(2) The caseload forecast council shall be sent a completed copy of the judgment and sentence document upon conviction for each felony sentencing under subsection (1) of this section.

(3) If any completed judgment and sentence document as defined in subsection (1) of this section is not sent to the caseload forecast council as required in subsection (2) of this section, the caseload forecast council shall have the authority and shall undertake reasonable and necessary steps to assure that all past, current, and future sentencing documents as defined in subsection (1) of this section are received by the caseload forecast council.

**Sec.**  RCW 9.94A.585 and 2002 c 290 s 19 are each amended to read as follows:

(1) A sentence within the standard sentence range, under RCW 9.94A.510 or 9.94A.517, for an offense shall not be appealed. For purposes of this section, a sentence imposed on a first-time offender under RCW 9.94A.650 shall also be deemed to be within the standard sentence range for the offense and shall not be appealed.

(2) A sentence outside the standard sentence range for the offense is subject to appeal by the defendant or the state. The appeal shall be to the court of appeals in accordance with rules adopted by the supreme court.

(3) Pending review of the sentence, the sentencing court or the court of appeals may order the defendant confined or placed on conditional release, including bond.

(4) To reverse a sentence which is outside the standard sentence range, the reviewing court must find: (a) Either that the reasons supplied by the sentencing court are not supported by the record which was before the judge or that those reasons do not justify a sentence outside the standard sentence range for that offense; or (b) that the sentence imposed was clearly excessive or clearly too lenient.

(5) A review under this section shall be made solely upon the record that was before the sentencing court. Written briefs shall not be required and the review and decision shall be made in an expedited manner according to rules adopted by the supreme court.

(6) The court of appeals shall issue a written opinion in support of its decision whenever the judgment of the sentencing court is reversed and may issue written opinions in any other case where the court believes that a written opinion would provide guidance to sentencing courts and others in implementing this chapter and in developing a common law of sentencing within the state.

(7) The department may petition for a review of a sentence committing an offender to the custody or jurisdiction of the department. The review shall be limited to errors of law or to address a missing, incomplete, or illegible mandatory sentencing elements section required pursuant to RCW 9.94A.480(1). Such petition shall be filed with the court of appeals no later than ninety days after the department has actual knowledge of terms of the sentence. The petition shall include a certification by the department that all reasonable efforts to resolve the dispute at the superior court level have been exhausted.

NEW SECTION. **Sec.**  (1) Subject to the availability of amounts appropriated for this specific purpose, the sentencing guidelines commission shall contract for the services of one or more external consultants to evaluate the state's sentencing laws and practices. The consultant must have demonstrated experience in conducting significant research studies and demonstrated successful experience in evaluating sentencing systems or practices. The evaluation must include:

(a) Recommendations for changing and improving sentencing laws and practices to:

(i) Reduce complexity and implementation challenges;

(ii) Reduce unwarranted disparity;

(iii) Increase postconviction review;

(iv) Reduce costs to taxpayers;

(v) Promote fairness and equity;

(vi) Reduce unintended and unnecessary impacts on the community; and

(vii) Achieve the intended purposes of sentencing as set forth in RCW 9.94A.010;

(b) Recommendations for:

(i) A phased prospective and retroactive implementation of any proposed changes; and

(ii) Establishing an ongoing review of sentencing laws and practices; and

(c) An assessment of:

(i) Sentence lengths among different categories of offenders;

(ii) Whether those sentences conform to current research literature on the relationship between sentence lengths and recidivism;

(iii) Sentencing changes adopted by the legislature since 1981, including frequency, nature, and impact;

(iv) Disparity in sentencing laws between similarly situated offenders, including the rationale for such disparities;

(v) The impact of the elimination of the parole system; and

(vi) The state's sentencing laws and practices as compared to other states and other sentencing models.

(2) The consultant shall work cooperatively with the sentencing guidelines commission members to obtain any additional recommendations or input consistent with the purposes of this section. Recommendations from the sentencing guidelines commission shall be included in the consultant's final report.

(3) The consultant may request data and information needed to accomplish its work from the office of financial management, the caseload forecast council, the administrative office of the courts, the department of corrections, and the department of social and health services, and such data and information must be provided to the consultant.

(4) The consultant shall complete its evaluation and submit a report to the commission, the joint legislative task force on criminal sentencing under section 18 of this act, the appropriate committees of the legislature, and the governor by September 1, 2018. The contract for services must include a requirement for three briefings before the legislature to take place during the 2018 interim and 2019 regular legislative session, including for the joint legislative task force on sentencing, the house of representatives, and the senate.

(5) This section expires July 1, 2019.

NEW SECTION. **Sec.**  (1) A joint legislative task force on criminal sentencing is established.

(2) The task force is composed of seventeen members as provided in this subsection.

(a) The president of the senate shall appoint one member from each of the two largest caucuses of the senate.

(b) The speaker of the house of representatives shall appoint one member from each of the two largest caucuses of the house of representatives.

(c) The president of the senate and the speaker of the house of representatives jointly shall appoint one member representing each of the following:

(i) Washington association of sheriffs and police chiefs;

(ii) Washington state patrol;

(iii) Caseload forecast council;

(iv) Washington association of prosecuting attorneys;

(v) Washington association of criminal defense attorneys;

(vi) Washington defender association;

(vii) Washington state association of counties;

(viii) Office of the attorney general;

(ix) American civil liberties union of Washington;

(x) Sentencing guidelines commission;

(xi) Department of corrections;

(xii) Superior court judges' association; and

(xiii) Administrative office of the courts.

(3) The task force shall review sentencing laws after consideration of the study under section 17 of this act and the consultant's recommendations. The task force shall develop recommendations to reduce sentencing implementation complexities and errors, improve the effectiveness and fairness of the sentencing system, and promote public safety. The task force shall submit a report, including findings and recommendations, to the governor and the appropriate committees of the legislature by December 1, 2019.

(4) The legislative membership shall convene the initial meeting of the task force to receive the report from the consultant under section 17 of this act no later than September 30, 2018. All meetings of the task force must be scheduled and conducted in accordance with the requirements of both the senate and the house of representatives.

(5) The legislative members of the task force shall choose the task force's cochairs, which must include one senator and one representative from among the legislative membership of the task force.

(6) The task force may request data, information, and other assistance needed to accomplish its work from the office of financial management, the caseload forecast council, the administrative office of the courts, the department of corrections, and the department of social and health services, and such data, information, and assistance must be provided to the task force.

(7) Staff support for the task force must be provided by the senate committee services and the house office of program research.

(8) Legislative members of the task force are reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members are not entitled to be reimbursed for travel expenses if they are elected officials or are participating on behalf of an employer, governmental entity, or other organization. Any reimbursement for other nonlegislative members is subject to chapter 43.03 RCW.

(9) The expenses of the task force shall be paid jointly by the senate and the house of representatives. Task force expenditures are subject to approval by the senate facilities and operations committee and the house executive rules committee, or their successor committees.

(10) This section expires December 31, 2019.

**PART 5**

**GENERAL PROVISIONS**

NEW SECTION. **Sec.**  In the contract for the next regularly scheduled performance audit under RCW 42.40.110 following the effective date of this section, the office of financial management must require the audit to review the ability of department of corrections employees to use the state employee whistleblower program. The audit must include findings and recommendations, including possible changes to improve the effectiveness of the whistleblower program.

NEW SECTION. **Sec.**  Sections 1 through 9 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. **Sec.**  Sections 14 through 16 of this act apply to sentences imposed on or after January 1, 2018.

NEW SECTION. **Sec.**  Section 18 of this act takes effect July 1, 2018."

Correct the title.

EFFECT: Makes the following changes:

(1) Removes the intent section from the underlying bill.

(2) Makes changes to the Office of the Corrections Ombuds (Ombuds) provisions:

(a) Adds intent language.

(b) Narrows the definition of "inmate" to those inmates in physical custody of the Department of Corrections (DOC).

(c) Purposes of the Ombuds: Removes providing assistance with alternative dispute resolution, individual representation, and advocating for systemic reform from stated purposes of the office. Changes the duty of "monitoring and promoting" departmental compliance to "ensuring" compliance, and amends list of what must be complied with to add that it includes "relevant" statutes pertaining to "services and treatment" (rather than rights) of inmates "under the jurisdiction of the department."

(d) Advisory Council (Council): Provides that establishment of the Council is subject to funds appropriated for that specific purpose. Requires the Governor to make appointments to the Council. Makes changes to the Council membership to: Remove legislative members, increase the number of former inmates from one to two, remove the requirement that the bargaining unit representative is selected by the bargaining unit membership, and add a representative of the Governor's office. Provides that councilmembers serve two year terms, rather than three year terms, and that the internal DOC ombuds is not subject to the two term limit. Requires the Council's review of the Ombuds' performance to include a review of compliance with the Ombuds' internal bylaws and standards.

(e) Selection of organization to operate Ombuds office: Requires the Department of Commerce, rather than the State Auditor, to designate a nonprofit organization to operate the Ombuds office. Specifies that the contract for hosting the Ombuds office is for two years, and must be renewed at the end of that term (except upon a showing of neglect of duty, misconduct, inability to perform in good faith, failure to perform in a manner consistent with the relevant statutory requirements, or failure to act within the scope of the contract or other material breach). Requires the Department of Commerce to conduct a request for proposals every six years. Removes stakeholder participation from development of the request for proposals, evaluation of bids, and final selection. Provides that relevant experience of the organization may, though not must, include addressing issues relating to chemical dependency treatment, disability and disability-related accommodation, respect for racial, ethnic, and religious diversity, and other civil rights and conditions issues. Requires the Ombuds to be an objective and nonbiased entity that will impartially investigate complaints. Provides that the Ombuds is subject to financial and other audits by the State Auditor, and that its employees must receive training from the Washington State Executive Ethics Board.

(f) Ombuds duties: Requires the Ombuds to establish professional standards and bylaws that are subject to final approval by the Washington State Executive Ethics Board. Amends the directive to provide technical assistance to support inmate self-advocacy to remove specific references to the kite, grievance, and appeal procedures. Provides that, rather than monitoring department legal compliance "with a view toward protecting the rights of inmates" this activity is undertaken "with a view toward the appropriate health, safety, welfare, and rehabilitation of inmates." Removes the directive to advocate for systemic reform aimed toward protecting the rights of inmates. Specifies that complaint resolution procedures are for resolution "at the lowest appropriate level of intervention." Requires the Ombuds to report annually to the Governor's Office and the Legislature, in addition to the Council.

(g) Complaint process: Requires complaints regarding DOC actions to be about "administrative" actions; and complaints regarding alleged violations of law to be regarding DOC violations that may adversely affect the health, safety, welfare, and rights of inmates. Applies the exhaustion requirement to any person, not just inmates, and requires exhaustion of DOC administrative and appellate procedures (in addition to internal grievance procedures). Requires pursuit of internal DOC processes for 90 business days, rather than 90 calendar days, prior to filing a complaint with the Ombuds. Requires the Ombuds, when it does not investigate a complaint, to notify the complainant and provide a reason.

(h) Ombuds responsive actions: Removes language allowing the Ombuds to report a finding of abuse, neglect, or other rights violation to the Legislature or take additional action. Provides, instead, that if the Ombuds believes the issues that gave rise to the investigation have not been substantially resolved, it must report to the Legislature and Governor and consult with the Council regarding additional measures, and may take reasonable steps toward resolution. Specifies that state resources cannot be used to support litigation.

(i) Access to facilities and documents: Removes all underlying provisions related to facility and documents access and instead provides the following: (i) The DOC must permit the Ombuds to enter and inspect facilities at any reasonable time, and to view, photograph, and record inmate accessible areas; (ii) the DOC must allow the Ombuds reasonable access to inmates, including opportunities to communicate privately and confidentially; (iii) the DOC must respond to the Ombuds' requests for records within 5 days by producing the records when the investigation is of a death or threats of bodily harm, and otherwise by providing a timeframe within which requested documentation will be produced, which must be no longer than twenty business days absent an agreed upon extension, or by denying the request for good cause; (iv) other governmental entities that have relevant records must provide those records to the Ombuds; (v) the DOC must not hinder the lawful actions of the Ombuds, and the Ombuds must work with DOC to minimize disruption; and (iv) if facility or inmate access is denied due to the secretary's determination that there is an immediate and serious security concern, the Ombuds must be notified of that determination in writing.

(j) Confidentiality: Removes language stating that the Ombuds must preserve confidentiality of information obtained while providing services, except upon informed consent or other legal authorization. Provides instead that the Ombuds must treat all matters under investigation as confidential, except as far as disclosure may be necessary to enable the Ombuds to perform its duties and to support any recommendations. Requires the Ombuds to maintain confidentiality of privileged or confidential material except as provided by law, and states that investigative records of the office are exempt from disclosure under the Public Records Act. Allows the Council to request records that would otherwise be confidential for purpose of determining whether the Ombuds is operating in a manner consistent with applicable statutory requirements, but requires the Ombuds to redact information protected under federal or state law prior to disclosing records.

(3) Modifies the requirements for the Joint Legislative Audit and Review Committee (JLARC) to conduct a performance audit of the information and technology and records departments at the Department of Corrections (DOC) by: Changing references to "information technology and records departments" to "information technology and records-related units"; removing the requirement that the performance audit must be conducted "immediately"; requiring JLARC to audit whether units should be restructured to respond efficiently to changes in sentencing laws and other emergent issues (rather than more quickly respond to legislative directives and emergent issues); requiring JLARC to audit the sufficiency of staffing levels and expertise at each of the units (rather than the sufficiency and quality of staffing at each of the units); specifying that the JLARC audit of the advance corrections project is limited to the project's impact on workload and staff resources at each of the units.

(4) Removes from the underlying bill the requirement that the Governor ensure all offices in the executive branch perform their duties as prescribed by law, and ensure that all personal and professional conflicts of interest are avoided.

(5) Requires the Sentencing Guidelines Commission (SGC) to contract with one or more external consultants to evaluate the state's sentencing laws and practices, including assessments of certain specified items. Requires the external consultant to develop recommendations for changing and improving sentencing laws and practices to reduce complexity and implementation challenges, reduce unwarranted disparity, increase postconviction review, reduce costs to taxpayers, promote fairness and equity, and other specified items. Specifies that the recommendations must include a phased implementation plan for possible retroactive and prospective changes and a process for an ongoing review of sentencing laws and practices. Authorizes the external consultant to request data, information, and assistance from specified agencies, and requires such data, information, and assistance to be provided to the Task Force. Requires the external consultant to report to the Legislature and Governor by September 1, 2018.

(6) Makes changes to the Joint Legislative Task Force (Task Force) created in the underlying bill:

(a) Limits the number of Task Force members to 17. Requires the Washington Association of Criminal Defense Attorneys and the Washington Defender Association to be represented on the Task Force by separately appointed members (rather than a single member representing both organizations).

(b) Specifies that the Task Force is on criminal sentencing (rather than simplifying sentencing). Removes language specifying that the Task Force make recommendations on simplifying the Sentencing Reform Act, and removes language limiting the Task Force's review and recommendations to technical, nonsubstantive changes that would not reduce punishment or risk public safety. Instead, requires the Task Force to review sentencing laws after consideration of the study and recommendations completed by the external consultant hired through the SGC. Requires the Task Force to develop recommendations to reduce sentencing implementation complexities and errors, improve the effectiveness and fairness of the sentencing system, and promote public safety.

(c) Authorizes the Task Force to request data, information, and assistance from specified agencies, and requires such data, information, and assistance to be provided to the Task Force.

(d) Requires the Task Force to convene its initial meeting to consider the external consultant's report no later than September 30, 2018. Requires all meetings of the Task Force to be scheduled and conducted in accordance with the requirements of both the Senate and House of Representatives. Requires the legislative members of the Task Force to choose the Task Force's cochairs, which must include one Senator and one Representative. Requires the Task Force to submit its report to the Governor (in addition to the Legislature).

(e) Modifies the effective date of the section creating the Task Force to July 1, 2018 (rather than 90 days after the adjournment of the session in which the bill is passed). Expires the Task Force on December 31, 2019 (rather than July 1, 2020).

(7) Removes from the underlying bill the changes to the Whistleblower Program, including the changes to investigations process and deadlines for notices and initiating and concluding investigations. Removes from the underlying bill the prohibition against provisions in settlements of whistleblower retaliation lawsuits that prevent an employee from future work in state government.

(8) Modifies the requirements in the underlying bill for the performance audit of the Whistleblower Protection Program (Program) by specifying that the audit must review the ability of DOC employees to use the Program (rather than the legislative report from the Senate Law and Justice Committee and any other pertinent documentation of the error, with a particular focus on the inability of DOC employees to use the Program to address concerns with mismanagement). Requires the audit to include recommendations to improve the effectiveness of the program.

(9) Requires the DOC to develop a mandatory sentencing elements worksheet to be used by courts to identify and record the elements of a sentencing order. Requires DOC to consult with certain entities when developing the worksheet. Requires the Administrative Office of the Courts to include the mandatory sentencing elements worksheet in a specific section within its felony Judgment and Sentence forms. Requires courts to use the mandatory sentencing elements worksheet for all felony sentences imposed on or after January 1, 2018. Authorizes the DOC to petition the Court of Appeals for a review of a sentence according to the processes in current law in order to address a missing, incomplete, or illegible sentencing elements worksheet.

(10) Makes technical changes.