
SECOND ENGROSSED SUBSTITUTE SENATE BILL 5294

State of Washington

65th Legislature

2017 Regular Session

By Senate Law & Justice (originally sponsored by Senators Padden and O'Ban)

READ FIRST TIME 02/17/17.

1 AN ACT Relating to addressing the department of corrections early
2 release error; amending RCW 72.09.010, 9.94A.480, 9.94A.585, and
3 49.60.210; adding new sections to chapter 72.09 RCW; adding a new
4 section to chapter 9.94A RCW; adding a new chapter to Title 43 RCW;
5 creating new sections; and providing expiration dates.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that serious
8 allegations arose in 2016 against the department of corrections
9 regarding the department's early release error. The governor's office
10 and senate engaged in investigations that resulted in reports with
11 recommendations to address the matter. The purpose of this act is to
12 implement the legislative recommendations contained in those reports.
13 These reforms will assist in strengthening public safety as well as
14 procedures and practices that lessen the possibility of actions
15 occurring within the department of corrections that may adversely
16 impact the health, safety, welfare, and rehabilitation of offenders,
17 and that will effectively reduce the exposure of the department to
18 litigation.

19 **PART 1**

20 **CREATING THE DEPARTMENT OF CORRECTIONS OMBUDS**

1 NEW SECTION. **Sec. 2.** Subject to the availability of amounts
2 appropriated for this specific purpose, the office of the corrections
3 ombuds is created for the purpose of providing information to
4 inmates, family members, representatives of inmates, department
5 employees, and others regarding the rights of inmates; providing
6 technical assistance to support inmate self-advocacy; identifying
7 systemic issues and responses for the governor and the legislature to
8 act upon; reporting to the legislature; and ensuring compliance with
9 relevant statutes, rules, and policies pertaining to conditions of
10 correctional facilities, services, and treatment of inmates under the
11 jurisdiction of the department.

12 NEW SECTION. **Sec. 3.** The definitions in this section apply
13 throughout this chapter unless the context clearly requires
14 otherwise.

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

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

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

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

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

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

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

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

35 NEW SECTION. **Sec. 4.** (1) Subject to the availability of amounts
36 appropriated for this specific purpose, no later than August 1, 2017,
37 the governor shall convene an ombuds advisory council with several
38 purposes in support of the ombuds function. The council shall

1 participate in a priority setting process for the purpose of
2 developing priority recommendations to the ombuds, review data
3 collected by the ombuds, review reports issued by the ombuds prior to
4 their release, and make recommendations to the ombuds regarding the
5 accomplishment of its purposes. The council also has authority to
6 issue its own reports and recommendations. The council must
7 biannually review the ombuds' performance, including its compliance
8 with its internal bylaws and other adopted standards of practice,
9 reporting to the governor and the legislature regarding its findings.
10 The council must provide the legislature with recommendations
11 regarding the ombuds budget and changes in the law that would enhance
12 the effectiveness of the ombuds.

13 (2) The council initially consists of the following four members:

14 (a) The majority leader and minority leader in the senate shall
15 appoint one member from each of their respective caucuses of the
16 senate.

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

20 (3) The remaining council members consist of the following
21 members, appointed by the governor, and subject to senate
22 confirmation:

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

25 (b) Two family members of current inmates;

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

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

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

34 (f) Two former department of corrections employees;

35 (g) A current department of corrections chaplain; and

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

38 (4) The council also includes:

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

40 (b) A bargaining unit representative; and

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

2 (5) After the full membership is attained, the council shall
3 develop a process for replacing members in case of resignation or
4 expiration of terms. The council must meet at least once a year.

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

14 NEW SECTION. **Sec. 5.** (1) Subject to the availability of amounts
15 appropriated for this specific purpose, the department of commerce
16 shall designate, by a competitive bidding process, the nonprofit
17 organization that will contract to operate the office of the
18 corrections ombuds. The contract must last for a period of two years
19 and may be renewed at the end of the term. The department of commerce
20 shall select an organization that possesses, directly or through
21 subcontracts, significant legal expertise, competence with mediation
22 and alternative dispute resolution, and experience working within
23 criminal justice and correctional environments. Other relevant
24 experience may include, but is not limited to, addressing issues
25 relating to chemical dependency treatment, disability and disability-
26 related accommodation, respect for racial, ethnic, and religious
27 diversity, and other civil rights and conditions issues. The selected
28 organization must have experience and the capacity to communicate
29 effectively regarding criminal justice issues with policymakers,
30 stakeholders, and the general public, and must be prepared and able
31 to provide all program and staff support necessary, directly or
32 through subcontracts, to carry out all duties of the office.

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

36 (3) The organization must be an objective and neutral entity that
37 will impartially investigate complaints.

1 (4) The organization is subject to financial and other audits by
2 the state auditor's office, and its employees must abide by the
3 provisions of chapter 42.52 RCW.

4 NEW SECTION. **Sec. 6.** (1) The ombuds shall:

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

7 (b) Develop policies for responding to records requests from the
8 public. These policies shall be similar in scope to the requirements
9 in the public records act except that identifying information about
10 complainants or witnesses must be protected and nondisclosable unless
11 the complainant or witness waives confidentiality;

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

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

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

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

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

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

28 (i) Establish procedures to receive, investigate, and resolve
29 complaints;

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

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

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

39 (i) Abuse or neglect;

1 (ii) Department decisions or administrative actions;

2 (iii) Inactions or omissions;

3 (iv) Policies, rules, or procedures; or

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

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

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

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

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

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

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

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

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

38 (i) Consider the matter further;

39 (ii) Modify or cancel any action;

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

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

2 (v) Rectify an omission; or

3 (vi) Take any other action.

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

8 (k) If the ombuds believes, based on the investigation, that
9 there has been or continues to be a significant inmate health,
10 safety, welfare, or rehabilitation issue, the ombuds must report the
11 finding to the governor and the appropriate committees of the
12 legislature.

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

20 (3) This chapter does not require inmates to file a complaint
21 with the ombuds in order to exhaust available administrative remedies
22 for purposes of the prison litigation reform act of 1995, P.L.
23 104-134.

24 NEW SECTION. **Sec. 7.** (1) The department must permit the ombuds
25 to enter and inspect, at any reasonable time, any correctional
26 facility for the purpose of carrying out its duties under this
27 chapter. The ombuds may inspect, view, photograph, and video record
28 all areas of the facility that are used by inmates or are accessible
29 to inmates. Before releasing any photographs or video recordings
30 taken within a correctional facility, the ombuds must consult with
31 the department concerning any safety or security issues.

32 (2) The department must allow the ombuds reasonable access to:

33 (a) Inmates, which includes the opportunity to meet and
34 communicate privately and confidentially with individuals regularly,
35 both formally and informally, by telephone, mail, and in person; and

36 (b) Department employees, or other persons, who might be
37 reasonably believed to have knowledge of the incident under
38 investigation, which includes the opportunity to interview those
39 individuals.

1 (3) Upon the ombuds' request, the department shall grant the
2 ombuds the right to access, inspect, and copy all relevant
3 information, records, or documents in the possession or control of
4 the department that the ombuds considers necessary in an
5 investigation of a complaint filed under this chapter, and must
6 assist the ombuds in obtaining the necessary releases of documents
7 that are specifically restricted or privileged for use by the ombuds.

8 (4) Following notification from the ombuds with a written demand
9 for access to agency records, the delegated department staff must
10 provide the ombuds with access to the requested documentation not
11 later than twenty business days after the ombuds' written request for
12 the records.

13 (5) A state or local government agency or entity that has records
14 that are relevant to a complaint or an investigation conducted by the
15 ombuds must provide the ombuds with access to such records.

16 (6) The department may not hinder the lawful actions of the
17 ombuds or employees of the office, or willfully refuse to comply with
18 lawful demands of the office.

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

24 NEW SECTION. **Sec. 8.** (1) Correspondence and communication with
25 the office is confidential and must be protected as privileged
26 correspondence in the same manner as legal correspondence or
27 communication.

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

30 (3) The office shall preserve the confidentiality of information
31 obtained while providing services, including general information,
32 technical assistance, and investigations, to individuals, including
33 inmates, family members and representatives of inmates, department
34 employees, and others. Confidential information may not be disclosed
35 unless the individual gives informed consent, the disclosure is
36 impliedly authorized in order to carry out ombuds services, or the
37 disclosure is authorized by subsection (4) of this section.

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

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

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

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

14 NEW SECTION. **Sec. 9.** (1) A civil action may not be brought
15 against any employee of the office for good faith performance of
16 responsibilities under this chapter.

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

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

27 **PART 2**

28 **DEPARTMENT OF CORRECTIONS**

29 **Sec. 10.** RCW 72.09.010 and 1995 1st sp.s. c 19 s 2 are each
30 amended to read as follows:

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

34 (1) The (~~system should~~) highest duty of the department and the
35 secretary is to ensure the public safety. The system should be
36 designed and managed to provide the maximum feasible safety for the

1 persons and property of the general public, the staff, and the
2 inmates.

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

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

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

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

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

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

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

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

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

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

1 communities to make an investment in effective rehabilitation
2 programs for offenders and the wise use of resources.

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

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

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

12 NEW SECTION. **Sec. 11.** A new section is added to chapter 72.09
13 RCW to read as follows:

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

20 NEW SECTION. **Sec. 12.** A new section is added to chapter 72.09
21 RCW to read as follows:

22 On December 1st of each year, and in compliance with RCW
23 43.01.036, the department must submit a report to the governor and
24 relevant policy and fiscal committees of the legislature that details
25 any information technology backlog at the department along with
26 specific requirements and plans to address such backlog.

27 **PART 3**
28 **JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE**

29 NEW SECTION. **Sec. 13.** (1) Pursuant to chapter 43.09 RCW, the
30 joint legislative audit and review committee must conduct a
31 performance audit of the information technology and records related
32 units at the department of corrections, including:

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

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

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

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

8 **PART 4**

9 **SENTENCING REFORM**

10 NEW SECTION. **Sec. 14.** A new section is added to chapter 9.94A
11 RCW to read as follows:

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

24 **Sec. 15.** RCW 9.94A.480 and 2011 1st sp.s. c 40 s 27 are each
25 amended to read as follows:

26 (1) A current, newly created or reworked judgment and sentence
27 document for each felony sentencing shall record any and all
28 recommended sentencing agreements or plea agreements and the
29 sentences for any and all felony crimes kept as public records under
30 RCW 9.94A.475 shall contain the clearly printed name and legal
31 signature of the sentencing judge. The judgment and sentence document
32 as defined in this section shall also provide additional space for
33 the sentencing judge's reasons for going either above or below the
34 presumptive sentence range for any and all felony crimes covered as
35 public records under RCW 9.94A.475. In addition, each felony judgment
36 and sentence document must contain in a specific section the
37 mandatory sentencing elements worksheet developed by the department

1 of corrections in section 14 of this act. Both the sentencing judge
2 and the prosecuting attorney's office shall each retain or receive a
3 completed copy of each sentencing document as defined in this section
4 for their own records.

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

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

15 **Sec. 16.** RCW 9.94A.585 and 2002 c 290 s 19 are each amended to
16 read as follows:

17 (1) A sentence within the standard sentence range, under RCW
18 9.94A.510 or 9.94A.517, for an offense shall not be appealed. For
19 purposes of this section, a sentence imposed on a first-time offender
20 under RCW 9.94A.650 shall also be deemed to be within the standard
21 sentence range for the offense and shall not be appealed.

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

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

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

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

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

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

17 NEW SECTION. **Sec. 17.** (1) Subject to the availability of
18 amounts appropriated for this specific purpose, the sentencing
19 guidelines commission shall contract for the services of one or more
20 external consultants to evaluate the state's sentencing laws and
21 practices. The consultant must have demonstrated experience in
22 conducting significant research studies and demonstrated successful
23 experience in evaluating sentencing systems or practices. The
24 evaluation must include:

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

27 (i) Reduce complexity and implementation challenges;

28 (ii) Reduce unwarranted disparity;

29 (iii) Increase postconviction review;

30 (iv) Reduce costs to taxpayers;

31 (v) Promote fairness and equity;

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

33 and

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

36 (b) Recommendations for:

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

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

3 (c) An assessment of:

4 (i) Sentence lengths among different categories of offenders;

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

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

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

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

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

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

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

29 (4) This section expires July 1, 2019.

30 NEW SECTION. **Sec. 18.** (1) A joint legislative task force to
31 simplify criminal sentencing is established.

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

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

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

1 (c) The president of the senate and the speaker of the house of
2 representatives jointly shall appoint members representing the:

3 (i) Washington association of sheriffs and police chiefs;

4 (ii) Washington state patrol;

5 (iii) Caseload forecast council;

6 (iv) Washington association of prosecuting attorneys;

7 (v) Washington association of criminal defense attorneys or the
8 Washington defender association;

9 (vi) Washington state association of counties;

10 (vii) Office of the attorney general;

11 (viii) American civil liberties union of Washington;

12 (ix) Sentencing guidelines commission;

13 (x) Department of corrections;

14 (xi) Superior court judges' association; and

15 (xii) Administrative office for the courts.

16 (3) The task force shall review sentencing laws after
17 consideration of the study under section 17 of this act and the
18 consultant's recommendations. The task force shall develop
19 recommendations to reduce sentencing implementation complexities and
20 errors, improve the effectiveness of the sentencing system, and
21 promote public safety. The task force must consider recommendations
22 that:

23 (a) Reduce sentencing complexity while reducing punishment;

24 (b) Reduce sentencing complexity while increasing punishment; and

25 (c) Reduce sentencing complexity and do not either reduce or
26 increase punishment under existing law.

27 (4) The legislative membership shall convene the initial meeting
28 of the task force no later than September 2018.

29 (5) The task force shall submit a report, which may include
30 findings, recommendations, and proposed legislation, to the
31 appropriate committees of the legislature by December 1, 2019.

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

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

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

6 (9) This section expires July 1, 2020.

7 **PART 5**
8 **GENERAL PROVISIONS**

9 **Sec. 19.** RCW 49.60.210 and 2011 1st sp.s. c 42 s 25 are each
10 amended to read as follows:

11 (1) It is an unfair practice for any employer, employment agency,
12 labor union, or other person to discharge, expel, or otherwise
13 discriminate against any person because he or she has opposed any
14 practices forbidden by this chapter, or because he or she has filed a
15 charge, testified, or assisted in any proceeding under this chapter.

16 (2)(a) It is an unfair practice for a government agency or
17 government manager or supervisor to retaliate against a whistleblower
18 as defined in chapter 42.40 RCW.

19 (b) A settlement of any cause of action brought by an employee
20 under this subsection may not contain a provision prohibiting the
21 employee from future work in state government unless the government
22 agency has a significant ongoing concern for the public health,
23 safety, or welfare as a result of the person's future employment.

24 (3) It is an unfair practice for any employer, employment agency,
25 labor union, government agency, government manager, or government
26 supervisor to discharge, expel, discriminate, or otherwise retaliate
27 against an individual assisting with an office of fraud and
28 accountability investigation under RCW 74.04.012, unless the
29 individual has willfully disregarded the truth in providing
30 information to the office.

31 NEW SECTION. **Sec. 20.** In the contract for the next regularly
32 scheduled performance audit under RCW 42.40.110 following the
33 effective date of this section, the office of financial management
34 must require the audit to review the ability of department of
35 corrections employees to use the state employee whistleblower
36 program. The audit must include findings and recommendations,

1 including possible changes to improve the effectiveness of the
2 whistleblower program.

3 NEW SECTION. **Sec. 21.** Sections 2 through 9 of this act
4 constitute a new chapter in Title 43 RCW.

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