

ESSB 5294 - H AMD 503

By Representative Goodman

NOT CONSIDERED 01/05/2018

1 Strike everything after the enacting clause and insert the
2 following:

3 "PART 1

4 CREATING THE DEPARTMENT OF CORRECTIONS OMBUDS

5 NEW SECTION. **Sec. 1.** The legislature intends to create an
6 independent and impartial office of the corrections ombuds to assist
7 in strengthening procedures and practices that lessen the possibility
8 of actions occurring within the department of corrections that may
9 adversely impact the health, safety, welfare, and rehabilitation of
10 offenders, and that will effectively reduce the exposure of the
11 department to litigation.

12 NEW SECTION. **Sec. 2.** Subject to the availability of amounts
13 appropriated for this specific purpose, the office of the corrections
14 ombuds is created for the purpose of providing information to
15 inmates, family members, representatives of inmates, department
16 employees, and others regarding the rights of inmates; providing
17 technical assistance to support inmate self-advocacy; identifying
18 systemic issues and responses for the governor and the legislature to
19 act upon; reporting to the legislature; and ensuring compliance with
20 relevant statutes, rules, and policies pertaining to conditions of
21 correctional facilities, services, and treatment of inmates under the
22 jurisdiction of the department.

23 NEW SECTION. **Sec. 3.** The definitions in this section apply
24 throughout this chapter unless the context clearly requires
25 otherwise.

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

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

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

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

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

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

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

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

17 NEW SECTION. **Sec. 4.** (1) Subject to the availability of amounts
18 appropriated for this specific purpose, no later than August 1, 2017,
19 the governor shall convene an ombuds advisory council with several
20 purposes in support of the ombuds function. The council shall
21 participate in a priority setting process for the purpose of
22 developing priority recommendations to the ombuds, review data
23 collected by the ombuds, review reports issued by the ombuds prior to
24 their release, and make recommendations to the ombuds regarding the
25 accomplishment of its purposes. The council also has authority to
26 issue its own reports and recommendations. The council must
27 biannually review the ombuds' performance, including its compliance
28 with its internal bylaws and other adopted standards of practice,
29 reporting to the governor and the legislature regarding its findings.
30 The council must provide the legislature with recommendations
31 regarding the ombuds budget and changes in the law that would enhance
32 the effectiveness of the ombuds.

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

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

37 (b) Two family members of current inmates;

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

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

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

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

11 (3) The council also includes:

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

13 (b) A bargaining unit representative; and

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

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

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

27 NEW SECTION. **Sec. 5.** (1) Subject to the availability of amounts
28 appropriated for this specific purpose, the department of commerce
29 shall designate, by a competitive bidding process, the nonprofit
30 organization that will contract to operate the office of the
31 corrections ombuds. The selection process must include direct
32 stakeholder participation in the development of the request for
33 proposals, evaluation of bids, and final selection; however,
34 stakeholders or entities that submit a proposal may not participate
35 in the evaluation of bids or final selection. The contract must last
36 for a period of two years and shall be renewed by the department of
37 commerce at the end of the term except upon a showing of neglect of
38 duty, misconduct, inability or failure to perform duties in good
39 faith, or failure to perform duties in a manner consistent with this

1 chapter, including failure to attempt to resolve concerns at the
2 lowest appropriate level of intervention. During an investigation or
3 inquiry by the department of commerce for neglect of duty,
4 misconduct, inability to perform duties, or failure to perform duties
5 in a manner consistent with this chapter, the organization must
6 provide any documentation necessary for the investigation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (i) Abuse or neglect;

37 (ii) Department decisions or administrative actions;

38 (iii) Inactions or omissions;

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

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

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

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

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

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

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

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

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

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

35 (i) Consider the matter further;

36 (ii) Modify or cancel any action;

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

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

39 (v) Rectify an omission; or

40 (vi) Take any other action.

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

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

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

22 (3) This chapter does not require inmates to file a complaint
23 with the ombuds in order to exhaust available administrative remedies
24 for purposes of the prison litigation reform act of 1995, P.L.
25 104-134.

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

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

38 (3) Upon the ombuds' request, the department shall grant the
39 ombuds the right to access, inspect, and copy all relevant

1 information, records, or documents in the possession or control of
2 the department that the ombuds considers necessary in an
3 investigation of a complaint filed under this chapter, and must
4 assist the ombuds in obtaining the necessary releases of documents
5 that are specifically restricted or privileged for use by the ombuds.

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

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

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

18 (b) The ombuds may consent to an extension of the time frames in
19 this subsection (4) if the ombuds determines that such an extension
20 is reasonable under the circumstances.

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

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

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

32 NEW SECTION. **Sec. 8.** (1) Correspondence and communication with
33 the office is confidential and must be protected as privileged
34 correspondence in the same manner as legal correspondence or
35 communication.

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

38 (3) The ombuds shall treat all matters under investigation,
39 including the identities of recipients of ombuds services,

1 complainants, and individuals from whom information is acquired, as
2 confidential, except as far as disclosures may be necessary to enable
3 the ombuds to perform the duties of the office and to support any
4 recommendations resulting from an investigation. Upon receipt of
5 information that by law is confidential or privileged, the ombuds
6 shall maintain the confidentiality of such information and shall not
7 further disclose or disseminate the information except as provided by
8 applicable state or federal law or as authorized by subsections (4)
9 and (5) of this section. Investigative records of the office are
10 confidential and are exempt from public disclosure under chapter
11 42.56 RCW.

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

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

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

19 (5) If a majority of the members on the council have reasonable
20 cause to believe that the ombuds is not operating in a manner
21 consistent with this chapter in relation to an investigation, the
22 council may request records that would otherwise be confidential
23 under this chapter for the sole purpose of determining whether the
24 ombuds is operating in a manner consistent with this chapter;
25 however, the council may not further disclose materials that would
26 otherwise be protected by state or federal law.

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

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

38 (2) No discriminatory, disciplinary, or retaliatory action may be
39 taken against a department employee, subcontractor, or volunteer, an

1 inmate, or a family member or representative of an inmate for any
2 communication made, or information given or disclosed, to aid the
3 office in carrying out its responsibilities, unless the communication
4 or information is made, given, or disclosed maliciously or without
5 good faith.

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

9 **PART 2**

10 **DEPARTMENT OF CORRECTIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 To ensure public safety and the administration of justice, if the
36 department has actual knowledge or reason to believe that a computer
37 calculation error is or has caused an error in the calculation of the
38 release date for any prisoner, the department shall immediately

1 manually calculate the release date of that prisoner as well as the
2 release dates of any similarly sentenced prisoners.

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

5 On December 1st of each year, and in compliance with RCW
6 43.01.036, the department must submit a report to the governor and
7 relevant policy and fiscal committees of the legislature that details
8 any information technology backlog at the department along with
9 specific requirements and plans to address such backlog.

10 **PART 3**

11 **JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE**

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

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

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

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

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

26 **PART 4**

27 **SENTENCING REFORM**

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

30 In consultation with the administrative office of the courts,
31 superior court judges' association, Washington association of
32 prosecuting attorneys, Washington association of criminal defense
33 lawyers, Washington public defenders' association, and Washington
34 association of county clerks, the department shall develop a
35 mandatory sentencing elements worksheet. The worksheet shall be used

1 to identify and record the elements of the court's order that are
2 required by the department to calculate an offender's confinement
3 term, and community custody term when ordered. The Washington
4 administrative office of the courts must include the mandatory
5 sentencing elements worksheet in a specific section within its felony
6 judgment and sentence forms.

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

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

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

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

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

37 (1) A sentence within the standard sentence range, under RCW
38 9.94A.510 or 9.94A.517, for an offense shall not be appealed. For

1 purposes of this section, a sentence imposed on a first-time offender
2 under RCW 9.94A.650 shall also be deemed to be within the standard
3 sentence range for the offense and shall not be appealed.

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

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

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

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

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

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

38 NEW SECTION. **Sec. 17.** (1) Subject to the availability of
39 amounts appropriated for this specific purpose, the sentencing

1 guidelines commission shall contract for the services of one or more
2 external consultants to evaluate the state's sentencing laws and
3 practices. The consultant must have demonstrated experience in
4 conducting significant research studies and demonstrated successful
5 experience in evaluating sentencing systems or practices. The
6 evaluation must include:

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

9 (i) Reduce complexity and implementation challenges;

10 (ii) Reduce unwarranted disparity;

11 (iii) Increase postconviction review;

12 (iv) Reduce costs to taxpayers;

13 (v) Promote fairness and equity;

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

15 and

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

18 (b) Recommendations for:

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

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

23 (c) An assessment of:

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

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

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

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

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

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

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

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

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

16 (5) This section expires July 1, 2019.

17 NEW SECTION. **Sec. 18.** (1) A joint legislative task force on
18 criminal sentencing is established.

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

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

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

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

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

30 (ii) Washington state patrol;

31 (iii) Caseload forecast council;

32 (iv) Washington association of prosecuting attorneys;

33 (v) Washington association of criminal defense attorneys;

34 (vi) Washington defender association;

35 (vii) Washington state association of counties;

36 (viii) Office of the attorney general;

37 (ix) American civil liberties union of Washington;

38 (x) Sentencing guidelines commission;

39 (xi) Department of corrections;

1 (xii) Superior court judges' association; and

2 (xiii) Administrative office of the courts.

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

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

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

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

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

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

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

39 (10) This section expires December 31, 2019.

1 **PART 5**

2 **GENERAL PROVISIONS**

3 NEW SECTION. **Sec. 19.** In the contract for the next regularly
4 scheduled performance audit under RCW 42.40.110 following the
5 effective date of this section, the office of financial management
6 must require the audit to review the ability of department of
7 corrections employees to use the state employee whistleblower
8 program. The audit must include findings and recommendations,
9 including possible changes to improve the effectiveness of the
10 whistleblower program.

11 NEW SECTION. **Sec. 20.** Sections 1 through 9 of this act
12 constitute a new chapter in Title 43 RCW.

13 NEW SECTION. **Sec. 21.** Sections 14 through 16 of this act apply
14 to sentences imposed on or after January 1, 2018.

15 NEW SECTION. **Sec. 22.** Section 18 of this act takes effect July
16 1, 2018."

17 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, or failure to perform in a manner consistent with the relevant statutory requirements). Requires the Department of Commerce to conduct a request for proposals every six years. States that entities that submit a proposal to operate the Ombuds office cannot participate in evaluation of bids or final selection of an organization to operate the Ombuds. 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; (iv) other governmental entities that have relevant records must provide those records to the Ombuds; and (v) the DOC must not hinder the lawful actions of the Ombuds, and the Ombuds must work with DOC to minimize disruption.

(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.

(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 31, 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.

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