

SSB 5952 - S AMD 296  
By Senator Padden

ADOPTED 06/29/2017

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

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

17 **PART 1**

18 **CREATING THE DEPARTMENT OF CORRECTIONS OMBUDS**

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

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

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

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

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

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

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

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

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

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

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

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

2 (a) The president of the senate shall appoint one member from  
3 each of their respective caucuses of the senate.

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

7 (3) The remaining council members consist of the following  
8 members, appointed by the governor, and subject to senate  
9 confirmation:

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

12 (b) Two family members of current inmates;

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

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

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

21 (f) Two former department of corrections employees;

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

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

25 (4) The council also includes:

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

27 (b) A bargaining unit representative; and

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

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

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

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

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

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

25        (4) The organization is subject to financial and other audits by  
26 the state auditor's office, and its employees must abide by the  
27 provisions of chapter 42.52 RCW except when such provisions are  
28 inconsistent with this chapter.

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

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

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

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

38        (d) Provide technical assistance to support inmate participation  
39 in self-advocacy;

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

5 (f) Monitor and participate in legislative and policy  
6 developments affecting correctional facilities;

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

9 (h) Establish procedures to receive, investigate, and resolve  
10 complaints;

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

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

16 (2)(a) The ombuds may initiate and attempt to resolve an  
17 investigation upon his or her own initiative, or upon receipt of a  
18 complaint from an inmate, a family member, a representative of an  
19 inmate, a department employee, or others, regarding any allegation of  
20 the following that may adversely affect the health, safety, welfare,  
21 and rights of inmates:

22 (i) Abuse or neglect;

23 (ii) Department decisions or administrative actions;

24 (iii) Inactions or omissions;

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

26 (v) Alleged violations of law by the department.

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

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

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

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

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

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

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

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

21 (i) Consider the matter further;

22 (ii) Modify or cancel any action;

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

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

25 (v) Rectify an omission; or

26 (vi) Take any other action.

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

31 (k) If the ombuds believes, based on the investigation, that  
32 there has been or continues to be a significant inmate health,  
33 safety, welfare, or rehabilitation issue, the ombuds must report the  
34 finding to the governor and the appropriate committees of the  
35 legislature.

36 (l) Before announcing a conclusion or recommendation that  
37 expressly, or by implication, criticizes a person or the department,  
38 the ombuds shall consult with that person or the department. The  
39 ombuds may request to be notified by the department, within a  
40 specified time, of any action taken on any recommendation presented.

1 The ombuds must notify the inmate, if any, of the actions taken by  
2 the department in response to the ombuds' recommendations.

3 (3) This chapter does not require inmates to file a complaint  
4 with the ombuds in order to exhaust available administrative remedies  
5 for purposes of the prison litigation reform act of 1995, P.L.  
6 104-134.

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

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

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

19 (b) Department employees, or other persons, who might be  
20 reasonably believed to have knowledge of the incident under  
21 investigation, which includes the opportunity to interview those  
22 individuals.

23 (3) Upon the ombuds' request, the department shall grant the  
24 ombuds the right to access, inspect, and copy all relevant  
25 information, records, or documents in the possession or control of  
26 the department that the ombuds considers necessary in an  
27 investigation of a complaint filed under this chapter, and must  
28 assist the ombuds in obtaining the necessary releases of documents  
29 that are specifically restricted or privileged for use by the ombuds.

30 (4) Following notification from the ombuds with a written demand  
31 for access to agency records, the delegated department staff must  
32 provide the ombuds with access to the requested documentation:

33 (a) Within five business days after the ombuds' request when the  
34 records pertain to an inmate death, threats of bodily harm, or the  
35 denial of necessary medical treatment;

36 (b) In all other circumstances, not later than thirty business  
37 days after the ombuds' request.

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

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

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

12 NEW SECTION. **Sec. 8.** (1) The ombuds shall treat all matters  
13 under investigation, including the identities of service recipients,  
14 complainants, and individuals from whom information is acquired, as  
15 confidential, except as far as disclosures may be necessary to enable  
16 the ombuds to perform the duties of the office and to support any  
17 recommendations resulting from an investigation.

18 (2) Upon receipt of information that by law is confidential or  
19 privileged or exempt from disclosure under chapter 42.56 RCW, the  
20 ombuds shall maintain the confidentiality of such information and  
21 shall not further disclose or disseminate the information except as  
22 provided by applicable state or federal law.

23 (3) Investigative records of the office of the ombuds are  
24 confidential and are exempt from public disclosure under chapter  
25 42.56 RCW. Records provided to and communications with the office of  
26 the ombuds related to an investigation are also exempt from public  
27 disclosure under chapter 42.56 RCW

28 NEW SECTION. **Sec. 9.** (1) Identifying information about  
29 complainants or witnesses is not subject to any method of legal  
30 compulsion and may not be revealed to the legislature or the governor  
31 except under the following circumstances:

32 (a) The complainant or witness waives confidentiality;

33 (b) Under a legislative subpoena when there is a legislative  
34 investigation for neglect of duty or misconduct by the ombuds or  
35 ombuds' office when the identifying information is necessary to the  
36 investigation of the ombuds' acts; or

37 (c) Under an investigation or inquiry by the governor as to  
38 neglect of duty or misconduct by the ombuds or ombuds' office when



1 the identifying information is necessary to the investigation of the  
2 ombuds' acts.

3 (2) For the purposes of this section, "identifying information"  
4 includes the complainant's or witness's name, location, telephone  
5 number, likeness, social security number or other identification  
6 number, or identification of immediate family members.

7 NEW SECTION. **Sec. 10.** The privilege described in section 9 of  
8 this act does not apply when:

9 (1) The ombuds or ombuds' staff member has direct knowledge of an  
10 alleged crime, and the testimony, evidence, or discovery sought is  
11 relevant to that allegation;

12 (2) The ombuds or a member of the ombuds' staff has received a  
13 threat of, or becomes aware of a risk of, imminent serious harm to  
14 any person, and the testimony, evidence, or discovery sought is  
15 relevant to that threat or risk; or

16 (3) The ombuds has been asked to provide general information  
17 regarding the general operation of, or the general processes employed  
18 at, the ombuds' office.

19 NEW SECTION. **Sec. 11.** (1) A civil action may not be brought  
20 against any employee of the office for good faith performance of  
21 responsibilities under this chapter.

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

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

32 **PART 2**  
33 **DEPARTMENT OF CORRECTIONS**

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

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

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

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

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

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

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

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

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

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

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

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

36 (6) The system should provide for prudent management of  
37 resources. The avoidance of unnecessary or inefficient public  
38 expenditures on the part of offenders and the department is  
39 essential. Offenders must be accountable to the department, and the  
40 department to the public and the legislature. The human and fiscal

1 resources of the community are limited. The management and use of  
2 these resources can be enhanced by wise investment, productive  
3 programs, the reduction of duplication and waste, and the joining  
4 together of all involved parties in a common endeavor. Since most  
5 offenders return to the community, it is wise for the state and the  
6 communities to make an investment in effective rehabilitation  
7 programs for offenders and the wise use of resources.

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

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

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

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

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

25 NEW SECTION. **Sec. 14.** A new section is added to chapter 72.09  
26 RCW to read as follows:

27 On December 1st of each year, and in compliance with RCW  
28 43.01.036, the department must submit a report to the governor and  
29 relevant policy and fiscal committees of the legislature that details  
30 any information technology backlog at the department along with  
31 specific requirements and plans to address such backlog.

### 32 **PART 3**

#### 33 **JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE**

34 NEW SECTION. **Sec. 15.** (1) Pursuant to chapter 43.09 RCW, the  
35 joint legislative audit and review committee must conduct a

1 performance audit of the information technology and records related  
2 units at the department of corrections, including:

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

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

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

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

13 **PART 4**  
14 **SENTENCING REFORM**

15 NEW SECTION. **Sec. 16.** A new section is added to chapter 9.94A  
16 RCW to read as follows:

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

29 **Sec. 17.** RCW 9.94A.480 and 2011 1st sp.s. c 40 s 27 are each  
30 amended to read as follows:

31 (1) A current, newly created or reworked judgment and sentence  
32 document for each felony sentencing shall record any and all  
33 recommended sentencing agreements or plea agreements and the  
34 sentences for any and all felony crimes kept as public records under  
35 RCW 9.94A.475 shall contain the clearly printed name and legal  
36 signature of the sentencing judge. The judgment and sentence document  
37 as defined in this section shall also provide additional space for

1 the sentencing judge's reasons for going either above or below the  
2 presumptive sentence range for any and all felony crimes covered as  
3 public records under RCW 9.94A.475. In addition, each felony judgment  
4 and sentence document must contain in a specific section the  
5 mandatory sentencing elements worksheet developed by the department  
6 of corrections in section 16 of this act. Both the sentencing judge  
7 and the prosecuting attorney's office shall each retain or receive a  
8 completed copy of each sentencing document as defined in this section  
9 for their own records.

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

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

20 **Sec. 18.** RCW 9.94A.585 and 2002 c 290 s 19 are each amended to  
21 read as follows:

22 (1) A sentence within the standard sentence range, under RCW  
23 9.94A.510 or 9.94A.517, for an offense shall not be appealed. For  
24 purposes of this section, a sentence imposed on a first-time offender  
25 under RCW 9.94A.650 shall also be deemed to be within the standard  
26 sentence range for the offense and shall not be appealed.

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

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

34 (4) To reverse a sentence which is outside the standard sentence  
35 range, the reviewing court must find: (a) Either that the reasons  
36 supplied by the sentencing court are not supported by the record  
37 which was before the judge or that those reasons do not justify a  
38 sentence outside the standard sentence range for that offense; or (b)

1 that the sentence imposed was clearly excessive or clearly too  
2 lenient.

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

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

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

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

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

33 (i) Reduce complexity and implementation challenges;

34 (ii) Reduce unwarranted disparity;

35 (iii) Increase postconviction review;

36 (iv) Reduce costs to taxpayers;

37 (v) Promote fairness and equity;

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

39 and

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

3 (b) Recommendations for:

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

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

8 (c) An assessment of:

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

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

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

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

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

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

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

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

31 (4) The consultant shall complete its evaluation and submit a  
32 report to the commission, the joint legislative task force on  
33 criminal sentencing under section 20 of this act, the appropriate  
34 committees of the legislature, and the governor by September 1, 2018.  
35 The contract for services must include a requirement for three  
36 briefings before the legislature to take place during the 2018  
37 interim and 2019 regular legislative session, including for the joint  
38 legislative task force on sentencing, the house of representatives,  
39 and the senate.

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

1        NEW SECTION.    **Sec. 20.**    (1) A joint legislative task force to  
2 simplify criminal sentencing is established.

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

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

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

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

- 13        (i) Washington association of sheriffs and police chiefs;
- 14        (ii) Washington state patrol;
- 15        (iii) Caseload forecast council;
- 16        (iv) Washington association of prosecuting attorneys;
- 17        (v) Washington association of criminal defense attorneys or the  
18 Washington defender association;
- 19        (vi) Washington state association of counties;
- 20        (vii) Office of the attorney general;
- 21        (viii) American civil liberties union of Washington;
- 22        (ix) Sentencing guidelines commission;
- 23        (x) Department of corrections;
- 24        (xi) Superior court judges' association; and
- 25        (xii) Administrative office for the courts.

26       (3) The task force shall review sentencing laws after  
27 consideration of the study under section 19 of this act and the  
28 consultant's recommendations. The task force shall develop  
29 recommendations to reduce sentencing implementation complexities and  
30 errors, improve the effectiveness of the sentencing system, and  
31 promote public safety. The task force must consider recommendations  
32 that:

- 33        (a) Reduce sentencing complexity while reducing punishment;
- 34        (b) Reduce sentencing complexity while increasing punishment; and
- 35        (c) Reduce sentencing complexity and do not either reduce or  
36 increase punishment under existing law.

37       (4) The legislative membership shall convene the initial meeting  
38 of the task force to receive the report from the consultant under  
39 section 19 of this act no later than September 30, 2018. The  
40 legislative members shall choose the task force's cochairs, which



1 must include one senator and one representative from among the  
2 legislative membership of the task force. All meetings of the task  
3 force must be scheduled and conducted in accordance with the  
4 requirements of both the senate and the house of representatives.

5 (5) The task force shall submit a report, which may include  
6 findings, recommendations, and proposed legislation, to the governor  
7 and the appropriate committees of the legislature by December 1,  
8 2019.

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

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

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

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

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

## 29 PART 5

### 30 GENERAL PROVISIONS

31 **Sec. 21.** RCW 49.60.210 and 2011 1st sp.s. c 42 s 25 are each  
32 amended to read as follows:

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

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

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

9 (3) It is an unfair practice for any employer, employment agency,  
10 labor union, government agency, government manager, or government  
11 supervisor to discharge, expel, discriminate, or otherwise retaliate  
12 against an individual assisting with an office of fraud and  
13 accountability investigation under RCW 74.04.012, unless the  
14 individual has willfully disregarded the truth in providing  
15 information to the office.

16 NEW SECTION. Sec. 22. In the contract for the next regularly  
17 scheduled performance audit under RCW 42.40.110 following the  
18 effective date of this section, the office of financial management  
19 must require the audit to review the ability of department of  
20 corrections employees to use the state employee whistleblower  
21 program. The audit must include findings and recommendations,  
22 including possible changes to improve the effectiveness of the  
23 whistleblower program.

24 NEW SECTION. Sec. 23. Sections 16 through 18 of this act apply  
25 to sentences imposed on or after July 1, 2018.

26 NEW SECTION. Sec. 24. Sections 2 through 11 of this act  
27 constitute a new chapter in Title 43 RCW.

28 NEW SECTION. Sec. 25. Section 20 of this act takes effect July  
29 1, 2018."

**SSB 5952 - S AMD 296**  
By Senator Padden

**ADOPTED 06/29/2017**

1       On page 1, line 2 of the title, after "error;" strike the  
2 remainder of the title and insert "amending RCW 72.09.010, 9.94A.480,  
3 9.94A.585, and 49.60.210; adding new sections to chapter 72.09 RCW;  
4 adding a new section to chapter 9.94A RCW; adding a new chapter to  
5 Title 43 RCW; creating new sections; providing an effective date; and  
6 providing expiration dates."

EFFECT: Adds language referencing whistleblower recommendations in the Senate report addressing the DOC early release error to clarify the scope of the bill.

Requires the ombuds advisory council to convene no later than October 1, 2017.

Requires the President of the Senate to appoint legislative members to the Ombuds Advisory Council.

Requires the Ombuds office to abide by the Ethics in Public Service Act except when the Act is inconsistent with the provisions of the bill.

Requires DOC to provide records to the Ombuds within 5 days of request if the records pertain to inmate death, threats of bodily harm, or the denial of necessary medical treatment.

Provides for the consultant and task force to request and receive data and other information from specified agencies.

Limits the number of task force members to 17, requires the initial meeting to be convened no later than September 30, 2018, and makes other technical changes related to task force operation.

--- END ---