

SENATE BILL REPORT

ESSB 5952

As Passed Senate, June 29, 2017

Title: An act relating to addressing the department of corrections early release error.

Brief Description: Concerning the department of corrections.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Padden and O'Ban).

Brief History:

Committee Activity: Law & Justice: 6/20/17 [DPS].

Floor Activity:

Third Special Session: Passed Senate: 6/29/17, 43-6.

Brief Summary of Engrossed First Substitute Bill

- Establishes an Office of Corrections Ombuds contracted through the Department of Commerce.
- Requires the Joint Legislative Audit Review Committee to conduct an audit of the Information Technology and Records departments at Department of Corrections (DOC).
- Requires the Sentencing Guidelines Commission to contract with a consultant to study sentencing laws and practices.
- Establishes a joint legislative taskforce to review and make recommendations for simplification of the Sentencing Reform Act.
- Requires the Department of Corrections, in consultation with the courts, prosecuting attorneys, and defense attorneys, to develop a sentencing elements worksheet which must be included as part of any judgment and sentence entered after July 1, 2018.
- Requires Office of Financial Management to include a review of the ability of DOC employees to utilize the whistleblower program in its next scheduled audit of the whistleblower program.
- Disallows the settlement of any cause of action brought by an employee for retaliation against a whistleblower from containing a provision prohibiting the employee from future work in state government.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5952 be substituted therefor, and the substitute bill do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Angel, Darneille and Frockt.

Staff: Shani Bauer (786-7468)

Background: DOC Early Release Error. In 2016, the Senate Law & Justice Committee conducted an investigation into the early release of some 3,000 prisoners by the DOC. The focus of the investigation was DOC's three-year delay in correcting a problem in calculating release dates for inmates. The committee issued a majority report in May of 2016 including the following recommendations:

- establish a Corrections ombuds independent of DOC or the Governor's office;
- investigate the Advance Corrections project with DOC;
- simplify Washington's sentencing code in a manner that does not reduce punishment or compromise public safety;
- review the staffing of the Information Technology and Records departments at DOC;
- require a DOC-wide hand count in the event of any future computer error that results in early prisoner releases;
- require an annual report to the Legislature and plan to address DOC's information technology maintenance backlog;
- enhance protections for DOC whistleblowers; and
- designate public safety as DOC's highest statutory duty.

State Ombuds Offices. In general, an ombuds is a state official appointed to provide a check on government activity in the interests of the citizens, and oversee the investigation of complaints of improper government activity against the citizens. If the ombuds finds a complaint to be substantiated, the problem may get rectified, or an ombuds report is published making recommendations for change. The typical duties of an ombuds are to investigate complaints and attempt to resolve them, usually through recommendations. Ombuds sometimes also aim to identify systemic issues leading to poor service or breaches of peoples' rights.

Washington State has the following ombuds offices: the Long Term Care Ombudsman; the Office of the Family and Children's Ombudsman; the Office of the Educational Ombudsman; and the Health Care Authority Ombudsman.

State Employee Whistleblower Program (SEWP). SEWP was established to encourage state employees to report suspected improper governmental action and provide protection to employees who do so. The law makes retaliation against employees who make a report unlawful and authorizes remedies should retaliation occur. The State Auditor's Office (Auditor) is responsible for investigating and reporting assertions of improper governmental conduct.

The Office of Financial Management (OFM) must periodically contract for a performance audit of SEWP to determine whether the program is using its resources economically and

efficiently, the cause of any uneconomic or inefficient practice, and whether the program has complied with laws and rules on matters of economy and efficiency. The audit must also analyze whether the desired results and benefits of the program are being achieved.

Summary of Engrossed First Substitute Bill: Office of the Corrections Ombuds (Ombuds). Subject to appropriation, the Office of Corrections Ombuds is created for the purpose of providing information to inmates, family members, inmate representatives, and DOC employees; providing assistance to support inmate self-advocacy; identifying systemic issues and responses for the Governor and Legislature to act upon; and ensuring compliance with statutes, rules, and policies pertaining to conditions of correctional facilities and the treatment of inmates.

No later than October 1, 2017, the Governor must convene an Ombuds Advisory Council (Council) to support the Ombuds functions. The Council will assist the Ombuds in developing priorities and recommendations and review data and reports prepared by the Ombuds. The Council must provide the Governor and the Legislature with recommendations regarding the Ombuds budget and changes in the law to enhance the Ombuds' effectiveness. The Council consists of four initial members of the Legislature. The remaining members are prescribed, to be appointed by the Governor and confirmed by the Senate. The Council must meet at least once per quarter. Council members serve a term of two years.

The Department of Commerce must conduct a competitive bidding process to designate a nonprofit organization to operate the Office of Corrections Ombuds. The contract must last for a period of two years and may be renewed at the end of the term. The selected organization will operate as an independent entity operating under contract with the state. The organization is subject to financial and other audits by the State Auditor's office.

The Ombuds must:

- establish priorities within appropriated resources;
- provide information to inmates, inmate families and representatives, department employees, and others;
- provide technical assistance to support inmate participation in self-advocacy;
- monitor department compliance with applicable laws, regulations, and policies;
- monitor and participate in legislative and policy development;
- establish a statewide uniform reporting system related to complaints regarding the department;
- establish procedures to receive, investigate, and resolve complaints;
- submit an annual report to the Council, Governor's office, and the Legislature; and
- adopt and comply with rules, policies, and procedures necessary to comply with this chapter.

Further guidelines regarding Ombuds operations are outlined, including the conducting and reporting of Ombuds investigations, Ombuds access to correctional facilities, and confidentiality of information held by the Ombuds.

DOC Information Technology. The highest duty of DOC and the Secretary is to ensure the public safety. To ensure public safety, if DOC has reason to believe a calculation error has caused an error in the calculation of the release date of any prisoner, DOC must manually

calculate the release date of any affected prisoners. DOC must submit an annual report to the Governor and the Legislature detailing any information technology backlog at DOC along with the plans to address the backlog.

The Joint Legislative Audit Review Committee (JLARC) is directed to conduct a performance audit of the information technology and records related units at DOC and report its findings no later than December 1, 2018. The audit must include:

- the administrative structure of the departments;
- the sufficiency and quality of staffing of each of the departments; and
- an evaluation of the advance corrections project.

Sentencing Reform. DOC is required to develop a mandatory sentencing elements worksheet in consultation with the following entities:

- Administrative Office of the Courts;
- Superior Court Judges Association;
- Washington Association of Prosecuting Attorneys;
- Washington Association of Criminal Defense Lawyers and the Washington Defender Association; and
- Association of County Clerks.

The worksheet must include the necessary elements to allow DOC to calculate and record the offender's term of confinement and term of community custody. AOC must include the worksheet in a specific section of the felony judgment and sentence form.

DOC may petition the court for review of any sentence committing a person to DOC custody to address any missing, incomplete, or illegible elements required by the sentencing elements worksheet.

The act applies to sentences imposed on or after January 1, 2018.

The Sentencing Guidelines Commission (SGC) shall contract with a consultant to evaluate the state's sentencing laws and practices. The scope of the evaluation is outlined. The consultant must complete its evaluation and submit a report to the commission, the Joint Legislative Task Force on Criminal Sentencing (Task Force), and the Governor by September 1, 2018.

A Task Force is established to simplify criminal sentencing. The Task Force must consist of four members of the Legislature and representatives from: the Washington Association of Sheriffs and Police Chiefs, Washington State Patrol, Caseload Forecast Council, Washington Association of Prosecuting Attorneys, Washington Association of Criminal Defense Attorneys/Washington Defender Association, Washington State Association of Counties, Office of the Attorney General, American Civil Liberties Union, Sentencing Guidelines Commission, Department of Corrections, Superior Court Judges Association, and Administrative Office of the Courts. The initial meeting must be convened by the legislative members no later than September 30, 2018.

The Task Force must review and make recommendations for the simplification of the Sentencing Reform Act no later than December 1, 2019.

State Employee Whistleblower Program (SEWP). In the contract for the next regularly scheduled performance audit of the SEWP, OFM must require the audit to review the ability of DOC employees to use the SEWP. The audit must provide recommendations to improve the effectiveness of the SEWP.

A settlement of any cause of action brought by an employee for retaliation against a whistleblower may not contain a provision prohibiting the employee from future work in state government unless the government agency has a significant ongoing concern for the public health, safety, or welfare as a result of the person's future employment.

Appropriation: None.

Fiscal Note: Requested on June 7, 2017.

Creates Committee/Commission/Task Force that includes Legislative members: Yes.

Effective Date: Except as otherwise stated, the bill takes effect ninety days after adjournment of session in which bill is passed. Sections 14, 15, and 16 apply to sentences imposed on or after July 1, 2018. Section 20 takes effect July 1, 2018.

Staff Summary of Public Testimony on Draft Bill (Second Special Session 2017): *The committee recommended a different version of the bill than what was heard.* PRO: The DOC is supportive of the mandatory sentencing elements worksheet. There are a few suggestions as to the Ombuds provisions. Conflicting provisions require the advisory council to meet annually or quarterly. Any claim made to the Ombuds should relate to the health, safety, and welfare of inmates. The strict timeline to respond to the Ombuds request for documents is concerning. This provision should be the same as provided for responding to a public records request.

The bill requires the Ombuds to adopt policies for responding to public records requests. The Long Term Care Ombuds and the Developmental Disabilities Ombuds are not required to respond to public records requests. The Corrections Ombuds should work the same as these other programs. Confidentiality is vitally important for reporters to know that a claim is not going to be disclosed. The Ombuds has multiple ways of reporting to the Legislature without having the chilling effect that will be created by open public records requests.

This bill is working towards peace between prisoners, staff, and the communities that will receive prisoners when they reenter society. The presence of the Corrections Ombuds is integral to that effort. When the state has absolute power over an individual such as the case with corrections, it is incumbent upon the state to ensure it is acting appropriately. The presence of an independent agency to provide oversight is key to that effort. Confidentiality is integral to prisoners having confidence in the Ombuds. The Ombuds will also have a significant function in offering families the opportunity to better navigate the system.

The SGC has commenced looking at the Sentencing Reform Act (SRA). One of the first steps has been to reach out to the various groups of key operators who work with the SRA on a daily basis and ask them to identify what elements of the SRA should be preserved and

what things it might make sense to change. The SGC looks forward to providing its work product to the Legislative Task Force for final recommendation.

Persons Testifying: PRO: Alex MacBain, Department of Corrections; Rachael Seevers, Disability Rights Washington; Melanie Smith, Post-Prison Education Program; Noah Martin, Quaker Voice on WA Public Policy; Loretta Rafay, DOC Statewide Family Council; Russell Hauge, Sentencing Guidelines Commission.

Persons Signed In To Testify But Not Testifying: No one.