
ENGROSSED SUBSTITUTE SENATE BILL 5952

State of Washington 65th Legislature 2017 2nd Special Session

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

READ FIRST TIME 06/21/17.

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

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

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

PART 1

CREATING THE DEPARTMENT OF CORRECTIONS OMBUDS

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

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

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

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

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

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

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

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

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

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

1 NEW SECTION. **Sec. 4.** (1) Subject to the availability of amounts
2 appropriated for this specific purpose, no later than October 1,
3 2017, the governor shall convene an ombuds advisory council with
4 several purposes in support of the ombuds function. The council shall
5 participate in a priority setting process for the purpose of
6 developing priority recommendations to the ombuds, review data
7 collected by the ombuds, review reports issued by the ombuds prior to
8 their release, and make recommendations to the ombuds regarding the
9 accomplishment of its purposes. The council also has authority to
10 issue its own reports and recommendations. The council must
11 biannually review the ombuds' performance, including its compliance
12 with its internal bylaws and other adopted standards of practice,
13 reporting to the governor and the legislature regarding its findings.
14 The council must provide the legislature with recommendations
15 regarding the ombuds budget and changes in the law that would enhance
16 the effectiveness of the ombuds.

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

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

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

23 (3) The remaining council members consist of the following
24 members, appointed by the governor, and subject to senate
25 confirmation:

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

28 (b) Two family members of current inmates;

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

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

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

37 (f) Two former department of corrections employees;

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

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

1 (4) The council also includes:

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

3 (b) A bargaining unit representative; and

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

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

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

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

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

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

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

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

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

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

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

16 (d) Provide technical assistance to support inmate participation
17 in self-advocacy;

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

22 (f) Monitor and participate in legislative and policy
23 developments affecting correctional facilities;

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

26 (h) Establish procedures to receive, investigate, and resolve
27 complaints;

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

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

33 (2)(a) The ombuds may initiate and attempt to resolve an
34 investigation upon his or her own initiative, or upon receipt of a
35 complaint from an inmate, a family member, a representative of an
36 inmate, a department employee, or others, regarding any allegation of
37 the following that may adversely affect the health, safety, welfare,
38 and rights of inmates:

39 (i) Abuse or neglect;

- 1 (ii) Department decisions or administrative actions;
- 2 (iii) Inactions or omissions;
- 3 (iv) Policies, rules, or procedures; or
- 4 (v) Alleged violations of law by the department.

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

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

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

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

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

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

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

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

- 37 (i) Consider the matter further;
- 38 (ii) Modify or cancel any action;
- 39 (iii) Alter a rule, practice, or ruling;
- 40 (iv) Explain in detail the administrative action in question;

1 (v) Rectify an omission; or

2 (vi) Take any other action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (3) Investigative records of the office of the ombuds are
39 confidential and are exempt from public disclosure under chapter

1 42.56 RCW. Records provided to and communications with the office of
2 the ombuds related to an investigation are also exempt from public
3 disclosure under chapter 42.56 RCW

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

8 (a) The complainant or witness waives confidentiality;

9 (b) Under a legislative subpoena when there is a legislative
10 investigation for neglect of duty or misconduct by the ombuds or
11 ombuds' office when the identifying information is necessary to the
12 investigation of the ombuds' acts; or

13 (c) Under an investigation or inquiry by the governor as to
14 neglect of duty or misconduct by the ombuds or ombuds' office when
15 the identifying information is necessary to the investigation of the
16 ombuds' acts.

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

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

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

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

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

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

36 (2) No discriminatory, disciplinary, or retaliatory action may be
37 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. 12.** 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. 13.** 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. 14.** 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. 15.** (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. 16.** 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 defender 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. 17.** 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 16 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. 18.** 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. 19.** (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 20 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. 20.** (1) A joint legislative task force to
18 simplify 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 or the
34 Washington defender association;

35 (vi) Washington state association of counties;

36 (vii) Office of the attorney general;

37 (viii) American civil liberties union of Washington;

38 (ix) Sentencing guidelines commission;

39 (x) Department of corrections;

1 (xi) Superior court judges' association; and

2 (xii) Administrative office for the courts.

3 (3) The task force shall review sentencing laws after
4 consideration of the study under section 19 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 of the sentencing system, and
8 promote public safety. The task force must consider recommendations
9 that:

10 (a) Reduce sentencing complexity while reducing punishment;

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

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

14 (4) The legislative membership shall convene the initial meeting
15 of the task force to receive the report from the consultant under
16 section 19 of this act no later than September 30, 2018. The
17 legislative members shall choose the task force's cochairs, which
18 must include one senator and one representative from among the
19 legislative membership of the task force. All meetings of the task
20 force must be scheduled and conducted in accordance with the
21 requirements of both the senate and the house of representatives.

22 (5) The task force shall submit a report, which may include
23 findings, recommendations, and proposed legislation, to the governor
24 and the appropriate committees of the legislature by December 1,
25 2019.

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

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

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

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

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

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

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

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

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

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

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

31 NEW SECTION. **Sec. 22.** In the contract for the next regularly
32 scheduled performance audit under RCW 42.40.110 following the
33 effective date of this section, the office of financial management
34 must require the audit to review the ability of department of
35 corrections employees to use the state employee whistleblower
36 program. The audit must include findings and recommendations,

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

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

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

7 NEW SECTION. **Sec. 25.** Section 20 of this act takes effect July
8 1, 2018.

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