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**SENATE BILL 5270**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senators Saldaña, Frame, Hasegawa, Hunt, Kuderer, Lovelett, Nguyen, Nobles, Stanford, Valdez, Wellman, and C. Wilson

AN ACT Relating to keeping communities together by limiting the department of corrections' assistance with federal immigration enforcement activities; amending RCW 72.09.270, 72.09.460, and 9.94A.733; adding a new section to chapter 72.09 RCW; creating a new section; repealing RCW 9.94A.685; and declaring an emergency.

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

NEW SECTION. **Sec.**  The legislature finds that immigrants make a significant contribution to the vitality of the state, and it is important that the state recognize the importance of keeping communities and families together. The legislature recognizes that nearly 1,000,000 Washingtonians are immigrants, which is one out of every seven people in the state.

The legislature finds that when prisons transfer immigrant and refugee community members eligible for release from state custody to immigration and customs enforcement for immigration detention and deportation purposes, they subject these community members to double punishment beyond a given sentence. The legislature finds that these community members may be refugees, lawful permanent residents, people who moved to Washington state as children, parents, caretakers, essential workers, and other Washington residents. The legislature finds that immigrant community members in federal detention can be detained for prolonged periods with no right to bail and deported, permanently banishing them from their families, homes, and communities. The legislature recognizes that the state has already taken steps to ensure all Washingtonians are treated with dignity and respect, including the governor's executive order 17-01 and the department of corrections 350.750 policy change from December 2021.

Therefore, the legislature resolves to enact the keeping communities together act to prevent the state from assisting immigration and customs enforcement in separating and disrupting families and communities.

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

(1) In accordance with RCW 10.93.160, the department may not arrest or assist with the arrest, confinement, detention, transfer, interrogation, or deportation of an individual under the jurisdiction of the department for an immigration enforcement purpose in any manner including, but not limited to, by notifying another agency or subcontractor of the agency regarding the release date and time of an individual, releasing or transferring an individual into the custody of another agency or subcontractor of the agency, or disclosing personal information, as defined in this section, about an individual.

(2)(a) The department may not record or enter into any database used by the department including, but not limited to, the offender management network information system, for any person currently or previously incarcerated or under the supervision of the department the following information:

(i) Place of birth; and

(ii) Immigration or citizenship status.

(b) The department may not allow any federal immigration authority to access to the department's offender management network information system or any other database used or controlled by the department.

(c) The department shall outline the applicable government assistance and benefit programs that an individual may be eligible for and must explain in writing:

(i) The individual's right to refuse to disclose their immigration or citizenship status; and

(ii) That disclosure of their immigration or citizenship status may result in civil or criminal immigration enforcement, including removal from the United States.

(d) The department may not disclose any information provided by an individual under (c) of this subsection for determining eligibility for relevant government assistance and benefit programs to any federal immigration authority.

(3)(a) The department may not use an individual's immigration or citizenship status, including the existence of a hold or immigration detainer request, as a factor to deny or recommend denial of privileges or participation in any diversion, rehabilitation, work program, or mental health program or placement in a credit-earning or vocational training program; or to determine custodial classification level.

(b) Immigration or citizenship status, including the existence of a hold or immigration detainer request, shall not be considered necessary for classification or placement purposes for individuals under the jurisdiction of the department.

(4) Nothing in this section shall prohibit the department's compliance with a bench warrant issued by the court for a criminal matter.

(5) In addition to any other sanctions, penalties, or remedies provided by law, a person may bring an action for equitable or declaratory relief in a court of competent jurisdiction against the department or state official that violates this section. A state agency or official that violates this section is also liable for actual and general damages and reasonable attorneys' fees.

(6) For the purposes of this section, the following terms have the meaning indicated:

(a) "Hold request" or "immigration detainer request" has the same meaning as provided in RCW 43.17.420 and includes a request from a federal immigration authority to be informed of the release date and time in advance of the individual's release from the department's custody.

(b) "Immigration or citizenship status" has the same meaning as provided in RCW 43.17.420.

(c) "Immigration enforcement" means any activity that has the purpose of apprehension or identification of an individual in order to:

(i) Subject the individual to civil immigration arrest, civil immigration detention, removal or deportation proceedings, or removal or deportation from the United States; or

(ii) Criminally prosecute the individual for offenses related to federal laws regarding immigration status.

(d) "Personal information" means any information that identifies or describes an individual including, but not limited to, the individual's name, place and date of birth, immigration or citizenship status, social security number, physical description, home address, work address, home telephone number, education, financial matters, and medical or employment history. It includes statements made by, or attributed to, the individual and parole or supervision check in dates and times.

(e) "Transfer" includes custodial transfers, informal transfers in which a person's arrest is facilitated through the physical handoff of that person in a nonpublic area of the department, or any coordination between the department and the receiving agency about an individual's release to effectuate an arrest for immigration enforcement purposes upon or following their release from the custody of the department.

**Sec.**  RCW 72.09.270 and 2021 c 200 s 3 are each amended to read as follows:

(1) The department of corrections shall develop an individual reentry plan as defined in RCW 72.09.015 for every incarcerated individual who is committed to the jurisdiction of the department except((~~:~~

~~(a) Incarcerated~~)) incarcerated individuals who are sentenced to life without the possibility of release or sentenced to death under chapter 10.95 RCW((~~; and~~

~~(b) Incarcerated individuals who are subject to the provisions of 8 U.S.C. Sec. 1227~~)).

(2) The individual reentry plan may be one document, or may be a series of individual plans that combine to meet the requirements of this section.

(3) In developing individual reentry plans, the department shall assess all incarcerated individuals using standardized and comprehensive tools to identify the criminogenic risks, programmatic needs, and educational and vocational skill levels for each incarcerated individual. The assessment tool should take into account demographic biases, such as culture, age, and gender, as well as the needs of the incarcerated individual, including any learning disabilities, substance abuse or mental health issues, and social or behavior challenges.

(4)(a) The initial assessment shall be conducted as early as sentencing, but, whenever possible, no later than forty‑five days of being sentenced to the jurisdiction of the department of corrections.

(b) The incarcerated individual's individual reentry plan shall be developed as soon as possible after the initial assessment is conducted, but, whenever possible, no later than sixty days after completion of the assessment, and shall be periodically reviewed and updated as appropriate.

(5) The individual reentry plan shall, at a minimum, include:

(a) A plan to maintain contact with the incarcerated individual's children and family, if appropriate. The plan should determine whether parenting classes, or other services, are appropriate to facilitate successful reunification with the incarcerated individual's children and family;

(b) An individualized portfolio for each incarcerated individual that includes the incarcerated individual's education achievements, certifications, employment, work experience, skills, and any training received prior to and during incarceration; and

(c) A plan for the incarcerated individual during the period of incarceration through reentry into the community that addresses the needs of the incarcerated individual including education, employment, substance abuse treatment, mental health treatment, family reunification, and other areas which are needed to facilitate a successful reintegration into the community.

(6)(a) Prior to discharge of any incarcerated individual, the department shall:

(i) Evaluate the incarcerated individual's needs and, to the extent possible, connect the incarcerated individual with existing services and resources that meet those needs; and

(ii) Connect the incarcerated individual with a community justice center and/or community transition coordination network in the area in which the incarcerated individual will be residing once released from the correctional system if one exists.

(b) If the department recommends partial confinement in an incarcerated individual's individual reentry plan, the department shall maximize the period of partial confinement for the incarcerated individual as allowed pursuant to RCW 9.94A.728 to facilitate the incarcerated individual's transition to the community.

(7) The department shall establish mechanisms for sharing information from individual reentry plans to those persons involved with the incarcerated individual's treatment, programming, and reentry, when deemed appropriate. When feasible, this information shall be shared electronically.

(8)(a) In determining the county of discharge for an incarcerated individual released to community custody, the department may approve a residence location that is not in the incarcerated individual's county of origin if the department determines that the residence location would be appropriate based on any court-ordered condition of the incarcerated individual's sentence, victim safety concerns, and factors that increase opportunities for successful reentry and long-term support including, but not limited to, location of family or other sponsoring persons or organizations that will support the incarcerated individual, ability to complete an educational program that the incarcerated individual is enrolled in, availability of appropriate programming or treatment, and access to housing, employment, and prosocial influences on the person in the community.

(b) In implementing the provisions of this subsection, the department shall approve residence locations in a manner that will not cause any one county to be disproportionately impacted.

(c) If the incarcerated individual is not returned to his or her county of origin, the department shall provide the law and justice council of the county in which the incarcerated individual is placed with a written explanation.

(d)(i) For purposes of this section, except as provided in (d)(ii) of this subsection, the incarcerated individual's county of origin means the county of the incarcerated individual's residence at the time of the incarcerated individual's first felony conviction in Washington state.

(ii) If the incarcerated individual is a homeless person as defined in RCW 43.185C.010, or the incarcerated individual's residence is unknown, then the incarcerated individual's county of origin means the county of the incarcerated individual's first felony conviction in Washington state.

(9) Nothing in this section creates a vested right in programming, education, or other services.

**Sec.**  RCW 72.09.460 and 2021 c 200 s 4 are each amended to read as follows:

(1) Recognizing that there is a positive correlation between education opportunities and reduced recidivism, it is the intent of the legislature to offer appropriate postsecondary degree or certificate opportunities to incarcerated individuals.

(2) The legislature intends that all incarcerated individuals be required to participate in department-approved education programs, work programs, or both, unless exempted as specifically provided in this section. Eligible incarcerated individuals who refuse to participate in available education or work programs available at no charge to the incarcerated individuals shall lose privileges according to the system established under RCW 72.09.130. Eligible incarcerated individuals who are required to contribute financially to an education or work program and refuse to contribute shall be placed in another work program. Refusal to contribute shall not result in a loss of privileges.

(3) The legislature recognizes more incarcerated individuals may agree to participate in education and work programs than are available. The department must make every effort to achieve maximum public benefit by placing incarcerated individuals in available and appropriate education and work programs.

(4)(a) The department shall, to the extent possible and considering all available funds, prioritize its resources to meet the following goals for incarcerated individuals in the order listed:

(i) Achievement of basic academic skills through obtaining a high school diploma or a high school equivalency certificate as provided in RCW 28B.50.536, including achievement by those incarcerated individuals eligible for special education services pursuant to state or federal law;

(ii) Achievement of vocational skills necessary for purposes of work programs and for an incarcerated individual to qualify for work upon release;

(iii) Additional work and education programs necessary for compliance with an incarcerated individual's individual reentry plan under RCW 72.09.270, including special education services and postsecondary degree or certificate education programs; and

(iv) Other appropriate vocational, work, or education programs that are not necessary for compliance with an incarcerated individual's individual reentry plan under RCW 72.09.270 including postsecondary degree or certificate education programs.

(b) If programming is provided pursuant to (a)(i) through (iii) of this subsection, the department shall pay the cost of such programming, including but not limited to books, materials, and supplies.

(c) If programming is provided pursuant to (a)(iv) of this subsection, incarcerated individuals shall be required to pay all or a portion of the costs, including books, fees, and tuition, for participation in any vocational, work, or education program as provided in department policies. Department policies shall include a formula for determining how much an incarcerated individual shall be required to pay. The formula shall include steps which correlate to an incarcerated individual's average monthly income or average available balance in a personal savings account and which are correlated to a prorated portion or percent of the per credit fee for tuition, books, or other ancillary educational costs. The formula shall be reviewed every two years. A third party, including but not limited to nonprofit entities or community-based postsecondary education programs, may pay directly to the department all or a portion of costs and tuition for any programming provided pursuant to (a)(iv) of this subsection on behalf of an incarcerated individual. Such payments shall not be subject to any of the deductions as provided in this chapter.

(d) The department may accept any and all donations and grants of money, equipment, supplies, materials, and services from any third party, including but not limited to nonprofit entities and community-based postsecondary education programs, and may receive, utilize, and dispose of same to complete the purposes of this section.

(e) Any funds collected by the department under (c) and (d) of this subsection and subsections (11) and (12) of this section shall be used solely for the creation, maintenance, or expansion of incarcerated individual educational and vocational programs.

(5) The department shall provide access to a program of education to all incarcerated individuals who are under the age of eighteen and who have not met high school graduation requirements or requirements to earn a high school equivalency certificate as provided in RCW 28B.50.536 in accordance with chapter 28A.193 RCW. The program of education established by the department and education provider under RCW 28A.193.020 for incarcerated individuals under the age of eighteen must provide each incarcerated individual a choice of curriculum that will assist the incarcerated individual in achieving a high school diploma or high school equivalency certificate. The program of education may include but not be limited to basic education, prevocational training, work ethic skills, conflict resolution counseling, substance abuse intervention, and anger management counseling. The curriculum may balance these and other rehabilitation, work, and training components.

(6)(a) In addition to the policies set forth in this section, the department shall consider the following factors in establishing criteria for assessing the inclusion of education and work programs in an incarcerated individual's individual reentry plan and in placing incarcerated individuals in education and work programs:

(i) An incarcerated individual's release date and custody level. An incarcerated individual shall not be precluded from participating in an education or work program solely on the basis of his or her release date, except that incarcerated individuals with a release date of more than one hundred twenty months in the future shall not comprise more than ten percent of incarcerated individuals participating in a new class I correctional industry not in existence on June 10, 2004;

(ii) An incarcerated individual's education history and basic academic skills;

(iii) An incarcerated individual's work history and vocational or work skills;

(iv) An incarcerated individual's economic circumstances, including but not limited to an incarcerated individual's family support obligations; and

(v) Where applicable, an incarcerated individual's prior performance in department-approved education or work programs;

(b) The department shall establish, and periodically review, incarcerated individual behavior standards and program outcomes for all education and work programs. Incarcerated individuals shall be notified of applicable behavior standards and program goals prior to placement in an education or work program and shall be removed from the education or work program if they consistently fail to meet the standards or outcomes.

(7) Eligible incarcerated individuals who refuse to participate in available education or work programs available at no charge to the incarcerated individuals shall lose privileges according to the system established under RCW 72.09.130. Eligible incarcerated individuals who are required to contribute financially to an education or work program and refuse to contribute shall be placed in another work program. Refusal to contribute shall not result in a loss of privileges.

(8) The department shall establish, by rule, a process for identifying and assessing incarcerated individuals with learning disabilities, traumatic brain injuries, and other cognitive impairments to determine whether the person requires accommodations in order to effectively participate in educational programming, including general educational development tests and postsecondary education. The department shall establish a process to provide such accommodations to eligible incarcerated individuals.

(9) The department shall establish, and periodically review, goals for expanding access to postsecondary degree and certificate education programs and program completion for all incarcerated individuals, including persons of color. The department may contract and partner with any accredited educational program sponsored by a nonprofit entity, community-based postsecondary education program, or institution with historical evidence of providing education programs to people of color.

(10) The department shall establish, by rule, objective medical standards to determine when an incarcerated individual is physically or mentally unable to participate in available education or work programs. When the department determines an incarcerated individual is permanently unable to participate in any available education or work program due to a health condition, the incarcerated individual is exempt from the requirement under subsection (2) of this section. When the department determines an incarcerated individual is temporarily unable to participate in an education or work program due to a medical condition, the incarcerated individual is exempt from the requirement of subsection (2) of this section for the period of time he or she is temporarily disabled. The department shall periodically review the medical condition of all incarcerated individuals with temporary disabilities to ensure the earliest possible entry or reentry by incarcerated individuals into available programming.

(11) The department shall establish policies requiring an incarcerated individual to pay all or a portion of the costs and tuition for any vocational training or postsecondary education program if the incarcerated individual previously abandoned coursework related to postsecondary degree or certificate education or vocational training without excuse as defined in rule by the department. Department policies shall include a formula for determining how much an incarcerated individual shall be required to pay. The formula shall include steps which correlate to an incarcerated individual's average monthly income or average available balance in a personal savings account and which are correlated to a prorated portion or percent of the per credit fee for tuition, books, or other ancillary costs. The formula shall be reviewed every two years. A third party may pay directly to the department all or a portion of costs and tuition for any program on behalf of an incarcerated individual under this subsection. Such payments shall not be subject to any of the deductions as provided in this chapter.

(12) Notwithstanding any other provision in this section, an incarcerated individual sentenced to death under chapter 10.95 RCW ((~~or subject to the provisions of 8 U.S.C. Sec. 1227~~)):

(a) Shall not be required to participate in education programming except as may be necessary for the maintenance of discipline and security;

(b) May not participate in a postsecondary degree education program offered by the department or its contracted providers, unless the incarcerated individual's participation in the program is paid for by a third party or by the individual;

(c) May participate in prevocational or vocational training that may be necessary to participate in a work program;

(d) Shall be subject to the applicable provisions of this chapter relating to incarcerated individual financial responsibility for programming.

(13) If an incarcerated individual has participated in postsecondary education programs, the department shall provide the incarcerated individual with a copy of the incarcerated individual's unofficial transcripts, at no cost to the individual, upon the incarcerated individual's release or transfer to a different facility. Upon the incarcerated individual's completion of a postsecondary education program, the department shall provide to the incarcerated individual, at no cost to the individual, a copy of the incarcerated individual's unofficial transcripts. This requirement applies regardless of whether the incarcerated individual became ineligible to participate in or abandoned a postsecondary education program.

(14) For the purposes of this section, "third party" includes a nonprofit entity or community-based postsecondary education program that partners with the department to provide accredited postsecondary education degree and certificate programs at state correctional facilities.

**Sec.**  RCW 9.94A.733 and 2021 c 266 s 1 are each amended to read as follows:

(1)(a) Except as provided in (b) of this subsection, an offender may not participate in the graduated reentry program under this subsection unless he or she has served at least six months in total confinement in a state correctional facility.

(i) An offender subject to (a) of this subsection may serve no more than the final five months of the offender's term of confinement in partial confinement as home detention as part of the graduated reentry program developed by the department.

(ii) Home detention under (a) of this subsection may not be imposed for individuals subject to ((~~a deportation order,~~)) civil commitment((~~,~~)) or the interstate compact for adult offender supervision under RCW 9.94A.745.

(b) For offenders who meet the requirements of (b)(iii) of this subsection, an offender may not participate in the graduated reentry program unless he or she has served at least four months in total confinement in a state correctional facility.

(i) An offender under this subsection (1)(b) may serve no more than the final 18 months of the offender's term of confinement in partial confinement as home detention as part of the graduated reentry program developed by the department.

(ii) Home detention under this subsection (1)(b) may not be imposed for individuals ((~~subject to a deportation order or~~)) subject to the jurisdiction of the indeterminate sentence review board.

(iii) Home detention under this subsection (1)(b) may not be imposed for offenders currently serving a term of confinement for the following offenses:

(A) Any sex offense;

(B) Any violent offense; or

(C) Any crime against a person offense in accordance with the categorization of crimes against persons outlined in RCW 9.94A.411(2).

(2) The secretary of the department may transfer an offender from a department correctional facility to home detention in the community if it is determined that the graduated reentry program is an appropriate placement and must assist the offender's transition from confinement to the community.

(3) The department and its officers, agents, and employees are not liable for the acts of offenders participating in the graduated reentry program unless the department or its officers, agents, and employees acted with willful and wanton disregard.

(4) All offenders placed on home detention as part of the graduated reentry program must provide an approved residence and living arrangement prior to transfer to home detention.

(5) While in the community on home detention as part of the graduated reentry program, the department must:

(a) Require the offender to be placed on electronic home monitoring;

(b) Require the offender to participate in programming and treatment that the department shall assign based on an offender's assessed need; and

(c) Assign a community corrections officer who will monitor the offender's compliance with conditions of partial confinement and programming requirements.

(6) The department retains the authority to return any offender serving partial confinement in the graduated reentry program to total confinement for any reason including, but not limited to, the offender's noncompliance with any sentence requirement.

(7) The department may issue rental vouchers for a period not to exceed six months for those transferring to partial confinement under this section if an approved address cannot be obtained without the assistance of a voucher.

(8) In the selection of offenders to participate in the graduated reentry program, and in setting, modifying, and enforcing the requirements of the graduated reentry program, the department is deemed to be performing a quasi-judicial function.

(9) The department shall publish a monthly report on its website with the number of offenders who were transferred during the month to home detention as part of the graduated reentry program. The department shall submit an annual report by December 1st to the appropriate committees of the legislature with the number of offenders who were transferred to home detention as part of the graduated reentry program during the prior year.

NEW SECTION. **Sec.**  RCW 9.94A.685 (Alien offenders) and 2011 c 206 s 1 & 1993 c 419 s 1 are each repealed.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**--- END ---**