**5294-S.E AMS PADD S2788.1 - NOT FOR FLOOR USE**

**ESSB 5294** - S AMD **286**

By Senator Padden

**ADOPTED 05/02/2017**

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec.**  The legislature finds that serious allegations arose in 2016 against the department of corrections regarding the department's early release error. The governor's office and senate engaged in investigations that resulted in reports with recommendations to address the matter. The purpose of this act is to implement the legislative recommendations contained in those reports. These reforms will assist in strengthening public safety as well as procedures and practices that lessen the possibility of actions occurring within the department of corrections that may adversely impact the health, safety, welfare, and rehabilitation of offenders, and that will effectively reduce the exposure of the department to litigation.

**PART 1**

**CREATING THE DEPARTMENT OF CORRECTIONS OMBUDS**

NEW SECTION. **Sec.**  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.**  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.

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

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

(a) The majority leader and minority leader in the senate shall appoint one member from each of their respective caucuses of the senate.

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

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

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

(b) Two family members of current inmates;

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

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

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

(f) Two former department of corrections employees;

(g) A current department of corrections chaplain; and

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

(4) The council also includes:

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

(b) A bargaining unit representative; and

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

(5) After the full membership is attained, the council shall develop a process for replacing members in case of resignation or expiration of terms. The council must meet at least once a year.

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

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

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

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

(4) The organization is subject to financial and other audits by the state auditor's office, and its employees must abide by the provisions of chapter 42.52 RCW.

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

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

(b) Develop policies for responding to records requests from the public. These policies shall be similar in scope to the requirements in the public records act except that identifying information about complainants or witnesses must be protected and nondisclosable unless the complainant or witness waives confidentiality;

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

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

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

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

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

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

(i) Establish procedures to receive, investigate, and resolve complaints;

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

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

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

(i) Abuse or neglect;

(ii) Department decisions or administrative actions;

(iii) Inactions or omissions;

(iv) Policies, rules, or procedures; or

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

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

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

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

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

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

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

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

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

(i) Consider the matter further;

(ii) Modify or cancel any action;

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

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

(v) Rectify an omission; or

(vi) Take any other action.

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

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

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

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

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

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

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

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

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

(4) Following notification from the ombuds with a written demand for access to agency records, the delegated department staff must provide the ombuds with access to the requested documentation not later than twenty business days after the ombuds' written request for the records.

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

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

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

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

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

(3) The office shall preserve the confidentiality of information obtained while providing services, including general information, technical assistance, and investigations, to individuals, including inmates, family members and representatives of inmates, department employees, and others. Confidential information may not be disclosed unless the individual gives informed consent, the disclosure is impliedly authorized in order to carry out ombuds services, or the disclosure is authorized by subsection (4) of this section.

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

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

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

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

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

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

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

**PART 2**

**DEPARTMENT OF CORRECTIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**PART 3**

**JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE**

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

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

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

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

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

**PART 4**

**SENTENCING REFORM**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Reduce complexity and implementation challenges;

(ii) Reduce unwarranted disparity;

(iii) Increase postconviction review;

(iv) Reduce costs to taxpayers;

(v) Promote fairness and equity;

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

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

(b) Recommendations for:

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

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

(c) An assessment of:

(i) Sentence lengths among different categories of offenders;

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

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

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

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

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

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

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

(4) This section expires July 1, 2019.

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

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

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

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

(c) The president of the senate and the speaker of the house of representatives jointly shall appoint members representing the:

(i) Washington association of sheriffs and police chiefs;

(ii) Washington state patrol;

(iii) Caseload forecast council;

(iv) Washington association of prosecuting attorneys;

(v) Washington association of criminal defense attorneys or the Washington defender association;

(vi) Washington state association of counties;

(vii) Office of the attorney general;

(viii) American civil liberties union of Washington;

(ix) Sentencing guidelines commission;

(x) Department of corrections;

(xi) Superior court judges' association; and

(xii) Administrative office for the courts.

(3) The task force shall review sentencing laws after consideration of the study under section 17 of this act and the consultant's recommendations. The task force shall develop recommendations to reduce sentencing implementation complexities and errors, improve the effectiveness of the sentencing system, and promote public safety. The task force must consider recommendations that:

(a) Reduce sentencing complexity while reducing punishment;

(b) Reduce sentencing complexity while increasing punishment; and

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

(4) The legislative membership shall convene the initial meeting of the task force no later than September 2018.

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

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

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

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

(9) This section expires July 1, 2020.

**PART 5**

**GENERAL PROVISIONS**

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

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

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

(b) A settlement of any cause of action brought by an employee under this subsection 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.

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

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

NEW SECTION. **Sec.**  Sections 2 through 9 of this act constitute a new chapter in Title 43 RCW."

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By Senator Padden

**ADOPTED 05/02/2017**

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