

**ESSB 5294 - S AMD 286**

By Senator Padden

ADOPTED 05/02/2017

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

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

15 **PART 1**

16 **CREATING THE DEPARTMENT OF CORRECTIONS OMBUDS**

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

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

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

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

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

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

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

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

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

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

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

1 (2) The council initially consists of the following four members:  
2 (a) The majority leader and minority leader in the senate shall  
3 appoint one member from each of their respective caucuses of the  
4 senate.  
5 (b) The speaker of the house of representatives shall appoint one  
6 member from each of the two largest caucuses of the house of  
7 representatives.  
8 (3) The remaining council members consist of the following  
9 members, appointed by the governor, and subject to senate  
10 confirmation:  
11 (a) Two former inmates who have successfully reintegrated into  
12 the community and are no longer in the custody of the department;  
13 (b) Two family members of current inmates;  
14 (c) One expert with significant criminal justice or correctional  
15 experience who is not an employee or contractor with the state of  
16 Washington;  
17 (d) A community member with extensive knowledge and experience in  
18 issues related to racial, ethnic, or religious diversity within the  
19 correctional system;  
20 (e) A community member with extensive knowledge and experience in  
21 the accommodation needs of individuals with disabilities;  
22 (f) Two former department of corrections employees;  
23 (g) A current department of corrections chaplain; and  
24 (h) A community member with dispute resolution training who has  
25 experience working in the criminal justice or corrections field.  
26 (4) The council also includes:  
27 (a) The department staff serving as the internal ombuds, if any;  
28 (b) A bargaining unit representative; and  
29 (c) A representative of the governor's office.  
30 (5) After the full membership is attained, the council shall  
31 develop a process for replacing members in case of resignation or  
32 expiration of terms. The council must meet at least once a year.  
33 (6) Councilmembers serve a term of two years, except that the  
34 council shall create and implement a system of staggered terms, and  
35 no member other than the department staff serving as the internal  
36 ombuds may serve more than two consecutive terms. The council shall  
37 convene at least quarterly. Councilmembers serve without  
38 compensation, except that funds appropriated for the implementation  
39 of this chapter may be used to reimburse members who are not

1 employees of Washington state for expenses necessary to the  
2 performance of their duties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (i) Abuse or neglect;

29 (ii) Department decisions or administrative actions;

30 (iii) Inactions or omissions;

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

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

34 (b) Prior to filing a complaint with the ombuds, a person shall  
35 have reasonably pursued resolution of the complaint through the  
36 internal grievance, administrative, or appellate procedures with the  
37 department. However, in no event may an inmate be prevented from  
38 filing a complaint more than ninety business days after filing an  
39 internal grievance, regardless of whether the department has  
40 completed the grievance process. This subsection (2)(b) does not

1 apply to complaints related to threats of bodily harm including, but  
2 not limited to, sexual or physical assaults or the denial of  
3 necessary medical treatment.

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

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

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

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

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

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

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

26 (i) Consider the matter further;

27 (ii) Modify or cancel any action;

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

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

30 (v) Rectify an omission; or

31 (vi) Take any other action.

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

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

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

8 (3) This chapter does not require inmates to file a complaint  
9 with the ombuds in order to exhaust available administrative remedies  
10 for purposes of the prison litigation reform act of 1995, P.L.  
11 104-134.

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

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

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

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

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

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

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

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

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

12 NEW SECTION. **Sec. 8.** (1) Correspondence and communication with  
13 the office is confidential and must be protected as privileged  
14 correspondence in the same manner as legal correspondence or  
15 communication.

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

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

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

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

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

33 (5) If the ombuds receives personally identifying information  
34 about individual corrections staff during the course of an  
35 investigation that the ombuds determines is unrelated or unnecessary  
36 to the subject of the investigation or recommendation for action, the  
37 ombuds will not further disclose such information. If the ombuds  
38 determines that such disclosure is necessary to an investigation or

1 recommendation, the ombuds will contact the staff member as well as  
2 the bargaining unit representative before any disclosure.

3 NEW SECTION. **Sec. 9.** (1) A civil action may not be brought  
4 against any employee of the office for good faith performance of  
5 responsibilities under this chapter.

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

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

## 16 **PART 2**

### 17 **DEPARTMENT OF CORRECTIONS**

18 **Sec. 10.** RCW 72.09.010 and 1995 1st sp.s. c 19 s 2 are each  
19 amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

13 **Sec. 15.** RCW 9.94A.480 and 2011 1st sp.s. c 40 s 27 are each  
14 amended to read as follows:

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

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

34 (3) If any completed judgment and sentence document as defined in  
35 subsection (1) of this section is not sent to the caseload forecast  
36 council as required in subsection (2) of this section, the caseload  
37 forecast council shall have the authority and shall undertake  
38 reasonable and necessary steps to assure that all past, current, and

1 future sentencing documents as defined in subsection (1) of this  
2 section are received by the caseload forecast council.

3 **Sec. 16.** RCW 9.94A.585 and 2002 c 290 s 19 are each amended to  
4 read as follows:

5 (1) A sentence within the standard sentence range, under RCW  
6 9.94A.510 or 9.94A.517, for an offense shall not be appealed. For  
7 purposes of this section, a sentence imposed on a first-time offender  
8 under RCW 9.94A.650 shall also be deemed to be within the standard  
9 sentence range for the offense and shall not be appealed.

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

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

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

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

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

34 (7) The department may petition for a review of a sentence  
35 committing an offender to the custody or jurisdiction of the  
36 department. The review shall be limited to errors of law or to  
37 address a missing, incomplete, or illegible mandatory sentencing  
38 elements section required pursuant to RCW 9.94A.480(1). Such petition  
39 shall be filed with the court of appeals no later than ninety days

1 after the department has actual knowledge of terms of the sentence.  
2 The petition shall include a certification by the department that all  
3 reasonable efforts to resolve the dispute at the superior court level  
4 have been exhausted.

5 NEW SECTION. **Sec. 17.** (1) Subject to the availability of  
6 amounts appropriated for this specific purpose, the sentencing  
7 guidelines commission shall contract for the services of one or more  
8 external consultants to evaluate the state's sentencing laws and  
9 practices. The consultant must have demonstrated experience in  
10 conducting significant research studies and demonstrated successful  
11 experience in evaluating sentencing systems or practices. The  
12 evaluation must include:

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

15 (i) Reduce complexity and implementation challenges;

16 (ii) Reduce unwarranted disparity;

17 (iii) Increase postconviction review;

18 (iv) Reduce costs to taxpayers;

19 (v) Promote fairness and equity;

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

21 and

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

24 (b) Recommendations for:

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

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

29 (c) An assessment of:

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

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

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

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

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

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

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

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

17 (4) This section expires July 1, 2019.

18 NEW SECTION. **Sec. 18.** (1) A joint legislative task force to  
19 simplify criminal sentencing is established.

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

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

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

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

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 17 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 no later than September 2018.

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

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

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

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

32 (9) This section expires July 1, 2020.

## 33 PART 5

### 34 GENERAL PROVISIONS

35 **Sec. 19.** RCW 49.60.210 and 2011 1st sp.s. c 42 s 25 are each  
36 amended to read as follows:

37 (1) It is an unfair practice for any employer, employment agency,  
38 labor union, or other person to discharge, expel, or otherwise

1 discriminate against any person because he or she has opposed any  
2 practices forbidden by this chapter, or because he or she has filed a  
3 charge, testified, or assisted in any proceeding under this chapter.

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

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

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

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

27 NEW SECTION. Sec. 21. Sections 2 through 9 of this act  
28 constitute a new chapter in Title 43 RCW."

**ESSB 5294 - S AMD 286**  
By Senator Padden

**ADOPTED 05/02/2017**

29 On page 1, line 2 of the title, after "error;" strike the  
30 remainder of the title and insert "amending RCW 72.09.010, 9.94A.480,  
31 9.94A.585, and 49.60.210; adding new sections to chapter 72.09 RCW;

1 adding a new section to chapter 9.94A RCW; adding a new chapter to  
2 Title 43 RCW; creating new sections; and providing expiration dates."

--- END ---