
ENGROSSED SUBSTITUTE SENATE BILL 5294

State of Washington

65th Legislature

2017 Regular Session

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

READ FIRST TIME 02/17/17.

1 AN ACT Relating to addressing the department of corrections early
2 release error; amending RCW 72.09.010, 43.06.010, 42.40.040,
3 49.60.210, and 42.40.110; adding new sections to chapter 72.09 RCW;
4 adding a new chapter to Title 43 RCW; creating new sections; and
5 providing an expiration date.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that serious and
8 specific public allegations have been made against the department of
9 corrections regarding the department's early release error of over
10 three thousand two hundred prisoners during a thirteen-year period
11 from 2002 to 2015. The senate engaged in an exhaustive investigation
12 that involved review of over one hundred thousand pages of documents,
13 three dozen witnesses interviews, six hearings in which thirteen
14 witnesses testified under oath, and the release of a report. The
15 report outlined a systematic failure of management by members of the
16 executive branch over a multiyear period and made a number of
17 recommendations to address the underlying causes of the problem. The
18 purpose of this act is to implement the following twelve legislative
19 recommendations:

20 (1) Establish a corrections ombuds independent of the department
21 of corrections and the governor's office.

1 (2) Investigate the advance corrections/STRONG-R initiative/
2 project.

3 (3) Clarify the statutory obligation of the governor to oversee
4 agencies.

5 (4) Clarify through policy how personal relationships within the
6 executive branch should be managed to avoid conflicts of interest.

7 (5) Simplify Washington's sentencing code in a manner that does
8 not reduce punishment or compromise public safety.

9 (6) Study the staffing of the information technology and records
10 departments of the department of corrections.

11 (7) Require a department of corrections-wide hand count in the
12 event of any future computer error that results in early prisoner
13 releases.

14 (8) Require an annual report to the legislature and plan to
15 address the department of corrections' information technology
16 maintenance backlog.

17 (9) Enhance protections for department of corrections
18 "whistleblowers."

19 (10) Review whether additional actions may be possible against
20 former department of corrections secretary Bernie Warner.

21 (11) Designate public safety as the department of corrections'
22 highest statutory duty.

23 (12) Restructure information technology governance at the
24 department of corrections.

25 **PART 1**

26 **CREATING THE DEPARTMENT OF CORRECTIONS OMBUDS**

27 NEW SECTION. **Sec. 2.** Subject to the availability of amounts
28 appropriated for this specific purpose, the office of the corrections
29 ombuds is funded through the office of the state auditor for the
30 purpose of providing information to inmates, family members,
31 representatives of inmates, department employees, and others
32 regarding the rights of inmates; providing technical assistance to
33 support inmate self-advocacy, alternative dispute resolution, and
34 individual representation; identifying systemic issues, reporting to
35 the legislature, and advocating for systemic reform; and monitoring
36 and promoting compliance with statutes, rules, and policies
37 pertaining to conditions of correctional facilities and the rights of
38 inmates.

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 custody of the
15 department, including, but not limited to, persons residing in a
16 correctional institution or facility; persons released from such
17 facility on furlough, work release, or community custody; and persons
18 received from another state, another state agency, a county, or the
19 federal government.

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

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

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

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

1 (2) The council initially consists of one democrat and one
2 republican member of the legislature. The chairs of the senate
3 committee on law and justice and the house of representatives
4 committee on public safety shall make recommendations to the
5 president of the senate and the speaker of the house of
6 representatives, who shall make the final appointments. These
7 appointed members shall select the following additional members:

8 (a) One former inmate who has successfully reintegrated into the
9 community and is no longer in the custody of the department;

10 (b) Two family members of a current inmate;

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

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

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

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

21 (3) The council also includes:

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

24 (b) A bargaining unit representative, as selected by the
25 membership of the bargaining unit.

26 (4) After the full membership is attained, the council shall
27 develop a process for replacing members in case of resignation or
28 expiration of terms.

29 (5) Councilmembers serve a term of three years, except that the
30 council shall create and implement a system of staggered terms, and
31 no member may serve more than two consecutive terms. The council
32 shall convene at least quarterly. Councilmembers will serve without
33 compensation, except that funds appropriated for the implementation
34 of this act may be used to reimburse members who are not employees of
35 Washington state for expenses necessary to the performance of their
36 duties.

37 NEW SECTION. **Sec. 5.** (1) Subject to the availability of amounts
38 appropriated for this specific purpose, the state auditor shall
39 designate, by a competitive bidding process, the nonprofit

1 organization that will contract to operate the office of the
2 corrections ombuds. The selection process must include direct
3 stakeholder participation in the development of the request for
4 proposals, evaluation of bids, and final selection. The state auditor
5 shall select an organization that possesses, directly or through
6 subcontracts, significant legal expertise, competence with mediation
7 and alternative dispute resolution, and experience working within
8 criminal justice and correctional environments addressing issues
9 relating to chemical dependency treatment, disability and disability-
10 related accommodation, respect for racial, ethnic, and religious
11 diversity, and other civil rights and conditions issues. The selected
12 organization must have experience and the capacity to effectively
13 communicate regarding criminal justice issues with policymakers,
14 stakeholders, and the general public, and must be prepared and able
15 to provide all program and staff support necessary, directly or
16 through subcontracts, to carry out all duties of the office.

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

20 (3) The state auditor or state may not revoke the designation of
21 the organization contracted to provide the services of the office of
22 the corrections ombuds except upon a showing of neglect of duty,
23 misconduct, or inability to perform duties. Prior to revoking the
24 designation, the state must provide notice and an opportunity for the
25 organization, the ombuds, and the public to comment upon the proposed
26 revocation, and must provide the organization an opportunity to
27 appeal the decision to a court.

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

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

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

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

37 (d) Provide technical assistance to support inmate participation
38 in self-advocacy, utilizing existing kite, grievance, and appeal
39 procedures;

1 (e) Monitor department compliance with applicable federal, state,
2 and local laws, rules, regulations, and policies with a view toward
3 protecting the rights of inmates;

4 (f) Monitor and participate in legislative and policy
5 developments affecting correctional facilities and advocate for
6 systemic reform aimed toward protecting the rights of inmates;

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

9 (h) Establish procedures to receive, investigate, and resolve
10 complaints;

11 (i) Submit annually to the council, by November 1st of each year,
12 a report analyzing the work of the office, including any
13 recommendations; and

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

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

- 20 (i) Abuse or neglect;
- 21 (ii) Department decisions or actions;
- 22 (iii) Inactions or omissions;
- 23 (iv) Policies, rules, or procedures; or
- 24 (v) Alleged violations of law.

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

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

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

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

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

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

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

13 (i) Consider the matter further;

14 (ii) Modify or cancel any action;

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

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

17 (v) Rectify an omission; or

18 (vi) Take any other action.

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

23 (j) After the conclusion of an investigation, if the ombuds
24 believes that additional action is warranted, the ombuds may:

25 (i) Report a finding of abuse, neglect, or other rights violation
26 to the appropriate committees of the legislature.

27 (ii) Take any additional action that the ombuds considers
28 appropriate.

29 (k) Before announcing a conclusion or recommendation that
30 expressly, or by implication, criticizes a person or the department,
31 the ombuds must attempt to notify the person or the department. The
32 ombuds may request to be notified by the department, within a
33 specified time, of any action taken on any recommendation presented.
34 The ombuds must notify the inmate, if any, of the actions taken by
35 the department in response to the ombuds' recommendations.

36 (3) This chapter does not require inmates to file a complaint
37 with the ombuds in order to exhaust available administrative remedies
38 for purposes of the prison litigation reform act of 1995, P.L.
39 104-134.

1 NEW SECTION. **Sec. 7.** (1) The ombuds must have reasonable access
2 to correctional facilities at all times necessary to conduct a full
3 investigation of an incident of abuse or neglect. This authority
4 includes the opportunity to interview any inmate, department
5 employee, or other person, including the person thought to be the
6 victim of such abuse, who might be reasonably believed to have
7 knowledge of the incident under investigation. Such access must be
8 afforded, upon request by the ombuds, when:

9 (a) An incident is reported or a complaint is made to the office;

10 (b) The ombuds determines there is reasonable suspicion that an
11 incident has or may have occurred; or

12 (c) The ombuds determines that there is or may be imminent danger
13 of serious abuse or neglect of an inmate.

14 (2) The ombuds must have reasonable access to department
15 facilities, including all areas which are used by inmates, all areas
16 which are accessible to inmates, and to programs for inmates at
17 reasonable times, which at a minimum must include normal working
18 hours and visiting hours. This access is for the purpose of:

19 (a) Providing information about individual rights and the
20 services available from the office, including the name, address, and
21 telephone number of the office;

22 (b) Monitoring compliance with respect to the rights and safety
23 of inmates; and

24 (c) Inspecting, viewing, photographing, and video recording all
25 areas of the facility which are used by inmates or are accessible to
26 inmates.

27 (3) Reasonable access to inmates includes the opportunity to meet
28 and communicate privately and confidentially with individuals
29 regularly, both formally and informally, by telephone, mail, and in
30 person.

31 (4) The ombuds has the right to access, inspect, and obtain
32 copies of all relevant information, records, or documents in the
33 possession or control of the department that the ombuds considers
34 necessary in an investigation of a complaint filed under this
35 chapter, and the department must assist the ombuds in obtaining the
36 necessary releases for those documents which are specifically
37 restricted or privileged for use by the ombuds.

38 (a) When conducting an investigation of potential abuse or
39 neglect, the ombuds must have access to relevant records not later

1 than ten business days after the ombuds makes a written request for
2 such records.

3 (b) The ombuds must have immediate access, not later than
4 seventy-two hours after the ombuds makes such a request, to relevant
5 records, without consent from another party, if the ombuds determines
6 there is reasonable suspicion that the health or safety of an inmate
7 is in serious and immediate jeopardy, or in any case of death of an
8 inmate while in department custody.

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

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

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

19 **PART 2**

20 **DEPARTMENT OF CORRECTIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 NEW SECTION. **Sec. 11.** A new section is added to chapter 72.09
4 RCW to read as follows:

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

11 NEW SECTION. **Sec. 12.** A new section is added to chapter 72.09
12 RCW to read as follows:

13 On December 1st of each year, and in compliance with RCW
14 43.01.036, the department must submit a report to the governor and
15 relevant policy and fiscal committees of the legislature that details
16 any information technology backlog at the department along with
17 specific requirements and plans to address such backlog.

18 **PART 3**

19 **JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE**

20 NEW SECTION. **Sec. 13.** (1) Pursuant to chapter 43.09 RCW, the
21 joint legislative audit and review committee must conduct an
22 immediate performance audit of the information technology and records
23 departments at the department of corrections, including:

24 (a) The administrative structure of the departments, including
25 whether the departments should be restructured to more quickly
26 respond to legislative directives and emergent issues;

27 (b) The sufficiency and quality of staffing at each of the
28 departments; and

29 (c) An evaluation of the advance corrections project.

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

33 **PART 4**

34 **GOVERNOR**

1 **Sec. 14.** RCW 43.06.010 and 2014 c 202 s 305 are each amended to
2 read as follows:

3 In addition to those prescribed by the Constitution, the governor
4 may exercise the powers and perform the duties prescribed in this and
5 the following sections:

6 (1) The governor shall supervise the conduct of all executive and
7 ministerial offices, ensure that all offices are performing their
8 duties as prescribed by law, and ensure that all personal and
9 professional conflicts of interest are avoided;

10 (2) The governor shall see that all offices are filled, including
11 as provided in RCW 42.12.070, and the duties thereof performed, or in
12 default thereof, apply such remedy as the law allows; and if the
13 remedy is imperfect, acquaint the legislature therewith at its next
14 session;

15 (3) The governor shall make the appointments and supply the
16 vacancies mentioned in this title;

17 (4) The governor is the sole official organ of communication
18 between the government of this state and the government of any other
19 state or territory, or of the United States;

20 (5) Whenever any suit or legal proceeding is pending against this
21 state, or which may affect the title of this state to any property,
22 or which may result in any claim against the state, the governor may
23 direct the attorney general to appear on behalf of the state, and
24 report the same to the governor, or to any grand jury designated by
25 the governor, or to the legislature when next in session;

26 (6) The governor may require the attorney general or any
27 prosecuting attorney to inquire into the affairs or management of any
28 corporation existing under the laws of this state, or doing business
29 in this state, and report the same to the governor, or to any grand
30 jury designated by the governor, or to the legislature when next in
31 session;

32 (7) The governor may require the attorney general to aid any
33 prosecuting attorney in the discharge of the prosecutor's duties;

34 (8) The governor may offer rewards, not exceeding one thousand
35 dollars in each case, payable out of the state treasury, for
36 information leading to the apprehension of any person convicted of a
37 felony who has escaped from a state correctional institution or for
38 information leading to the arrest of any person who has committed or
39 is charged with the commission of a felony;

1 (9) The governor shall perform such duties respecting fugitives
2 from justice as are prescribed by law;

3 (10) The governor shall issue and transmit election proclamations
4 as prescribed by law;

5 (11) The governor may require any officer or board to make, upon
6 demand, special reports to the governor, in writing;

7 (12) The governor may, after finding that a public disorder,
8 disaster, energy emergency, or riot exists within this state or any
9 part thereof which affects life, health, property, or the public
10 peace, proclaim a state of emergency in the area affected, and the
11 powers granted the governor during a state of emergency shall be
12 effective only within the area described in the proclamation;

13 (13) The governor may, after finding that there exists within
14 this state an imminent danger of infestation of plant pests as
15 defined in RCW 17.24.007 or plant diseases which seriously endangers
16 the agricultural or horticultural industries of the state of
17 Washington, or which seriously threatens life, health, or economic
18 well-being, order emergency measures to prevent or abate the
19 infestation or disease situation, which measures, after thorough
20 evaluation of all other alternatives, may include the aerial
21 application of pesticides;

22 (14) The governor, after finding that a prohibited level 1 or
23 level 2 species as defined in chapter 77.135 RCW has been detected
24 and after finding that the detected species seriously endangers or
25 threatens the environment, economy, human health, or well-being of
26 the state of Washington, may order emergency measures to prevent or
27 abate the prohibited species, which measures, after thorough
28 evaluation of all other alternatives, may include the surface or
29 aerial application of pesticides;

30 (15) On all compacts forwarded to the governor pursuant to RCW
31 9.46.360(6), the governor is authorized and empowered to execute on
32 behalf of the state compacts with federally recognized Indian tribes
33 in the state of Washington pursuant to the federal Indian Gaming
34 Regulatory Act, 25 U.S.C. Sec. 2701 et seq., for conducting class III
35 gaming, as defined in the Act, on Indian lands.

36 **PART 5**

37 **SENTENCING REFORM**

1 NEW SECTION. **Sec. 15.** (1) A joint legislative task force to
2 simplify criminal sentencing is established.

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

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

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

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

12 (i) Washington association of sheriffs and police chiefs;

13 (ii) Washington state patrol;

14 (iii) Caseload forecast council;

15 (iv) Washington association of prosecuting attorneys;

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

18 (vi) Washington state association of counties;

19 (vii) Office of the attorney general;

20 (viii) American civil liberties union of Washington;

21 (ix) Sentencing guidelines commission;

22 (x) Department of corrections;

23 (xi) Superior court judges' association; and

24 (xii) Administrative office for the courts.

25 (3) The task force shall:

26 (a) Review and make recommendations regarding how the sentencing
27 reform act of 1981 can be simplified; and

28 (b) Limit its review and recommendations to technical,
29 nonsubstantive changes. The task force recommendations must be
30 limited to those that will not reduce punishment or risk public
31 safety.

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

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

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

39 (7) Legislative members of the task force are reimbursed for
40 travel expenses in accordance with RCW 44.04.120. Nonlegislative

1 members are not entitled to be reimbursed for travel expenses if they
2 are elected officials or are participating on behalf of an employer,
3 governmental entity, or other organization. Any reimbursement for
4 other nonlegislative members is subject to chapter 43.03 RCW.

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

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

11 **PART 6**
12 **GENERAL PROVISIONS**

13 **Sec. 16.** RCW 42.40.040 and 2008 c 266 s 4 are each amended to
14 read as follows:

15 (1)(a) In order to be investigated, an assertion of improper
16 governmental action must be provided to the auditor or other public
17 official within one year after the occurrence of the asserted
18 improper governmental action. The public official, as defined in RCW
19 42.40.020, receiving an assertion of improper governmental action
20 must report the assertion to the auditor within fifteen calendar days
21 of receipt of the assertion. The auditor retains sole authority to
22 investigate an assertion of improper governmental action including
23 those made to a public official. A failure of the public official to
24 report the assertion to the auditor within fifteen days does not
25 impair the rights of the whistleblower.

26 (b) Except as provided under RCW 42.40.910 for legislative and
27 judicial branches of government, the auditor has the authority to
28 determine whether to investigate any assertions received. In
29 determining whether to conduct either a preliminary or further
30 investigation, the auditor shall consider factors including, but not
31 limited to: The nature and quality of evidence and the existence of
32 relevant laws and rules; whether the action was isolated or
33 systematic; the history of previous assertions regarding the same
34 subject or subjects or subject matter; whether other avenues are
35 available for addressing the matter; whether the matter has already
36 been investigated or is in litigation; the seriousness or
37 significance of the asserted improper governmental action; and the
38 cost and benefit of the investigation. The auditor has the sole

1 discretion to determine the priority and weight given to these and
2 other relevant factors and to decide whether a matter is to be
3 investigated. The auditor shall document the factors considered and
4 the analysis applied.

5 (c) The auditor also has the authority to investigate assertions
6 of improper governmental actions as part of an audit conducted under
7 chapter 43.09 RCW. The auditor shall document the reasons for
8 handling the matter as part of such an audit.

9 (2) Subject to subsection (5)(c) of this section, the identity or
10 identifying characteristics of a whistleblower is confidential at all
11 times unless the whistleblower consents to disclosure by written
12 waiver or by acknowledging his or her identity in a claim against the
13 state for retaliation. In addition, the identity or identifying
14 characteristics of any person who in good faith provides information
15 in an investigation under this section is confidential at all times,
16 unless the person consents to disclosure by written waiver or by
17 acknowledging his or her identity as a witness who provides
18 information in an investigation.

19 (3) Upon receiving specific information that an employee has
20 engaged in improper governmental action, the auditor shall, within
21 fifteen working days of receipt of the information, mail written
22 acknowledgment to the whistleblower at the address provided stating
23 whether a preliminary investigation will be conducted. For a period
24 not to exceed sixty working days from receipt of the assertion, the
25 auditor shall conduct such preliminary investigation of the matter as
26 the auditor deems appropriate.

27 (4) In addition to the authority under subsection (3) of this
28 section, the auditor may, on its own initiative, investigate
29 incidents of improper state governmental action.

30 (5)(a) If it appears to the auditor, upon completion of the
31 ((preliminary)) investigation, that the matter is so unsubstantiated
32 that no further investigation, prosecution, or administrative action
33 is warranted, the auditor shall so notify the whistleblower
34 summarizing where the allegations are deficient, and provide a
35 reasonable opportunity to reply. Such notification may be by
36 electronic means.

37 (b) The written notification shall contain a summary of the
38 information received and of the results of the ((preliminary))
39 investigation with regard to each assertion of improper governmental
40 action.

1 (c) In any case to which this section applies, the identity or
2 identifying characteristics of the whistleblower shall be kept
3 confidential unless the auditor determines that the information has
4 been provided other than in good faith. If the auditor makes such a
5 determination, the auditor shall provide reasonable advance notice to
6 the employee.

7 (d) With the agency's consent, the auditor may forward the
8 assertions to an appropriate agency to investigate and report back to
9 the auditor no later than sixty working days after the assertions are
10 received from the auditor. The auditor is entitled to all
11 investigative records resulting from such a referral. All procedural
12 and confidentiality provisions of this chapter apply to
13 investigations conducted under this subsection. The auditor shall
14 document the reasons the assertions were referred.

15 (6) During the (~~preliminary~~) investigation, the auditor shall
16 provide written notification of the nature of the assertions to the
17 subject or subjects of the investigation and the agency head. The
18 notification shall include the relevant facts and laws known at the
19 time and the procedure for the subject or subjects of the
20 investigation and the agency head to respond to the assertions and
21 information obtained during the investigation. This notification does
22 not limit the auditor from considering additional facts or laws which
23 become known during further investigation.

24 ~~(a) ((If it appears to the auditor after completion of the~~
25 ~~preliminary investigation that further investigation, prosecution, or~~
26 ~~administrative action is warranted)) Within twenty days of initiating~~
27 ~~an investigation under this section, the auditor shall ((~~se~~)) notify~~
28 ~~the whistleblower, the subject or subjects of the investigation, and~~
29 ~~the agency head ((and either conduct a further investigation or issue~~
30 ~~a report under subsection (9) of this section.~~

31 ~~(b) If the preliminary investigation resulted from an anonymous~~
32 ~~assertion, a decision to conduct further investigation shall be~~
33 ~~subject to review by a three person panel convened as necessary by~~
34 ~~the auditor prior to the commencement of any additional~~
35 ~~investigation. The panel shall include a state auditor representative~~
36 ~~knowledgeable of the subject agency operations, a citizen volunteer,~~
37 ~~and a representative of the attorney general's office. This group~~
38 ~~shall be briefed on the preliminary investigation and shall recommend~~
39 ~~whether the auditor should proceed with further investigation.~~

1 ~~(c) If further investigation is to occur, the auditor shall~~
2 ~~provide written notification of the nature of the assertions to the~~
3 ~~subject or subjects of the investigation and the agency head. The~~
4 ~~notification shall include the relevant facts known at the time and~~
5 ~~the procedure to be used by the subject or subjects of the~~
6 ~~investigation and the agency head to respond to the assertions and~~
7 ~~information obtained during the investigation)) that an investigation~~
8 ~~has been initiated. The auditor shall also notify the whistleblower,~~
9 ~~the subject or subjects of the investigation, and the agency head no~~
10 ~~later than ninety days after initiating the investigation regarding~~
11 ~~the one hundred twenty-day statutory deadline for conclusion of the~~
12 ~~investigation provided in subsection (7) of this section and provide~~
13 ~~notice that the investigation will be completed within thirty days.~~

14 (7) Within (~~sixty~~) one hundred twenty working days after the
15 (~~preliminary~~) investigation period in subsection (3) of this
16 section, the auditor shall complete the investigation and report its
17 findings to the whistleblower unless written justification for the
18 delay is furnished to the whistleblower, agency head, and subject or
19 subjects of the investigation. In all such cases, the report of the
20 auditor's investigation and findings shall be sent to the
21 whistleblower within one year after the information was filed under
22 subsection (3) of this section.

23 (8)(a) At any stage of an investigation under this section the
24 auditor may require by subpoena the attendance and testimony of
25 witnesses and the production of documentary or other evidence
26 relating to the investigation at any designated place in the state.
27 The auditor may issue subpoenas, administer oaths, examine witnesses,
28 and receive evidence. In the case of contumacy or failure to obey a
29 subpoena, the superior court for the county in which the person to
30 whom the subpoena is addressed resides or is served may issue an
31 order requiring the person to appear at any designated place to
32 testify or to produce documentary or other evidence. Any failure to
33 obey the order of the court may be punished by the court as a
34 contempt thereof.

35 (b) The auditor may order the taking of depositions at any stage
36 of a proceeding or investigation under this chapter. Depositions
37 shall be taken before an individual designated by the auditor and
38 having the power to administer oaths. Testimony shall be reduced to
39 writing by or under the direction of the individual taking the
40 deposition and shall be subscribed by the deponent.

1 (c) Agencies shall cooperate fully in the investigation and shall
2 take appropriate action to preclude the destruction of any evidence
3 during the course of the investigation.

4 (d) During the investigation the auditor shall interview each
5 subject of the investigation. If it is determined there is reasonable
6 cause to believe improper governmental action has occurred, the
7 subject or subjects and the agency head shall be given fifteen
8 working days to respond to the assertions prior to the issuance of
9 the final report.

10 (9)(a) If the auditor determines there is reasonable cause to
11 believe an employee has engaged in improper governmental action, the
12 auditor shall report, to the extent allowable under existing public
13 disclosure laws, the nature and details of the activity to:

14 (i) The subject or subjects of the investigation and the head of
15 the employing agency;

16 (ii) If appropriate, the attorney general or such other authority
17 as the auditor determines appropriate;

18 (iii) Electronically to the governor, secretary of the senate,
19 and chief clerk of the house of representatives; and

20 (iv) Except for information whose release is specifically
21 prohibited by statute or executive order, the public through the
22 public file of whistleblower reports maintained by the auditor.

23 (b) The auditor has no enforcement power except that in any case
24 in which the auditor submits an investigative report containing
25 reasonable cause determinations to the agency, the agency shall send
26 its plan for resolution to the auditor within fifteen working days of
27 having received the report. The agency is encouraged to consult with
28 the subject or subjects of the investigation in establishing the
29 resolution plan. The auditor may require periodic reports of agency
30 action until all resolution has occurred. If the auditor determines
31 that appropriate action has not been taken, the auditor shall report
32 the determination to the governor and to the legislature and may
33 include this determination in the agency audit under chapter 43.09
34 RCW.

35 (10) Once the auditor concludes that appropriate action has been
36 taken to resolve the matter, the auditor shall so notify the
37 whistleblower, the agency head, and the subject or subjects of the
38 investigation. If the resolution takes more than one year, the
39 auditor shall provide annual notification of its status to the

1 whistleblower, agency head, and subject or subjects of the
2 investigation.

3 (11) Failure to cooperate with such audit or investigation, or
4 retaliation against anyone who assists the auditor by engaging in
5 activity protected by this chapter shall be reported as a separate
6 finding with recommendations for corrective action in the associated
7 report whenever it occurs.

8 (12) This section does not limit any authority conferred upon the
9 attorney general or any other agency of government to investigate any
10 matter.

11 **Sec. 17.** RCW 49.60.210 and 2011 1st sp.s. c 42 s 25 are each
12 amended to read as follows:

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

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

21 (b) A settlement of any cause of action brought by an employee
22 under this subsection may not contain a provision prohibiting the
23 employee from future work in state government.

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

31 **Sec. 18.** RCW 42.40.110 and 1999 c 361 s 8 are each amended to
32 read as follows:

33 (1)(a) The office of financial management shall contract for a
34 performance audit of the state employee whistleblower program on a
35 cycle to be determined by the office of financial management. The
36 audit shall be done in accordance with generally accepted government
37 auditing standards beginning with the fiscal year ending June 30,
38 2001. The audit shall determine at a minimum: Whether the program is

1 acquiring, protecting, and using its resources such as personnel,
2 property, and space economically and efficiently; the causes of
3 inefficiencies or uneconomical practices; and whether the program has
4 complied with laws and rules on matters of economy and efficiency.
5 The audit shall also at a minimum determine the extent to which the
6 desired results or benefits established by the legislature are being
7 achieved, the effectiveness of the program, and whether the auditor
8 has complied with significant laws and rules applicable to the
9 program.

10 (b) The cost of the audit is a cost of operating the program and
11 shall be funded by the auditing services revolving account created by
12 RCW 43.09.410.

13 (2) In the contract for the next regularly scheduled performance
14 audit following the effective date of this section, the office of
15 financial management must require the audit to review the legislative
16 report from the senate law and justice committee and any other
17 pertinent documentation regarding the department of corrections early
18 release error, with particular focus on the inability of department
19 of corrections employees to use the state employee whistleblower
20 program to address concerns with mismanagement of that department.
21 The audit must provide recommendations on this matter in its
22 evaluation of the effectiveness of the program.

23 NEW SECTION. **Sec. 19.** Sections 1 through 9 of this act
24 constitute a new chapter in Title 43 RCW.

--- END ---