
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 legislature hereby
29 authorizes the creation of the office of the corrections ombuds for
30 the 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.** (1) Subject to confirmation by the senate,
2 the governor shall appoint an ombuds who must be a person of
3 recognized judgment, independence, objectivity, and integrity, and
4 must be qualified by training or experience, or both,
5 in providing information to inmates, family members, representatives
6 of inmates, department employees, and others regarding the rights of
7 inmates; providing technical assistance to support inmate self-
8 advocacy, alternative dispute resolution, and individual
9 representation; identifying systemic issues, reporting to the
10 legislature, and advocating for systemic reform; and monitoring and
11 promoting compliance with statutes, rules, and policies pertaining to
12 conditions of correctional facilities and the rights of inmates.
13 Prior to the appointment, the governor shall consult with and may
14 receive recommendations from the ombuds advisory council regarding
15 the selection of the ombuds.

16 (2) The person appointed ombuds shall hold office for a term of
17 three years and continue to hold office until reappointed or until
18 his or her successor is appointed. The governor may remove the ombuds
19 only for neglect of duty, misconduct, or inability to perform duties.
20 Any vacancy shall be filled by similar appointment for the remainder
21 of the unexpired term.

22 NEW SECTION. **Sec. 4.** The definitions in this section apply
23 throughout this chapter unless the context clearly requires
24 otherwise.

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

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

32 (3) "Council" means the ombuds advisory council established in
33 section 5(1) of this act.

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

35 (5) "Inmate" means a person committed to the custody of the
36 department, including, but not limited to, persons residing in a
37 correctional institution or facility; persons released from such
38 facility on furlough, work release, or community custody; and persons

1 received from another state, another state agency, a county, or the
2 federal government.

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

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

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

9 NEW SECTION. **Sec. 5.** (1) No later than August 1, 2017, the
10 governor shall convene an ombuds advisory council with several
11 purposes in support of the ombuds function. The council shall
12 participate in a priority setting process for the purpose of
13 developing priority recommendations to the ombuds, review data
14 collected by the ombuds, review reports issued by the ombuds prior to
15 their release, and make recommendations to the ombuds regarding the
16 accomplishment of its purposes. The council also has authority to
17 issue its own reports and recommendations. The council must
18 biannually review ombuds performance, reporting to the governor and
19 the legislature regarding its findings. The council must provide the
20 legislature with recommendations regarding the ombuds budget and
21 changes in the law that would enhance ombuds effectiveness.

22 (2) The council initially consists of one democrat and one
23 republican member of the legislature. The chairs of the senate
24 committee on law and justice and the house of representatives
25 committee on public safety shall make recommendations to the
26 president of the senate and the speaker of the house of
27 representatives, who shall make the final appointments. These
28 appointed members shall select the following additional members:

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

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

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

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

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

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

3 (3) The council also includes:

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

6 (b) A bargaining unit representative, as selected by the
7 membership of the bargaining unit.

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

11 (5) Councilmembers serve a term of three years, except that the
12 council shall create and implement a system of staggered terms, and
13 no member may serve more than two consecutive terms. The council
14 shall convene at least quarterly. Councilmembers will serve without
15 compensation, except that funds appropriated for the implementation
16 of this act may be used to reimburse members who are not employees of
17 Washington state for expenses necessary to the performance of their
18 duties.

19 NEW SECTION. **Sec. 6.** (1) The state auditor shall designate, by
20 a competitive bidding process, the nonprofit organization that will
21 contract to operate the office of the corrections ombuds. The
22 selection process must include direct stakeholder participation in
23 the development of the request for proposals, evaluation of bids, and
24 final selection. The state auditor shall select an organization that
25 possesses, directly or through subcontracts, significant legal
26 expertise, competence with mediation and alternative dispute
27 resolution, and experience working within criminal justice and
28 correctional environments addressing issues relating to chemical
29 dependency treatment, disability and disability-related
30 accommodation, respect for racial, ethnic, and religious diversity,
31 and other civil rights and conditions issues. The selected
32 organization must have experience and the capacity to effectively
33 communicate regarding criminal justice issues with policymakers,
34 stakeholders, and the general public, and must be prepared and able
35 to provide all program and staff support necessary, directly or
36 through subcontracts, to carry out all duties of the office.

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

1 (3) The state auditor or state may not revoke the designation of
2 the organization contracted to provide the services of the office of
3 the corrections ombuds except upon a showing of neglect of duty,
4 misconduct, or inability to perform duties. Prior to revoking the
5 designation, the state must provide notice and an opportunity for the
6 organization, the ombuds, and the public to comment upon the proposed
7 revocation, and must provide the organization an opportunity to
8 appeal the decision to a court.

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

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

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

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

18 (d) Provide technical assistance to support inmate participation
19 in self-advocacy, utilizing existing kite, grievance, and appeal
20 procedures;

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

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

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

29 (h) Establish procedures to receive, investigate, and resolve
30 complaints;

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

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

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

- 1 (i) Abuse or neglect;
- 2 (ii) Department decisions or actions;
- 3 (iii) Inactions or omissions;
- 4 (iv) Policies, rules, or procedures; or
- 5 (v) Alleged violations of law.
- 6 (b) The ombuds may decline to investigate any complaint as
- 7 provided by the rules adopted under this chapter.
- 8 (c) The ombuds may not investigate any complaints relating to an
- 9 inmate's underlying criminal conviction.
- 10 (d) The ombuds may not investigate a complaint from a department
- 11 employee that relates to the employee's employment relationship with
- 12 the department.
- 13 (e) The ombuds may refer complainants and others to appropriate
- 14 resources, agencies, or departments.
- 15 (f) The ombuds may not levy any fees for the submission or
- 16 investigation of complaints.
- 17 (g) At the conclusion of an investigation of a complaint, the
- 18 ombuds must render a public decision on the merits of each complaint,
- 19 except that the documents supporting the decision are subject to the
- 20 confidentiality provisions of section 9 of this act. The ombuds must
- 21 communicate the decision to the inmate, if any, and to the
- 22 department. The ombuds must state their recommendations and reasoning
- 23 if, in the ombuds' opinion, the department or any employee thereof
- 24 should:
- 25 (i) Consider the matter further;
- 26 (ii) Modify or cancel any action;
- 27 (iii) Alter a rule, practice, or ruling;
- 28 (iv) Explain in detail the administrative action in question;
- 29 (v) Rectify an omission; or
- 30 (vi) Take any other action.
- 31 (h) If the ombuds so requests, the department must, within the
- 32 time specified, inform the ombuds about any action taken on the
- 33 recommendations or the reasons for not complying with the
- 34 recommendations.
- 35 (i) After the conclusion of an investigation, if the ombuds
- 36 believes that additional action is warranted, the ombuds may:
- 37 (i) Report a finding of abuse, neglect, or other rights violation
- 38 to the appropriate committees of the legislature.
- 39 (ii) Take any additional action that the ombuds considers
- 40 appropriate.

1 (j) Before announcing a conclusion or recommendation that
2 expressly, or by implication, criticizes a person or the department,
3 the ombuds must attempt to notify the 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. 8.** (1) The ombuds must have reasonable access
13 to correctional facilities at all times necessary to conduct a full
14 investigation of an incident of abuse or neglect. This authority
15 includes the opportunity to interview any inmate, department
16 employee, or other person, including the person thought to be the
17 victim of such abuse, who might be reasonably believed to have
18 knowledge of the incident under investigation. Such access must be
19 afforded, upon request by the ombuds, when:

- 20 (a) An incident is reported or a complaint is made to the office;
- 21 (b) The ombuds determines there is reasonable suspicion that an
22 incident has or may have occurred; or
- 23 (c) The ombuds determines that there is or may be imminent danger
24 of serious abuse or neglect of an inmate.

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

- 30 (a) Providing information about individual rights and the
31 services available from the office, including the name, address, and
32 telephone number of the office;
- 33 (b) Monitoring compliance with respect to the rights and safety
34 of inmates; and
- 35 (c) Inspecting, viewing, photographing, and video recording all
36 areas of the facility which are used by inmates or are accessible to
37 inmates.

38 (3) Reasonable access to inmates includes the opportunity to meet
39 and communicate privately and confidentially with individuals

1 regularly, both formally and informally, by telephone, mail, and in
2 person.

3 (4) The ombuds has the right to access, inspect, and obtain
4 copies of all relevant information, records, or documents in the
5 possession or control of the department that the ombuds considers
6 necessary in an investigation of a complaint filed under this
7 chapter, and the department must assist the ombuds in obtaining the
8 necessary releases for those documents which are specifically
9 restricted or privileged for use by the ombuds.

10 (a) When conducting an investigation of potential abuse or
11 neglect, the ombuds must have access to relevant records not later
12 than ten business days after the ombuds makes a written request for
13 such records.

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

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

23 NEW SECTION. **Sec. 9.** (1) Correspondence and communication with
24 the office is confidential and must be protected as privileged
25 correspondence in the same manner as legal correspondence or
26 communication.

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

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

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

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

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

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

14 NEW SECTION. **Sec. 10.** (1) A civil action may not be brought
15 against any employee of the office for good faith performance of
16 responsibilities under this chapter.

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

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

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

30 **PART 2**

31 **DEPARTMENT OF CORRECTIONS**

32 **Sec. 11.** RCW 72.09.010 and 1995 1st sp.s. c 19 s 2 are each
33 amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

33 (6) The system should provide for prudent management of
34 resources. The avoidance of unnecessary or inefficient public
35 expenditures on the part of offenders and the department is
36 essential. Offenders must be accountable to the department, and the
37 department to the public and the legislature. The human and fiscal
38 resources of the community are limited. The management and use of
39 these resources can be enhanced by wise investment, productive
40 programs, the reduction of duplication and waste, and the joining

1 together of all involved parties in a common endeavor. Since most
2 offenders return to the community, it is wise for the state and the
3 communities to make an investment in effective rehabilitation
4 programs for offenders and the wise use of resources.

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

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

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

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

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

22 NEW SECTION. **Sec. 13.** A new section is added to chapter 72.09
23 RCW to read as follows:

24 On December 1st of each year, and in compliance with RCW
25 43.01.036, the department must submit a report to the governor and
26 relevant policy and fiscal committees of the legislature that details
27 any information technology backlog at the department along with
28 specific requirements and plans to address such backlog.

29 **PART 3**

30 **JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE**

31 NEW SECTION. **Sec. 14.** (1) Pursuant to chapter 43.09 RCW, the
32 joint legislative audit and review committee must conduct an
33 immediate performance audit of the information technology and records
34 departments at the department of corrections, including:

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

4 (b) The sufficiency and quality of staffing at each of the
5 departments; and

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

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

10 **PART 4**
11 **GOVERNOR**

12 **Sec. 15.** RCW 43.06.010 and 2014 c 202 s 305 are each amended to
13 read as follows:

14 In addition to those prescribed by the Constitution, the governor
15 may exercise the powers and perform the duties prescribed in this and
16 the following sections:

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

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

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

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

31 (5) Whenever any suit or legal proceeding is pending against this
32 state, or which may affect the title of this state to any property,
33 or which may result in any claim against the state, the governor may
34 direct the attorney general to appear on behalf of the state, and
35 report the same to the governor, or to any grand jury designated by
36 the governor, or to the legislature when next in session;

37 (6) The governor may require the attorney general or any
38 prosecuting attorney to inquire into the affairs or management of any

1 corporation existing under the laws of this state, or doing business
2 in this state, and report the same to the governor, or to any grand
3 jury designated by the governor, or to the legislature when next in
4 session;

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

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

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

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

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

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

25 (13) The governor may, after finding that there exists within
26 this state an imminent danger of infestation of plant pests as
27 defined in RCW 17.24.007 or plant diseases which seriously endangers
28 the agricultural or horticultural industries of the state of
29 Washington, or which seriously threatens life, health, or economic
30 well-being, order emergency measures to prevent or abate the
31 infestation or disease situation, which measures, after thorough
32 evaluation of all other alternatives, may include the aerial
33 application of pesticides;

34 (14) The governor, after finding that a prohibited level 1 or
35 level 2 species as defined in chapter 77.135 RCW has been detected
36 and after finding that the detected species seriously endangers or
37 threatens the environment, economy, human health, or well-being of
38 the state of Washington, may order emergency measures to prevent or
39 abate the prohibited species, which measures, after thorough

1 evaluation of all other alternatives, may include the surface or
2 aerial application of pesticides;

3 (15) On all compacts forwarded to the governor pursuant to RCW
4 9.46.360(6), the governor is authorized and empowered to execute on
5 behalf of the state compacts with federally recognized Indian tribes
6 in the state of Washington pursuant to the federal Indian Gaming
7 Regulatory Act, 25 U.S.C. Sec. 2701 et seq., for conducting class III
8 gaming, as defined in the Act, on Indian lands.

9 **PART 5**

10 **SENTENCING REFORM**

11 NEW SECTION. **Sec. 16.** (1) A joint legislative task force to
12 simplify criminal sentencing is established.

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

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

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

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

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

23 (ii) Washington state patrol;

24 (iii) Caseload forecast council;

25 (iv) Washington association of prosecuting attorneys;

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

28 (vi) Washington state association of counties;

29 (vii) Office of the attorney general;

30 (viii) American civil liberties union of Washington;

31 (ix) Sentencing guidelines commission;

32 (x) Department of corrections;

33 (xi) Superior court judges' association; and

34 (xii) Administrative office for the courts.

35 (3) The task force shall:

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

1 (b) Limit its review and recommendations to technical,
2 nonsubstantive changes. The task force recommendations must be
3 limited to those that will not reduce punishment or risk public
4 safety.

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

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

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

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

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

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

24 **PART 6**

25 **GENERAL PROVISIONS**

26 **Sec. 17.** RCW 42.40.040 and 2008 c 266 s 4 are each amended to
27 read as follows:

28 (1)(a) In order to be investigated, an assertion of improper
29 governmental action must be provided to the auditor or other public
30 official within one year after the occurrence of the asserted
31 improper governmental action. The public official, as defined in RCW
32 42.40.020, receiving an assertion of improper governmental action
33 must report the assertion to the auditor within fifteen calendar days
34 of receipt of the assertion. The auditor retains sole authority to
35 investigate an assertion of improper governmental action including
36 those made to a public official. A failure of the public official to
37 report the assertion to the auditor within fifteen days does not
38 impair the rights of the whistleblower.

1 (b) Except as provided under RCW 42.40.910 for legislative and
2 judicial branches of government, the auditor has the authority to
3 determine whether to investigate any assertions received. In
4 determining whether to conduct either a preliminary or further
5 investigation, the auditor shall consider factors including, but not
6 limited to: The nature and quality of evidence and the existence of
7 relevant laws and rules; whether the action was isolated or
8 systematic; the history of previous assertions regarding the same
9 subject or subjects or subject matter; whether other avenues are
10 available for addressing the matter; whether the matter has already
11 been investigated or is in litigation; the seriousness or
12 significance of the asserted improper governmental action; and the
13 cost and benefit of the investigation. The auditor has the sole
14 discretion to determine the priority and weight given to these and
15 other relevant factors and to decide whether a matter is to be
16 investigated. The auditor shall document the factors considered and
17 the analysis applied.

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

22 (2) Subject to subsection (5)(c) of this section, the identity or
23 identifying characteristics of a whistleblower is confidential at all
24 times unless the whistleblower consents to disclosure by written
25 waiver or by acknowledging his or her identity in a claim against the
26 state for retaliation. In addition, the identity or identifying
27 characteristics of any person who in good faith provides information
28 in an investigation under this section is confidential at all times,
29 unless the person consents to disclosure by written waiver or by
30 acknowledging his or her identity as a witness who provides
31 information in an investigation.

32 (3) Upon receiving specific information that an employee has
33 engaged in improper governmental action, the auditor shall, within
34 fifteen working days of receipt of the information, mail written
35 acknowledgment to the whistleblower at the address provided stating
36 whether a preliminary investigation will be conducted. For a period
37 not to exceed sixty working days from receipt of the assertion, the
38 auditor shall conduct such preliminary investigation of the matter as
39 the auditor deems appropriate.

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

4 (5)(a) If it appears to the auditor, upon completion of the
5 ((preliminary)) investigation, that the matter is so unsubstantiated
6 that no further investigation, prosecution, or administrative action
7 is warranted, the auditor shall so notify the whistleblower
8 summarizing where the allegations are deficient, and provide a
9 reasonable opportunity to reply. Such notification may be by
10 electronic means.

11 (b) The written notification shall contain a summary of the
12 information received and of the results of the ((preliminary))
13 investigation with regard to each assertion of improper governmental
14 action.

15 (c) In any case to which this section applies, the identity or
16 identifying characteristics of the whistleblower shall be kept
17 confidential unless the auditor determines that the information has
18 been provided other than in good faith. If the auditor makes such a
19 determination, the auditor shall provide reasonable advance notice to
20 the employee.

21 (d) With the agency's consent, the auditor may forward the
22 assertions to an appropriate agency to investigate and report back to
23 the auditor no later than sixty working days after the assertions are
24 received from the auditor. The auditor is entitled to all
25 investigative records resulting from such a referral. All procedural
26 and confidentiality provisions of this chapter apply to
27 investigations conducted under this subsection. The auditor shall
28 document the reasons the assertions were referred.

29 (6) During the ((preliminary)) investigation, the auditor shall
30 provide written notification of the nature of the assertions to the
31 subject or subjects of the investigation and the agency head. The
32 notification shall include the relevant facts and laws known at the
33 time and the procedure for the subject or subjects of the
34 investigation and the agency head to respond to the assertions and
35 information obtained during the investigation. This notification does
36 not limit the auditor from considering additional facts or laws which
37 become known during further investigation.

38 ~~(a) ((If it appears to the auditor after completion of the~~
39 ~~preliminary investigation that further investigation, prosecution, or~~
40 ~~administrative action is warranted))~~ Within twenty days of initiating

1 an investigation under this section, the auditor shall ~~((se))~~ notify
2 the whistleblower, the subject or subjects of the investigation, and
3 the agency head ~~((and either conduct a further investigation or issue~~
4 ~~a report under subsection (9) of this section.~~

5 ~~(b) If the preliminary investigation resulted from an anonymous~~
6 ~~assertion, a decision to conduct further investigation shall be~~
7 ~~subject to review by a three person panel convened as necessary by~~
8 ~~the auditor prior to the commencement of any additional~~
9 ~~investigation. The panel shall include a state auditor representative~~
10 ~~knowledgeable of the subject agency operations, a citizen volunteer,~~
11 ~~and a representative of the attorney general's office. This group~~
12 ~~shall be briefed on the preliminary investigation and shall recommend~~
13 ~~whether the auditor should proceed with further investigation.~~

14 ~~(c) If further investigation is to occur, the auditor shall~~
15 ~~provide written notification of the nature of the assertions to the~~
16 ~~subject or subjects of the investigation and the agency head. The~~
17 ~~notification shall include the relevant facts known at the time and~~
18 ~~the procedure to be used by the subject or subjects of the~~
19 ~~investigation and the agency head to respond to the assertions and~~
20 ~~information obtained during the investigation)) that an investigation~~
21 ~~has been initiated. The auditor shall also notify the whistleblower,~~
22 ~~the subject or subjects of the investigation, and the agency head no~~
23 ~~later than ninety days after initiating the investigation regarding~~
24 ~~the one hundred twenty-day statutory deadline for conclusion of the~~
25 ~~investigation provided in subsection (7) of this section and provide~~
26 ~~notice that the investigation will be completed within thirty days.~~

27 (7) Within ~~((sixty))~~ one hundred twenty working days after the
28 ~~((preliminary))~~ investigation period in subsection (3) of this
29 section, the auditor shall complete the investigation and report its
30 findings to the whistleblower unless written justification for the
31 delay is furnished to the whistleblower, agency head, and subject or
32 subjects of the investigation. In all such cases, the report of the
33 auditor's investigation and findings shall be sent to the
34 whistleblower within one year after the information was filed under
35 subsection (3) of this section.

36 (8)(a) At any stage of an investigation under this section the
37 auditor may require by subpoena the attendance and testimony of
38 witnesses and the production of documentary or other evidence
39 relating to the investigation at any designated place in the state.
40 The auditor may issue subpoenas, administer oaths, examine witnesses,

1 and receive evidence. In the case of contumacy or failure to obey a
2 subpoena, the superior court for the county in which the person to
3 whom the subpoena is addressed resides or is served may issue an
4 order requiring the person to appear at any designated place to
5 testify or to produce documentary or other evidence. Any failure to
6 obey the order of the court may be punished by the court as a
7 contempt thereof.

8 (b) The auditor may order the taking of depositions at any stage
9 of a proceeding or investigation under this chapter. Depositions
10 shall be taken before an individual designated by the auditor and
11 having the power to administer oaths. Testimony shall be reduced to
12 writing by or under the direction of the individual taking the
13 deposition and shall be subscribed by the deponent.

14 (c) Agencies shall cooperate fully in the investigation and shall
15 take appropriate action to preclude the destruction of any evidence
16 during the course of the investigation.

17 (d) During the investigation the auditor shall interview each
18 subject of the investigation. If it is determined there is reasonable
19 cause to believe improper governmental action has occurred, the
20 subject or subjects and the agency head shall be given fifteen
21 working days to respond to the assertions prior to the issuance of
22 the final report.

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

27 (i) The subject or subjects of the investigation and the head of
28 the employing agency;

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

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

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

36 (b) The auditor has no enforcement power except that in any case
37 in which the auditor submits an investigative report containing
38 reasonable cause determinations to the agency, the agency shall send
39 its plan for resolution to the auditor within fifteen working days of
40 having received the report. The agency is encouraged to consult with

1 the subject or subjects of the investigation in establishing the
2 resolution plan. The auditor may require periodic reports of agency
3 action until all resolution has occurred. If the auditor determines
4 that appropriate action has not been taken, the auditor shall report
5 the determination to the governor and to the legislature and may
6 include this determination in the agency audit under chapter 43.09
7 RCW.

8 (10) Once the auditor concludes that appropriate action has been
9 taken to resolve the matter, the auditor shall so notify the
10 whistleblower, the agency head, and the subject or subjects of the
11 investigation. If the resolution takes more than one year, the
12 auditor shall provide annual notification of its status to the
13 whistleblower, agency head, and subject or subjects of the
14 investigation.

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

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

23 **Sec. 18.** RCW 49.60.210 and 2011 1st sp.s. c 42 s 25 are each
24 amended to read as follows:

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

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

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

36 (3) It is an unfair practice for any employer, employment agency,
37 labor union, government agency, government manager, or government
38 supervisor to discharge, expel, discriminate, or otherwise retaliate
39 against an individual assisting with an office of fraud and

1 accountability investigation under RCW 74.04.012, unless the
2 individual has willfully disregarded the truth in providing
3 information to the office.

4 **Sec. 19.** RCW 42.40.110 and 1999 c 361 s 8 are each amended to
5 read as follows:

6 (1)(a) The office of financial management shall contract for a
7 performance audit of the state employee whistleblower program on a
8 cycle to be determined by the office of financial management. The
9 audit shall be done in accordance with generally accepted government
10 auditing standards beginning with the fiscal year ending June 30,
11 2001. The audit shall determine at a minimum: Whether the program is
12 acquiring, protecting, and using its resources such as personnel,
13 property, and space economically and efficiently; the causes of
14 inefficiencies or uneconomical practices; and whether the program has
15 complied with laws and rules on matters of economy and efficiency.
16 The audit shall also at a minimum determine the extent to which the
17 desired results or benefits established by the legislature are being
18 achieved, the effectiveness of the program, and whether the auditor
19 has complied with significant laws and rules applicable to the
20 program.

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

24 (2) In the contract for the next regularly scheduled performance
25 audit following the effective date of this section, the office of
26 financial management must require the audit to review the legislative
27 report from the senate law and justice committee and any other
28 pertinent documentation regarding the department of corrections early
29 release error, with particular focus on the inability of department
30 of corrections employees to use the state employee whistleblower
31 program to address concerns with mismanagement of that department.
32 The audit must provide recommendations on this matter in its
33 evaluation of the effectiveness of the program.

34 NEW SECTION. **Sec. 20.** Sections 1 through 10 of this act
35 constitute a new chapter in Title 43 RCW.

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