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**SENATE BILL 5876**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senators Darneille, Rivers, Rolfes, Wilson, C., Kuderer, Walsh, Randall, Brown, Keiser, Saldaña, Frockt, Warnick, Cleveland, Das, and Nguyen

AN ACT Relating to creating a women's division and system of gender-responsive, risk-need-responsivity, and trauma-informed practices within the department of corrections; amending RCW 72.09.010, 72.09.015, 72.09.060, and 43.06C.040; and adding a new section to chapter 72.09 RCW.

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

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

(1) The department shall create a permanent women's division under the direct supervision of the secretary. The women's division shall have statewide authority and operational oversight for all of the department's women's correctional centers, women's custodial or transitional institutions, and women's community supervision.

(2) The secretary shall appoint an assistant secretary for the women's division who has received nationally recognized specialized training in gender-responsive and trauma-informed practices. The assistant secretary for the women's division is responsible for the:

(a) Management and supervision of all employees assigned to the department's women's correctional centers, women's custodial or transitional institutions, and women's community supervision;

(b) Development and implementation of evidenced-based, gender-responsive, and trauma-informed practices that govern the women's division operations and programs;

(c) Development of the women's division training, orientation, and curriculum, which must be updated as needed to align with emerging gender-responsive and trauma-informed practices;

(d) Training of all staff assigned to the department's women's correctional centers, women's custodial or transitional institutions, and women's community supervision on gender-responsive and trauma-informed practices;

(e) Implementation of validated gender-responsive classification and placement instruments;

(f) Implementation of a gender-responsive risk-needs-responsivity assessment tool and case management system specifically validated for use with women experiencing incarceration;

(g) Collaborating with the assistant secretary of probation, parole, community restitution, restitution, and other nonincarcerative sanctions to ensure staff responsible for supervision of females under mandatory supervised release are appropriately trained in evidence-based practices in community supervision, gender-responsive practices, and trauma-informed practices;

(h) Assessment of the department's programs and policies by using the gender-responsive program assessment tool and the gender-responsive policy and practice assessment tool at all women's correctional centers and women's custodial or transitional institutions; and

(i) Development and implementation of policies, practices, and programming that address the differences in the necessary physical conditions of incarceration, and the physical health needs between men and women.

(3) Beginning December 1, 2020, and in compliance with RCW 43.01.036, the department must submit an annual report to the legislature and the governor that details the efforts and progress toward the responsibilities outlined in subsection (2)(a) through (i) of this section.

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

It is the intent of the legislature to establish a comprehensive system of corrections for ((~~convicted law violators~~)) persons experiencing incarceration within the state of Washington to accomplish the following objectives.

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

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

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

((~~(4)~~)) (3) The system should treat all ((~~offenders fairly and equitably without regard to~~)) persons experiencing incarceration in a manner that is gender-responsive, trauma-informed, and supportive of the principles of diversity, equity, and inclusion, and may not discriminate on the basis of race, religion, sex, national origin, residence, or social condition.

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

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

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

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

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

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

((~~(6)~~)) (5) The system should provide for prudent management of resources. The avoidance of unnecessary or inefficient public expenditures on the part of ((~~offenders~~)) persons experiencing incarceration and the department is essential. ((~~Offenders~~)) Persons experiencing incarceration must be accountable to the department, and the department to the public and the legislature. The human and fiscal resources of the community are limited. The management and use of these resources can be enhanced by wise investment, productive programs, the reduction of duplication and waste, and the joining together of all involved parties in a common endeavor. Since most ((~~offenders~~)) persons experiencing incarceration return to the community, it is wise for the state and the communities to make an investment in effective individualized, gender-responsive, and trauma-informed rehabilitation programs ((~~for offenders~~)) based on research, risk-needs-responsivity principles, and the wise use of resources.

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

((~~(8)~~)) (7) The system should be accountable to the citizens of the state. In return, the individual citizens and local units of government must meet their responsibilities to make the corrections system effective.

((~~(9)~~)) (8) The system should meet those national standards which the state determines to be appropriate.

(9) The system should be gender-responsive and incorporate risk-need-responsivity principles and trauma-informed practices into classification, programming, and interactions with persons experiencing incarceration.

**Sec.**  RCW 72.09.015 and 2013 c 39 s 22 are each amended to read as follows:

The definitions in this section apply throughout this chapter.

(1) "Adult basic education" means education or instruction designed to achieve general competence of skills in reading, writing, and oral communication, including English as a second language and preparation and testing services for obtaining a high school diploma or a high school equivalency certificate as provided in RCW 28B.50.536.

(2) "Base level of correctional services" means the minimum level of field services the department of corrections is required by statute to provide for the supervision and monitoring of ((~~offenders~~)) persons experiencing incarceration.

(3) "Civil judgment for assault" means a civil judgment for monetary damages awarded to a correctional officer or department employee entered by a court of competent jurisdiction against ((~~an inmate~~)) a person experiencing incarceration that is based on, or arises from, injury to the correctional officer or department employee caused by the ((~~inmate~~)) person experiencing incarceration while the correctional officer or department employee was acting in the course and scope of his or her employment.

(4) "Community custody" has the same meaning as that provided in RCW 9.94A.030 and also includes community placement and community supervision as defined in RCW 9.94B.020.

(5) "Contraband" means any object or communication the secretary determines shall not be allowed to be: (a) Brought into; (b) possessed while on the grounds of; or (c) sent from any institution under the control of the secretary.

(6) "Correctional facility" means a facility or institution operated directly or by contract by the secretary for the purposes of incarcerating adults in total or partial confinement, as defined in RCW 9.94A.030.

(7) "County" means a county or combination of counties.

(8) "Department" means the department of corrections.

(9) "Earned early release" means earned release as authorized by RCW 9.94A.729.

(10) "Evidence‑based" means a program or practice that has had multiple‑site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective in reducing recidivism for the population.

(11) "Extended family visit" means an authorized visit between ((~~an inmate~~)) a person experiencing incarceration and a member of his or her immediate family that occurs in a private visiting unit located at the correctional facility where the ((~~inmate~~)) person experiencing incarceration is confined.

(12) "Good conduct" means compliance with department rules and policies.

(13) "Good performance" means successful completion of a program required by the department, including an education, work, or other program.

(14) "Immediate family" means the ((~~inmate's~~)) person experiencing incarceration's children, stepchildren, grandchildren, great grandchildren, parents, stepparents, grandparents, great grandparents, siblings, and a person legally married to or in a state registered domestic partnership with ((~~an inmate~~)) a person experiencing incarceration. "Immediate family" does not include ((~~an inmate~~)) a person experiencing incarceration who is adopted by another ((~~inmate~~)) person experiencing incarceration or the immediate family of the adopted or adopting ((~~inmate~~)) person experiencing incarceration.

(15) "Indigent ((~~inmate~~)) person experiencing incarceration," "indigent," and "indigency" mean ((~~an inmate~~)) a person experiencing incarceration who has less than a ten-dollar balance of disposable income in his or her institutional account on the day a request is made to utilize funds and during the thirty days previous to the request.

(16) "Individual reentry plan" means the plan to prepare ((~~an offender~~)) a person experiencing incarceration for release into the community. It should be developed collaboratively between the department and the ((~~offender~~)) person experiencing incarceration and be based on an assessment of the ((~~offender~~)) person experiencing incarceration using a standardized and comprehensive tool to identify the ((~~offender's~~)) individual's risks and needs. The individual reentry plan describes actions that should occur to prepare individual ((~~offenders~~)) persons experiencing incarceration for release from prison or jail, specifies the supervision and services they will experience in the community, and describes ((~~an offender's~~)) a person experiencing incarceration's eventual discharge to aftercare upon successful completion of supervision. An individual reentry plan is updated throughout the period of ((~~an offender's~~)) the individual's incarceration and supervision to be relevant to the ((~~offender's~~)) individual's current needs and risks.

(17) ((~~"Inmate"~~)) "Person experiencing incarceration" means a person committed to the custody of the department, including but not limited to persons residing in a correctional institution or facility and persons released from such facility on furlough, work release, or community custody, and persons received from another state, state agency, county, or federal jurisdiction. Historical terms such as offender, inmate, convict, and incarcerated individual are included in the definition of person experiencing incarceration.

(18) "Labor" means the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix.

(19) "Physical restraint" means the use of any bodily force or physical intervention to control ((~~an offender~~)) a person experiencing incarceration or limit ((~~an offender's~~)) the person's freedom of movement in a way that does not involve a mechanical restraint. Physical restraint does not include momentary periods of minimal physical restriction by direct person-to-person contact, without the aid of mechanical restraint, accomplished with limited force and designed to:

(a) Prevent ((~~an offender~~)) a person experiencing incarceration from completing an act that would result in potential bodily harm to self or others or damage property;

(b) Remove a disruptive ((~~offender~~)) person experiencing incarceration who is unwilling to leave the area voluntarily; or

(c) Guide ((~~an offender~~)) a person experiencing incarceration from one location to another.

(20) "Postpartum recovery" means (a) the entire period a woman or youth is in the hospital, birthing center, or clinic after giving birth and (b) an additional time period, if any, a treating physician determines is necessary for healing after the woman or youth leaves the hospital, birthing center, or clinic.

(21) "Privilege" means any goods or services, education or work programs, or earned early release days, the receipt of which are directly linked to ((~~an inmate's~~)) a person experiencing incarceration's (a) good conduct; and (b) good performance. Privileges do not include any goods or services the department is required to provide under the state or federal Constitution or under state or federal law.

(22) "Promising practice" means a practice that presents, based on preliminary information, potential for becoming a research‑based or consensus‑based practice.

(23) "Research‑based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence‑based practices.

(24) "Restraints" means anything used to control the movement of a person's body or limbs and includes:

(a) Physical restraint; or

(b) Mechanical device including but not limited to: Metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, tasers, or batons.

(25) "Secretary" means the secretary of corrections or his or her designee.

(26) "Significant expansion" includes any expansion into a new product line or service to the class I business that results from an increase in benefits provided by the department, including a decrease in labor costs, rent, or utility rates (for water, sewer, electricity, and disposal), an increase in work program space, tax advantages, or other overhead costs.

(27) "Superintendent" means the superintendent of a correctional facility under the jurisdiction of the Washington state department of corrections, or his or her designee.

(28) "Transportation" means the conveying, by any means, of an incarcerated pregnant woman or youth from the correctional facility to another location from the moment she leaves the correctional facility to the time of arrival at the other location, and includes the escorting of the pregnant incarcerated woman or youth from the correctional facility to a transport vehicle and from the vehicle to the other location.

(29) "Unfair competition" means any net competitive advantage that a business may acquire as a result of a correctional industries contract, including labor costs, rent, tax advantages, utility rates (water, sewer, electricity, and disposal), and other overhead costs. To determine net competitive advantage, the department of corrections shall review and quantify any expenses unique to operating a for-profit business inside a prison.

(30) "Vocational training" or "vocational education" means "vocational education" as defined in RCW 72.62.020.

(31) "Washington business" means an in-state manufacturer or service provider subject to chapter 82.04 RCW existing on June 10, 2004.

(32) "Work programs" means all classes of correctional industries jobs authorized under RCW 72.09.100.

(33) "Gender-responsive" means taking into account gender-specific differences that have been identified in women-centered research including, but not limited to, socialization, psychological development, strengths, risk factors, pathways through systems, responses to treatment intervention, and other unique gender-specific needs facing justice-involved women. Gender-responsive policies, practices, programs, and services must be implemented in a manner that is considered relational, culturally competent, family-centered, holistic, strength-based, and trauma-informed.

(34) "Trauma-informed practices" means practices incorporating gender violence research and the impact of all forms of trauma in designing and implementing policies, practices, processes, programs, and services that involve understanding, recognizing, and responding to the effects of all types of trauma with emphasis on physical, psychological, and emotional safety.

**Sec.**  RCW 72.09.060 and 2002 c 175 s 48 are each amended to read as follows:

The department of corrections may be organized into such divisions or offices as the secretary may determine, but shall include divisions for (1) correctional industries, (2) ((~~prisons and other custodial institutions and (3)~~)) male-specific prisons and other male-specific custodial or transitional institutions and community supervision, (3) female-specific prisons and other female-specific custodial or transitional institutions and community supervision, as described in section 1 of this act, and (4) probation, parole, community restitution, restitution, and other nonincarcerative sanctions. The secretary shall have at least one person on his or her staff who shall have the responsibility for developing a program which encourages the use of volunteers, for citizen advisory groups, and for similar public involvement programs in the corrections area. Minimum qualification for staff assigned to public involvement responsibilities shall include previous experience in working with volunteers or volunteer agencies.

**Sec.**  RCW 43.06C.040 and 2018 c 270 s 5 are each amended to read as follows:

(1) The ombuds shall:

(a) Establish priorities for use of the limited resources available to the ombuds;

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

(c) Provide information, as appropriate, to ((~~inmates~~)) persons experiencing incarceration, family members, representatives of ((~~inmates~~)) persons experiencing incarceration, department employees, and others regarding the rights of ((~~inmates~~)) persons experiencing incarceration;

(d) Provide technical assistance to support ((~~inmate~~)) participation in self-advocacy for persons experiencing incarceration;

(e) Monitor department compliance with applicable federal, state, and local laws, rules, regulations, and policies as related to the health, safety, welfare, and rehabilitation of ((~~inmates~~)) persons experiencing incarceration;

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

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

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

(i) Establish procedures to gather stakeholder input into the ombuds' activities and priorities, which must include at a minimum quarterly public meetings;

(j) Submit annually to the governor's office, the legislature, and the statewide family council, by November 1st of each year, a report that includes, at a minimum, the following information:

(i) The budget and expenditures of the ombuds;

(ii) The number of complaints received and resolved by the ombuds, including information specific to the number and a description of gender-based complaints;

(iii) A description of significant systemic or individual investigations or outcomes achieved by the ombuds during the prior year;

(iv) Any outstanding or unresolved concerns or recommendations of the ombuds; and

(v) Input and comments from stakeholders, including the statewide family council, regarding the ombuds' activities during the prior year; and

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

(2)(a) The ombuds may initiate and attempt to resolve an investigation upon his or her own initiative, or upon receipt of a complaint from ((~~an inmate~~)) a person experiencing incarceration, a family member, a representative of ((~~an inmate~~)) a person experiencing incarceration, a department employee, or others, regarding any of the following that may adversely affect the health, safety, welfare, and rights of ((~~inmates~~)) persons experiencing incarceration:

(i) Abuse or neglect;

(ii) Department decisions or administrative actions;

(iii) Inactions or omissions;

(iv) Policies, rules, or procedures; or

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

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

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

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

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

(f) The ombuds may not investigate a complaint from a department employee that relates to the employee's employment relationship with the department or the administration of the department, unless the complaint is related to the health, safety, welfare, and rehabilitation of ((~~inmates~~)) persons experiencing incarceration.

(g) The ombuds must attempt to resolve any complaint at the lowest possible level.

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

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

(j) The ombuds must remain neutral and impartial and may not act as an advocate for the complainant or for the department.

(k) At the conclusion of an investigation of a complaint, the ombuds must render a public decision on the merits of each complaint, except that the documents supporting the decision are subject to the confidentiality provisions of RCW 43.06C.060. The ombuds must communicate the decision to the ((~~inmate~~)) person experiencing incarceration, if any, and to the department. The ombuds must state its recommendations and reasoning if, in the ombuds' opinion, the department or any employee thereof should:

(i) Consider the matter further;

(ii) Modify or cancel any action;

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

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

(v) Rectify an omission.

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

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

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

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

**--- END ---**