

HOUSE BILL REPORT

HB 1147

As Reported by House Committee On:
State Government & Tribal Relations

Title: An act relating to supporting civic engagement for incarcerated and institutionalized individuals in state custody to promote inclusion and rehabilitation.

Brief Description: Supporting civic engagement for incarcerated and institutionalized individuals in state custody to promote inclusion and rehabilitation.

Sponsors: Representatives Farivar, Simmons, Ryu, Ramel, Mena, Macri, Doglio, Goodman, Ormsby and Hill.

Brief History:

Committee Activity:

State Government & Tribal Relations: 1/15/25, 1/31/25 [DPS].

Brief Summary of Substitute Bill

- Establishes a right to civic engagement for individuals who are incarcerated or receiving treatment at certain state institutions and provides provisions for enforcement of the right.
- Creates the Civic Engagement Coordinator within the Office of Equity (OEQ) and establishes duties of the OEQ to assist certain agencies in upholding an individual's right to civic engagement.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Mena, Chair; Stearns, Vice Chair; Doglio and Farivar.

Minority Report: Without recommendation. Signed by 2 members: Representatives Walsh, Assistant Ranking Minority Member; Chase.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Connor Schiff (786-7093).

Background:

First Amendment Protections for Individuals Who Are Incarcerated or Civilly Committed.

The United States Supreme Court (Supreme Court) has held that some rights under the First Amendment, including freedom of speech and freedom of association, are necessarily restricted for individuals who are incarcerated due to the nature of the prison environment.

For communication and association between individuals who are incarcerated, the Supreme Court held that a regulation impinging on intra-prison communication is valid if it is reasonably related to a legitimate penological interest. "Legitimate penological interests" include interest in preserving order and authority and deterrence of future crime. Several federal courts have interpreted that this standard of review also applies to the First Amendment rights of sex offenders who are civilly committed.

The Supreme Court provides a different standard for communication between individuals who are incarcerated and the public. A prison's regulations or practices restricting the public's access to speech from incarcerated individuals must:

- further an important or substantial government interest unrelated to the suppression of expression; and
- must be no greater than is necessary or essential to the protection of the particular governmental interest involved.

In some instances, the federal government has explicitly granted additional protection for certain First Amendment rights for individuals who are incarcerated or institutionalized. For example, the Religious Land Use and Institutionalized Persons Act prohibits the government from imposing a substantial burden on the religious exercise of a person residing in or confined to a prison or other government institution unless the government demonstrates that the burden:

- is in furtherance of a compelling government interest; and
- is the least restrictive means of furthering that compelling governmental interest.

The Department of Social and Health Services Facilities.

The Department of Social and Health Services (DSHS) operates three state hospitals for psychiatric treatment: Western State Hospital, Eastern State Hospital, and the Child Study and Treatment Center. The Child Study and Treatment Center treats minors aged 5 to 17 who are committed or referred for up to six months of inpatient treatment through the Children's Long-Term Inpatient Program, by managed care organizations or behavioral health administrative services organizations, or by the courts. Eastern State Hospital and Western State Hospital treat adult involuntary patients who are either civilly committed for treatment through the Involuntary Treatment Act or forensically committed for treatment related to criminal insanity or competency to stand trial through the criminal courts. The DSHS also operates three Behavioral Health and Treatment Centers and Olympic Heritage

Behavioral Health. These facilities provide evaluations, competency restoration and inpatient psychiatric treatment for adults.

If a person is found to be a sexually violent predator (SVP) by a court, the person is committed to the custody of the DSHS at the Special Commitment Center on McNeil Island. If certain conditions are met, courts may grant unconditional or conditional release of an individual found to be an SVP. A conditional release of an SVP may be to a secure community transition facility (SCTF). The DSHS operates SCTFs on McNeil Island and in King County.

Summary of Substitute Bill:

Individuals who are currently incarcerated in adult and juvenile prisons, individuals living at residential habilitation centers, and individuals receiving treatment at state hospitals, the Special Commitment Center, secure community transition facilities, and residential treatment facilities operated by the Department of Social and Health Services that provide mental health services have a right to civic engagement. Civic engagement rights include:

- forming political organizations within state institutions;
- organizing and communicating with community groups, organizations, institutions, and elected officials and their staff;
- accessing spaces for meetings with community members, organizations, institutions, and government officials;
- participating in teleconference and videoconference proceedings with groups, panels, institutions, and legislative bodies; and
- being free from punishment or retaliation for participating in civic processes.

An individual's right to civic engagement shall not be substantially burdened unless justified by a compelling state interest achieved by the least restrictive means. This standard is accompanied by a legislative finding that limiting the civic engagement of individuals serves no compelling governmental interest and no legitimate penological objective. An individual is required to exhaust available administrative remedies prior to filing a claim in court. If an agency administering an administrative remedy violates its own policy when addressing a complaint, the individual is considered to have exhausted administrative remedies.

Civic Engagement Coordinator and the Office of Equity.

A Civic Engagement Coordinator (CEC) is created within the Office of Equity (OEQ). Individuals or groups seeking to exercise their civic engagement rights may petition the OEQ if the individual or group believes an agency is unduly infringing on their rights. The CEC shall review the petitions, and, upon a determination that an activity described in a petition is an appropriate exercise of civic engagement rights, notify the applicable agency to permit the individual or group to engage in the activity. An individual is not required to petition the OEQ in order to exhaust administrative remedies. Agencies must facilitate all

actions necessary for an individual or group to petition the OEQ. Agencies must also report to the CEC whether a petition has been resolved 30 days after the CEC responds to a petition.

The CEC is also responsible for:

- facilitating communication between individuals seeking to exercise civic engagement rights and the agency in which the individual is incarcerated, living, or receiving treatment;
- providing technical assistance to applicable agencies;
- supporting agencies in facilitating actions necessary for individuals to exercise their civic engagement rights;
- providing civic engagement and voter education programming and information upon request; and
- supporting agencies in the compensation process where applicable.

The OEQ shall develop and implement an accountability process. Beginning October 31, 2027, the OEQ shall submit annual reports to the Legislature about civic engagement activities, including petitions. The OEQ shall coordinate with the Secretary of State to facilitate voting access and related activities.

It is clarified that the act does not apply to local agencies or facilities operated by local agencies.

Substitute Bill Compared to Original Bill:

The substitute bill removes registering to vote, casting votes, receiving electoral information, and engaging with political candidates from the list of civic engagement rights. The substitute bill revises the standard of review for a civic engagement right to be as follows: an individual's right to civic engagement cannot be substantially burdened unless justified by a compelling state interest achieved by the least restrictive means. The substitute bill requires that an individual exhaust all administrative remedies prior to filing a civic engagement right violation in court. The substitute bill removes language about forms of judicial relief and the court's discretion to increase damages. The substitute bill creates a Civic Engagement Coordinator within the Office of Equity and establishes duties for the Office of Equity. The substitute bill clarifies that the substitute bill does not apply to local agencies or facilities operated by local agencies. The substitute bill provides definitions for "civic engagement" and "political advocacy organization."

Appropriation: None.

Fiscal Note: Requested on January 7, 2025.

Effective Date of Substitute Bill: The bill takes effect on January 1, 2026.

Staff Summary of Public Testimony:

(In support) This proposal aligns with the values that the Legislature overwhelmingly agreed to. To do the best work, legislators need to hear from people with direct lived experience. This bill gives people who are most disenfranchised the opportunity to participate in civic processes. Voices of the most impacted should be pushed to the forefront. Many of the best policy ideas come from these communities; they are most informed about what does and does not work. Engagement in civic processes promotes rehabilitation and reintroduction into society. Institutionalization and incarceration isolate people and disconnect them from their communities. People have said that participation in civic processes is important for their recovery. Civic engagement improves public safety by expanding access and relationships with communities before reentry. This would be a tool for personal transformation and societal change. Many of these individuals want to engage in civic processes. Individuals have been penalized for working with legislators. Agency support is needed to facilitate civic engagement. Several changes to the bill have been made based on feedback from the Department of Corrections (DOC), the Department of Social and Health Services (DSHS), and the Department of Children, Youth, and Families.

(Opposed) There is concern that this bill allows ineligible individuals to register to vote. The Office of the Secretary of the State already has an individual who facilitates a program for civic engagement; the Office of Equity position would be redundant of this position and program. There are concerns about resource allocation; additional staffing, materials, and infrastructure would be required. Impacts to rehabilitation outcomes are uncertain. These activities may impact security protocols and impose a public safety risk.

(Other) The DOC supports incarcerated individuals engaging in civic processes. The proposed substitute addresses some of DOC's initial concerns. The definitions in the bill are broad. There are concerns about lack of space and funding for the DOC. Critical programming, including education, religious, and cultural programs, could be displaced. The DSHS supports the intent of the bill and can implement many aspects of it, however, DSHS facilities are not staffed or designed to manage these activities. There are concerns about logistics, safety, and security of the DSHS facilities. It is not clear whether this bill would affect local agencies, including jails.

Persons Testifying: (In support) Representative Darya Farivar, prime sponsor; Rachael Ann Snell; Rachael Seevers, Disability Rights Washington ; Chloe Merino, Disability Rights Washington; David Thometz, Self-advocate; Heather Kelly, League of Women Voters of Washington; Raymond Williams, Just Us Solutions; Arthur Longworth, TeamChild; Derek Jones; Kristin Ang, Faith Action Network (FAN); Tom Sahlberg; Katie Welch; Larry Jefferson, Washington State Reentry Council and Washington State Office of Public Defense; and Alexis Hale.

(Opposed) Brian Hatfield, Office of Secretary of State; Mary Long, Conservative Ladies of Washington; Anne Anderson; and Steve Hobbs, Office of the Secretary of State.

(Other) Sean Murphy, Department of Corrections; Danielle Armbruster, Department of Corrections; Kevin Bovenkamp, DSHS Behavioral Health Administration; Bryan Glant ; Rudy Madrigal; and James McMahan, WA Assoc Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.