

# SENATE BILL REPORT

## SB 5907

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As Reported by Senate Committee On:  
Labor, Commerce & Consumer Protection, March 25, 2011  
Ways & Means, April 1, 2011

**Title:** An act relating to implementing the policy recommendations resulting from the national institute of corrections review of prison safety.

**Brief Description:** Implementing the policy recommendations resulting from the national institute of corrections review of prison safety. [**Revised for 2nd Substitute:** Addressing prison safety by implementing the policy recommendations resulting from the national institute of corrections review of prison safety.]

**Sponsors:** Senators Kohl-Welles, Holmquist Newbry, Kline, Hewitt, Keiser, King, Regala, Conway, Carrell and Hargrove; by request of Governor Gregoire.

**Brief History:**

**Committee Activity:** Labor, Commerce & Consumer Protection: 3/25/11 [DPS-WM, DNP].

Ways & Means: 3/30/11, 4/01/11 [DP2S, DNP].

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### SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

**Majority Report:** That Substitute Senate Bill No. 5907 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Kohl-Welles, Chair; Conway, Vice Chair; Hewitt, Keiser and Kline.

**Minority Report:** Do not pass.

Signed by Senators Holmquist Newbry, Ranking Minority Member; King, Assistant Ranking Minority Member.

**Staff:** Ingrid Mungia (786-7423)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Second Substitute Senate Bill No. 5907 be substituted therefor, and the second substitute bill do pass.

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

Signed by Senators Murray, Chair; Kilmer, Vice Chair, Capital Budget Chair; Zarelli, Ranking Minority Member; Baumgartner, Baxter, Brown, Conway, Fraser, Hewitt, Kastama, Keiser, Kohl-Welles, Pflug, Pridemore, Regala, Rockefeller and Schoesler.

**Minority Report:** Do not pass.

Signed by Senators Parlette, Ranking Minority Member Capital; Holmquist Newbry and Honeyford.

**Staff:** Richard Ramsey (786-7412)

**Background:** The Washington Department of Corrections (Department) submitted a request for the national Institute of Corrections to conduct an independent review of Monroe Correctional Complex (MCC)/Washington State Reformatory (WSR) into pertinent systems and policies surrounding the policies and procedures relative to the death of Correctional Officer Jayme Biendl which occurred on January 29, 2011. The report contains 15 recommendations relating to changing systems, policies, practices, protocol, and technology within MCC/WRS.

**Summary of Bill (Recommended Second Substitute):** Statewide and Local Security Advisory Committees. The Department must establish a statewide security advisory committee (Committee) to review the department's security-related policies and procedures. The committee must be comprised of a wide range of institutional staff, some of who must be custody staff, including:

- the director of prisons;
- a nonsupervisory classified employee and/or sergeant from each local advisory committee of a major facility and one nonsupervisory classified employee and/or sergeant repetitive from a minimum facility;
- the senior-ranking security custody staff member from each security facility and a senior ranking custody staff member from a minimum correctional facility; and
- a delegate from the union that represents department employees located at correctional facilities.

The Committee must:

1. Make recommendations to the Secretary of Corrections on the methods to provide consistent application of the security policies and procedures; and
2. Develop guidelines to establish local security advisory committees (local committee) for each correctional facility within the Department. The chair of each local committee must be the captain at a major facility and the lieutenant at a minimum security facility. The local committee should consist of a wide range of nonsupervisory classified employees and/or sergeants from the facility, such as:
  - a. medical staff;
  - b. class counselors;
  - c. program staff; and
  - d. mental health staff.

The Department must report back to the Governor and the appropriate committees of the Legislature by November 1, 2011, and annually thereafter. The report must include:

- recommendations raised by either the statewide or local security advisory committees;
- recommendations for improving the ability of nonsupervisory classified employees to provide input on safety concerns including staff allocation, labor and industries mandated safety committees, and the inclusion of safety issues in collective bargaining;
- minutes from each meeting of the statewide security advisory committee meetings;
- actions taken by the Department as a result of recommendations by the statewide security advisory committee; and
- recommendations for additional resources or legislation to address security concerns in total confinement correctional facilities.

Multidisciplinary Teams. The Department must establish multidisciplinary teams (Teams) at each correctional facility to evaluate offenders' placements in inmate job assignments and custody promotions. The Teams at each facility must determine suitable placement based on the offender's risk, behavior, or other factors considered by the team. The Teams must be comprised of representatives from a wide range of nonsupervisory classified employees and/or sergeants from the facility, such as medical staff, class counselors, program staff, and mental health staff.

Training Curriculum. The Department must develop training curriculum regarding staff safety issues at correctional facilities in consultation with both the statewide security and local advisory committees. The training must be delivered to applicable correctional staff at in-service by July 1, 2012. The training curriculum must address the following issues:

- security routines;
- physical plant layout;
- offender movement and program areas coverage; and
- situational awareness and de-escalation techniques.

Body Alarms and Proximity Cards. The Department must hire a consultant to study the feasibility of implementing a statewide system for staff safety, utilizing body alarms and proximity alarms for staff within correctional facilities. The consultant must seek the input from both the statewide and local security advisory committees. The Department must report the consultant's findings and recommendations to the Governor and appropriate committees of the Legislature by November 1, 2011. The report must include:

- recommendations for the use of body alarms by security level personnel;
- recommendations for specific positions that should require the use of body alarms;
- the information technological and infrastructure requirements needed for body alarms and proximity cards;
- the training requirements for body alarms;
- lessons learned from any pilot project the Department may implement in the interim; and
- the estimated costs of the alarms and proximity cards and needed supporting infrastructure, staffing, and training requirements.

The Department may pilot the use of body alarms and proximity cards within available resources.

Video Monitoring Cameras. The Department must hire a consultant to study and make recommendations on the deployment of video monitoring cameras within the Department. The consultant must seek the input from both the statewide and local security advisory committees. The Department must report the findings and recommendations to the Governor and the appropriate committees of the Legislature by November 1, 2011. The report must include:

- recommendations for the use of video monitoring cameras by security level;
- recommendations for specific locations within a correctional facility which would benefit from the use of video monitoring cameras;
- the information technological and infrastructure requirements needed for effective use of video monitoring cameras;
- recommendations for how video monitoring cameras should be incorporated into future prison construction to insure consistency in camera use system-wide; and
- the estimated cost of the video monitoring cameras, supporting infrastructure needed, and staffing required by the correctional facility.

Oleoresin Capsicum Aerosol Products. The Department must develop a plan for the use of oleoresin capsicum aerosol products, also known as pepper spray, as a security measure available for staff at correctional facilities in consultation with the statewide and local security advisory committees. The plan must include recommendations regarding which facility's use should be limited to, what the training requirements should be, the estimated costs, and an implementation schedule. The Department must report its plan, including costs, to the Governor and appropriate committees of the Legislature by November 1, 2011.

The Department may initiate a pilot project, within available funds, to expand the deployment of oleoresin capsicum aerosol products within correctional facilities.

Matters subject to bargaining for employees of the Department must include issues of employee safety relating to equipment, policy, and protocol.

**EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Second Substitute):** Deletes staff allocation as a subject of collective bargaining.

**EFFECT OF CHANGES MADE BY LABOR, COMMERCE & CONSUMER PROTECTION COMMITTEE (Recommended Substitute):**

1. Adds line staff (nonsupervisory classified employee) to the statewide and each local advisory committee.
2. Adds a labor representative to the statewide advisory committee.
3. Adds requirement for annual reports and for the meeting minutes of the statewide advisory committee to be provided to the Governor and the Legislature.
4. Adds requirement that the Department report to the Governor/Legislature on recommendations for improving the ability of nonsupervisory classified employees to provide input on safety concerns including staff allocations.
5. Directs the Department to deliver the training curriculum to applicable correctional staff at in service training by July 1, 2012.

6. Directs that input from the local advisory committees be considered for Section 4 (training curriculum), Section 5 (body alarms and proximity cards), Section 6 (video cameras), and Section 7 (plan of pepper spray).
7. Adds issues relating to DOC employee safety as a mandatory subject of collective bargaining.

The title is changed to an act relating to prison safety and implementing the policy recommendations resulting from the national institute of corrections review of prison safety.

**Appropriation:** None.

**Fiscal Note:** Available on Original and Substitute Bills. Requested for Second Substitute on 4/5/2011.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill (Labor, Commerce & Consumer Protection):** PRO: The Governor asked for a review after the death of correctional officer Jayme Biendl at the Monroe Reformatory. The National Institute of Corrections (NIC) conducted a review and submitted 15 recommendations. This legislation is to implement some of those recommendations. The report or the bill intends to be the last word on this subject. There are multiple investigations going on, and we will learn from each of them. The Department of Labor & Industries is currently investigating and they have six months to complete their investigation. This bill does not address everything that needs to be accomplished. It is the Governor's intention to meet with the state Security Committee on an annual basis. We need all the input from the security committees to implement the plan. It is our intention to have in-service training programs. We want body alarms and proximity cards, but we need to be smart about it and get someone on board. The advisory committees need to work with the consultant so we can come back to you next year with our recommendations of what we need. We have the resources in our current budget to buy the pepper spray product. We are moving forward deliberately but with some caution and some trial and error is our intention. This is an extraordinary event and the attention it is being paid is completely appropriate.

OTHER: We have very strong concerns on this piece of legislation. We are most concerned that this piece of legislation does not address all the points made by the NIC investigation. This legislation does not address any staffing concerns brought up by the NIC investigator. We are incredibly disappointed how the Governor's Office and the Department is moving forward with the NIC recommendations. There is nothing that would ensure enforcement of the recommendations made by the state and local safety committees. We have had safety committees in the past, and nothing has happened. The question is how is this going to be implemented. Are there any enforcement mechanisms? It is inappropriate that we have to fund a consultant versus taking that money and giving it to the Department for immediate fixes to safety concerns raised by line staff. We ask that you spend the money on the immediate need of the line staff. The best line of defense is the knowledge we have on the ground. It is not enough just to consult two correctional officers. We have to consult

employees across the board. We need additional cameras now. We have to find funds; this is a matter of life and death.

**Persons Testifying (Labor, Commerce & Consumer Protection):** PRO: John Lane, Governor's Office; Eldon Vail, Secretary, Department of Corrections.

OTHER: Anna Jancewicz, Teamsters 117.

**Staff Summary of Public Testimony on Recommended First Substitute (Ways & Means):** PRO: I work in a unit with one partner; we are outnumbered by offenders 63 to 1, with handcuffs, flashlight, and your verbal skills to get the offenders to comply without them putting their hands on you or you putting their hands on them. We accept the fact that we work in a dangerous environment, have received cuts in pay and dealt with facility closure. I worked in a unit for two years before I discovered my body alarm did not work. I strongly encourage you move this bill forward with the right to bargain the staff safety measures.

OTHER: The Governor put this bill together in response to the NIC report and the Department's desire to act immediately on several specific safety issues. The cost of the body alarms at MCC/WSR is large given the nature of the old facility. The reason for the consultant report is to get a sense of how much installing these technologies will cost at other facilities. There's not actually new staff required; rather the new staff included on the fiscal note relates to overtime and backfill of posts and positions which must be filled at all times. The cost for putting together the training program is one-time; going forward these would be wrapped into the training program.

The Governor supports sections 1-7 but respectfully requests you remove section 8 because it adds 4 items for bargaining. It's unclear how these requirements will interact with RCW 41.80.040 which retains as management right the size of the workforce, the right to direct and supervise employees and the right to control functions and program of the employer. These are not just reserved for the Department and the Governor but for the Legislature to retain control of policy and budget. For DOC this represents over \$1 billion/biennium in General Funds. With respect to staff allocation – we view this as affecting staff ratio: do we have two officers instead of one guarding the gym? If it is the intent of the staff allocation to be a zero-sum outcome, it creates the potential for competition: institution vs. institution; union vs. union; and job class vs. job class, and making those choices at the bargaining table and without the Legislature's input. With respect to equipment it's likely to carry a cost – we come here with a request to pilot the use of equipment. With respect to policies and protocols, there are 344 policies that are reviewed every year to two years; 50 are tied directly to operation of correction institutions and are specific to the nature of the institution: male, female, and the characteristics of each. In 2010 there are 350 policies that would be subject to bargaining. In sum, these are the major functions of management

Today, community corrections offices (CCOs) have the lowest caseloads in 20 years. However, the work continues to get increasingly dangerous. Over the last year the Department has produced a plan with the CCOs regarding safety. I recommend keeping this bill focused on prison safety and address community corrections division safety in another forum.

The management rights are provided in the Legislature's enactment of RCW 41.80.040. Contracts will constrain the ability of the Legislature to control policy and budget.

Community corrections is not included in the bill. This bill saw its origin in a tragedy. There are two parts of DOC – inside and the community – the offenders are the commonality. CCOs have safety issues as well. If the intent of this bill is to prevent tragedy, we encourage including CCOs.

Under no circumstances have we asked to negotiate over inmate health care or any other benefit. The only thing we've asked for is to address safety issues; this has never been about adding more staff. We only want to talk about post assignment. There is concern about the consultant fees. Two years ago you funded \$500,000 for a consultant study on facility closure. The Legislature did not follow that study. There's a concern from the line staff that funding on consultants should go to purchase equipment and security of line staff.

Are you going to treat DOC employees the same as other public safety professionals with respect to staff safety and right to bargain safety? Consider the cost if we do not. What is the cost of another correctional employee losing their life, assaulted, stabbed, or held hostage at work? What are the costs of suffering PTSD, wanting to commit suicide, or leaving work in tears after being told to keep quiet by your superintendent regarding your concerns about the inadequacy of self-defense training? Safety should be a mandatory subject of bargaining. By not addressing this need, there will be another cost to the state of civil litigation, challenges of unfair labor practices and through grievances over workplace safety.

**Persons Testifying (Ways & Means):** PRO: Bruce Bengel, Mission Creek Corrections Center for Women.

OTHER: John Lane, Governor's Office; Julie Murray, OFM; Eldon Vail, Secretary of Corrections; Matt Zuvich, WA Federation of State Employees; Anna Jancewicz, James V. Smith III, Teamsters Local 117.