

ESSB 5294 - H COMM AMD  
By Committee on Public Safety

NOT CONSIDERED 01/05/2018

1 Strike everything after the enacting clause and insert the  
2 following:

3 "PART 1

4 CREATING THE DEPARTMENT OF CORRECTIONS OMBUDS

5 NEW SECTION. **Sec. 1.** The legislature intends to create an  
6 independent and impartial office of the corrections ombuds to assist  
7 in strengthening procedures and practices that lessen the possibility  
8 of actions occurring within the department of corrections that may  
9 adversely impact the health, safety, welfare, and rehabilitation of  
10 offenders, and that will effectively reduce the exposure of the  
11 department to litigation.

12 NEW SECTION. **Sec. 2.** Subject to the availability of amounts  
13 appropriated for this specific purpose, the office of the corrections  
14 ombuds is created for the purpose of providing information to  
15 inmates, family members, representatives of inmates, department  
16 employees, and others regarding the rights of inmates; providing  
17 technical assistance to support inmate self-advocacy; identifying  
18 systemic issues and responses for the governor and the legislature to  
19 act upon; reporting to the legislature; and ensuring compliance with  
20 relevant statutes, rules, and policies pertaining to conditions of  
21 correctional facilities, services, and treatment of inmates under the  
22 jurisdiction of the department.

23 NEW SECTION. **Sec. 3.** The definitions in this section apply  
24 throughout this chapter unless the context clearly requires  
25 otherwise.

26 (1) "Abuse" means any act or failure to act by a department  
27 employee, subcontractor, or volunteer which was performed, or which

1 was failed to be performed, knowingly, recklessly, or intentionally,  
2 and which caused, or may have caused, injury or death to an inmate.

3 (2) "Corrections ombuds" or "ombuds" means the corrections  
4 ombuds, staff of the corrections ombuds, and volunteers with the  
5 office of the corrections ombuds.

6 (3) "Council" means the ombuds advisory council established in  
7 section 4(1) of this act.

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

9 (5) "Inmate" means a person committed to the physical custody of  
10 the department, including persons residing in a correctional  
11 institution or facility and persons received from another state,  
12 another state agency, a county, or the federal government.

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

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

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

19 NEW SECTION. **Sec. 4.** (1) Subject to the availability of amounts  
20 appropriated for this specific purpose, no later than August 1, 2017,  
21 the governor shall convene an ombuds advisory council with several  
22 purposes in support of the ombuds function. The council shall  
23 participate in a priority setting process for the purpose of  
24 developing priority recommendations to the ombuds, review data  
25 collected by the ombuds, review reports issued by the ombuds prior to  
26 their release, and make recommendations to the ombuds regarding the  
27 accomplishment of its purposes. The council also has authority to  
28 issue its own reports and recommendations. The council must  
29 biannually review ombuds performance, reporting to the governor and  
30 the legislature regarding its findings. The council must provide the  
31 legislature with recommendations regarding the ombuds budget and  
32 changes in the law that would enhance ombuds effectiveness.

33 (2) The council consists of the following members, appointed by  
34 the governor:

35 (a) Two former inmates who have successfully reintegrated into  
36 the community and are no longer in the custody of the department;

37 (b) Two family members of current inmates;

1 (c) One expert with significant criminal justice or correctional  
2 experience who is not an employee or contractor with the state of  
3 Washington;

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

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

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

11 (3) The council also includes:

12 (a) The department staff serving as the internal ombuds, if any;

13 (b) A bargaining unit representative; and

14 (c) A representative of the governor's office.

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

18 (5) Councilmembers serve a term of two years, except that the  
19 council shall create and implement a system of staggered terms, and  
20 no member other than the department staff serving as the internal  
21 ombuds may serve more than two consecutive terms. The council shall  
22 convene at least quarterly. Councilmembers will serve without  
23 compensation, except that funds appropriated for the implementation  
24 of this chapter may be used to reimburse members who are not  
25 employees of Washington state for expenses necessary to the  
26 performance of their duties.

27 NEW SECTION. **Sec. 5.** (1) Subject to the availability of amounts  
28 appropriated for this specific purpose, the department of commerce  
29 shall designate, by a competitive bidding process, the nonprofit  
30 organization that will contract to operate the office of the  
31 corrections ombuds. The contract must last for a period of two years  
32 and may be renewed at the end of the term. The department of commerce  
33 shall select an organization that possesses, directly or through  
34 subcontracts, significant legal expertise, competence with mediation  
35 and alternative dispute resolution, and experience working within  
36 criminal justice and correctional environments. Other relevant  
37 experience may include, but is not limited to, addressing issues  
38 relating to chemical dependency treatment, disability and disability-  
39 related accommodation, respect for racial, ethnic, and religious

1 diversity, and other civil rights and conditions issues. The selected  
2 organization must have experience and the capacity to communicate  
3 effectively regarding criminal justice issues with policymakers,  
4 stakeholders, and the general public, and must be prepared and able  
5 to provide all program and staff support necessary, directly or  
6 through subcontracts, to carry out all duties of the office.

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

10 (3) The organization must be an objective and neutral entity that  
11 will impartially investigate complaints.

12 (4) The organization is subject to financial and other audits by  
13 the state auditor's office, and its employees must abide by the  
14 provisions of chapter 42.52 RCW.

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

16 (a) Establish priorities for use of the limited resources  
17 appropriated to implement this chapter;

18 (b) Develop policies for responding to records requests from the  
19 public. These policies shall be similar in scope to the requirements  
20 in the public records act except that identifying information about  
21 complainants or witnesses must be protected and nondisclosable unless  
22 the complainant or witness waives confidentiality;

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

26 (d) Provide information, as appropriate, to inmates, family  
27 members, representatives of inmates, department employees, and others  
28 regarding the rights of inmates;

29 (e) Provide technical assistance to support inmate participation  
30 in self-advocacy;

31 (f) Monitor department compliance with applicable federal, state,  
32 and local laws, rules, regulations, and policies with a view toward  
33 the appropriate health, safety, welfare, and rehabilitation of  
34 inmates;

35 (g) Monitor and participate in legislative and policy  
36 developments affecting correctional facilities;

37 (h) Establish a statewide uniform reporting system to collect and  
38 analyze data related to complaints regarding the department;

1 (i) Establish procedures to receive, investigate, and resolve  
2 complaints;

3 (j) Submit annually to the council, the governor's office, and  
4 the legislature, by November 1st of each year, a report analyzing the  
5 work of the office, including any recommendations; and

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

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

12 (i) Abuse or neglect;

13 (ii) Department decisions or administrative actions;

14 (iii) Inactions or omissions;

15 (iv) Policies, rules, or procedures; or

16 (v) Alleged violations of law by the department that may  
17 adversely affect the health, safety, welfare, and rights of inmates.

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

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

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

33 (e) The ombuds may not investigate any complaints relating to an  
34 inmate's underlying criminal conviction.

35 (f) The ombuds may not investigate a complaint from a department  
36 employee that relates to the employee's employment relationship with  
37 the department.

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

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

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

11 (i) Consider the matter further;

12 (ii) Modify or cancel any action;

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

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

15 (v) Rectify an omission; or

16 (vi) Take any other action.

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

21 (k) If the ombuds believes, based on the investigation, that  
22 there has been or continues to be a significant inmate health,  
23 safety, welfare, or rehabilitation issue, the ombuds must report the  
24 finding to the governor and the appropriate committees of the  
25 legislature.

26 (l) Before announcing a conclusion or recommendation that  
27 expressly, or by implication, criticizes a person or the department,  
28 the ombuds shall consult with that person or the department. The  
29 ombuds may request to be notified by the department, within a  
30 specified time, of any action taken on any recommendation presented.  
31 The ombuds must notify the inmate, if any, of the actions taken by  
32 the department in response to the ombuds' recommendations.

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

37 NEW SECTION. **Sec. 7.** (1) The department must permit the ombuds  
38 to enter and inspect, at any reasonable time, any correctional  
39 facility for the purpose of carrying out its duties under this

1 chapter. The ombuds may inspect, view, photograph, and video record  
2 all areas of the facility that are used by inmates or are accessible  
3 to inmates. Before releasing any photographs or video recordings  
4 taken within a correctional facility, the ombuds must consult with  
5 the department concerning any safety or security issues.

6 (2) The department must allow the ombuds reasonable access to  
7 inmates, which includes the opportunity to meet and communicate  
8 privately and confidentially with individuals regularly, both  
9 formally and informally, by telephone, mail, and in person.

10 (3) Upon the ombuds' request, the department shall grant the  
11 ombuds the right to access, inspect, and copy all relevant  
12 information, records, or documents in the possession or control of  
13 the department that the ombuds considers necessary in an  
14 investigation of a complaint filed under this chapter, and must  
15 assist the ombuds in obtaining the necessary releases of documents  
16 that are specifically restricted or privileged for use by the ombuds.

17 (4) Following notification from the ombuds with a written demand  
18 for access to agency records, the delegated department staff must  
19 respond to the ombuds within five business days of the department's  
20 receipt of a request by:

21 (a) Making the requested documentation available; or

22 (b) Acknowledging receipt of the request and providing a  
23 reasonable estimate of the time needed to respond.

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

27 (6) The department may not hinder the lawful actions of the  
28 ombuds or employees of the office, or willfully refuse to comply with  
29 lawful demands of the office.

30 (7) The ombuds must work with the department to minimize  
31 disruption to the operations of the department due to ombuds  
32 activities, and must comply with the department's security clearance  
33 processes, provided these processes do not impede the activities  
34 outlined in this chapter.

35 NEW SECTION. **Sec. 8.** (1) Correspondence and communication with  
36 the office is confidential and must be protected as privileged  
37 correspondence in the same manner as legal correspondence or  
38 communication.

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

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

11 (4) To the extent the ombuds reasonably believes necessary, the  
12 ombuds:

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

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

18 (5) If the ombuds receives personally identifying information  
19 about individual corrections staff during the course of an  
20 investigation that the ombuds determines is unrelated or unnecessary  
21 to the subject of the investigation or recommendation for action, the  
22 ombuds will not further disclose such information. If the ombuds  
23 determines that such disclosure is necessary to an investigation or  
24 recommendation, the ombuds will contact the staff member as well as  
25 the bargaining unit representative before any disclosure.

26 NEW SECTION. **Sec. 9.** (1) A civil action may not be brought  
27 against any employee of the office for good faith performance of  
28 responsibilities under this chapter.

29 (2) No discriminatory, disciplinary, or retaliatory action may be  
30 taken against a department employee, subcontractor, or volunteer, an  
31 inmate, or a family member or representative of an inmate for any  
32 communication made, or information given or disclosed, to aid the  
33 office in carrying out its responsibilities, unless the communication  
34 or information is made, given, or disclosed maliciously or without  
35 good faith.

36 (3) This section is not intended to infringe on the rights of an  
37 employer to supervise, discipline, or terminate an employee for other  
38 reasons.



PART 2

DEPARTMENT OF CORRECTIONS

Sec. 10. 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 within the state of Washington to accomplish the following objectives.

(1) The ~~((system should))~~ highest duty of the department and the secretary is to 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.

(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 by stressing personal responsibility and accountability and by discouraging recidivism.

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

(5) 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 alike, have a personal and fiscal obligation in the corrections system. All communities must share in the responsibility of the corrections system.

1 (6) The system should provide for prudent management of  
2 resources. The avoidance of unnecessary or inefficient public  
3 expenditures on the part of offenders and the department is  
4 essential. Offenders must be accountable to the department, and the  
5 department to the public and the legislature. The human and fiscal  
6 resources of the community are limited. The management and use of  
7 these resources can be enhanced by wise investment, productive  
8 programs, the reduction of duplication and waste, and the joining  
9 together of all involved parties in a common endeavor. Since most  
10 offenders return to the community, it is wise for the state and the  
11 communities to make an investment in effective rehabilitation  
12 programs for offenders and the wise use of resources.

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

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

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

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

24 To ensure public safety and the administration of justice, if the  
25 department has actual knowledge or reason to believe that a computer  
26 calculation error is or has caused an error in the calculation of the  
27 release date for any prisoner, the department shall immediately  
28 manually calculate the release date of that prisoner as well as the  
29 release dates of any similarly sentenced prisoners.

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

32 On December 1st of each year, and in compliance with RCW  
33 43.01.036, the department must submit a report to the governor and  
34 relevant policy and fiscal committees of the legislature that details  
35 any information technology backlog at the department along with  
36 specific requirements and plans to address such backlog.



1 sentences for any and all felony crimes kept as public records under  
2 RCW 9.94A.475 shall contain the clearly printed name and legal  
3 signature of the sentencing judge. The judgment and sentence document  
4 as defined in this section shall also provide additional space for  
5 the sentencing judge's reasons for going either above or below the  
6 presumptive sentence range for any and all felony crimes covered as  
7 public records under RCW 9.94A.475. In addition, each felony judgment  
8 and sentence document must contain in a specific section the  
9 mandatory sentencing elements worksheet developed by the department  
10 of corrections in section 14 of this act. Both the sentencing judge  
11 and the prosecuting attorney's office shall each retain or receive a  
12 completed copy of each sentencing document as defined in this section  
13 for their own records.

14 (2) The caseload forecast council shall be sent a completed copy  
15 of the judgment and sentence document upon conviction for each felony  
16 sentencing under subsection (1) of this section.

17 (3) If any completed judgment and sentence document as defined in  
18 subsection (1) of this section is not sent to the caseload forecast  
19 council as required in subsection (2) of this section, the caseload  
20 forecast council shall have the authority and shall undertake  
21 reasonable and necessary steps to assure that all past, current, and  
22 future sentencing documents as defined in subsection (1) of this  
23 section are received by the caseload forecast council.

24 **Sec. 16.** RCW 9.94A.585 and 2002 c 290 s 19 are each amended to  
25 read as follows:

26 (1) A sentence within the standard sentence range, under RCW  
27 9.94A.510 or 9.94A.517, for an offense shall not be appealed. For  
28 purposes of this section, a sentence imposed on a first-time offender  
29 under RCW 9.94A.650 shall also be deemed to be within the standard  
30 sentence range for the offense and shall not be appealed.

31 (2) A sentence outside the standard sentence range for the  
32 offense is subject to appeal by the defendant or the state. The  
33 appeal shall be to the court of appeals in accordance with rules  
34 adopted by the supreme court.

35 (3) Pending review of the sentence, the sentencing court or the  
36 court of appeals may order the defendant confined or placed on  
37 conditional release, including bond.

38 (4) To reverse a sentence which is outside the standard sentence  
39 range, the reviewing court must find: (a) Either that the reasons

1 supplied by the sentencing court are not supported by the record  
2 which was before the judge or that those reasons do not justify a  
3 sentence outside the standard sentence range for that offense; or (b)  
4 that the sentence imposed was clearly excessive or clearly too  
5 lenient.

6 (5) A review under this section shall be made solely upon the  
7 record that was before the sentencing court. Written briefs shall not  
8 be required and the review and decision shall be made in an expedited  
9 manner according to rules adopted by the supreme court.

10 (6) The court of appeals shall issue a written opinion in support  
11 of its decision whenever the judgment of the sentencing court is  
12 reversed and may issue written opinions in any other case where the  
13 court believes that a written opinion would provide guidance to  
14 sentencing courts and others in implementing this chapter and in  
15 developing a common law of sentencing within the state.

16 (7) The department may petition for a review of a sentence  
17 committing an offender to the custody or jurisdiction of the  
18 department. The review shall be limited to errors of law or to  
19 address a missing, incomplete, or illegible mandatory sentencing  
20 elements section required pursuant to RCW 9.94A.480(1). Such petition  
21 shall be filed with the court of appeals no later than ninety days  
22 after the department has actual knowledge of terms of the sentence.  
23 The petition shall include a certification by the department that all  
24 reasonable efforts to resolve the dispute at the superior court level  
25 have been exhausted.

26 NEW SECTION. **Sec. 17.** (1) Subject to the availability of  
27 amounts appropriated for this specific purpose, the sentencing  
28 guidelines commission shall contract for the services of one or more  
29 external consultants to evaluate the state's sentencing laws and  
30 practices. The consultant must have demonstrated experience in  
31 conducting significant research studies and demonstrated successful  
32 experience in evaluating sentencing systems or practices. The  
33 evaluation must include:

34 (a) Recommendations for changing and improving sentencing laws  
35 and practices to:

- 36 (i) Reduce complexity and implementation challenges;  
37 (ii) Reduce unwarranted disparity;  
38 (iii) Increase postconviction review;  
39 (iv) Reduce costs to taxpayers;

1 (v) Promote fairness and equity;  
2 (vi) Reduce unintended and unnecessary impacts on the community;  
3 and  
4 (vii) Achieve the intended purposes of sentencing as set forth in  
5 RCW 9.94A.010;  
6 (b) Recommendations for:  
7 (i) A phased prospective and retroactive implementation of any  
8 proposed changes; and  
9 (ii) Establishing an ongoing review of sentencing laws and  
10 practices; and  
11 (c) An assessment of:  
12 (i) Sentence lengths among different categories of offenders;  
13 (ii) Whether those sentences conform to current research  
14 literature on the relationship between sentence lengths and  
15 recidivism;  
16 (iii) Sentencing changes adopted by the legislature since 1981,  
17 including frequency, nature, and impact;  
18 (iv) Disparity in sentencing laws between similarly situated  
19 offenders, including the rationale for such disparities;  
20 (v) The impact of the elimination of the parole system; and  
21 (vi) The state's sentencing laws and practices as compared to  
22 other states and other sentencing models.  
23 (2) The consultant shall work cooperatively with the sentencing  
24 guidelines commission members to obtain any additional  
25 recommendations or input consistent with the purposes of this  
26 section. Recommendations from the sentencing guidelines commission  
27 shall be included in the consultant's final report.  
28 (3) The consultant shall complete its evaluation and submit a  
29 report to the commission, the joint legislative task force on  
30 criminal sentencing under section 18 of this act, the appropriate  
31 committees of the legislature, and the governor by September 1, 2018.  
32 The contract for services must include a requirement for three  
33 briefings before the legislature to take place during the 2018  
34 interim and 2019 regular legislative session, including for the joint  
35 legislative task force on sentencing, the house of representatives,  
36 and the senate.  
37 (4) This section expires July 1, 2019.

38 NEW SECTION. **Sec. 18.** (1) A joint legislative task force on  
39 criminal sentencing is established.

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

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

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

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

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

11 (ii) Washington state patrol;

12 (iii) Caseload forecast council;

13 (iv) Washington association of prosecuting attorneys;

14 (v) Washington association of criminal defense attorneys or the  
15 Washington defender association;

16 (vi) Washington state association of counties;

17 (vii) Office of the attorney general;

18 (viii) American civil liberties union of Washington;

19 (ix) Sentencing guidelines commission;

20 (x) Department of corrections;

21 (xi) Superior court judges' association; and

22 (xii) Administrative office of the courts.

23 (3) The task force shall review sentencing laws after  
24 consideration of the study under section 17 of this act and the  
25 consultant's recommendations. The task force shall develop  
26 recommendations to reduce sentencing implementation complexities and  
27 errors, improve the effectiveness and fairness of the sentencing  
28 system, and promote public safety. The task force shall submit a  
29 report, including findings and recommendations, to the governor and  
30 the appropriate committees of the legislature by December 1, 2019.

31 (4) The legislative membership shall convene the initial meeting  
32 of the task force no later than September 2018. All meetings of the  
33 task force must be scheduled and conducted in accordance with the  
34 requirements of both the senate and the house of representatives.

35 (5) The legislative members of the task force shall choose the  
36 task force's cochairs, which must include one senator and one  
37 representative from among the legislative membership of the task  
38 force.

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

1 (7) Legislative members of the task force are reimbursed for  
2 travel expenses in accordance with RCW 44.04.120. Nonlegislative  
3 members are not entitled to be reimbursed for travel expenses if they  
4 are elected officials or are participating on behalf of an employer,  
5 governmental entity, or other organization. Any reimbursement for  
6 other nonlegislative members is subject to chapter 43.03 RCW.

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

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

13 **PART 5**  
14 **GENERAL PROVISIONS**

15 NEW SECTION. **Sec. 19.** In the contract for the next regularly  
16 scheduled performance audit under RCW 42.40.110 following the  
17 effective date of this section, the office of financial management  
18 must require the audit to review the ability of department of  
19 corrections employees to use the state employee whistleblower  
20 program. The audit must include findings and recommendations,  
21 including possible changes to improve the effectiveness of the  
22 whistleblower program.

23 NEW SECTION. **Sec. 20.** Sections 1 through 9 of this act  
24 constitute a new chapter in Title 43 RCW.

25 NEW SECTION. **Sec. 21.** Sections 14 through 16 of this act apply  
26 to sentences imposed on or after January 1, 2018."

27 Correct the title.

EFFECT: Makes the following changes:

(1) Removes the intent section from the underlying bill.  
(2) Makes changes to the Department of Corrections Ombuds  
provisions:

(a) Makes changes to intent language.  
(b) Narrows the definition of "inmate" to those inmates in  
physical custody of the Department of Corrections (DOC).

(c) Purposes of the Ombuds: Removes providing assistance with  
alternative dispute resolution, individual representation, and  
advocating for systemic reform from stated purposes of the office.



Changes the duty of "monitoring and promoting" departmental compliance to "ensuring" compliance, and amends list of what must be complied with to add that it includes "relevant" statutes pertaining to "services and treatment" (rather than rights) of inmates "under the jurisdiction of the department."

(d) Advisory Council (Council): Provides that establishment of the Council is subject to funds appropriated for that specific purpose. Requires the Governor to make appointments to the Council. Makes changes to the Council membership to: Remove legislative members, remove the requirement that the bargaining unit representative is selected by the bargaining unit membership, and add a representative of the Governor's office. Provides that councilmembers serve two year terms, rather than three year terms, and that the internal DOC ombuds is not subject to the two term limit.

(e) Selection of organization to operate Ombuds office: Requires the Department of Commerce, rather than the State Auditor, to designate a nonprofit organization to operate the Ombuds office. Specifies that the contract for hosting the Ombuds office is for two years, and may be renewed at the end of that term. Removes the requirement for stakeholder participation in the selection process. Provides that relevant experience may, though not must, include addressing issues relating to chemical dependency treatment, disability and disability-related accommodation, respect for racial, ethnic, and religious diversity, and other civil rights and conditions issues. Requires the contracted organization to be an objective and neutral entity that will impartially investigate complaints. Provides that the contracted organization is subject to financial and other audits by the State Auditor, and that its employees must abide by the provisions of the Ethics in Public Service Act. Removes provisions regarding revocation of the contracted agency's designation.

(f) Ombuds duties: Requires the Ombuds to develop policies for responding to records requests by the public that are similar to the requirements in the Public Records Act. Amends the directive to provide technical assistance to support inmate self-advocacy to remove specific references to the kite, grievance, and appeal procedures. Provides that, rather than monitoring department legal compliance "with a view toward protecting the rights of inmates" this activity is undertaken "with a view toward the appropriate health, safety, welfare, and rehabilitation of inmates." Removes the directive to advocate for systemic reform aimed toward protecting the rights of inmates. Requires the Ombuds to report annually to the Governor's Office and the Legislature, in addition to the Council.

(g) Complaint process: Requires complaints regarding DOC actions to be about "administrative" actions; and complaints regarding alleged violations of law must be regarding DOC violations that may adversely affect the health, safety, welfare, and rights of inmates. Applies the exhaustion requirement to any person, not just inmates, and requires exhaustion of DOC administrative and appellate procedures (in addition to internal grievance procedures). Requires pursuit of internal DOC processes for 90 business days, rather than 90 calendar days, prior to filing a complaint with the Ombuds. Requires the Ombuds, when it does not investigate a complaint, to notify the complainant and provide a reason.

(h) Ombuds responsive actions: Removes language allowing the Ombuds to report a finding of abuse, neglect, or other rights violation to the Legislature or take additional action. Provides, instead, that if the Ombuds believes there has been or continues to

be a significant prisoner health, safety, welfare, or rehabilitation issue, it must report to the Legislature and Governor.

(i) Access to facilities and records: Removes all underlying provisions related to facility and records access and instead provides the following: (i) The DOC must permit the Ombuds to enter and inspect facilities at any reasonable time, and to view, photograph, and record inmate accessible areas; (ii) the DOC must allow the Ombuds reasonable access to inmates, including opportunities to communicate privately and confidentially; (iii) the DOC must provide the Ombuds with record and document access upon the Ombuds request, and must respond to a records request within 5 days; (iv) other governmental entities that have relevant records must provide those records to the Ombuds; and (v) the DOC must not hinder the lawful actions of the Ombuds, and the Ombuds must work with DOC to minimize disruption.

(3) Modifies the requirements for the Joint Legislative Audit and Review Committee (JLARC) to conduct a performance audit of the information and technology and records departments at the Department of Corrections (DOC) by: Changing references to "information technology and records departments" to "information technology and records-related units"; removing the requirement that the performance audit must be conducted "immediately"; requiring JLARC to audit whether units should be restructured to respond efficiently to changes in sentencing laws and other emergent issues (rather than more quickly respond to legislative directives and emergent issues); requiring JLARC to audit the sufficiency of staffing levels and expertise at each of the units (rather than the sufficiency and quality of staffing at each of the units); specifying that the JLARC audit of the advance corrections project is limited to the project's impact on workload and staff resources at each of the units.

(4) Removes from the underlying bill the requirement that the Governor ensure all offices in the executive branch perform their duties as prescribed by law, and ensure that all personal and professional conflicts of interest are avoided.

(5) Requires the Sentencing Guidelines Commission (SGC) to contract with one or more external consultants to evaluate the state's sentencing laws and practices, including assessments of certain specified items. Requires the external consultant to develop recommendations for changing and improving sentencing laws and practices to reduce complexity and implementation challenges, reduce unwarranted disparity, increase postconviction review, reduce costs to taxpayers, promote fairness and equity, and other specified items. Specifies that the recommendations must include a phased implementation plan for possible retroactive and prospective changes and a process for an ongoing review of sentencing laws and practices.

(6) Modifies the Joint Legislative Task Force (Task Force) created in the underlying bill by: Specifying that the Task Force is on criminal sentencing (rather than simplifying sentencing); removing from the underlying bill language specifying that the Task Force make recommendations on simplifying the Sentencing Reform Act, and removing language limiting the Task Force's review and recommendations to technical, nonsubstantive changes that would not reduce punishment or risk public safety; requiring the Task Force to review sentencing laws after consideration of the study and recommendations completed by the external consultant; requiring the Task Force to develop recommendations to reduce sentencing implementation complexities and errors, improve the effectiveness and fairness of the sentencing system, and promote public safety; requiring the Task Force to submit its report to the Governor (in addition to the Legislature); and requiring the legislative members

of the Task Force to choose the Task Force's cochairs, which must include one Senator and one Representative.

(7) Removes from the underlying bill the changes to the Whistleblower Program, including the changes to investigations process and deadlines for notices and initiating and concluding investigations. Removes from the underlying bill the prohibition against provisions in settlements of whistleblower retaliation lawsuits that prevent an employee from future work in state government.

(8) Modifies the requirements in the underlying bill for the performance audit of the Whistleblower Protection Program (Program) by specifying that the audit must review the ability of DOC employees to use the Program (rather than the legislative report from the Senate Law and Justice Committee and any other pertinent documentation of the error, with a particular focus on the inability of DOC employees to use the Program to address concerns with mismanagement). Requires the audit to include recommendations to improve the effectiveness of the program.

(9) Requires the DOC to develop a mandatory sentencing elements worksheet to be used by courts to identify and record the elements of a sentencing order. Requires DOC to consult with certain entities when developing the worksheet. Requires the Administrative Office of the Courts to include the mandatory sentencing elements worksheet in a specific section within its felony Judgment and Sentence forms. Requires courts to use the mandatory sentencing elements worksheet for all felony sentences imposed on or after January 1, 2018. Authorizes the DOC to petition the Court of Appeals for a review of a sentence according to the processes in current law in order to address a missing, incomplete, or illegible sentencing elements worksheet.

(10) Makes technical changes.

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