
SENATE BILL 5876

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

Read first time 02/08/19. Referred to Committee on Human Services, Reentry & Rehabilitation.

1 AN ACT Relating to creating a women's division and system of
2 gender-responsive, risk-need-responsivity, and trauma-informed
3 practices within the department of corrections; amending RCW
4 72.09.010, 72.09.015, 72.09.060, and 43.06C.040; and adding a new
5 section to chapter 72.09 RCW.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 72.09
8 RCW to read as follows:

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

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

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

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

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

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

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

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

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

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

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

32 (3) Beginning December 1, 2020, and in compliance with RCW
33 43.01.036, the department must submit an annual report to the
34 legislature and the governor that details the efforts and progress
35 toward the responsibilities outlined in subsection (2)(a) through (i)
36 of this section.

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

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

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

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

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

15 ~~((4))~~ (3) The system should treat all ~~((offenders fairly and
16 equitably without regard to))~~ persons experiencing incarceration in a
17 manner that is gender-responsive, trauma-informed, and supportive of
18 the principles of diversity, equity, and inclusion, and may not
19 discriminate on the basis of race, religion, sex, national origin,
20 residence, or social condition.

21 ~~((5))~~ (4) The system, as much as possible, should reflect the
22 values of the community including:

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

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

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

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

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

1 (~~(6)~~) (5) The system should provide for prudent management of
2 resources. The avoidance of unnecessary or inefficient public
3 expenditures on the part of (~~offenders~~) persons experiencing
4 incarceration and the department is essential. (~~Offenders~~) Persons
5 experiencing incarceration must be accountable to the department, and
6 the department to the public and the legislature. The human and
7 fiscal resources of the community are limited. The management and use
8 of these resources can be enhanced by wise investment, productive
9 programs, the reduction of duplication and waste, and the joining
10 together of all involved parties in a common endeavor. Since most
11 (~~offenders~~) persons experiencing incarceration return to the
12 community, it is wise for the state and the communities to make an
13 investment in effective individualized, gender-responsive, and
14 trauma-informed rehabilitation programs (~~for offenders~~) based on
15 research, risk-needs-responsivity principles, and the wise use of
16 resources.

17 (~~(7)~~) (6) The system should provide for restitution. Those who
18 have damaged others, persons or property, have a responsibility to
19 make restitution for these damages.

20 (~~(8)~~) (7) The system should be accountable to the citizens of
21 the state. In return, the individual citizens and local units of
22 government must meet their responsibilities to make the corrections
23 system effective.

24 (~~(9)~~) (8) The system should meet those national standards which
25 the state determines to be appropriate.

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

30 **Sec. 3.** RCW 72.09.015 and 2013 c 39 s 22 are each amended to
31 read as follows:

32 The definitions in this section apply throughout this chapter.

33 (1) "Adult basic education" means education or instruction
34 designed to achieve general competence of skills in reading, writing,
35 and oral communication, including English as a second language and
36 preparation and testing services for obtaining a high school diploma
37 or a high school equivalency certificate as provided in RCW
38 28B.50.536.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (17) ~~(("Inmate"))~~ "Person experiencing incarceration" means a
37 person committed to the custody of the department, including but not
38 limited to persons residing in a correctional institution or facility
39 and persons released from such facility on furlough, work release, or
40 community custody, and persons received from another state, state

1 agency, county, or federal jurisdiction. Historical terms such as
2 offender, inmate, convict, and incarcerated individual are included
3 in the definition of person experiencing incarceration.

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

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

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

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

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

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

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

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

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

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

3 (a) Physical restraint; or

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

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

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

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

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

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

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

34 (31) "Washington business" means an in-state manufacturer or
35 service provider subject to chapter 82.04 RCW existing on June 10,
36 2004.

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

39 (33) "Gender-responsive" means taking into account gender-
40 specific differences that have been identified in women-centered

1 research including, but not limited to, socialization, psychological
2 development, strengths, risk factors, pathways through systems,
3 responses to treatment intervention, and other unique gender-specific
4 needs facing justice-involved women. Gender-responsive policies,
5 practices, programs, and services must be implemented in a manner
6 that is considered relational, culturally competent, family-centered,
7 holistic, strength-based, and trauma-informed.

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

14 **Sec. 4.** RCW 72.09.060 and 2002 c 175 s 48 are each amended to
15 read as follows:

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

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

34 (1) The ombuds shall:

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

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

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

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

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

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

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

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

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

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

29 (i) The budget and expenditures of the ombuds;

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

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

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

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

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

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

11 (i) Abuse or neglect;

12 (ii) Department decisions or administrative actions;

13 (iii) Inactions or omissions;

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

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

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))~~ a person
22 experiencing incarceration be prevented from filing a complaint more
23 than ninety business days after filing an internal grievance,
24 regardless of whether the department has completed the grievance
25 process. This subsection (2)(b) does not apply to complaints related
26 to threats of bodily harm including, but not limited to, sexual or
27 physical assaults or the denial of 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
34 ~~((an inmate's))~~ a person experiencing incarceration's underlying
35 criminal conviction.

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

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

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

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

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

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

17 (i) Consider the matter further;

18 (ii) Modify or cancel any action;

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

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

21 (v) Rectify an omission.

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

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

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

39 (3) This chapter does not require ((inmates)) persons
40 experiencing incarceration to file a complaint with the ombuds in

1 order to exhaust available administrative remedies for purposes of
2 the prison litigation reform act of 1995, P.L. 104-134.

--- **END** ---