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**HOUSE BILL 1044**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Representatives Leavitt, Simmons, J. Johnson, Eslick, Lovick, Kloba, Lekanoff, Wylie, Bateman, Senn, Goodman, Bronoske, Valdez, Callan, Ramos, Hackney, Morgan, Ormsby, Fey, Frame, Santos, Davis, Pollet, and Bergquist

AN ACT Relating to creating prison to postsecondary education pathways; amending RCW 72.09.270, 72.09.460, 72.09.465, 72.68.010, and 28B.15.067; amending 2019 c 397 s 1 (uncodified); adding a new section to chapter 72.68 RCW; adding a new section to chapter 72.09 RCW; creating a new section; and providing an expiration date.

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

**Sec.**  2019 c 397 s 1 (uncodified) is amended to read as follows:

(1) The legislature finds that incarceration is both a rural and urban issue in the state. According to one recent report, the highest rates of prison admissions are in rural counties. In addition, since 1980, the number of women in prison has increased more than eight hundred percent. The legislature finds that studies clearly and consistently demonstrate that postsecondary education in prisons improves safety in facilities, and incarcerated adults who obtain postsecondary education and training are more likely to be employed following release, which leads to a ((~~dramatic~~)) significant reduction in recidivism rates, ((~~significant~~)) improvements in public safety, and a major return on investment. The legislature finds that reducing recidivism ((~~would~~)) decreases the financial burden to taxpayers and the emotional burden of victims.

(2) The legislature finds that research indicates that postsecondary education and training is an effective evidence-based practice for reducing recidivism. An analysis commissioned by the United States department of justice determined that adults who received ((~~such~~)) an education while incarcerated were forty-three percent less likely to recidivate.

(3) Ninety-five percent of incarcerated adults ultimately return to their communities to obtain employment and contribute to society. The legislature finds that according to the bureau of labor statistics, unemployment rates for people with only a high school education are twice that of those with an associate degree. Research has shown that adults who participated in ((~~such~~)) education programs while incarcerated were thirteen percent more likely to be employed.

(4) The legislature further finds that correctional education is cost-effective. A 2014 study by the Washington state institute for public policy estimated that ((~~the state received~~)), based on a review of national research literature and cost benefit analysis, there is a return on investment of twenty dollars for every dollar invested in correctional education.

(5) It is the intent of the legislature to enhance public safety, including the safety of prison workers as findings show that violence rates are reduced in institutions where there are educational programs, to reduce crime, and to increase employment rates in a cost-effective manner by exploring benefits and costs associated with providing postsecondary education degree opportunities and training to incarcerated adults through expanded partnerships between ((~~the community and technical colleges~~)) postsecondary institutions and the department of corrections.

(6) It is the intent of the legislature to support exploring the use of secure internet connections expressly for the purposes of furthering postsecondary education degree opportunities and training of incarcerated adults, including providing assistance to incarcerated adults with completing financial aid materials. The legislature intends for the department to be able to provide complete assurance that all offender-used internet connections are secure.

(7) It is also the intent of the legislature, by requiring the study under section 2 of this act, to examine the effects of enrollment in the postsecondary education system postrelease.

NEW SECTION. **Sec.**  (1) Subject to the availability of amounts appropriated for this specific purpose, the Washington state institute for public policy shall conduct a study on enrollment and completion rates of inmates in the postsecondary education system postrelease, as well as recidivism rates. At a minimum, the Washington state institute for public policy must:

(a) Study the effects of postrelease enrollment in the postsecondary education system by individuals who, while incarcerated, completed some coursework but did not earn a degree or certificate;

(b) Study postrelease patterns of participation in postsecondary education of individuals who, while incarcerated, participated in postsecondary education programs;

(c) Identify differential outcomes for individuals participating in different types of postsecondary education courses and degree and certificate programs; and

(d) Examine recidivism outcomes beyond incarceration.

(2) The department of corrections, the student achievement council, and the state board for community and technical colleges shall provide data necessary to conduct the study.

(3) By October 1, 2024, and in compliance with RCW 43.01.036, the institute must submit a report to the appropriate committees of the legislature.

(4) This section expires January 1, 2026.

**Sec.**  RCW 72.09.270 and 2008 c 231 s 48 are each amended to read as follows:

(1) The department of corrections shall develop an individual reentry plan as defined in RCW 72.09.015 for every offender who is committed to the jurisdiction of the department except:

(a) Offenders who are sentenced to life without the possibility of release or sentenced to death under chapter 10.95 RCW; and

(b) Offenders who are subject to the provisions of 8 U.S.C. Sec. 1227.

(2) The individual reentry plan may be one document, or may be a series of individual plans that combine to meet the requirements of this section.

(3) In developing individual reentry plans, the department shall assess all offenders using standardized and comprehensive tools to identify the criminogenic risks, programmatic needs, and educational and vocational skill levels for each offender. The assessment tool should take into account demographic biases, such as culture, age, and gender, as well as the needs of the offender, including any learning disabilities, substance abuse or mental health issues, and social or behavior ((~~deficits~~)) challenges.

(4)(a) The initial assessment shall be conducted as early as sentencing, but, whenever possible, no later than forty‑five days of being sentenced to the jurisdiction of the department of corrections.

(b) The offender's individual reentry plan shall be developed as soon as possible after the initial assessment is conducted, but, whenever possible, no later than sixty days after completion of the assessment, and shall be periodically reviewed and updated as appropriate.

(5) The individual reentry plan shall, at a minimum, include:

(a) A plan to maintain contact with the inmate's children and family, if appropriate. The plan should determine whether parenting classes, or other services, are appropriate to facilitate successful reunification with the offender's children and family;

(b) An individualized portfolio for each offender that includes the offender's education achievements, certifications, employment, work experience, skills, and any training received prior to and during incarceration; and

(c) A plan for the offender during the period of incarceration through reentry into the community that addresses the needs of the offender including education, employment, substance abuse treatment, mental health treatment, family reunification, and other areas which are needed to facilitate a successful reintegration into the community.

(6)(a) Prior to discharge of any offender, the department shall:

(i) Evaluate the offender's needs and, to the extent possible, connect the offender with existing services and resources that meet those needs; and

(ii) Connect the offender with a community justice center and/or community transition coordination network in the area in which the offender will be residing once released from the correctional system if one exists.

(b) If the department recommends partial confinement in an offender's individual reentry plan, the department shall maximize the period of partial confinement for the offender as allowed pursuant to RCW 9.94A.728 to facilitate the offender's transition to the community.

(7) The department shall establish mechanisms for sharing information from individual reentry plans to those persons involved with the offender's treatment, programming, and reentry, when deemed appropriate. When feasible, this information shall be shared electronically.

(8)(a)(i) In determining the county of discharge for an offender released to community custody, the department may not approve a residence location that is not in the offender's county of origin unless it is determined by the department that the offender's return to his or her county of origin would be inappropriate considering any court-ordered condition of the offender's sentence, victim safety concerns, negative influences on the offender in the community, or the location of family or other sponsoring persons or organizations that will support the offender.

(ii) Unless there are victim safety concerns, the department shall consider the offender's return to the offender's county of origin to be inappropriate if the offender is enrolled in an educational program and a return to the offender's county of origin would result in the offender not being able to complete the program.

(b) If the offender is not returned to his or her county of origin, the department shall provide the law and justice council of the county in which the offender is placed with a written explanation.

(c) For purposes of this section, the offender's county of origin means the county of the offender's first felony conviction in Washington.

(9) Nothing in this section creates a vested right in programming, education, or other services.

**Sec.**  RCW 72.09.460 and 2017 c 120 s 3 are each amended to read as follows:

(1) Recognizing that there is a positive correlation between education opportunities and reduced recidivism, it is the intent of the legislature to offer appropriate ((~~associate~~)) postsecondary degree or certificate opportunities to inmates ((~~designed to prepare the inmate to enter the workforce~~)).

(2) The legislature intends that all inmates be required to participate in department-approved education programs, work programs, or both, unless exempted as specifically provided in this section. Eligible inmates who refuse to participate in available education or work programs available at no charge to the inmates shall lose privileges according to the system established under RCW 72.09.130. Eligible inmates who are required to contribute financially to an education or work program and refuse to contribute shall be placed in another work program. Refusal to contribute shall not result in a loss of privileges.

(3) The legislature recognizes more inmates may agree to participate in education and work programs than are available. The department must make every effort to achieve maximum public benefit by placing inmates in available and appropriate education and work programs.

(4)(a) The department shall, to the extent possible and considering all available funds, prioritize its resources to meet the following goals for inmates in the order listed:

(i) Achievement of basic academic skills through obtaining a high school diploma or a high school equivalency certificate as provided in RCW 28B.50.536, including achievement by those incarcerated individuals eligible for special education services pursuant to state or federal law;

(ii) Achievement of vocational skills necessary for purposes of work programs and for an inmate to qualify for work upon release;

(iii) Additional work and education programs necessary for compliance with an offender's individual reentry plan under RCW 72.09.270, including special education services and postsecondary degree or certificate education programs; and

(iv) Other appropriate vocational, work, or education programs that are not necessary for compliance with an offender's individual reentry plan under RCW 72.09.270 including ((~~associate~~)) postsecondary degree or certificate education programs.

(b) If programming is provided pursuant to (a)(i) through (iii) of this subsection, the department shall pay the cost of such programming, including but not limited to books, materials, and supplies.

(c) If programming is provided pursuant to (a)(iv) of this subsection, inmates shall be required to pay all or a portion of the costs, including books, fees, and tuition, for participation in any vocational, work, or education program as provided in department policies. Department policies shall include a formula for determining how much an offender shall be required to pay. The formula shall include steps which correlate to an offender average monthly income or average available balance in a personal inmate savings account and which are correlated to a prorated portion or percent of the per credit fee for tuition, books, or other ancillary educational costs. The formula shall be reviewed every two years. A third party may pay directly to the department all or a portion of costs and tuition for any programming provided pursuant to (a)(iv) of this subsection on behalf of an inmate. Such payments shall not be subject to any of the deductions as provided in this chapter.

(d) The department may accept any and all donations and grants of money, equipment, supplies, materials, and services from any third party, including but not limited to nonprofit entities, and may receive, utilize, and dispose of same to complete the purposes of this section.

(e) Any funds collected by the department under (c) and (d) of this subsection and subsections ((~~(9) and~~)) (10) and (11) of this section shall be used solely for the creation, maintenance, or expansion of inmate educational and vocational programs.

(5) The department shall provide access to a program of education to all offenders who are under the age of eighteen and who have not met high school graduation requirements or requirements to earn a high school equivalency certificate as provided in RCW 28B.50.536 in accordance with chapter 28A.193 RCW. The program of education established by the department and education provider under RCW 28A.193.020 for offenders under the age of eighteen must provide each offender a choice of curriculum that will assist the inmate in achieving a high school diploma or high school equivalency certificate. The program of education may include but not be limited to basic education, prevocational training, work ethic skills, conflict resolution counseling, substance abuse intervention, and anger management counseling. The curriculum may balance these and other rehabilitation, work, and training components.

(6)(a) In addition to the policies set forth in this section, the department shall consider the following factors in establishing criteria for assessing the inclusion of education and work programs in an inmate's individual reentry plan and in placing inmates in education and work programs:

(i) An inmate's release date and custody level. An inmate shall not be precluded from participating in an education or work program solely on the basis of his or her release date, except that inmates with a release date of more than one hundred twenty months in the future shall not comprise more than ten percent of inmates participating in a new class I correctional industry not in existence on June 10, 2004;

(ii) An inmate's education history and basic academic skills;

(iii) An inmate's work history and vocational or work skills;

(iv) An inmate's economic circumstances, including but not limited to an inmate's family support obligations; and

(v) Where applicable, an inmate's prior performance in department-approved education or work programs;

(b) The department shall establish, and periodically review, inmate behavior standards and program ((~~goals~~)) outcomes for all education and work programs. Inmates shall be notified of applicable behavior standards and program goals prior to placement in an education or work program and shall be removed from the education or work program if they consistently fail to meet the standards or ((~~goals~~)) outcomes.

(7) Eligible inmates who refuse to participate in available education or work programs available at no charge to the inmates shall lose privileges according to the system established under RCW 72.09.130. Eligible inmates who are required to contribute financially to an education or work program and refuse to contribute shall be placed in another work program. Refusal to contribute shall not result in a loss of privileges.

(8) The department shall establish, by rule, a process for identifying and assessing incarcerated individuals with learning disabilities, traumatic brain injuries, and other cognitive impairments to determine whether the person requires accommodations in order to effectively participate in educational programming, including general educational development tests and postsecondary education. The department shall establish a process to provide such accommodations to eligible incarcerated individuals.

(9) The department shall establish, by rule, objective medical standards to determine when an inmate is physically or mentally unable to participate in available education or work programs. When the department determines an inmate is permanently unable to participate in any available education or work program due to a health condition, the inmate is exempt from the requirement under subsection (2) of this section. When the department determines an inmate is temporarily unable to participate in an education or work program due to a medical condition, the inmate is exempt from the requirement of subsection (2) of this section for the period of time he or she is temporarily disabled. The department shall periodically review the medical condition of all inmates with temporary disabilities to ensure the earliest possible entry or reentry by inmates into available programming.

((~~(9)~~)) (10) The department shall establish policies requiring an offender to pay all or a portion of the costs and tuition for any vocational training or postsecondary education program if the offender previously abandoned coursework related to ((~~associate~~)) postsecondary degree or certificate education or vocational training without excuse as defined in rule by the department. Department policies shall include a formula for determining how much an offender shall be required to pay. The formula shall include steps which correlate to an offender average monthly income or average available balance in a personal inmate savings account and which are correlated to a prorated portion or percent of the per credit fee for tuition, books, or other ancillary costs. The formula shall be reviewed every two years. A third party may pay directly to the department all or a portion of costs and tuition for any program on behalf of an inmate under this subsection. Such payments shall not be subject to any of the deductions as provided in this chapter.

((~~(10)~~)) (11) Notwithstanding any other provision in this section, an inmate sentenced to life without the possibility of release, sentenced to death under chapter 10.95 RCW, or subject to the provisions of 8 U.S.C. Sec. 1227:

(a) Shall not be required to participate in education programming except as may be necessary for the maintenance of discipline and security;

(b) May not participate in ((~~an associate~~)) a postsecondary degree education program offered by the department or its contracted providers, unless the inmate's participation in the program is paid for by a third party;

(c) May participate in prevocational or vocational training that may be necessary to participate in a work program;

(d) Shall be subject to the applicable provisions of this chapter relating to inmate financial responsibility for programming.

(12) If an inmate has participated in postsecondary education programs, the department shall provide the inmate with a copy of the inmate's unofficial transcripts, at no cost to the inmate, upon the inmate's release or transfer to a different facility. Upon the inmate's completion of a postsecondary education program, the department shall provide to the inmate, at no cost to the inmate, a copy of the inmate's unofficial transcripts. This requirement applies regardless of whether the inmate became ineligible to participate in or abandoned a postsecondary education program.

**Sec.**  RCW 72.09.465 and 2017 c 120 s 4 are each amended to read as follows:

(1)(a) The department may implement ((~~associate~~)) postsecondary degree or certificate education programs at state correctional institutions. ((~~During the 2015-2017 fiscal biennium, the department may implement postsecondary degree programs within state institutions, including the state correctional institution with the largest population of females, within its existing funds and under the limitations in this section, to include any funding provided under subsection (3) of this section.~~))

(b) The department may consider for inclusion in any ((~~associate~~)) postsecondary degree or certificate education program, any education program from an accredited community or technical college, college, or university that is ((~~part of an associate workforce degree program designed to prepare the inmate to enter the workforce~~)) limited to no more than a bachelor's degree.

(2) Inmates not meeting the department's priority criteria for the state-funded ((~~associate~~)) postsecondary degree education program shall be required to pay the costs for participation in a postsecondary education degree program if he or she elects to participate through self-pay, including costs of books, fees, tuition, or any other appropriate ancillary costs, by one or more of the following means:

(a) The inmate who is participating in the postsecondary education degree program may, during confinement, provide the required payment or payments to the department; or

(b) A third party shall provide the required payment or payments directly to the department on behalf of an inmate, and such payments shall not be subject to any of the deductions as provided in this chapter.

(3) The department may accept any and all donations and grants of money, equipment, supplies, materials, and services from any third party, including but not limited to nonprofit entities, and may receive, utilize, and dispose of same to provide postsecondary education to inmates.

(4) An inmate may be selected to participate in a state-funded ((~~associate~~)) postsecondary degree or certificate education program, based on priority criteria determined by the department, in which the following conditions may be considered:

(a) Priority should be given to inmates within ((~~five~~)) ten years or less of release;

(b) The inmate does not already possess a postsecondary education degree; and

(c) The inmate's individual reentry plan includes participation in ((~~an associate~~)) a postsecondary degree or certificate education program that is:

(i) Offered at the inmate's state correctional institution;

(ii) Approved by the department as an eligible and effective postsecondary education degree program; and

(iii) Limited to ((~~an associate workforce~~)) a postsecondary degree or certificate program.

(5) ((~~During the 2015-2017 fiscal biennium, an inmate may be selected to participate in a state-funded postsecondary education degree program, based on priority criteria determined by the department, in which the following conditions may be considered:~~

~~(a) Priority should be given to inmates within five years of release;~~

~~(b) The inmate does not already possess a postsecondary education degree; and~~

~~(c) The inmate's individual reentry plan includes participation in a postsecondary education degree program that is:~~

~~(i) Offered at the inmate's state correctional institution; and~~

~~(ii) Approved by the department as an eligible and effective postsecondary education degree program.~~)) The department may assist inmates selected to participate in state-funded postsecondary degree or certificate programs with filing a free application for federal student aid or the Washington application for state financial aid.

(6) Any funds collected by the department under this section shall be used solely for the creation, maintenance, or expansion of inmate postsecondary education degree programs.

NEW SECTION. **Sec.**  A new section is added to chapter 72.68 RCW to read as follows:

(1) In determining whether to transfer an offender to a different facility in the state, the department shall consider whether the offender is enrolled in a vocational or educational program, including those operated by approved outside providers, which cannot be continued at the receiving facility. The department shall work with the offender's case manager, counselor, education navigator, or other appropriate person to attempt to meet the needs of the department and the offender regarding transfer.

(2) Nothing in this section creates a vested right in programming, education, or other services.

**Sec.**  RCW 72.68.010 and 2020 c 318 s 4 are each amended to read as follows:

(1) Whenever in its judgment the best interests of the state or the welfare of any prisoner confined in any penal institution will be better served by his or her transfer to another institution or to a foreign country of which the prisoner is a citizen or national, the secretary may effect such transfer consistent with applicable federal laws and treaties. The secretary has the authority to transfer offenders between in-state correctional facilities or to out-of-state governmental institutions if the secretary determines that transfer is in the best interest of the state or the offender. The determination of what is in the best interest of the state or offender may include but is not limited to considerations of overcrowding, emergency conditions, or hardship to the offender. In determining whether the transfer will impose a hardship on the offender, the secretary shall consider: (a) The location of the offender's family and whether the offender has maintained contact with members of his or her family; (b) whether, if the offender has maintained contact, the contact will be significantly disrupted by the transfer due to the family's inability to maintain the contact as a result of the transfer; and (c) whether the offender is enrolled in a vocational or educational program that cannot reasonably be resumed or completed if the offender is transferred to another correctional institution or returned to the state.

(2)(a) The secretary has the authority to transfer offenders to an out-of-state private correctional entity only if:

(i) The governor finds that an emergency exists such that the population of a state correctional facility exceeds its reasonable, maximum capacity, resulting in safety and security concerns;

(ii) The governor has considered all other legal options to address capacity, including those pursuant to RCW 9.94A.870;

(iii) The secretary determines that transfer is in the best interest of the state or the offender; and

(iv) The contract with the out-of-state private correctional entity includes requirements for access to public records to the same extent as if the facility were operated by the department, inmate access to the office of the corrections ombuds, and inspections and visits without notice.

(b) Should any of these requirements in this subsection not be met, the contract with the private correctional entity shall be terminated.

(3) If directed by the governor, the secretary shall, in carrying out this section and RCW 43.06.350, adopt rules under chapter 34.05 RCW to effect the transfer of prisoners requesting transfer to foreign countries.

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

(1) The department, the state board for community and technical colleges, the student achievement council, and the Washington statewide reentry council, in collaboration with an organization representing the presidents of the public four-year institutions of higher education, shall submit a combined report, pursuant to RCW 43.01.036, by December 1, 2021, and annually thereafter, to the appropriate committees of the legislature having oversight over higher education issues and correctional matters.

(2) At a minimum, the combined report must include:

(a) The number of incarcerated individuals served in the department's postsecondary education system, the number of individuals not served, the number of individuals leaving the department's custody without a high school equivalency who were in the department's custody longer than one year, and the number of individuals released without any postsecondary education, each disaggregated by demographics;

(b) A review of the department's identification and assessment of incarcerated individuals with learning disabilities, traumatic brain injuries, and other cognitive impairments or disabilities that may limit their ability to participate in educational programming, including general educational development testing and postsecondary education. The report shall identify barriers to the identification and assessment of these individuals and include recommendations that will further facilitate access to educational programming for these inmates;

(c) An identification of issues related to ensuring that credits earned in credit-bearing courses are transferable. The report must also include the number of transferable credits awarded and the number of credits awarded that are not transferable;

(d) A review of policies on transfer, in order to create recommendations to institutions and the legislature that to ensure postsecondary education credits earned while incarcerated transfer seamlessly upon postrelease enrollment in a postsecondary education institution. The review must identify barriers or challenges on transferring credits experienced by individuals and the number of credits earned while incarcerated that transferred to the receiving colleges postrelease;

(e) The number of individuals participating in correspondence courses and completion rates of correspondence courses, disaggregated by demographics;

(f) An examination of the collaboration between correctional facilities, the educational programs, and the institutions, with the goal of ensuring that roles and responsibilities are clearly defined, including the roles and responsibilities of each entity in relation to ensuring inmate access to, and accommodations in, educational programming; and

(g) A review of the partnerships with nonprofit organizations at state correctional facilities that provide accredited certificate and degree granting programs and those that provide reentry services in support of educational programs and goals.

**Sec.**  RCW 28B.15.067 and 2020 c 114 s 4 are each amended to read as follows:

(1) Tuition fees shall be established under the provisions of this chapter.

(2) Tuition operating fees for resident undergraduates at institutions of higher education as defined in RCW 28B.10.016, excluding applied baccalaureate degrees as defined in RCW 28B.50.030, may increase by no more than the average annual percentage growth rate in the median hourly wage for Washington for the previous fourteen years as the wage is determined by the federal bureau of labor statistics.

(3) The governing boards of the state universities, regional universities, and The Evergreen State College; and the state board for community and technical colleges may reduce or increase full-time tuition fees for all students other than resident undergraduates, including nonresident students, summer school students, and students in other self-supporting degree programs. Percentage increases in full-time tuition may exceed the fiscal growth factor. Except during the 2013-2015 fiscal biennium, the state board for community and technical colleges may pilot or institute differential tuition models. The board may define scale, scope, and rationale for the models.

(4) The tuition fees established under this chapter shall not apply to high school students enrolling in participating institutions of higher education under RCW 28A.600.300 through 28A.600.400.

(5)(a) The tuition fees established under this chapter shall not apply to eligible students enrolling in a dropout reengagement program through an interlocal agreement between a school district and a community or technical college under RCW 28A.175.100 through 28A.175.110.

(b) The tuition fees established under this chapter shall not apply to students incarcerated with the department of corrections who are participating in credit-eligible postsecondary education courses and degree programs when the program expenses are funded by nontuition resources, such as, but not limited to, grants, contracts, and donations.

(6) As a result of any changes in tuition under section 3, chapter 36, Laws of 2015 3rd sp. sess., the governing boards of the state universities, the regional universities, and The Evergreen State College shall not reduce resident undergraduate enrollment below the 2014-15 academic year levels.

**--- END ---**