
SENATE BILL 5270

State of Washington

68th Legislature

2023 Regular Session

By Senator Saldaña

1 AN ACT Relating to keeping communities together by limiting the
2 department of corrections' assistance with federal immigration
3 enforcement activities; amending RCW 72.09.270, 72.09.460, and
4 9.94A.733; adding a new section to chapter 72.09 RCW; creating a new
5 section; repealing RCW 9.94A.685; and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that immigrants make
8 a significant contribution to the vitality of the state, and it is
9 important that the state recognize the importance of keeping
10 communities and families together. The legislature recognizes that
11 nearly 1,000,000 Washingtonians are immigrants, which is one out of
12 every seven people in the state.

13 The legislature finds that when prisons transfer immigrant and
14 refugee community members eligible for release from state custody to
15 immigration and customs enforcement for immigration detention and
16 deportation purposes, they subject these community members to double
17 punishment beyond a given sentence. The legislature finds that these
18 community members may be refugees, lawful permanent residents, people
19 who moved to Washington state as children, parents, caretakers,
20 essential workers, and other Washington residents. The legislature
21 finds that immigrant community members in federal detention can be

1 detained for prolonged periods with no right to bail and deported,
2 permanently banishing them from their families, homes, and
3 communities. The legislature recognizes that the state has already
4 taken steps to ensure all Washingtonians are treated with dignity and
5 respect, including the governor's executive order 17-01 and the
6 department of corrections 350.750 policy change from December 2021.

7 Therefore, the legislature resolves to enact the keeping
8 communities together act to prevent the state from assisting
9 immigration and customs enforcement in separating and disrupting
10 families and communities.

11 NEW SECTION. **Sec. 2.** A new section is added to chapter 72.09
12 RCW to read as follows:

13 (1) In accordance with RCW 10.93.160, the department may not
14 arrest or assist with the arrest, confinement, detention, transfer,
15 interrogation, or deportation of an individual under the jurisdiction
16 of the department for an immigration enforcement purpose in any
17 manner including, but not limited to, by notifying another agency or
18 subcontractor of the agency regarding the release date and time of an
19 individual, releasing or transferring an individual into the custody
20 of another agency or subcontractor of the agency, or disclosing
21 personal information, as defined in this section, about an
22 individual.

23 (2) (a) The department may not record or enter into any database
24 used by the department including, but not limited to, the offender
25 management network information system, for any person currently or
26 previously incarcerated or under the supervision of the department
27 the following information:

- 28 (i) Place of birth; and
- 29 (ii) Immigration or citizenship status.

30 (b) The department may not allow any federal immigration
31 authority to access to the department's offender management network
32 information system or any other database used or controlled by the
33 department.

34 (c) The department shall outline the applicable government
35 assistance and benefit programs that an individual may be eligible
36 for and must explain in writing:

- 37 (i) The individual's right to refuse to disclose their
38 immigration or citizenship status; and

1 (ii) That disclosure of their immigration or citizenship status
2 may result in civil or criminal immigration enforcement, including
3 removal from the United States.

4 (d) The department may not disclose any information provided by
5 an individual under (c) of this subsection for determining
6 eligibility for relevant government assistance and benefit programs
7 to any federal immigration authority.

8 (3) (a) The department may not use an individual's immigration or
9 citizenship status, including the existence of a hold or immigration
10 detainer request, as a factor to deny or recommend denial of
11 privileges or participation in any diversion, rehabilitation, work
12 program, or mental health program or placement in a credit-earning or
13 vocational training program; or to determine custodial classification
14 level.

15 (b) Immigration or citizenship status, including the existence of
16 a hold or immigration detainer request, shall not be considered
17 necessary for classification or placement purposes for individuals
18 under the jurisdiction of the department.

19 (4) Nothing in this section shall prohibit the department's
20 compliance with a bench warrant issued by the court for a criminal
21 matter.

22 (5) In addition to any other sanctions, penalties, or remedies
23 provided by law, a person may bring an action for equitable or
24 declaratory relief in a court of competent jurisdiction against the
25 department or state official that violates this section. A state
26 agency or official that violates this section is also liable for
27 actual and general damages and reasonable attorneys' fees.

28 (6) For the purposes of this section, the following terms have
29 the meaning indicated:

30 (a) "Hold request" or "immigration detainer request" has the same
31 meaning as provided in RCW 43.17.420 and includes a request from a
32 federal immigration authority to be informed of the release date and
33 time in advance of the individual's release from the department's
34 custody.

35 (b) "Immigration or citizenship status" has the same meaning as
36 provided in RCW 43.17.420.

37 (c) "Immigration enforcement" means any activity that has the
38 purpose of apprehension or identification of an individual in order
39 to:

1 (i) Subject the individual to civil immigration arrest, civil
2 immigration detention, removal or deportation proceedings, or removal
3 or deportation from the United States; or

4 (ii) Criminally prosecute the individual for offenses related to
5 federal laws regarding immigration status.

6 (d) "Personal information" means any information that identifies
7 or describes an individual including, but not limited to, the
8 individual's name, place and date of birth, immigration or
9 citizenship status, social security number, physical description,
10 home address, work address, home telephone number, education,
11 financial matters, and medical or employment history. It includes
12 statements made by, or attributed to, the individual and parole or
13 supervision check in dates and times.

14 (e) "Transfer" includes custodial transfers, informal transfers
15 in which a person's arrest is facilitated through the physical
16 handoff of that person in a nonpublic area of the department, or any
17 coordination between the department and the receiving agency about an
18 individual's release to effectuate an arrest for immigration
19 enforcement purposes upon or following their release from the custody
20 of the department.

21 **Sec. 3.** RCW 72.09.270 and 2021 c 200 s 3 are each amended to
22 read as follows:

23 (1) The department of corrections shall develop an individual
24 reentry plan as defined in RCW 72.09.015 for every incarcerated
25 individual who is committed to the jurisdiction of the department
26 except(~~(~~

27 ~~(a) Incarcerated~~) incarcerated individuals who are sentenced to
28 life without the possibility of release or sentenced to death under
29 chapter 10.95 RCW(~~(~~and

30 ~~(b) Incarcerated individuals who are subject to the provisions of~~
31 ~~8 U.S.C. Sec. 1227)~~).

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

35 (3) In developing individual reentry plans, the department shall
36 assess all incarcerated individuals using standardized and
37 comprehensive tools to identify the criminogenic risks, programmatic
38 needs, and educational and vocational skill levels for each
39 incarcerated individual. The assessment tool should take into account

1 demographic biases, such as culture, age, and gender, as well as the
2 needs of the incarcerated individual, including any learning
3 disabilities, substance abuse or mental health issues, and social or
4 behavior challenges.

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

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

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

14 (a) A plan to maintain contact with the incarcerated individual's
15 children and family, if appropriate. The plan should determine
16 whether parenting classes, or other services, are appropriate to
17 facilitate successful reunification with the incarcerated
18 individual's children and family;

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

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

29 (6) (a) Prior to discharge of any incarcerated individual, the
30 department shall:

31 (i) Evaluate the incarcerated individual's needs and, to the
32 extent possible, connect the incarcerated individual with existing
33 services and resources that meet those needs; and

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

38 (b) If the department recommends partial confinement in an
39 incarcerated individual's individual reentry plan, the department
40 shall maximize the period of partial confinement for the incarcerated

1 individual as allowed pursuant to RCW 9.94A.728 to facilitate the
2 incarcerated individual's transition to the community.

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

8 (8) (a) In determining the county of discharge for an incarcerated
9 individual released to community custody, the department may approve
10 a residence location that is not in the incarcerated individual's
11 county of origin if the department determines that the residence
12 location would be appropriate based on any court-ordered condition of
13 the incarcerated individual's sentence, victim safety concerns, and
14 factors that increase opportunities for successful reentry and long-
15 term support including, but not limited to, location of family or
16 other sponsoring persons or organizations that will support the
17 incarcerated individual, ability to complete an educational program
18 that the incarcerated individual is enrolled in, availability of
19 appropriate programming or treatment, and access to housing,
20 employment, and prosocial influences on the person in the community.

21 (b) In implementing the provisions of this subsection, the
22 department shall approve residence locations in a manner that will
23 not cause any one county to be disproportionately impacted.

24 (c) If the incarcerated individual is not returned to his or her
25 county of origin, the department shall provide the law and justice
26 council of the county in which the incarcerated individual is placed
27 with a written explanation.

28 (d) (i) For purposes of this section, except as provided in
29 (d) (ii) of this subsection, the incarcerated individual's county of
30 origin means the county of the incarcerated individual's residence at
31 the time of the incarcerated individual's first felony conviction in
32 Washington state.

33 (ii) If the incarcerated individual is a homeless person as
34 defined in RCW 43.185C.010, or the incarcerated individual's
35 residence is unknown, then the incarcerated individual's county of
36 origin means the county of the incarcerated individual's first felony
37 conviction in Washington state.

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

1 **Sec. 4.** RCW 72.09.460 and 2021 c 200 s 4 are each amended to
2 read as follows:

3 (1) Recognizing that there is a positive correlation between
4 education opportunities and reduced recidivism, it is the intent of
5 the legislature to offer appropriate postsecondary degree or
6 certificate opportunities to incarcerated individuals.

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

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

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

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

31 (ii) Achievement of vocational skills necessary for purposes of
32 work programs and for an incarcerated individual to qualify for work
33 upon release;

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

38 (iv) Other appropriate vocational, work, or education programs
39 that are not necessary for compliance with an incarcerated

1 individual's individual reentry plan under RCW 72.09.270 including
2 postsecondary degree or certificate education programs.

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

7 (c) If programming is provided pursuant to (a)(iv) of this
8 subsection, incarcerated individuals shall be required to pay all or
9 a portion of the costs, including books, fees, and tuition, for
10 participation in any vocational, work, or education program as
11 provided in department policies. Department policies shall include a
12 formula for determining how much an incarcerated individual shall be
13 required to pay. The formula shall include steps which correlate to
14 an incarcerated individual's average monthly income or average
15 available balance in a personal savings account and which are
16 correlated to a prorated portion or percent of the per credit fee for
17 tuition, books, or other ancillary educational costs. The formula
18 shall be reviewed every two years. A third party, including but not
19 limited to nonprofit entities or community-based postsecondary
20 education programs, may pay directly to the department all or a
21 portion of costs and tuition for any programming provided pursuant to
22 (a)(iv) of this subsection on behalf of an incarcerated individual.
23 Such payments shall not be subject to any of the deductions as
24 provided in this chapter.

25 (d) The department may accept any and all donations and grants of
26 money, equipment, supplies, materials, and services from any third
27 party, including but not limited to nonprofit entities and community-
28 based postsecondary education programs, and may receive, utilize, and
29 dispose of same to complete the purposes of this section.

30 (e) Any funds collected by the department under (c) and (d) of
31 this subsection and subsections (11) and (12) of this section shall
32 be used solely for the creation, maintenance, or expansion of
33 incarcerated individual educational and vocational programs.

34 (5) The department shall provide access to a program of education
35 to all incarcerated individuals who are under the age of eighteen and
36 who have not met high school graduation requirements or requirements
37 to earn a high school equivalency certificate as provided in RCW
38 28B.50.536 in accordance with chapter 28A.193 RCW. The program of
39 education established by the department and education provider under
40 RCW 28A.193.020 for incarcerated individuals under the age of

1 eighteenth must provide each incarcerated individual a choice of
2 curriculum that will assist the incarcerated individual in achieving
3 a high school diploma or high school equivalency certificate. The
4 program of education may include but not be limited to basic
5 education, prevocational training, work ethic skills, conflict
6 resolution counseling, substance abuse intervention, and anger
7 management counseling. The curriculum may balance these and other
8 rehabilitation, work, and training components.

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

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

22 (ii) An incarcerated individual's education history and basic
23 academic skills;

24 (iii) An incarcerated individual's work history and vocational or
25 work skills;

26 (iv) An incarcerated individual's economic circumstances,
27 including but not limited to an incarcerated individual's family
28 support obligations; and

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

31 (b) The department shall establish, and periodically review,
32 incarcerated individual behavior standards and program outcomes for
33 all education and work programs. Incarcerated individuals shall be
34 notified of applicable behavior standards and program goals prior to
35 placement in an education or work program and shall be removed from
36 the education or work program if they consistently fail to meet the
37 standards or outcomes.

38 (7) Eligible incarcerated individuals who refuse to participate
39 in available education or work programs available at no charge to the
40 incarcerated individuals shall lose privileges according to the

1 system established under RCW 72.09.130. Eligible incarcerated
2 individuals who are required to contribute financially to an
3 education or work program and refuse to contribute shall be placed in
4 another work program. Refusal to contribute shall not result in a
5 loss of privileges.

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

14 (9) The department shall establish, and periodically review,
15 goals for expanding access to postsecondary degree and certificate
16 education programs and program completion for all incarcerated
17 individuals, including persons of color. The department may contract
18 and partner with any accredited educational program sponsored by a
19 nonprofit entity, community-based postsecondary education program, or
20 institution with historical evidence of providing education programs
21 to people of color.

22 (10) The department shall establish, by rule, objective medical
23 standards to determine when an incarcerated individual is physically
24 or mentally unable to participate in available education or work
25 programs. When the department determines an incarcerated individual
26 is permanently unable to participate in any available education or
27 work program due to a health condition, the incarcerated individual
28 is exempt from the requirement under subsection (2) of this section.
29 When the department determines an incarcerated individual is
30 temporarily unable to participate in an education or work program due
31 to a medical condition, the incarcerated individual is exempt from
32 the requirement of subsection (2) of this section for the period of
33 time he or she is temporarily disabled. The department shall
34 periodically review the medical condition of all incarcerated
35 individuals with temporary disabilities to ensure the earliest
36 possible entry or reentry by incarcerated individuals into available
37 programming.

38 (11) The department shall establish policies requiring an
39 incarcerated individual to pay all or a portion of the costs and
40 tuition for any vocational training or postsecondary education

1 program if the incarcerated individual previously abandoned
2 coursework related to postsecondary degree or certificate education
3 or vocational training without excuse as defined in rule by the
4 department. Department policies shall include a formula for
5 determining how much an incarcerated individual shall be required to
6 pay. The formula shall include steps which correlate to an
7 incarcerated individual's average monthly income or average available
8 balance in a personal savings account and which are correlated to a
9 prorated portion or percent of the per credit fee for tuition, books,
10 or other ancillary costs. The formula shall be reviewed every two
11 years. A third party may pay directly to the department all or a
12 portion of costs and tuition for any program on behalf of an
13 incarcerated individual under this subsection. Such payments shall
14 not be subject to any of the deductions as provided in this chapter.

15 (12) Notwithstanding any other provision in this section, an
16 incarcerated individual sentenced to death under chapter 10.95 RCW
17 (~~or subject to the provisions of 8 U.S.C. Sec. 1227~~):

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

21 (b) May not participate in a postsecondary degree education
22 program offered by the department or its contracted providers, unless
23 the incarcerated individual's participation in the program is paid
24 for by a third party or by the individual;

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

27 (d) Shall be subject to the applicable provisions of this chapter
28 relating to incarcerated individual financial responsibility for
29 programming.

30 (13) If an incarcerated individual has participated in
31 postsecondary education programs, the department shall provide the
32 incarcerated individual with a copy of the incarcerated individual's
33 unofficial transcripts, at no cost to the individual, upon the
34 incarcerated individual's release or transfer to a different
35 facility. Upon the incarcerated individual's completion of a
36 postsecondary education program, the department shall provide to the
37 incarcerated individual, at no cost to the individual, a copy of the
38 incarcerated individual's unofficial transcripts. This requirement
39 applies regardless of whether the incarcerated individual became

1 ineligible to participate in or abandoned a postsecondary education
2 program.

3 (14) For the purposes of this section, "third party" includes a
4 nonprofit entity or community-based postsecondary education program
5 that partners with the department to provide accredited postsecondary
6 education degree and certificate programs at state correctional
7 facilities.

8 **Sec. 5.** RCW 9.94A.733 and 2021 c 266 s 1 are each amended to
9 read as follows:

10 (1)(a) Except as provided in (b) of this subsection, an offender
11 may not participate in the graduated reentry program under this
12 subsection unless he or she has served at least six months in total
13 confinement in a state correctional facility.

14 (i) An offender subject to (a) of this subsection may serve no
15 more than the final five months of the offender's term of confinement
16 in partial confinement as home detention as part of the graduated
17 reentry program developed by the department.

18 (ii) Home detention under (a) of this subsection may not be
19 imposed for individuals subject to (~~a deportation order,~~) civil
20 commitment(~~(,)~~) or the interstate compact for adult offender
21 supervision under RCW 9.94A.745.

22 (b) For offenders who meet the requirements of (b)(iii) of this
23 subsection, an offender may not participate in the graduated reentry
24 program unless he or she has served at least four months in total
25 confinement in a state correctional facility.

26 (i) An offender under this subsection (1)(b) may serve no more
27 than the final 18 months of the offender's term of confinement in
28 partial confinement as home detention as part of the graduated
29 reentry program developed by the department.

30 (ii) Home detention under this subsection (1)(b) may not be
31 imposed for individuals (~~(subject to a deportation order or)~~) subject
32 to the jurisdiction of the indeterminate sentence review board.

33 (iii) Home detention under this subsection (1)(b) may not be
34 imposed for offenders currently serving a term of confinement for the
35 following offenses:

- 36 (A) Any sex offense;
37 (B) Any violent offense; or

1 (C) Any crime against a person offense in accordance with the
2 categorization of crimes against persons outlined in RCW
3 9.94A.411(2).

4 (2) The secretary of the department may transfer an offender from
5 a department correctional facility to home detention in the community
6 if it is determined that the graduated reentry program is an
7 appropriate placement and must assist the offender's transition from
8 confinement to the community.

9 (3) The department and its officers, agents, and employees are
10 not liable for the acts of offenders participating in the graduated
11 reentry program unless the department or its officers, agents, and
12 employees acted with willful and wanton disregard.

13 (4) All offenders placed on home detention as part of the
14 graduated reentry program must provide an approved residence and
15 living arrangement prior to transfer to home detention.

16 (5) While in the community on home detention as part of the
17 graduated reentry program, the department must:

18 (a) Require the offender to be placed on electronic home
19 monitoring;

20 (b) Require the offender to participate in programming and
21 treatment that the department shall assign based on an offender's
22 assessed need; and

23 (c) Assign a community corrections officer who will monitor the
24 offender's compliance with conditions of partial confinement and
25 programming requirements.

26 (6) The department retains the authority to return any offender
27 serving partial confinement in the graduated reentry program to total
28 confinement for any reason including, but not limited to, the
29 offender's noncompliance with any sentence requirement.

30 (7) The department may issue rental vouchers for a period not to
31 exceed six months for those transferring to partial confinement under
32 this section if an approved address cannot be obtained without the
33 assistance of a voucher.

34 (8) In the selection of offenders to participate in the graduated
35 reentry program, and in setting, modifying, and enforcing the
36 requirements of the graduated reentry program, the department is
37 deemed to be performing a quasi-judicial function.

38 (9) The department shall publish a monthly report on its website
39 with the number of offenders who were transferred during the month to
40 home detention as part of the graduated reentry program. The

1 department shall submit an annual report by December 1st to the
2 appropriate committees of the legislature with the number of
3 offenders who were transferred to home detention as part of the
4 graduated reentry program during the prior year.

5 NEW SECTION. **Sec. 6.** RCW 9.94A.685 (Alien offenders) and 2011 c
6 206 s 1 & 1993 c 419 s 1 are each repealed.

7 NEW SECTION. **Sec. 7.** If any provision of this act or its
8 application to any person or circumstance is held invalid, the
9 remainder of the act or the application of the provision to other
10 persons or circumstances is not affected.

11 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
12 preservation of the public peace, health, or safety, or support of
13 the state government and its existing public institutions, and takes
14 effect immediately.

--- END ---