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**SENATE BILL 5294**

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**State of Washington**

**65th Legislature**

**2017 Regular Session**

**By** Senators Padden and O'Ban

1 AN ACT Relating to addressing the department of corrections early  
2 release error; amending RCW 72.09.010, 43.06.010, 42.40.040, and  
3 42.40.110; adding new sections to chapter 72.09 RCW; adding a new  
4 chapter to Title 43 RCW; creating new sections; and providing an  
5 expiration date.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that serious and  
8 specific public allegations have been made against the department of  
9 corrections regarding the department's early release error of over  
10 three thousand two hundred prisoners during a thirteen-year period  
11 from 2002 to 2015. The senate engaged in an exhaustive investigation  
12 that involved review of over one hundred thousand pages of documents,  
13 three dozen witnesses interviews, six hearings in which thirteen  
14 witnesses testified under oath, and the release of a report. The  
15 report outlined a systematic failure of management by members of the  
16 executive branch over a multiyear period and made a number of  
17 recommendations to address the underlying causes of the problem. The  
18 purpose of this act is to implement the following twelve legislative  
19 recommendations:

20 (1) Establish a corrections ombuds independent of the department  
21 of corrections and the governor's office.

1 (2) Investigate the advance corrections/STRONG-R initiative/  
2 project.

3 (3) Clarify the statutory obligation of the governor to oversee  
4 agencies.

5 (4) Clarify through policy how personal relationships within the  
6 executive branch should be managed to avoid conflicts of interest.

7 (5) Simplify Washington's sentencing code in a manner that does  
8 not reduce punishment or compromise public safety.

9 (6) Study the staffing of the information technology and records  
10 departments of the department of corrections.

11 (7) Require a department of corrections-wide hand count in the  
12 event of any future computer error that results in early prisoner  
13 releases.

14 (8) Require an annual report to the legislature and plan to  
15 address the department of corrections' information technology  
16 maintenance backlog.

17 (9) Enhance protections for department of corrections  
18 "whistleblowers."

19 (10) Review whether additional actions may be possible against  
20 former department of corrections secretary Bernie Warner.

21 (11) Designate public safety as the department of corrections'  
22 highest statutory duty.

23 (12) Restructure information technology governance at the  
24 department of corrections.

25 **PART 1**  
26 **CREATING THE DEPARTMENT OF CORRECTIONS OMBUDS**

27 NEW SECTION. **Sec. 2.** Subject to the availability of amounts  
28 appropriated for this specific purpose, the legislature hereby  
29 authorizes the creation of the office of the corrections ombuds for  
30 the purpose of providing information to inmates, family members,  
31 representatives of inmates, department employees, and others  
32 regarding the rights of inmates; providing technical assistance to  
33 support inmate self-advocacy, alternative dispute resolution, and  
34 individual representation; identifying systemic issues, reporting to  
35 the legislature, and advocating for systemic reform; and monitoring  
36 and promoting compliance with statutes, rules, and policies  
37 pertaining to conditions of correctional facilities and the rights of  
38 inmates.

1        NEW SECTION.    **Sec. 3.**    (1) Subject to confirmation by the senate,  
2 the governor shall appoint an ombuds who must be a person of  
3 recognized judgment, independence, objectivity, and integrity, and  
4 must be qualified by training or experience, or both,  
5 in providing information to inmates, family members, representatives  
6 of inmates, department employees, and others regarding the rights of  
7 inmates; providing technical assistance to support inmate self-  
8 advocacy, alternative dispute resolution, and individual  
9 representation; identifying systemic issues, reporting to the  
10 legislature, and advocating for systemic reform; and monitoring and  
11 promoting compliance with statutes, rules, and policies pertaining to  
12 conditions of correctional facilities and the rights of inmates.  
13 Prior to the appointment, the governor shall consult with and may  
14 receive recommendations from the ombuds advisory council regarding  
15 the selection of the ombuds.

16        (2) The person appointed ombuds shall hold office for a term of  
17 three years and continue to hold office until reappointed or until  
18 his or her successor is appointed. The governor may remove the ombuds  
19 only for neglect of duty, misconduct, or inability to perform duties.  
20 Any vacancy shall be filled by similar appointment for the remainder  
21 of the unexpired term.

22        NEW SECTION.    **Sec. 4.**    The definitions in this section apply  
23 throughout this chapter unless the context clearly requires  
24 otherwise.

25        (1) "Abuse" means any act or failure to act by a department  
26 employee, subcontractor, or volunteer which was performed, or which  
27 was failed to be performed, knowingly, recklessly, or intentionally,  
28 and which caused, or may have caused, injury or death to an inmate.

29        (2) "Corrections ombuds" or "ombuds" means the corrections  
30 ombuds, staff of the corrections ombuds, and volunteers with the  
31 office of the corrections ombuds.

32        (3) "Council" means the ombuds advisory council established in  
33 section 5(1) of this act.

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

35        (5) "Inmate" means a person committed to the custody of the  
36 department, including, but not limited to, persons residing in a  
37 correctional institution or facility; persons released from such  
38 facility on furlough, work release, or community custody; and persons

1 received from another state, another state agency, a county, or the  
2 federal government.

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

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

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

9 NEW SECTION. **Sec. 5.** (1) No later than July 1, 2018, the  
10 governor shall convene an ombuds advisory council with several  
11 purposes in support of the ombuds function. The council shall  
12 participate in a priority setting process for the purpose of  
13 developing priority recommendations to the ombuds, review data  
14 collected by the ombuds, review reports issued by the ombuds prior to  
15 their release, and make recommendations to the ombuds regarding the  
16 accomplishment of its purposes. The council also has authority to  
17 issue its own reports and recommendations. The council must  
18 biannually review ombuds performance, reporting to the governor and  
19 the legislature regarding its findings. The council must provide the  
20 legislature and the governor with recommendations regarding the  
21 ombuds budget and changes in the law that would enhance the ombuds  
22 effectiveness.

23 (2) The council initially consists of the following four members:

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

26 (b) The speaker of the house of representatives shall appoint one  
27 member from each of the two largest caucuses of the house of  
28 representatives.

29 (3) The council membership in subsection (2) of this section  
30 shall select the following additional members:

31 (a) One former inmate, who has successfully reintegrated into the  
32 community and is no longer in the custody of the department.

33 (b) Two family members of current inmates.

34 (c) One expert with significant criminal justice or correctional  
35 experience who is not an employee or contractor with Washington  
36 state.

37 (d) A community member with extensive knowledge and experience in  
38 issues related to racial, ethnic, or religious diversity within the  
39 correctional system.

1 (e) A community member with extensive knowledge and experience in  
2 the accommodation needs of individuals with disabilities.

3 (f) An individual with dispute resolution training who has  
4 experience working in the criminal justice or corrections fields.

5 (4) The governor shall select the following two additional  
6 members of the council:

7 (a) A representative of the department.

8 (b) A representative of the collective bargaining unit of  
9 employees of the department.

10 (5) After the full membership is attained, the council shall  
11 develop a process for replacing members in case of resignation or  
12 expiration of terms.

13 (6) Council members serve a term of three years, except that the  
14 council shall create and implement a system of staggered terms, and  
15 no member may serve more than two consecutive terms. The council  
16 shall convene at least quarterly. Council members will serve without  
17 compensation, except that funds appropriated for the implementation  
18 of this act may be used to reimburse members who are not employees of  
19 Washington state for expenses necessary to the performance of their  
20 duties.

21 NEW SECTION. **Sec. 6.** (1) The state auditor shall designate, by  
22 a competitive bidding process, the nonprofit organization that will  
23 contract to operate the office of the corrections ombuds. The  
24 selection process must include direct stakeholder participation in  
25 the development of the request for proposals, evaluation of bids, and  
26 final selection. The state auditor shall select an organization that  
27 possesses, directly or through subcontracts, significant legal  
28 expertise, competence with mediation and alternative dispute  
29 resolution, and experience working within criminal justice and  
30 correctional environments addressing issues relating to chemical  
31 dependency treatment, disability and disability-related  
32 accommodation, respect for racial, ethnic, and religious diversity,  
33 and other civil rights and conditions issues. The selected  
34 organization must have experience and the capacity to effectively  
35 communicate regarding criminal justice issues with policymakers,  
36 stakeholders, and the general public, and must be prepared and able  
37 to provide all program and staff support necessary, directly or  
38 through subcontracts, to carry out all duties of the office.

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

4 (3) The state auditor or state may not revoke the designation of  
5 the organization contracted to provide the services of the office of  
6 the corrections ombuds except upon a showing of neglect of duty,  
7 misconduct, or inability to perform duties. Prior to revoking the  
8 designation, the state must provide notice and an opportunity for the  
9 organization, the ombuds, and the public to comment upon the proposed  
10 revocation, and must provide the organization an opportunity to  
11 appeal the decision to a court.

12 NEW SECTION. **Sec. 7.** (1) The ombuds shall:

13 (a) Establish priorities for use of the limited resources  
14 appropriated to implement this act;

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

18 (c) Provide information, as appropriate, to inmates, family  
19 members, representatives of inmates, department employees, and others  
20 regarding the rights of inmates;

21 (d) Provide technical assistance to support inmate participation  
22 in self-advocacy, utilizing existing kite, grievance, and appeal  
23 procedures;

24 (e) Monitor department compliance with applicable federal, state,  
25 and local laws, rules, regulations, and policies with a view toward  
26 protecting the rights of inmates;

27 (f) Monitor and participate in legislative and policy  
28 developments affecting correctional facilities and advocate for  
29 systemic reform aimed toward protecting the rights of inmates;

30 (g) Establish a statewide uniform reporting system to collect and  
31 analyze data related to complaints regarding the department;

32 (h) Establish procedures to receive, investigate, and resolve  
33 complaints;

34 (i) Submit annually to the council, by November 1st of each year,  
35 a report analyzing the work of the office, including any  
36 recommendations; and

37 (j) Adopt and comply with rules, policies, and procedures  
38 necessary to implement this chapter.

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

- 5 (i) Abuse or neglect;
- 6 (ii) Department decisions or actions;
- 7 (iii) Inactions or omissions;
- 8 (iv) Policies, rules, or procedures; or
- 9 (v) Alleged violations of law.

10 (b) The ombuds may decline to investigate any complaint as  
11 provided by the rules adopted under this chapter.

12 (c) The ombuds may not investigate any complaints relating to an  
13 inmate's underlying criminal conviction.

14 (d) The ombuds may not investigate a complaint from a department  
15 employee that relates to the employee's employment relationship with  
16 the department.

17 (e) The ombuds may refer complainants and others to appropriate  
18 resources, agencies, or departments.

19 (f) The ombuds may not levy any fees for the submission or  
20 investigation of complaints.

21 (g) At the conclusion of an investigation of a complaint, the  
22 ombuds must render a public decision on the merits of each complaint,  
23 except that the documents supporting the decision are subject to the  
24 confidentiality provisions of section 9 of this act. The ombuds must  
25 communicate the decision to the inmate, if any, and to the  
26 department. The ombuds must state their recommendations and reasoning  
27 if, in the ombuds' opinion, the department or any employee thereof  
28 should:

- 29 (i) Consider the matter further;
- 30 (ii) Modify or cancel any action;
- 31 (iii) Alter a rule, practice, or ruling;
- 32 (iv) Explain in detail the administrative action in question;
- 33 (v) Rectify an omission; or
- 34 (vi) Take any other action.

35 (h) If the ombuds so requests, the department must, within the  
36 time specified, inform the ombuds about any action taken on the  
37 recommendations or the reasons for not complying with the  
38 recommendations.

39 (i) After the conclusion of an investigation, if the ombuds  
40 believes that additional action is warranted, the ombuds may:

1 (i) Report a finding of abuse, neglect, or other rights violation  
2 to the appropriate committees of the legislature.

3 (ii) Take any additional action that the ombuds considers  
4 appropriate.

5 (j) Before announcing a conclusion or recommendation that  
6 expressly, or by implication, criticizes a person or the department,  
7 the ombuds must attempt to notify the person or the department. The  
8 ombuds may request to be notified by the department, within a  
9 specified time, of any action taken on any recommendation presented.  
10 The ombuds must notify the inmate, if any, of the actions taken by  
11 the department in response to the ombuds' recommendations.

12 (3) This chapter does not require inmates to file a complaint  
13 with the ombuds in order to exhaust available administrative remedies  
14 for purposes of the prison litigation reform act of 1995, P.L.  
15 104-134.

16 NEW SECTION. **Sec. 8.** (1) The ombuds must have reasonable access  
17 to correctional facilities at all times necessary to conduct a full  
18 investigation of an incident of abuse or neglect. This authority  
19 includes the opportunity to interview any inmate, department  
20 employee, or other person, including the person thought to be the  
21 victim of such abuse, who might be reasonably believed to have  
22 knowledge of the incident under investigation. Such access must be  
23 afforded, upon request by the ombuds, when:

24 (a) An incident is reported or a complaint is made to the office;

25 (b) The ombuds determines there is reasonable suspicion that an  
26 incident has or may have occurred; or

27 (c) The ombuds determines that there is or may be imminent danger  
28 of serious abuse or neglect of an inmate.

29 (2) The ombuds must have reasonable access to department  
30 facilities, including all areas which are used by inmates, all areas  
31 which are accessible to inmates, and to programs for inmates at  
32 reasonable times, which at a minimum must include normal working  
33 hours and visiting hours. This access is for the purpose of:

34 (a) Providing information about individual rights and the  
35 services available from the office, including the name, address, and  
36 telephone number of the office;

37 (b) Monitoring compliance with respect to the rights and safety  
38 of inmates; and



1 (c) Inspecting, viewing, photographing, and video recording all  
2 areas of the facility which are used by inmates or are accessible to  
3 inmates.

4 (3) Reasonable access to inmates includes the opportunity to meet  
5 and communicate privately and confidentially with individuals  
6 regularly, both formally and informally, by telephone, mail, and in  
7 person.

8 (4) The ombuds has the right to access, inspect, and obtain  
9 copies of all relevant information, records, or documents in the  
10 possession or control of the department that the ombuds considers  
11 necessary in an investigation of a complaint filed under this  
12 chapter, and the department must assist the ombuds in obtaining the  
13 necessary releases for those documents which are specifically  
14 restricted or privileged for use by the ombuds.

15 (a) When conducting an investigation of potential abuse or  
16 neglect, the ombuds must have access to relevant records not later  
17 than three business days after the ombuds makes a written request for  
18 such records.

19 (b) The ombuds must have immediate access, not later than twenty-  
20 four hours after the ombuds makes such a request, to relevant  
21 records, without consent from another party, if the ombuds determines  
22 there is reasonable suspicion that the health or safety of an inmate  
23 is in serious and immediate jeopardy, or in any case of death of an  
24 inmate while in department custody.

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

28 NEW SECTION. **Sec. 9.** (1) Correspondence between the office and  
29 an inmate is confidential and must be processed as privileged  
30 correspondence in the same manner as legal correspondence between  
31 inmates and courts, attorneys, or public officials.

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

34 (3) The office shall preserve the confidentiality of information  
35 obtained while providing services, including general information,  
36 technical assistance, and investigations, to individuals, including  
37 inmates, family members and representatives of inmates, department  
38 employees, and others. Confidential information may not be disclosed  
39 unless the individual gives informed consent, the disclosure is

1 impliedly authorized in order to carry out ombuds services, or the  
2 disclosure is authorized by subsection (4) of this section.

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

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

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

10 NEW SECTION. **Sec. 10.** (1) A civil action may not be brought  
11 against any employee of the office for good faith performance of  
12 responsibilities under this chapter.

13 (2) No discriminatory, disciplinary, or retaliatory action may be  
14 taken against a department employee, subcontractor, or volunteer, an  
15 inmate, or a family member or representative of an inmate for any  
16 communication made, or information given or disclosed, to aid the  
17 office in carrying out its responsibilities, unless the communication  
18 or information is made, given, or disclosed maliciously or without  
19 good faith.

20 (3) The department may not hinder the lawful actions of the  
21 ombuds or employees of the office, or willfully refuse to comply with  
22 lawful demands of the office.

23 (4) This section is not intended to infringe on the rights of an  
24 employer to supervise, discipline, or terminate an employee for other  
25 reasons.

26 **PART 2**  
27 **DEPARTMENT OF CORRECTIONS**

28 **Sec. 11.** RCW 72.09.010 and 1995 1st sp.s. c 19 s 2 are each  
29 amended to read as follows:

30 It is the intent of the legislature to establish a comprehensive  
31 system of corrections for convicted law violators within the state of  
32 Washington to accomplish the following objectives.

33 (1) The (~~system should~~) highest duty of the department and the  
34 secretary is to ensure the public safety. The system should be  
35 designed and managed to provide the maximum feasible safety for the  
36 persons and property of the general public, the staff, and the  
37 inmates.

1 (2) The system should punish the offender for violating the laws  
2 of the state of Washington. This punishment should generally be  
3 limited to the denial of liberty of the offender.

4 (3) The system should positively impact offenders by stressing  
5 personal responsibility and accountability and by discouraging  
6 recidivism.

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

10 (5) The system, as much as possible, should reflect the values of  
11 the community including:

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

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

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

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

24 (e) Sharing in the obligations of the community. All citizens,  
25 the public and inmates alike, have a personal and fiscal obligation  
26 in the corrections system. All communities must share in the  
27 responsibility of the corrections system.

28 (6) The system should provide for prudent management of  
29 resources. The avoidance of unnecessary or inefficient public  
30 expenditures on the part of offenders and the department is  
31 essential. Offenders must be accountable to the department, and the  
32 department to the public and the legislature. The human and fiscal  
33 resources of the community are limited. The management and use of  
34 these resources can be enhanced by wise investment, productive  
35 programs, the reduction of duplication and waste, and the joining  
36 together of all involved parties in a common endeavor. Since most  
37 offenders return to the community, it is wise for the state and the  
38 communities to make an investment in effective rehabilitation  
39 programs for offenders and the wise use of resources.

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

4 (8) The system should be accountable to the citizens of the  
5 state. In return, the individual citizens and local units of  
6 government must meet their responsibilities to make the corrections  
7 system effective.

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

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

12 To ensure public safety and the administration of justice, if the  
13 department has actual knowledge or reason to believe that a computer  
14 calculation error is or has caused an error in the calculation of the  
15 release date for any prisoner, the department shall immediately  
16 manually calculate the release date of that prisoner as well as the  
17 release dates of any similarly sentenced prisoners.

18 NEW SECTION. **Sec. 13.** A new section is added to chapter 72.09  
19 RCW to read as follows:

20 On December 1st of each year, and in compliance with RCW  
21 43.01.036, the department must submit a report to the governor and  
22 relevant policy and fiscal committees of the legislature that details  
23 any information technology backlog at the department along with  
24 specific requirements and plans to address such backlog.

### 25 **PART 3**

#### 26 **JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE**

27 NEW SECTION. **Sec. 14.** (1) Pursuant to chapter 43.09 RCW, the  
28 joint legislative audit and review committee must conduct an  
29 immediate performance audit of the information technology and records  
30 departments at the department of corrections, including:

31 (a) The administrative structure of the departments, including  
32 whether the departments should be restructured to more quickly  
33 respond to legislative directives and emergent issues;

34 (b) The sufficiency and quality of staffing at each of the  
35 departments; and

36 (c) An evaluation of the advance corrections project.

1 (2) The joint legislative audit and review committee shall report  
2 its findings to the governor and relevant policy and fiscal  
3 committees of the legislature by December 1, 2018.

4 **PART 4**  
5 **GOVERNOR**

6 **Sec. 15.** RCW 43.06.010 and 2014 c 202 s 305 are each amended to  
7 read as follows:

8 In addition to those prescribed by the Constitution, the governor  
9 may exercise the powers and perform the duties prescribed in this and  
10 the following sections:

11 (1) The governor shall supervise the conduct of all executive and  
12 ministerial offices, ensure that all offices are performing their  
13 duties as prescribed by law, and ensure that all personal and  
14 professional conflicts of interest are avoided;

15 (2) The governor shall see that all offices are filled, including  
16 as provided in RCW 42.12.070, and the duties thereof performed, or in  
17 default thereof, apply such remedy as the law allows; and if the  
18 remedy is imperfect, acquaint the legislature therewith at its next  
19 session;

20 (3) The governor shall make the appointments and supply the  
21 vacancies mentioned in this title;

22 (4) The governor is the sole official organ of communication  
23 between the government of this state and the government of any other  
24 state or territory, or of the United States;

25 (5) Whenever any suit or legal proceeding is pending against this  
26 state, or which may affect the title of this state to any property,  
27 or which may result in any claim against the state, the governor may  
28 direct the attorney general to appear on behalf of the state, and  
29 report the same to the governor, or to any grand jury designated by  
30 the governor, or to the legislature when next in session;

31 (6) The governor may require the attorney general or any  
32 prosecuting attorney to inquire into the affairs or management of any  
33 corporation existing under the laws of this state, or doing business  
34 in this state, and report the same to the governor, or to any grand  
35 jury designated by the governor, or to the legislature when next in  
36 session;

37 (7) The governor may require the attorney general to aid any  
38 prosecuting attorney in the discharge of the prosecutor's duties;

1 (8) The governor may offer rewards, not exceeding one thousand  
2 dollars in each case, payable out of the state treasury, for  
3 information leading to the apprehension of any person convicted of a  
4 felony who has escaped from a state correctional institution or for  
5 information leading to the arrest of any person who has committed or  
6 is charged with the commission of a felony;

7 (9) The governor shall perform such duties respecting fugitives  
8 from justice as are prescribed by law;

9 (10) The governor shall issue and transmit election proclamations  
10 as prescribed by law;

11 (11) The governor may require any officer or board to make, upon  
12 demand, special reports to the governor, in writing;

13 (12) The governor may, after finding that a public disorder,  
14 disaster, energy emergency, or riot exists within this state or any  
15 part thereof which affects life, health, property, or the public  
16 peace, proclaim a state of emergency in the area affected, and the  
17 powers granted the governor during a state of emergency shall be  
18 effective only within the area described in the proclamation;

19 (13) The governor may, after finding that there exists within  
20 this state an imminent danger of infestation of plant pests as  
21 defined in RCW 17.24.007 or plant diseases which seriously endangers  
22 the agricultural or horticultural industries of the state of  
23 Washington, or which seriously threatens life, health, or economic  
24 well-being, order emergency measures to prevent or abate the  
25 infestation or disease situation, which measures, after thorough  
26 evaluation of all other alternatives, may include the aerial  
27 application of pesticides;

28 (14) The governor, after finding that a prohibited level 1 or  
29 level 2 species as defined in chapter 77.135 RCW has been detected  
30 and after finding that the detected species seriously endangers or  
31 threatens the environment, economy, human health, or well-being of  
32 the state of Washington, may order emergency measures to prevent or  
33 abate the prohibited species, which measures, after thorough  
34 evaluation of all other alternatives, may include the surface or  
35 aerial application of pesticides;

36 (15) On all compacts forwarded to the governor pursuant to RCW  
37 9.46.360(6), the governor is authorized and empowered to execute on  
38 behalf of the state compacts with federally recognized Indian tribes  
39 in the state of Washington pursuant to the federal Indian Gaming

1 Regulatory Act, 25 U.S.C. Sec. 2701 et seq., for conducting class III  
2 gaming, as defined in the Act, on Indian lands.

3 **PART 5**

4 **SENTENCING REFORM**

5 NEW SECTION. **Sec. 16.** (1) A joint legislative task force to  
6 simplify criminal sentencing is established.

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

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

11 (b) The speaker of the house of representatives shall appoint one  
12 member from each of the two largest caucuses of the house of  
13 representatives.

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

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

17 (ii) Washington state patrol;

18 (iii) Caseload forecast council;

19 (iv) Washington association of prosecuting attorneys;

20 (v) Washington association of criminal defense attorneys or the  
21 Washington defender association;

22 (vi) Washington state association of counties;

23 (vii) Office of the attorney general;

24 (viii) American civil liberties union of Washington;

25 (ix) Sentencing guidelines commission;

26 (x) Department of corrections;

27 (xi) Superior court judges' association; and

28 (xii) Administrative office for the courts.

29 (3) The task force shall:

30 (a) Review and make recommendations regarding how the sentencing  
31 reform act of 1981 can be simplified; and

32 (b) Limit its review and recommendations to technical,  
33 nonsubstantive changes. The task force recommendations must be  
34 limited to those that will not reduce punishment or risk public  
35 safety.

36 (4) The legislative membership shall convene the initial meeting  
37 of the task force no later than September 2018.

1 (5) The task force shall submit a report, which may include  
2 findings, recommendations, and proposed legislation, to the  
3 appropriate committees of the legislature by December 1, 2019.

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

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

12 (8) The expenses of the task force shall be paid jointly by the  
13 senate and the house of representatives. Task force expenditures are  
14 subject to approval by the senate facilities and operations committee  
15 and the house executive rules committee, or their successor  
16 committees.

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

18 **PART 6**

19 **GENERAL PROVISIONS**

20 **Sec. 17.** RCW 42.40.040 and 2008 c 266 s 4 are each amended to  
21 read as follows:

22 (1)(a) In order to be investigated, an assertion of improper  
23 governmental action must be provided to the auditor or other public  
24 official within one year after the occurrence of the asserted  
25 improper governmental action. The public official, as defined in RCW  
26 42.40.020, receiving an assertion of improper governmental action  
27 must report the assertion to the auditor within fifteen calendar days  
28 of receipt of the assertion. The auditor retains sole authority to  
29 investigate an assertion of improper governmental action including  
30 those made to a public official. A failure of the public official to  
31 report the assertion to the auditor within fifteen days does not  
32 impair the rights of the whistleblower.

33 (b) Except as provided under RCW 42.40.910 for legislative and  
34 judicial branches of government, the auditor has the authority to  
35 determine whether to investigate any assertions received. In  
36 determining whether to conduct either a preliminary or further  
37 investigation, the auditor shall consider factors including, but not  
38 limited to: The nature and quality of evidence and the existence of



1 relevant laws and rules; whether the action was isolated or  
2 systematic; the history of previous assertions regarding the same  
3 subject or subjects or subject matter; whether other avenues are  
4 available for addressing the matter; whether the matter has already  
5 been investigated or is in litigation; the seriousness or  
6 significance of the asserted improper governmental action; and the  
7 cost and benefit of the investigation. The auditor has the sole  
8 discretion to determine the priority and weight given to these and  
9 other relevant factors and to decide whether a matter is to be  
10 investigated. The auditor shall document the factors considered and  
11 the analysis applied.

12 (c) The auditor also has the authority to investigate assertions  
13 of improper governmental actions as part of an audit conducted under  
14 chapter 43.09 RCW. The auditor shall document the reasons for  
15 handling the matter as part of such an audit.

16 (2) Subject to subsection (5)(c) of this section, the identity or  
17 identifying characteristics of a whistleblower is confidential at all  
18 times unless the whistleblower consents to disclosure by written  
19 waiver or by acknowledging his or her identity in a claim against the  
20 state for retaliation. In addition, the identity or identifying  
21 characteristics of any person who in good faith provides information  
22 in an investigation under this section is confidential at all times,  
23 unless the person consents to disclosure by written waiver or by  
24 acknowledging his or her identity as a witness who provides  
25 information in an investigation.

26 (3) Upon receiving specific information that an employee has  
27 engaged in improper governmental action, the auditor shall, within  
28 fifteen working days of receipt of the information, mail written  
29 acknowledgment to the whistleblower at the address provided stating  
30 whether a preliminary investigation will be conducted. For a period  
31 not to exceed sixty working days from receipt of the assertion, the  
32 auditor shall conduct such preliminary investigation of the matter as  
33 the auditor deems appropriate.

34 (4) In addition to the authority under subsection (3) of this  
35 section, the auditor may, on its own initiative, investigate  
36 incidents of improper state governmental action.

37 (5)(a) If it appears to the auditor, upon completion of the  
38 ((preliminary)) investigation, that the matter is so unsubstantiated  
39 that no further investigation, prosecution, or administrative action  
40 is warranted, the auditor shall so notify the whistleblower

1 summarizing where the allegations are deficient, and provide a  
2 reasonable opportunity to reply. Such notification may be by  
3 electronic means.

4 (b) The written notification shall contain a summary of the  
5 information received and of the results of the ((preliminary))  
6 investigation with regard to each assertion of improper governmental  
7 action.

8 (c) In any case to which this section applies, the identity or  
9 identifying characteristics of the whistleblower shall be kept  
10 confidential unless the auditor determines that the information has  
11 been provided other than in good faith. If the auditor makes such a  
12 determination, the auditor shall provide reasonable advance notice to  
13 the employee.

14 (d) With the agency's consent, the auditor may forward the  
15 assertions to an appropriate agency to investigate and report back to  
16 the auditor no later than sixty working days after the assertions are  
17 received from the auditor. The auditor is entitled to all  
18 investigative records resulting from such a referral. All procedural  
19 and confidentiality provisions of this chapter apply to  
20 investigations conducted under this subsection. The auditor shall  
21 document the reasons the assertions were referred.

22 (6) During the ((preliminary)) investigation, the auditor shall  
23 provide written notification of the nature of the assertions to the  
24 subject or subjects of the investigation and the agency head. The  
25 notification shall include the relevant facts and laws known at the  
26 time and the procedure for the subject or subjects of the  
27 investigation and the agency head to respond to the assertions and  
28 information obtained during the investigation. This notification does  
29 not limit the auditor from considering additional facts or laws which  
30 become known during further investigation.

31 (a) ~~((If it appears to the auditor after completion of the  
32 preliminary investigation that further investigation, prosecution, or  
33 administrative action is warranted))~~ Within twenty days of initiating  
34 an investigation under this section, the auditor shall ((se)) notify  
35 the whistleblower, the subject or subjects of the investigation, and  
36 the agency head ~~((and either conduct a further investigation or issue  
37 a report under subsection (9) of this section.~~

38 ~~(b) If the preliminary investigation resulted from an anonymous  
39 assertion, a decision to conduct further investigation shall be  
40 subject to review by a three person panel convened as necessary by~~

1 the auditor prior to the commencement of any additional  
2 investigation. The panel shall include a state auditor representative  
3 knowledgeable of the subject agency operations, a citizen volunteer,  
4 and a representative of the attorney general's office. This group  
5 shall be briefed on the preliminary investigation and shall recommend  
6 whether the auditor should proceed with further investigation.

7 (c) ~~If further investigation is to occur, the auditor shall~~  
8 ~~provide written notification of the nature of the assertions to the~~  
9 ~~subject or subjects of the investigation and the agency head. The~~  
10 ~~notification shall include the relevant facts known at the time and~~  
11 ~~the procedure to be used by the subject or subjects of the~~  
12 ~~investigation and the agency head to respond to the assertions and~~  
13 ~~information obtained during the investigation)) that an investigation~~  
14 ~~has been initiated. The auditor shall also notify the whistleblower,~~  
15 ~~the subject or subjects of the investigation, and the agency head no~~  
16 ~~later than ninety days after initiating the investigation regarding~~  
17 ~~the one hundred twenty-day statutory deadline for conclusion of the~~  
18 ~~investigation provided in subsection (7) of this section and provide~~  
19 ~~notice that the investigation will be completed within thirty days.~~

20 (7) Within ~~((sixty))~~ one hundred twenty working days after the  
21 ~~((preliminary))~~ investigation period in subsection (3) of this  
22 section, the auditor shall complete the investigation and report its  
23 findings to the whistleblower unless written justification for the  
24 delay is furnished to the whistleblower, agency head, and subject or  
25 subjects of the investigation. In all such cases, the report of the  
26 auditor's investigation and findings shall be sent to the  
27 whistleblower within one year after the information was filed under  
28 subsection (3) of this section.

29 (8)(a) At any stage of an investigation under this section the  
30 auditor may require by subpoena the attendance and testimony of  
31 witnesses and the production of documentary or other evidence  
32 relating to the investigation at any designated place in the state.  
33 The auditor may issue subpoenas, administer oaths, examine witnesses,  
34 and receive evidence. In the case of contumacy or failure to obey a  
35 subpoena, the superior court for the county in which the person to  
36 whom the subpoena is addressed resides or is served may issue an  
37 order requiring the person to appear at any designated place to  
38 testify or to produce documentary or other evidence. Any failure to  
39 obey the order of the court may be punished by the court as a  
40 contempt thereof.

1 (b) The auditor may order the taking of depositions at any stage  
2 of a proceeding or investigation under this chapter. Depositions  
3 shall be taken before an individual designated by the auditor and  
4 having the power to administer oaths. Testimony shall be reduced to  
5 writing by or under the direction of the individual taking the  
6 deposition and shall be subscribed by the deponent.

7 (c) Agencies shall cooperate fully in the investigation and shall  
8 take appropriate action to preclude the destruction of any evidence  
9 during the course of the investigation.

10 (d) During the investigation the auditor shall interview each  
11 subject of the investigation. If it is determined there is reasonable  
12 cause to believe improper governmental action has occurred, the  
13 subject or subjects and the agency head shall be given fifteen  
14 working days to respond to the assertions prior to the issuance of  
15 the final report.

16 (9)(a) If the auditor determines there is reasonable cause to  
17 believe an employee has engaged in improper governmental action, the  
18 auditor shall report, to the extent allowable under existing public  
19 disclosure laws, the nature and details of the activity to:

20 (i) The subject or subjects of the investigation and the head of  
21 the employing agency;

22 (ii) If appropriate, the attorney general or such other authority  
23 as the auditor determines appropriate;

24 (iii) Electronically to the governor, secretary of the senate,  
25 and chief clerk of the house of representatives; and

26 (iv) Except for information whose release is specifically  
27 prohibited by statute or executive order, the public through the  
28 public file of whistleblower reports maintained by the auditor.

29 (b) The auditor has no enforcement power except that in any case  
30 in which the auditor submits an investigative report containing  
31 reasonable cause determinations to the agency, the agency shall send  
32 its plan for resolution to the auditor within fifteen working days of  
33 having received the report. The agency is encouraged to consult with  
34 the subject or subjects of the investigation in establishing the  
35 resolution plan. The auditor may require periodic reports of agency  
36 action until all resolution has occurred. If the auditor determines  
37 that appropriate action has not been taken, the auditor shall report  
38 the determination to the governor and to the legislature and may  
39 include this determination in the agency audit under chapter 43.09  
40 RCW.

1 (10) Once the auditor concludes that appropriate action has been  
2 taken to resolve the matter, the auditor shall so notify the  
3 whistleblower, the agency head, and the subject or subjects of the  
4 investigation. If the resolution takes more than one year, the  
5 auditor shall provide annual notification of its status to the  
6 whistleblower, agency head, and subject or subjects of the  
7 investigation.

8 (11) Failure to cooperate with such audit or investigation, or  
9 retaliation against anyone who assists the auditor by engaging in  
10 activity protected by this chapter shall be reported as a separate  
11 finding with recommendations for corrective action in the associated  
12 report whenever it occurs.

13 (12) This section does not limit any authority conferred upon the  
14 attorney general or any other agency of government to investigate any  
15 matter.

16 **Sec. 18.** RCW 42.40.110 and 1999 c 361 s 8 are each amended to  
17 read as follows:

18 (1)(a) The office of financial management shall contract for a  
19 performance audit of the state employee whistleblower program on a  
20 cycle to be determined by the office of financial management. The  
21 audit shall be done in accordance with generally accepted government  
22 auditing standards beginning with the fiscal year ending June 30,  
23 2001. The audit shall determine at a minimum: Whether the program is  
24 acquiring, protecting, and using its resources such as personnel,  
25 property, and space economically and efficiently; the causes of  
26 inefficiencies or uneconomical practices; and whether the program has  
27 complied with laws and rules on matters of economy and efficiency.  
28 The audit shall also at a minimum determine the extent to which the  
29 desired results or benefits established by the legislature are being  
30 achieved, the effectiveness of the program, and whether the auditor  
31 has complied with significant laws and rules applicable to the  
32 program.

33 (b) The cost of the audit is a cost of operating the program and  
34 shall be funded by the auditing services revolving account created by  
35 RCW 43.09.410.

36 (2) In the contract for the next regularly scheduled performance  
37 audit following the effective date of this section, the office of  
38 financial management must require the audit to review the legislative  
39 report from the senate law and justice committee and any other

1 pertinent documentation regarding the department of corrections early  
2 release error, with particular focus on the inability of department  
3 of corrections employees to use the state employee whistleblower  
4 program to address concerns with mismanagement of that department.  
5 The audit must provide recommendations on this matter in its  
6 evaluation of the effectiveness of the program.

7 NEW SECTION. **Sec. 19.** Sections 1 through 10 of this act  
8 constitute a new chapter in Title 43 RCW.

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