
SUBSTITUTE SENATE BILL 5876

State of Washington

66th Legislature

2019 Regular Session

By Senate Ways & Means (originally sponsored by Senators Darneille, Rivers, Rolfes, Wilson, C., Kuderer, Walsh, Randall, Brown, Keiser, Saldaña, Frockt, Warnick, Cleveland, Das, and Nguyen)

READ FIRST TIME 03/01/19.

1 AN ACT Relating to creating a gender-responsive and trauma-
2 informed work group within the department of corrections; amending
3 RCW 72.09.010, 72.09.015, and 43.06C.040; creating a new section; and
4 providing an expiration date.

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

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

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

12 ~~((1))~~ (a) The system should ensure the public safety. The
13 system should be designed and managed to provide the maximum feasible
14 safety for the persons and property of the general public, the staff,
15 and the ~~((inmates))~~ persons experiencing incarceration.

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

19 ~~(3))~~ (b) The system should positively impact ~~((offenders))~~
20 persons experiencing incarceration by ~~((stressng))~~ providing
21 individualized change programming and interventions that are founded

1 in risk-needs-responsivity principles, which supports personal
2 responsibility and accountability, and ((by discouraging)) positively
3 impacts recidivism.

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

10 ~~((5))~~ (d) The system ~~((, as much as possible, should reflect the~~
11 ~~values of 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)~~ shall provide opportunities for self improvement
18 and rehabilitation. All individuals should have opportunities to grow
19 and expand their skills and abilities so as to ~~((fulfill their role~~
20 ~~in))~~ support their successful reentry into the community.

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

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

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

1 an investment in effective individualized, gender-responsive, and
2 trauma-informed rehabilitation programs (~~for offenders~~) based on
3 research, risk-needs-responsivity principles, and the wise use of
4 resources.

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

8 ~~((8))~~ (g) The system should be accountable to the citizens of
9 the state. In return, the individual citizens and local units of
10 government must meet their responsibilities to make the corrections
11 system effective.

12 ~~((9))~~ (h) The system should meet ~~(those)~~ national standards
13 ~~((which the state determines to be appropriate))~~ and best practices
14 for ethical treatment, programming, and operations.

15 (i) The system should be gender-responsive and incorporate risk-
16 need-responsivity principles and trauma-informed practices into
17 classification, programming, and interactions with persons
18 experiencing incarceration.

19 (2) Therefore, in furtherance of the intent of the legislature to
20 establish a comprehensive system of corrections, the legislature
21 intends to establish the gender-responsive and trauma-informed work
22 group within the department, to study how best to implement the items
23 in section 2(2) of this act, and make recommendations on how the
24 state can best implement women's specific programs, classification
25 systems including, but not limited to, specific options for
26 organizational structures, such as the creation of a women's division
27 within the department, and the costs associated with each, by
28 December 1, 2020. The legislature intends to assist the department in
29 ensuring that gender-responsive and trauma-informed practices are
30 integrated into classification, programming, and interactions with
31 persons experiencing incarceration. The work group shall consist of
32 relevant stakeholders and shall develop recommendations for use in
33 determining the best course of action in the creation of a women's
34 division within the department.

35 NEW SECTION. Sec. 2. (1) Subject to the availability of amounts
36 appropriated for this specific purpose, the gender-responsive and
37 trauma-informed work group is established within the department of
38 corrections. The work group membership may consist of, but is not
39 limited to, the following:

- 1 (a) Representatives who specialize in the medical and
2 psychological treatment of women;
- 3 (b) Representatives from the financial, faith-based, educational,
4 arts, and cultural communities;
- 5 (c) Representatives from the department of corrections reentry
6 division, prison division, community corrections division,
7 correctional industries, and human resources;
- 8 (d) A family member of a person experiencing incarceration;
- 9 (e) Individuals with training and experience in developmental
10 psychology, parenting, trauma-informed practices, and adverse
11 childhood experiences;
- 12 (f) A representative from an organization supporting crime
13 victims, and interested and willing victims of crimes;
- 14 (g) A representative from the office of the corrections ombuds;
- 15 (h) Any interested members of the legislature;
- 16 (i) At least two individuals who have experienced incarceration
17 and successfully reentered; and
- 18 (j) A representative familiar with aging and disability services.
- 19 (2) The work group must develop suggestions and recommendations
20 specific to:
- 21 (a) Evidence-based, gender-responsive, and trauma-informed
22 practices that govern operations and programs for women experiencing
23 incarceration;
- 24 (b) Appropriate ongoing training, orientation, and curriculum
25 about gender-responsive and trauma-informed practices and a plan for
26 how the training shall incorporate emerging best practices, and be
27 delivered to department of corrections staff;
- 28 (c) How best to implement validated gender-responsive
29 classification and placement instruments;
- 30 (d) How best to implement a validated gender-responsive
31 assessment tool and case management system that is based on the risk-
32 needs-responsivity model;
- 33 (e) How best to implement policies, practices, and programs to
34 address differences in physical conditions of incarceration and
35 physical health needs for men and women; and
- 36 (f) How to ensure staff responsible for supervision of females
37 under mandatory supervised release are appropriately trained in
38 evidence-based practices in community supervision, gender-responsive
39 practices, and trauma-informed practices.

1 (3) Staff support for the work group must be provided by the
2 department of corrections.

3 (4) The work group must submit a report to the governor and the
4 legislature with its recommendations by December 1, 2020.

5 (5) This section expires June 30, 2021.

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

8 The definitions in this section apply throughout this chapter.

9 (1) "Adult basic education" means education or instruction
10 designed to achieve general competence of skills in reading, writing,
11 and oral communication, including English as a second language and
12 preparation and testing services for obtaining a high school diploma
13 or a high school equivalency certificate as provided in RCW
14 28B.50.536.

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

19 (3) "Civil judgment for assault" means a civil judgment for
20 monetary damages awarded to a correctional officer or department
21 employee entered by a court of competent jurisdiction against (~~a~~
22 ~~inmate~~) a person experiencing incarceration that is based on, or
23 arises from, injury to the correctional officer or department
24 employee caused by the (~~inmate~~) person experiencing incarceration
25 while the correctional officer or department employee was acting in
26 the course and scope of his or her employment.

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

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

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

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

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

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

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

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

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

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

17 (14) "Immediate family" means the ~~((inmate's))~~ person
18 experiencing incarceration's children, stepchildren, grandchildren,
19 great grandchildren, parents, stepparents, grandparents, great
20 grandparents, siblings, and a person legally married to or in a state
21 registered domestic partnership with ~~((an inmate))~~ a person
22 experiencing incarceration. "Immediate family" does not include ~~((an~~
23 ~~inmate))~~ a person experiencing incarceration who is adopted by
24 another ~~((inmate))~~ person experiencing incarceration or the immediate
25 family of the adopted or adopting ~~((inmate))~~ person experiencing
26 incarceration.

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

33 (16) "Individual reentry plan" means the plan to prepare ~~((an~~
34 ~~offender))~~ a person experiencing incarceration for release into the
35 community. It should be developed collaboratively between the
36 department and the ~~((offender))~~ person experiencing incarceration and
37 be based on an assessment of the ~~((offender))~~ person experiencing
38 incarceration using a standardized and comprehensive tool to identify
39 the ~~((offender's))~~ individual's risks and needs. The individual
40 reentry plan describes actions that should occur to prepare

1 individual (~~offenders~~) persons experiencing incarceration for
2 release from prison or jail, specifies the supervision and services
3 they will experience in the community, and describes (~~an~~
4 ~~offender's~~) a person experiencing incarceration's eventual discharge
5 to aftercare upon successful completion of supervision. An individual
6 reentry plan is updated throughout the period of (~~an offender's~~)
7 the individual's incarceration and supervision to be relevant to the
8 (~~offender's~~) individual's current needs and risks.

9 (17) ("~~Inmate~~") "Person experiencing incarceration" means a
10 person committed to the custody of the department, including but not
11 limited to persons residing in a correctional institution or facility
12 and persons released from such facility on furlough, work release, or
13 community custody, and persons received from another state, state
14 agency, county, or federal jurisdiction. Historical terms such as
15 offender, inmate, convict, and incarcerated individual are included
16 in the definition of person experiencing incarceration.

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

20 (19) "Physical restraint" means the use of any bodily force or
21 physical intervention to control (~~an offender~~) a person
22 experiencing incarceration or limit (~~an offender's~~) the person's
23 freedom of movement in a way that does not involve a mechanical
24 restraint. Physical restraint does not include momentary periods of
25 minimal physical restriction by direct person-to-person contact,
26 without the aid of mechanical restraint, accomplished with limited
27 force and designed to:

28 (a) Prevent (~~an offender~~) a person experiencing incarceration
29 from completing an act that would result in potential bodily harm to
30 self or others or damage property;

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

33 (c) Guide (~~an offender~~) a person experiencing incarceration
34 from one location to another.

35 (20) "Postpartum recovery" means (a) the entire period a woman or
36 youth is in the hospital, birthing center, or clinic after giving
37 birth and (b) an additional time period, if any, a treating physician
38 determines is necessary for healing after the woman or youth leaves
39 the hospital, birthing center, or clinic.

1 (21) "Privilege" means any goods or services, education or work
2 programs, or earned early release days, the receipt of which are
3 directly linked to (~~an inmate's~~) a person experiencing
4 incarceration's (a) good conduct; and (b) good performance.
5 Privileges do not include any goods or services the department is
6 required to provide under the state or federal Constitution or under
7 state or federal law.

8 (22) "Promising practice" means a practice that presents, based
9 on preliminary information, potential for becoming a research-based
10 or consensus-based practice.

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

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

16 (a) Physical restraint; or

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

20 (25) "Secretary" means the secretary of corrections or his or her
21 designee.

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

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

31 (28) "Transportation" means the conveying, by any means, of an
32 incarcerated pregnant woman or youth from the correctional facility
33 to another location from the moment she leaves the correctional
34 facility to the time of arrival at the other location, and includes
35 the escorting of the pregnant incarcerated woman or youth from the
36 correctional facility to a transport vehicle and from the vehicle to
37 the other location.

38 (29) "Unfair competition" means any net competitive advantage
39 that a business may acquire as a result of a correctional industries
40 contract, including labor costs, rent, tax advantages, utility rates

1 (water, sewer, electricity, and disposal), and other overhead costs.
2 To determine net competitive advantage, the department of corrections
3 shall review and quantify any expenses unique to operating a for-
4 profit business inside a prison.

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

7 (31) "Washington business" means an in-state manufacturer or
8 service provider subject to chapter 82.04 RCW existing on June 10,
9 2004.

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

12 (33) "Gender-responsive" means taking into account gender-
13 specific differences that have been identified in gender-specific
14 research including, but not limited to, socialization, psychological
15 development, strengths, risk factors, pathways through systems,
16 responses to treatment intervention, and other unique gender-specific
17 needs facing justice-involved individuals. Gender-responsive
18 policies, practices, programs, and services must be implemented in a
19 manner that is considered relational, culturally competent, family-
20 centered, holistic, strength-based, and trauma-informed.

21 (34) "Trauma-informed practices" means practices incorporating
22 gender violence research and the impact of all forms of trauma in
23 designing and implementing policies, practices, processes, programs,
24 and services that involve understanding, recognizing, and responding
25 to the effects of all types of trauma with emphasis on physical,
26 psychological, and emotional safety.

27 **Sec. 4.** RCW 43.06C.040 and 2018 c 270 s 5 are each amended to
28 read as follows:

29 (1) The ombuds shall:

30 (a) Establish priorities for use of the limited resources
31 available to the ombuds;

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

35 (c) Provide information, as appropriate, to ~~((inmates))~~ persons
36 experiencing incarceration, family members, representatives of
37 ~~((inmates))~~ persons experiencing incarceration, department employees,
38 and others regarding the rights of ~~((inmates))~~ persons experiencing
39 incarceration;

1 (d) Provide technical assistance to support ((inmate))
2 participation in self-advocacy for persons experiencing
3 incarceration;

4 (e) Monitor department compliance with applicable federal, state,
5 and local laws, rules, regulations, and policies as related to the
6 health, safety, welfare, and rehabilitation of ((inmates)) persons
7 experiencing incarceration;

8 (f) Monitor and participate in legislative and policy
9 developments affecting correctional facilities;

10 (g) Establish a statewide uniform reporting system to collect and
11 analyze data related to complaints received by the ombuds regarding
12 the department;

13 (h) Establish procedures to receive, investigate, and resolve
14 complaints;

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

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

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

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

25 (iii) A description of significant systemic or individual
26 investigations or outcomes achieved by the ombuds during the prior
27 year;

28 (iv) Any outstanding or unresolved concerns or recommendations of
29 the ombuds; and

30 (v) Input and comments from stakeholders, including the statewide
31 family council, regarding the ombuds' activities during the prior
32 year; and

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

35 (2)(a) The ombuds may initiate and attempt to resolve an
36 investigation upon his or her own initiative, or upon receipt of a
37 complaint from ((an inmate)) a person experiencing incarceration, a
38 family member, a representative of ((an inmate)) a person
39 experiencing incarceration, a department employee, or others,
40 regarding any of the following that may adversely affect the health,

1 safety, welfare, and rights of (~~inmates~~) persons experiencing
2 incarceration:

3 (i) Abuse or neglect;

4 (ii) Department decisions or administrative actions;

5 (iii) Inactions or omissions;

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

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

10 (b) Prior to filing a complaint with the ombuds, a person shall
11 have reasonably pursued resolution of the complaint through the
12 internal grievance, administrative, or appellate procedures with the
13 department. However, in no event may (~~an inmate~~) a person
14 experiencing incarceration be prevented from filing a complaint more
15 than ninety business days after filing an internal grievance,
16 regardless of whether the department has completed the grievance
17 process. This subsection (2)(b) does not apply to complaints related
18 to threats of bodily harm including, but not limited to, sexual or
19 physical assaults or the denial of necessary medical treatment.

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

22 (d) If the ombuds does not investigate a complaint, the ombuds
23 shall notify the complainant of the decision not to investigate and
24 the reasons for the decision.

25 (e) The ombuds may not investigate any complaints relating to
26 (~~an inmate's~~) a person experiencing incarceration's underlying
27 criminal conviction.

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

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

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

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

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

1 (k) At the conclusion of an investigation of a complaint, the
2 ombuds must render a public decision on the merits of each complaint,
3 except that the documents supporting the decision are subject to the
4 confidentiality provisions of RCW 43.06C.060. The ombuds must
5 communicate the decision to the ((inmate)) person experiencing
6 incarceration, if any, and to the department. The ombuds must state
7 its recommendations and reasoning if, in the ombuds' opinion, the
8 department or any employee thereof should:

- 9 (i) Consider the matter further;
- 10 (ii) Modify or cancel any action;
- 11 (iii) Alter a rule, practice, or ruling;
- 12 (iv) Explain in detail the administrative action in question; or
- 13 (v) Rectify an omission.

14 (l) If the ombuds so requests, the department must, within the
15 time specified, inform the ombuds about any action taken on the
16 recommendations or the reasons for not complying with the
17 recommendations.

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

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

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

--- END ---