
SUBSTITUTE HOUSE BILL 1889

State of Washington

65th Legislature

2017 Regular Session

By House Public Safety (originally sponsored by Representatives Pettigrew, Appleton, Peterson, Stanford, and Pollet)

1 AN ACT Relating to creating an office of the corrections ombuds;
2 adding a new chapter to Title 43 RCW; and prescribing penalties.

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

4 NEW SECTION. **Sec. 1.** The legislature intends to increase
5 transparency and accountability in Washington's correctional system
6 by creating an independent entity, the office of the corrections
7 ombuds, which will work for improved conditions and programs, and
8 support fair treatment of inmates in Washington state. The
9 legislature further intends that the ombuds will support changes that
10 facilitate the successful reentry of inmates into the community, and
11 promote high standards of justice throughout the state correctional
12 system.

13 NEW SECTION. **Sec. 2.** The legislature hereby authorizes the
14 creation of an office of the corrections ombuds for the purpose of
15 increasing transparency and accountability in Washington state's
16 prisons and providing information to inmates, family members,
17 representatives of inmates, department employees, and others,
18 regarding the rights of inmates; providing technical assistance to
19 support inmate self-advocacy, alternative dispute resolution, and
20 individual representation; identifying systemic issues, reporting to

1 the legislature, and advocating for systemic reform; and monitoring
2 and promoting compliance with statutes, rules, and policies
3 pertaining to conditions of correctional facilities and the rights of
4 inmates.

5 NEW SECTION. **Sec. 3.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires
7 otherwise.

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

12 (2) "Corrections ombuds" or "ombuds" means the corrections
13 ombuds, staff of the corrections ombuds, and volunteers with the
14 office of the corrections ombuds.

15 (3) "Council" means the ombuds advisory council established in
16 section 4(1) of this act.

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

18 (5) "Inmate" means a person committed to the physical custody of
19 the department including persons residing in a correctional
20 institution or facility and persons received from another state,
21 another state agency, a county, or the federal government.

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

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

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

28 NEW SECTION. **Sec. 4.** (1) No later than August 1, 2017, the
29 governor shall convene an ombuds advisory council with several
30 purposes in support of the ombuds function. The council shall
31 participate in a priority setting process for the purpose of
32 developing priority recommendations to the ombuds, review data
33 collected by the ombuds, review reports issued by the ombuds prior to
34 their release, and make recommendations to the ombuds regarding the
35 accomplishment of its purposes. The council also has authority to
36 issue its own reports and recommendations. The council must
37 biannually review ombuds performance, reporting to the governor and
38 the legislature regarding its findings. The council must provide the

1 legislature with recommendations regarding the ombuds budget and
2 changes in the law that would enhance ombuds effectiveness.

3 (2) The council initially consists of one legislative member from
4 the largest caucus of the house of representatives, appointed by the
5 speaker of the house of representatives, and one legislative member
6 from the largest caucus of the senate, appointed by the president of
7 the senate. The legislative members shall select the following
8 additional members:

9 (a) Two former inmates who have successfully reintegrated into
10 the community and are no longer in the custody of the department;

11 (b) Two family members of a current inmate;

12 (c) One expert with significant criminal justice or correctional
13 experience who is not an employee or contractor with the state of
14 Washington;

15 (d) A community member with extensive knowledge and experience in
16 issues related to racial, ethnic, or religious diversity within the
17 correctional system;

18 (e) A community member with extensive knowledge and experience in
19 the accommodation needs of individuals with disabilities; and

20 (f) A community member with dispute resolution training who has
21 experience working in the criminal justice or corrections field.

22 (3) The council also includes:

23 (a) The department staff serving as the internal ombuds, if any;

24 (b) A bargaining unit representative, as selected by the
25 membership of the bargaining unit; and

26 (c) A representative of the governor's office.

27 (4) After the full membership is attained, the council shall
28 develop a process for replacing members in case of resignation or
29 expiration of terms.

30 (5) Councilmembers serve a term of three years, except that the
31 council shall create and implement a system of staggered terms, and
32 no member may serve more than two consecutive terms. The council
33 shall convene at least quarterly. Councilmembers will serve without
34 compensation, except that funds appropriated for the implementation
35 of this act may be used to reimburse members who are not employees of
36 Washington state for expenses necessary to the performance of their
37 duties, as determined by the council.

38 NEW SECTION. **Sec. 5.** (1) The governor shall designate, by a
39 competitive bidding process, the nonprofit organization that will

1 contract to operate the office of the corrections ombuds. The
2 selection process must include direct stakeholder participation in
3 the development of the request for proposals, evaluation of bids, and
4 final selection. The governor shall select an organization that
5 possesses, directly or through subcontracts, significant legal
6 expertise, competence with mediation and alternative dispute
7 resolution, and experience working within criminal justice and
8 correctional environments addressing issues relating to chemical
9 dependency treatment, disability and disability-related
10 accommodation, respect for racial, ethnic, and religious diversity,
11 and other civil rights and conditions issues. The selected
12 organization must have experience and the capacity to effectively
13 communicate regarding criminal justice issues with policymakers,
14 stakeholders, and the general public, and must be prepared and able
15 to provide all program and staff support necessary, directly or
16 through subcontracts, to carry out all duties of the office.

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

20 (3) The governor may not revoke the designation of the
21 organization contracted to provide the services of the office of the
22 corrections ombuds except upon a showing of neglect of duty,
23 misconduct, or inability to perform duties. Prior to revoking the
24 designation, the state must provide notice and an opportunity for the
25 organization, the ombuds, and the public to comment upon the proposed
26 revocation, and must provide the organization an opportunity to
27 appeal the decision to the state supreme court.

28 NEW SECTION. **Sec. 6.** (1) The ombuds shall:

29 (a) Establish priorities for use of the limited resources
30 appropriate pursuant to this act;

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

34 (c) Provide information, as appropriate, to inmates, family
35 members, representatives of inmates, department employees, and others
36 regarding the rights of inmates;

37 (d) Provide technical assistance to support inmate participation
38 in self-advocacy, utilizing existing kite, grievance, and appeal
39 procedures;

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

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

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

9 (h) Establish procedures to receive, investigate, and resolve
10 complaints;

11 (i) Submit annually to the council, the governor's office, and
12 the legislature, by November 1st of each year, a report analyzing the
13 work of the office, including any recommendations; and

14 (j) Adopt and comply with policies and procedures necessary to
15 implement this chapter.

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

20 (i) Abuse or neglect;

21 (ii) Department decisions or actions;

22 (iii) Inactions or omissions;

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

24 (v) Alleged violations of law.

25 (b) The ombuds may decline to investigate or respond to any
26 complaint or report, including those deemed by the ombuds to be
27 frivolous or nonmeritorious, as provided by the rules adopted under
28 this chapter.

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

31 (d) The ombuds may not investigate a complaint from a department
32 employee that relates to the employee's employment relationship with
33 the department.

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

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

38 (g) At the conclusion of an investigation of a complaint, the
39 ombuds must render a decision on the merits of each complaint and,
40 subject to the confidentiality provisions of section 8 of this act,

1 communicate the decision to the inmate, if any, and to the
2 department. The ombuds must state their recommendations and reasoning
3 if, in the ombuds' opinion, the department or any employee thereof
4 should:

- 5 (i) Consider the matter further;
- 6 (ii) Modify or cancel any action;
- 7 (iii) Alter a rule, practice, or ruling;
- 8 (iv) Explain in detail the administrative action in question;
- 9 (v) Rectify an omission; or
- 10 (vi) Take any other action.

11 (h) If the ombuds so requests, the department must, within an
12 agreed upon time frame, inform the ombuds about any action taken on
13 the recommendations or the reasons for not complying with the
14 recommendations.

15 (i) After the conclusion of an investigation, if the ombuds
16 believes that additional action is warranted, the ombuds may choose
17 to:

18 (i) Report a finding of abuse, neglect, or other rights violation
19 to the appropriate committees of the legislature;

20 (ii) Report a finding of abuse, neglect, other rights violation,
21 or other relevant information to the governor;

22 (iii) Commence litigation, but state funds may not be used for
23 purposes of litigation;

24 (iv) Take any additional action that the ombuds considers
25 appropriate.

26 (j) Before announcing a conclusion or recommendation that
27 expressly, or by implication, criticizes a person or the department,
28 the ombuds must attempt to notify the person or the department. The
29 ombuds may request to be notified by the department, within an agreed
30 upon time frame, of any action taken on any recommendation presented.
31 The ombuds must notify the inmate, if any, of the actions taken by
32 the department in response to the ombuds' recommendations.

33 (3) This chapter does not require inmates to file a complaint
34 with the ombuds in order to exhaust available administrative remedies
35 for purposes of the prison litigation reform act of 1995, P.L.
36 104-134, nor does it require the ombuds to investigate or otherwise
37 respond to all reports or complaints received by the office.

38 NEW SECTION. **Sec. 7.** (1) The ombuds must have reasonable access
39 to correctional facilities at all times necessary to conduct a full

1 investigation of an incident of abuse or neglect. This authority
2 includes the opportunity to interview any inmate, department
3 employee, or other person, including the person thought to be the
4 victim of such abuse, who might be reasonably believed by the
5 facility to have knowledge of the incident under investigation. Such
6 access must be afforded, upon request by the ombuds, when:

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

8 (b) The ombuds determines there is probable cause to believe that
9 an incident has or may have occurred; or

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

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

17 (a) Providing information about individual rights and the
18 services available from the office, including the name, address, and
19 telephone number of the office;

20 (b) Monitoring compliance with respect to the rights and safety
21 of inmates; and

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

25 (3) Access to inmates includes the opportunity to meet and
26 communicate privately and confidentially with individuals regularly,
27 both formally and informally, by telephone, mail, and in person.

28 (4) The ombuds has the right to access, inspect, and copy all
29 relevant information, records, or documents in the possession or
30 control of the department that the ombuds considers necessary in an
31 investigation of a complaint filed under this chapter, and the
32 department must assist the ombuds in obtaining the necessary releases
33 for those documents which are specifically restricted or privileged
34 for use by the ombuds.

35 (a) When conducting an investigation of potential abuse or
36 neglect, the ombuds must make a written request for such records. The
37 department must respond promptly to requests for records. Within five
38 business days of receiving a request, the department must respond by:

39 (i) Providing the records;

1 (ii) Acknowledging that the department has received the request
2 and will provide a reasonable estimate of time within which the
3 department will respond to the request; or

4 (iii) Denying the request because of safety or security concerns.

5 (b) The ombuds must have immediate access, not later than twenty-
6 four hours after the ombuds makes such a request, to relevant
7 records, without consent from another party, if the ombuds determines
8 there is probable cause to believe that the health or safety of an
9 inmate is in serious and immediate jeopardy, or in any case of death
10 of an inmate while in department custody.

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

14 (6) The ombuds must work with the department to minimize
15 disruption to the operations of the department due to ombuds
16 activities and must comply with the department's security clearance
17 processes, provided those processes do not impede the activities
18 outlined in this section.

19 NEW SECTION. **Sec. 8.** (1) Correspondence and communication with
20 the office is confidential and must be protected as privileged
21 correspondence in the same manner as legal correspondence or
22 communication.

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

25 (3) The office shall preserve the confidentiality of information
26 obtained while providing services, including general information,
27 technical assistance, and investigations, to individuals, including
28 inmates, family members and representatives of inmates, department
29 employees, and others. Confidential information may not be disclosed
30 unless the individual gives informed consent, the disclosure is
31 impliedly authorized in order to carry out ombuds services, or the
32 disclosure is authorized by subsection (4) of this section.

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

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

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

1 (5) If the ombuds receives personally identifying information
2 about individual corrections staff during the course of an
3 investigation that the ombuds determines is unrelated or unnecessary
4 to the subject of the investigation or recommendation for action, the
5 ombuds will not further disclose such information. If the ombuds
6 determines that such disclosure is necessary to an investigation or
7 recommendation, the ombuds will contact the staff member as well as
8 the bargaining unit representative before any disclosure.

9 NEW SECTION. **Sec. 9.** (1) A civil action may not be brought
10 against any employee of the office for good faith performance of
11 responsibilities under this chapter.

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

19 (3) This section is not intended to infringe on the rights of an
20 employer to supervise, discipline, or terminate an employee for other
21 reasons.

22 NEW SECTION. **Sec. 10.** Sections 1 through 9 of this act
23 constitute a new chapter in Title 43 RCW.

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