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**SUBSTITUTE SENATE BILL 5465**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Miloscia, Hasegawa, Rolfes, O'Ban, Darneille, Angel, and Frockt)

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

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

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

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

NEW SECTION. **Sec.**  (1) Subject to confirmation by the senate, the governor shall appoint an ombuds who must be a person of recognized judgment, independence, objectivity, and integrity, and must be qualified by training or experience, or both,

in providing information to inmates, family members, representatives of inmates, department employees, and others regarding the rights of inmates; providing technical assistance to support inmate self-advocacy, alternative dispute resolution, and individual representation; identifying systemic issues, reporting to the legislature, and advocating for systemic reform; and monitoring and promoting compliance with statutes, rules, and policies pertaining to conditions of correctional facilities and the rights of inmates. Prior to the appointment, the governor shall consult with and may receive recommendations from the ombuds advisory council regarding the selection of the ombuds.

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

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

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

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

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

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

(5) "Inmate" means a person committed to the custody of the department, including, but not limited to, persons residing in a correctional institution or facility; persons released from such facility on furlough, work release, or community custody; and persons received from another state, another state agency, a county, or the federal government.

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

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

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

NEW SECTION. **Sec.**  (1) No later than August 1, 2017, the governor shall convene an ombuds advisory council with several purposes in support of the ombuds function. The council shall participate in a priority setting process for the purpose of developing priority recommendations to the ombuds, review data collected by the ombuds, review reports issued by the ombuds prior to their release, and make recommendations to the ombuds regarding the accomplishment of its purposes. The council also has authority to issue its own reports and recommendations. The council must biannually review ombuds performance, reporting to the governor and the legislature regarding its findings. The council must provide the legislature with recommendations regarding the ombuds budget and changes in the law that would enhance ombuds effectiveness.

(2) The council initially consists of one democrat and one republican member of the legislature. The chairs of the senate committee on law and justice and the house of representatives committee on public safety shall make recommendations to the president of the senate and the speaker of the house of representatives, who shall make the final appointments. These appointed members shall select the following additional members:

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

(b) Two family members of a current inmate;

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

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

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

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

(3) The council also includes:

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

(b) A bargaining unit representative, as selected by the membership of the bargaining unit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Abuse or neglect;

(ii) Department decisions or actions;

(iii) Inactions or omissions;

(iv) Policies, rules, or procedures; or

(v) Alleged violations of law.

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

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

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

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

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

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

(i) Consider the matter further;

(ii) Modify or cancel any action;

(iii) Alter a rule, practice, or ruling;

(iv) Explain in detail the administrative action in question;

(v) Rectify an omission; or

(vi) Take any other action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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