
HOUSE BILL 2005

State of Washington 64th Legislature 2015 Regular Session

By Representatives Moscoso, Goodman, Pettigrew, Appleton, Orwall, Ormsby, and Jinkins

Read first time 02/06/15. Referred to Committee on Public Safety.

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

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

4 NEW SECTION. **Sec. 1.** The creation of the office of corrections
5 ombuds is intended to assist in strengthening procedures and
6 practices which lessen the possibility of actions occurring within
7 the department of corrections which may adversely impact the health,
8 safety, welfare, and rehabilitation of offenders, and which will
9 effectively reduce the exposure of the department to litigation.

10 NEW SECTION. **Sec. 2.** There is hereby created an office of
11 corrections ombuds within the office of the governor for the purpose
12 of providing information to offenders and their families; promoting
13 public awareness and understanding of the rights and responsibilities
14 of offenders; identifying system issues and responses for the
15 governor and the legislature to act upon; and ensuring compliance
16 with relevant statutes, rules, and policies pertaining to corrections
17 facilities, services, and treatment of offenders under the
18 jurisdiction of the department.

19 The ombuds shall report directly to the governor and shall
20 exercise his or her powers and duties independently of the secretary.

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

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

5 (2) "Director" means the director of the office of corrections
6 ombuds.

7 (3) "Offender" means an offender as defined in RCW 9.94A.030 who
8 is under the control of the department or its contracted agencies,
9 entities, or programs.

10 (4) "Office" means the office of corrections ombuds.

11 (5) "Secretary" means the secretary of the department of
12 corrections.

13 NEW SECTION. **Sec. 4.** (1) Subject to confirmation by the senate,
14 the governor shall appoint an ombuds who shall be a person of
15 recognized judgment, independence, objectivity, and integrity, and
16 shall be qualified by training or experience in corrections law and
17 policy. Prior to the appointment, the governor shall consult with,
18 and may receive recommendations from, the appropriate committees of
19 the legislature regarding the selection of the ombuds.

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

26 (3) The ombuds may employ technical experts and other employees
27 to complete the purposes of this chapter, subject to funding. In the
28 implementation phase during the 2015-2017 biennium, staffing shall be
29 limited to two ombuds, including the director.

30 NEW SECTION. **Sec. 5.** The ombuds shall:

31 (1) Provide to the public as appropriate information on the
32 rights and responsibilities of offenders and their family members;

33 (2) Maintain a statewide toll-free telephone number, a collect
34 telephone number to be operated during normal business hours, a web
35 site, and a mailing address for the receipt of complaints and
36 inquiries;

37 (3) Provide information to interested members of the public
38 regarding the state's correctional system;

1 (4) Monitor the development and implementation of federal, state,
2 and departmental laws, rules, regulations, and policies with respect
3 to corrections facilities in Washington state with a view toward the
4 appropriate health, safety, welfare, and rehabilitation of offenders;

5 (5) Establish a statewide uniform reporting system to collect and
6 analyze data relating to complaints regarding the department;

7 (6) Establish procedures to receive and investigate complaints.

8 (a) The ombuds may initiate and attempt to resolve an
9 investigation upon his or her own initiative, or upon receipt of a
10 complaint from a legislator, or an offender in the physical custody
11 of the department, including offenders who are initially received
12 into the physical custody of the department and transferred to a
13 county facility or facility in another state, and a member of the
14 offender's immediate family, regarding:

15 (i) Decisions;

16 (ii) Administrative actions;

17 (iii) Inactions or omissions;

18 (iv) Policies;

19 (v) Procedures and rules; or

20 (vi) Alleged violations of law

21 of the department which may adversely affect the health, safety,
22 welfare, rehabilitation, and rights of offenders.

23 (b) A person is not entitled as a right to be heard by the
24 ombuds. The ombuds may decline to investigate any complaint as
25 provided by rules adopted under this chapter.

26 (c) If the ombuds does not investigate a complaint, the ombuds
27 shall notify the complainant of the decision not to investigate and
28 the reasons for the decision.

29 (d) The ombuds shall not investigate a complaint from an employee
30 of the department that relates to the employee's employment
31 relationship with the department.

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

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

36 (g) Prior to any person in the custody of the department
37 obtaining ombuds services, the person shall have reasonably pursued a
38 resolution of the complaint through any existing internal grievance,
39 administrative, or appellate procedures. This subsection (6)(g) shall
40 not apply to complaints related to threats of bodily harm, including

1 but not limited to sexual or physical assaults or the denial of
2 necessary medical treatment.

3 (h) At the conclusion of an investigation of a complaint, the
4 ombuds shall render a decision on the merits of each complaint and
5 communicate the decision to the complainant and to the department.
6 The ombuds shall state the recommendations and reasons if, in the
7 ombuds' opinion, the department or any employee thereof should:

8 (i) Consider the matter further;

9 (ii) Modify or cancel any action;

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

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

12 (v) Rectify an omission; or

13 (vi) Take any other action.

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

17 (j) If the ombuds believes that any action or omission has or
18 continues to pose significant prisoner health, safety, welfare, and
19 rehabilitation issues, the ombuds shall report the finding to the
20 governor and the appropriate committees of the legislature.

21 (k) Before announcing a conclusion or recommendation that
22 expressly or by implication criticizes a person or the department,
23 the ombuds shall consult with that person or the department. The
24 ombuds may request to be notified by the department, within a
25 specified time, of any action taken on any recommendation presented.

26 (l) The ombuds shall notify the complainant of the actions taken
27 by the office and by the department;

28 (7) Submit annually to the governor and the appropriate
29 committees of the legislature by November 1st of each year a report
30 analyzing the work of the office including any recommendations; and

31 (8) Adopt rules necessary to implement this chapter and act in
32 accordance with the policies and procedures established by the
33 office.

34 This section shall not be construed as requiring offenders to
35 file a complaint with the ombuds in order to exhaust available
36 administrative remedies for purposes of the prison litigation reform
37 act of 1995, P.L. 104-134.

38 NEW SECTION. **Sec. 6.** (1) The department shall permit the ombuds
39 or the his or her designee to enter and inspect at any reasonable

1 time any correctional facility for the purpose of carrying out his or
2 her duties under this chapter.

3 (2) Upon the ombuds' request, the department shall grant the
4 ombuds or his or her designee the right to access, inspect, and copy
5 all relevant information, records, or documents in the possession or
6 control of the department that the ombuds considers necessary in an
7 investigation of a complaint filed under this chapter; and assist the
8 ombuds in obtaining the necessary releases of those documents which
9 are specifically restricted or privileged for use by the ombuds.

10 (3) If the ombuds or any employee of the office acting as an
11 ombuds who has been delegated in writing the authority granted is
12 denied access to any premises under the control of the secretary, the
13 secretary or the secretary's designee, within twenty-four hours after
14 the denial, shall give the ombuds a written statement of the reason
15 for the denial of access.

16 (4) A state or local government agency or entity that has records
17 that are relevant to a complaint or an investigation conducted by the
18 ombuds shall provide the ombuds with access to the records.

19 (5) The department shall ensure that correspondence from inmates
20 to the ombuds is not reviewed or inspected, except to ensure that
21 such correspondence does not contain contraband.

22 NEW SECTION. **Sec. 7.** (1) The office shall establish
23 confidentiality rules and procedures for all information maintained
24 by the office.

25 (2) Investigative records of the office are confidential and are
26 exempt from public disclosure under chapter 42.56 RCW during the
27 course of an ongoing investigation. Such records shall not be
28 considered privileged or exempt from discovery in criminal
29 proceedings or in civil litigation if otherwise discoverable under
30 the rules of civil procedure.

31 (3) Whenever in the course of providing ombuds services, the
32 ombuds or a member of the ombuds' staff becomes aware of a criminal
33 act or a threat to the health and safety of any individual or the
34 security of a correctional facility, the ombuds shall notify the
35 secretary and the appropriate facility administrator of such act or
36 threat and the nature and target thereof.

1 NEW SECTION. **Sec. 8.** (1) An employee of the office is not
2 liable for good faith performance of responsibilities under this
3 chapter.

4 (2) No discriminatory, disciplinary, or retaliatory action may be
5 taken against an employee of the department, an employee of a
6 contracting agency of the department, an offender, or a member of an
7 offender's immediate family for any communication made, or
8 information given or disclosed, to aid the office in carrying out its
9 responsibilities, unless the communication or information is made,
10 given, or disclosed maliciously or without good faith.

11 (3) A person or the department shall not hinder the lawful
12 actions of the ombuds or employees of the office, or willfully refuse
13 to comply with lawful demands of the office.

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

17 NEW SECTION. **Sec. 9.** Funding for the office shall be provided
18 from the proceeds of the department's institutional offender
19 betterment accounts, after distribution is made to the crime victims'
20 compensation program under RCW 72.09.095.

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

--- END ---