

---

SENATE BILL 5505

---

State of Washington

64th Legislature

2015 Regular Session

By Senators McAuliffe, Darneille, Chase, Frockt, Hasegawa, Kohl-  
Welles, Keiser, O'Ban, Pearson, and Conway

Read first time 01/22/15. Referred to Committee on Law & Justice.

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 ---