

E2SHB 1889 - S COMM AMD

By Committee on Human Services & Corrections

OUT OF ORDER 02/28/2018

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature intends to create an
4 independent and impartial office of the corrections ombuds to assist
5 in strengthening procedures and practices that lessen the possibility
6 of actions occurring within the department of corrections that may
7 adversely impact the health, safety, welfare, and rehabilitation of
8 offenders, and that will effectively reduce the exposure of the
9 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 inmates and their families; promoting
13 public awareness and understanding of the rights and responsibilities
14 of inmates; identifying system issues and responses for the governor
15 and the legislature to act upon; and ensuring compliance with
16 relevant statutes, rules, and policies pertaining to corrections
17 facilities, services, and treatment of inmates under the jurisdiction
18 of the department.

19 The ombuds reports directly to the governor and exercises his or
20 her powers and duties independently of the secretary.

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

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

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

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

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

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

12 (6) "Office" means the office of the corrections ombuds.

13 (7) "Secretary" means the secretary of the department of
14 corrections.

15 (8) "Statewide family council" means the family council
16 maintained by the department that is comprised of representatives
17 from local family councils.

18 NEW SECTION. **Sec. 4.** (1) The governor shall appoint an ombuds
19 who must be a person of recognized judgment, independence,
20 objectivity, and integrity, and be qualified by training or
21 experience in corrections law and policy. Prior to the appointment,
22 the governor shall consult with, and may receive recommendations
23 from, the appropriate committees of the legislature, delegates of the
24 statewide family council as selected by the members of the council,
25 and other relevant stakeholders, regarding the selection of the
26 ombuds.

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

33 (3) The ombuds may employ technical experts and other employees
34 to complete the purposes of this chapter.

35 NEW SECTION. **Sec. 5.** (1) The ombuds shall:

36 (a) Establish priorities for use of the limited resources
37 available to the ombuds;

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

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

7 (d) Provide technical assistance to support inmate participation
8 in self-advocacy;

9 (e) Monitor department compliance with applicable federal, state,
10 and local laws, rules, regulations, and policies as related to the
11 health, safety, welfare, and rehabilitation of inmates;

12 (f) Monitor and participate in legislative and policy
13 developments affecting correctional facilities;

14 (g) Establish a statewide uniform reporting system to collect and
15 analyze data related to complaints received by the ombuds regarding
16 the department;

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

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

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

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

26 (ii) The number of complaints received and resolved by the
27 ombuds;

28 (iii) A description of significant systemic or individual
29 investigations or outcomes achieved by the ombuds during the prior
30 year;

31 (iv) Any outstanding or unresolved concerns or recommendations of
32 the ombuds; and

33 (v) Input and comments from stakeholders, including the statewide
34 family council, regarding the ombuds' activities during the prior
35 year; and

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

38 (2)(a) The ombuds may initiate and attempt to resolve an
39 investigation upon his or her own initiative, or upon receipt of a
40 complaint from an inmate, a family member, a representative of an

1 inmate, a department employee, or others, regarding any of the
2 following that may adversely affect the health, safety, welfare, and
3 rights of inmates:

4 (i) Abuse or neglect;

5 (ii) Department decisions or administrative actions;

6 (iii) Inactions or omissions;

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

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

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 be prevented from
14 filing a complaint more than ninety business days after filing an
15 internal grievance, regardless of whether the department has
16 completed the grievance process. This subsection (2)(b) does not
17 apply to complaints related to threats of bodily harm including, but
18 not limited to, sexual or physical assaults or the denial of
19 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 an
26 inmate's underlying criminal conviction.

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

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

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

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

38 (j) The ombuds must remain neutral and impartial and may not act
39 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 section 7 of this act. The ombuds must
5 communicate the decision to the inmate, if any, and to the
6 department. The ombuds must state its recommendations and reasoning
7 if, in the ombuds' opinion, the department or any employee thereof
8 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, the ombuds must report the
21 finding to the governor and the appropriate committees of the
22 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, if any, of the actions taken by
29 the department in response to the ombuds' recommendations.

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

34 NEW SECTION. **Sec. 6.** (1) The ombuds must have reasonable access
35 to correctional facilities at all times necessary to conduct a full
36 investigation of an incident of abuse or neglect. This authority
37 includes the opportunity to interview any inmate, department
38 employee, or other person, including the person thought to be the
39 victim of such abuse, who might be reasonably believed by the

1 facility to have knowledge of the incident under investigation. Such
2 access must be afforded, upon request by the ombuds, when:

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

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

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

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

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

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

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

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

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

31 (5) Following notification from the ombuds with a written demand
32 for access to agency records, the delegated department staff must
33 provide the ombuds with access to the requested documentation not
34 later than twenty business days after the ombuds' written request for
35 the records. Where the records requested by the ombuds pertain to an
36 inmate death, threats of bodily harm including, but not limited to,
37 sexual or physical assaults, or the denial of necessary medical
38 treatment, the records shall be provided within five days unless the
39 ombuds consents to an extension of that time frame.

1 (6) Upon notice and a request by the ombuds, a state or local
2 government agency or entity that has records that are relevant to a
3 complaint or an investigation conducted by the ombuds must provide
4 the ombuds with access to such records.

5 (7) The ombuds must work with the department to minimize
6 disruption to the operations of the department due to ombuds
7 activities and must comply with the department's security clearance
8 processes, provided those processes do not impede the activities
9 outlined in this section.

10 NEW SECTION. **Sec. 7.** (1) Correspondence and communication with
11 the office is confidential and must be protected as privileged
12 correspondence in the same manner as legal correspondence or
13 communication.

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

16 (3) The ombuds shall treat all matters under investigation,
17 including the identities of recipients of ombuds services,
18 complainants, and individuals from whom information is acquired, as
19 confidential, except as far as disclosures may be necessary to enable
20 the ombuds to perform the duties of the office and to support any
21 recommendations resulting from an investigation. Upon receipt of
22 information that by law is confidential or privileged, the ombuds
23 shall maintain the confidentiality of such information and shall not
24 further disclose or disseminate the information except as provided by
25 applicable state or federal law or as authorized by subsection (4) of
26 this section. All records exchanged and communications between the
27 office of the corrections ombuds and the department to include the
28 investigative record are confidential and are exempt from public
29 disclosure under chapter 42.56 RCW.

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

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

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

37 (5) If the ombuds believes it is necessary to reveal
38 investigative records for any of the reasons outlined in section 4 of
39 this act, the ombuds shall provide a copy of what they intend to

1 disclose to the department for review and application of legal
2 exemptions prior to releasing to any other persons. If the ombuds
3 receives personally identifying information about individual
4 corrections staff during the course of an investigation that the
5 ombuds determines is unrelated or unnecessary to the subject of the
6 investigation or recommendation for action, the ombuds will not
7 further disclose such information. If the ombuds determines that such
8 disclosure is necessary to an investigation or recommendation, the
9 ombuds will contact the staff member as well as the bargaining unit
10 representative before any disclosure.

11 NEW SECTION. **Sec. 8.** (1) A civil action may not be brought
12 against any employee of the office for good faith performance of
13 responsibilities under this chapter.

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

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

24 NEW SECTION. **Sec. 9.** Sections 1 through 8 of this act
25 constitute a new chapter in Title 43 RCW.

26 NEW SECTION. **Sec. 10.** A new section is added to chapter 43.131
27 RCW to read as follows:

28 The office of the corrections ombuds is terminated July 1, 2028,
29 as provided in section 11 of this act.

30 NEW SECTION. **Sec. 11.** A new section is added to chapter 43.131
31 RCW to read as follows:

32 The following acts or parts of acts, as now existing or hereafter
33 amended, are each repealed, effective July 1, 2029:

- 34 (1) Section 1 of this act;
35 (2) Section 2 of this act;
36 (3) Section 3 of this act;

- 1 (4) Section 4 of this act;
- 2 (5) Section 5 of this act;
- 3 (6) Section 6 of this act;
- 4 (7) Section 7 of this act; and
- 5 (8) Section 8 of this act."

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OUT OF ORDER 02/28/2018

6 On page 1, line 2 of the title, after "RCW;" strike the remainder
7 of the title and insert "and adding a new chapter to Title 43 RCW."

EFFECT: Specifies that the power of the Ombuds to initiate and attempt to resolve an investigation upon his or her own initiative must relate to the health, safety, welfare, or rights of inmates. Provides that all records exchanged and communications between the office of the corrections Ombuds and the department, including the investigative record, are confidential and exempt from public disclosure. Requires the Ombuds to provide a copy of investigative records which it intends to disclose to the public to DOC for review and application of legal exemptions prior to release. Requires the Ombuds to report directly to the Governor. Removes requirement for the Ombuds to have a clearly delineated budget separate from the overall budget for the Office of the Governor.

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