

WAC 138-10-040 Investigations. (1) The ombuds may initiate and attempt to resolve an investigation upon his or her own initiative, or upon receipt of a complaint from an incarcerated individual, a family member, a representative of an incarcerated individual, a department employee, or others, regarding any of the following that may adversely affect the health, safety, welfare, and rights of incarcerated individuals:

- (a) Abuse or neglect;
- (b) Department decisions or administrative actions;
- (c) Inactions or omissions;
- (d) Policies, rules, or procedures; or
- (e) Alleged violations of law by the department that may adversely affect the health, safety, welfare, and rights of incarcerated individuals.

(2) Prior to filing a complaint with the ombuds, a person shall have reasonably pursued resolution of the complaint through the internal grievance, administrative, or appellate procedures with the department. However, in no event may an incarcerated individual be prevented from filing a complaint more than ninety business days after filing an internal grievance, regardless of whether the department has completed the grievance process. This subsection does not apply to complaints related to threats of bodily harm including, but not limited to, sexual or physical assaults or the denial of necessary medical treatment.

(3) The ombuds may decline to investigate any complaint or may close any investigation of any complaint for any of the following reasons:

- (a) Lack jurisdiction over the complaint. At a minimum, complaints should meet the requirements in RCW 43.06C.040 and be:

- (i) About an incarcerated individual;
- (ii) About an alleged department action; and
- (iii) Made after the incarcerated individual has reasonably pursued resolution of the issue through the internal grievance, administrative, or appellate procedures with the department.

- (b) Department took action to resolve any alleged violations;

- (c) The nature and quality of evidence;

- (d) The complaint does not allege violation of policy, procedure, or law;

- (e) The requested resolution is not within the ombuds' statutory power and authority;

- (f) The alleged violation is a past rather than ongoing issue; or

- (g) Any other reasons the ombuds deems relevant to the complaint including, but not limited to, the priority and weight given to these and other relevant factors.

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

(5) The ombuds may not investigate any complaints relating to an incarcerated individual's underlying criminal conviction.

(6) The ombuds may not investigate a complaint from a department employee that relates to the employee's employment relationship with the department or the administration of the department, unless the complaint is related to the health, safety, welfare, and rehabilitation of incarcerated individuals.

(7) Complainants may request a review of a closed investigation case by the director or designee.

[Statutory Authority: RCW 43.06C.040 (1)(k), and (2)(c), and 43.06C.060(2). WSR 21-18-049, § 138-10-040, filed 8/25/21, effective 9/25/21.]