

SENATE BILL REPORT

E2SHB 1889

As Reported by Senate Committee On:
Human Services & Corrections, February 23, 2018
Ways & Means, February 26, 2018

Title: An act relating to creating an office of the corrections ombuds.

Brief Description: Creating an office of the corrections ombuds.

Sponsors: House Committee on Public Safety (originally sponsored by Representatives Pettigrew, Appleton, Peterson, Stanford and Pollet).

Brief History: Passed House: 2/12/18, 76-21.

Committee Activity: Human Services & Corrections: 2/20/18, 2/23/18 [DPA-WM].
Ways & Means: 2/26/18, 2/26/18 [DPA(WM)].

Brief Summary of Amended Bill

- Establishes the Office of Corrections Ombuds within the Governor's Office, subject to appropriations, to report directly to the Governor and independent from the secretary of the Department of Corrections (DOC).
- Requires the Governor to appoint an Ombuds for a three-year term with input from the Legislature, Statewide Family Council, and other stakeholders.
- Establishes duties, powers, access requirements, and confidentiality rules for the Ombuds.
- Establishes a sunset date of July 1, 2028.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Darneille, Chair; Dhingra, Vice Chair; O'Ban, Ranking Member; Carlyle, Frockt and Miloscia.

Staff: Kevin Black (786-7747)

SENATE COMMITTEE ON WAYS & MEANS

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: Do pass as amended by Committee on Ways & Means.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair; Braun, Ranking Member; Honeyford, Assistant Ranking Member; Bailey, Becker, Billig, Brown, Carlyle, Conway, Darneille, Fain, Hasegawa, Hunt, Keiser, Mullet, Palumbo, Pedersen, Ranker, Rivers, Schoesler, Van De Wege, Wagoner and Warnick.

Staff: Travis Sugarman (786-7446)

Background: An ombuds is an appointed person or office charged with representing the interests of the public or a particular group by providing information and receiving, investigating, and addressing complaints regarding a system or agency. Washington has several ombuds offices, including the Family and Children's Ombuds, the Education Ombuds, The Health Care Authority Ombuds, the Ombuds for Self-Insured Workers, the Long-Term Care Ombuds, and the Developmental Disabilities Ombuds.

The Department of Corrections Internal Ombuds. The Department of Corrections (DOC) created an ombuds position within DOC's Executive Policy Office in 2016. The ombuds is intended to act as a resource for families and inmates by providing impartial assistance and investigating and attempting to resolve allegations of noncompliance of DOC policies and state law. In addition, the DOC Ombuds may recommend changes in DOC policies, procedures, and statutes if systemic problems are identified.

The Department of Corrections Offender Grievance Program. DOC has a formal grievance process overseen at the facility level by grievance coordinators. Only incidents, policies, or practices within DOC jurisdiction that affect an offender personally and that do not have an established appeals process are grievable. Examples of grievance topics include conduct of employees or other offenders, health services, policies, prison operations, and food services. The grievance program contains an appeals system that allows an offender to request review at a higher level if the offender is not satisfied with a response.

The Department of Corrections Family Council. DOC facilitates local and statewide family councils that are charged with enhancing communication with DOC; assisting in developing policies, procedures, and programs that support family reunification; and working with DOC to improve offender quality of life and successful reentry. Local family councils are established at every prison to address facility-specific issues. One family member from each local family council must be selected to serve as a representative on the Statewide Family Council, which focuses on issues and concerns that impact a broad range of offenders and their families.

Sunset Reviews. A sunset review is a system by which an expiration date for a program is established and a program and fiscal review is scheduled by the Joint Legislative Audit and Review Committee of the Legislature during the calendar year prior to program termination. The Legislature may reestablish an entity scheduled for termination for a specified period of time or indefinitely, and may also modify or consolidate such entity or allow it to be terminated. Examples of current state entities subject to sunset reviews include the Washington State Commission on Hispanic Affairs, the Underground Storage Tank Program, the Joint Center for Aerospace Technology Innovation, and the Medicaid Fraud False Claims Act.

Summary of Amended Bill: The Office of Corrections Ombuds is created within the Office of the Governor. The Ombuds must report directly to the Governor and exercise powers and duties independently of the secretary of DOC. The purpose of the Office of Corrections Ombuds is to:

- provide information to inmates and their families;
- promote public awareness and understanding of the rights and responsibilities of inmates;
- identify system issues and responses for the Governor and Legislature to act upon; and
- ensure compliance with relevant statutes, rules, and policies pertaining to corrections facilities, services, and treatment of inmates.

The Ombuds must be appointed by the Governor to a term of three years, subject to reappointment, and be qualified by training or experience in corrections law and policy. The Governor must consult with appropriate committees of the Legislature, delegates of the Statewide Family Council, and other relevant stakeholders regarding the appointment. The Ombuds may be removed before the end of the appointed term only for neglect of duty, misconduct, or inability to perform duties.

The Ombuds has the following duties:

- establish priorities within limited resources;
- maintain a statewide, toll-free telephone number, collect telephone number, website, and mailing address to receive complaints and inquiries;
- establish a uniform system to collect and analyze data related to DOC complaints, and to investigate and resolve complaints;
- provide technical assistance to support inmate participation in self-advocacy;
- monitor DOC compliance with laws, rules, and policies related to the health, safety, welfare, and rehabilitation of inmates;
- monitor and participate in legislative and policy developments affecting correctional facilities;
- establish quarterly public stakeholder meetings; and
- submit an annual report describing complaints, investigations, concerns, stakeholder comments, and recommendations.

The Ombuds may initiate investigations and attempt to resolve issues that adversely affect the health, safety, welfare, or rights of inmates that relate to abuse, neglect, DOC activities or inactions, and alleged violations of law. Resolution of complaints must be sought through internal grievance, administrative, or appellate processes before resorting to an Ombuds investigation, except for complaints related to threats of bodily harm or denial of necessary medical treatment. The Ombuds may decline to investigate a complaint, but must notify the complainant of the decision and reason for declining to investigate. Complaints which are investigated must be resolved by public decision on the merits of each complaint which is communicated to the complainant. DOC must respond to public decisions at the request of the Ombuds within a specified period of time. The Ombuds must remain neutral and impartial and not advocate for a complainant or for DOC. DOC must provide reasonable access to correctional facilities to the Ombuds at all times for the investigation of complaints, including the right to inspect, view, photograph, and conduct video recording in some circumstances; to interview inmates and department employees; and to access and inspect

DOC information, documents, and records. Before announcing a criticism of DOC or a specific employee, the Ombuds must consult with that person or DOC.

Correspondence and communication with the Office of Corrections Ombuds is confidential, protected, and privileged. All records and communication exchanged between the Ombuds and DOC must be exempt from public disclosure under the Public Records Act. The Ombuds may reveal information to prevent reasonably certain death or substantial bodily harm, or to prevent the commission of a crime; however, the Ombuds must provide a copy of records the Ombuds intends to disclose to DOC for review and application of legal exemptions before release to other persons. Retaliatory action may not be taken against a DOC employee, subcontractor, volunteer, or inmate for communication with the Ombuds.

A sunset review is established for the Office of Corrections Ombuds with a statutory expiration of July 1, 2028.

EFFECT OF WAYS & MEANS COMMITTEE AMENDMENT(S):

- Makes the establishment of the Office of the Corrections Ombuds, subject to appropriations.

EFFECT OF HUMAN SERVICES & CORRECTIONS COMMITTEE AMENDMENT (S):

- 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 DOC, 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 a requirement for the Ombuds to have a clearly delineated budget separate from the overall budget for the Office of the Governor.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Second Engrossed Substitute House Bill (Human Services & Corrections): *The committee recommended a different version of the bill than what was heard.* PRO: Many people residing in the criminal justice system struggle with mental illness. An ombuds can do low-level problem solving before it becomes

a big, formal complaint process that costs the state a lot of money and time. This will help the families of those who are incarcerated by giving them a contact and a procedure. It will help people reenter society more safely and securely. This bill has been pending since 2008. I served as an ombuds in Maine and appreciated being able to be a liaison and mediator who could facilitate communication in a difficult environment. All state institutions need oversight. The internal ombuds is a resource for some, but accessing the ombuds requires resort to the deeply flawed grievance process. The internal ombuds is not independent. An independent ombuds could assess and fix the grievance process and effect real policy change. An independent set of eyes and voice produces a better result for inmates, their families, and DOC staff.

OTHER: We appreciate the amendments in the House, but still have concerns about potential gaps in confidentiality provisions. Some additional language is needed to bring clarity with reference to the Public Records Act. A process is needed to review and redact records.

Persons Testifying (Human Services & Corrections): PRO: Melanie Smith, National Alliance on Mental Illness (NAMI) Washington; Tom Ewrl, Quaker Voice; Suzanne Cook, DOC Statewide Family Council; Zachary Kinneman, What's Next Washington.

OTHER: Alex MacBain, Department of Corrections.

Persons Signed In To Testify But Not Testifying (Human Services & Corrections): No one.

Staff Summary of Public Testimony on Bill as Amended by Human Services & Corrections (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: There is no current fiscal note on this bill. We would expect about \$700,000 as a total cost. We have been advocating for this bill for over a decade. This bill helps with transparency. This bill helps address some concerns for families of incarcerated individuals. Over 17,000 families are served by only a few staff and this bill helps correct that.

Persons Testifying (Ways & Means): PRO: Loretta Rafay, Department of Corrections Statewide Family Council; Rachael Seevers, Disability Rights Washington; Noah Martin, Quaker Voice on Washington Public Policy.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.