

SENATE BILL REPORT

SB 5465

As Reported by Senate Committee On:
Law & Justice, February 16, 2017
Ways & Means, February 21, 2017

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

Brief Description: Creating an office of the corrections ombuds.

Sponsors: Senators Miloscia, Hasegawa, Rolfes, O'Ban, Darneille, Angel and Frockt.

Brief History:

Committee Activity: Law & Justice: 2/09/17, 2/16/17 [DPS-WM].
Ways & Means: 2/20/17, 2/21/17 [DPS(LAW)].

<p style="text-align: center;">Brief Summary of Substitute Bill</p> <ul style="list-style-type: none">• Creates the Office of the Corrections Ombuds.
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SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5465 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Angel, Darneille, Frockt and Wilson.

Staff: Shani Bauer (786-7468)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5465 as recommended by Committee on Law & Justice be substituted therefor, and the substitute bill do pass.

Signed by Senators Braun, Chair; Brown, Vice Chair; Rossi, Vice Chair; Honeyford, Vice Chair, Capital Budget ; Ranker, Ranking Minority Member; Rolfes, Assistant Ranking Minority Member, Operating Budget; Frockt, Assistant Ranking Minority Member, Capital Budget; Bailey, Becker, Billig, Carlyle, Conway, Darneille, Fain, Hasegawa, Keiser, Miloscia, Padden, Pedersen, Rivers, Schoesler, Warnick and Zeiger.

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.

Staff: Julie Murray (786-7711)

Background: In general, an ombuds is a state official appointed to provide a check on government activity in the interests of the citizens, and oversee the investigation of complaints of improper government activity against the citizens. If the ombuds finds a complaint to be substantiated, the problem may get rectified, or an ombuds report is published making recommendations for change. The typical duties of an ombuds are to investigate complaints and attempt to resolve them, usually through recommendations. Ombuds sometimes also aim to identify systemic issues leading to poor service or breaches of peoples' rights.

Washington State has the following ombuds offices: the Long Term Care Ombudsman; the Office of the Family and Children's Ombudsman; the Office of the Educational Ombudsman; and the Health Care Authority Ombudsman.

Summary of Bill (First Substitute): An Ombuds is created for the purpose of providing information to inmates, family members, and DOC employees; providing assistance to support inmate self-advocacy; identifying and advocating for systemic reform; and monitoring and promoting compliance with statutes, rules, and policies pertaining to conditions of correctional facilities and the rights of inmates. Subject to confirmation by the Senate, the Governor must appoint an Ombuds to serve for a term of three years. The Governor must consult with the Ombuds Advisory Council in making the selection.

No later than August 1, 2017, the Governor must convene an Ombuds Advisory Council (Council) to support the Ombuds functions. The Council will assist the Ombuds in developing priorities and recommendations and review data and reports prepared by the Ombuds. The Council must provide the Governor and the Legislature with recommendations regarding the Ombuds budget and changes in the law to enhance the Ombuds' effectiveness. The Council consists of four initial members of the Legislature charged with selecting six additional members from the community as prescribed. Membership also includes DOC staff serving as the internal ombuds and a bargaining unit representative. Council members must serve a term of three years.

The Auditor must conduct a competitive bidding process to designate a nonprofit organization to operate the Office of Corrections Ombuds. The selected organization will operate as an independent entity operating under contract with the state.

The Ombuds must:

- establish priorities within appropriated resources;
- provide information to inmates, inmate families and representatives, department employees, and others;
- provide technical assistance to support inmate participation in self-advocacy;
- monitor department compliance with applicable laws, regulations, and policies;
- monitor and participate in legislative and policy development;
- establish a statewide uniform reporting system related to complaints regarding the department;
- establish procedures to receive, investigate, and resolve complaints;
- submit an annual report to the council; and

- adopt and comply with rules, policies, and procedures necessary to comply with this chapter.

Further guidelines regarding Ombuds operations are outlined, including the conducting and reporting of Ombuds investigations, Ombuds access to correctional facilities, and confidentiality of information held by the Ombuds.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Aligns provisions with SB 5294.
- Requires the Governor to appoint an Ombuds.
- Requires State Auditor to conduct bidding process for Office of Corrections Ombuds.
- Removes requirement that DOC provide Ombuds with unaccompanied access to correctional facilities.
- Changes timeframes for DOC to respond to Ombuds to 10 days and 72 hours.

Appropriation: None.

Fiscal Note: Requested on February 2, 2017.

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 Original Bill (Law & Justice): *The committee recommended a different version of the bill than what was heard.* PRO: Current systems for addressing grievances within DOC are not effective. Family members have worked long and hard to get information from DOC with little response unless they contact their elected officials. The DOC grievance process is currently intended to provide a pathway for inmates but almost never leads to a resolution. Prisoners are discouraged from using the grievance process by unofficial punishment and the perception that it is not effective. DOC has changed leadership four times over the last several years. Positive and meaningful change is needed. Outside oversight is badly needed.

Advocates, inmates, and family members support an independent ombuds office. This bill establishes independence, a collaborative advisory council, and regular reporting to the legislature. This type of prison oversight is also recommended by the American Bar Association. An independent ombuds will enable issues to be identified earlier and be addressed before they become a larger problem. The idea of an independent ombuds was first addressed in 2007. Prevailing wisdom at the time stated that the single most important recommendation that could be implemented in each state was to establish an independent ombuds program.

Many prison inmates live with a mental illness. It is important for persons in the prison system to have a method of addressing concerns that is safe and easy. The idea of an independent ombuds office is absolutely necessary and will help to ensure the safety and

health of inmates and employees. In the long run, having an ombuds will save money on preventative care and litigation as opposed to waiting for a crisis.

OTHER: DOC would like to see people exhaust remedies through the internal grievance process before filing a complaint with the Ombuds. Unaccompanied access to correctional facilities is also a concern. The Ombuds should be able to have confidential conversations, but having unaccompanied access to facilities is a safety concern.

Persons Testifying (Law & Justice): PRO: Melody Simle, citizen; Rachel Seevers, Disability Rights Washington; Sandy Ando, NAMI; Jeffrey Conner, Prison Voice Washington; Noah Martin, Quaker Voice on WA Public Policy; Thomas Ewell, citizen; Suzanne Cook, citizen; Julie Tackett, citizen; Arthur West, citizen.

OTHER: Alex McBain, Department of Corrections.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): Pro: The DOC grievance system doesn't work resulting in losses of millions through litigation. I have witnessed harm from someone on the outside not looking into the system. This bill will prevent lawsuits, remove stress, and save lives. I have a family member in Monroe; he does self-harm requiring treatment. If DOC had followed its own policies, the harm and cost would have been mitigated. Only when Senator Pearson intervened did DOC begin following its policy to notify me of these incidents. DOC internal ombuds does not work; the internet link to submit a request to their internal ombuds is broken. For several years, I was the editor of an internal prison newspaper and saw this problem from the inside. The grievance process is broken; many are frivolous so they treat all grievances as frivolous. DOC had a problem calculating good time, was aware of the problem, but wouldn't fix it. If someone from the outside could look into these issues, it would save money. DOC's operations are opaque and need oversight litigation. Families and inmates who used the grievance process are subject to reprisal, but that is difficult to prove. DOC subjects inmates who submit grievances to greater scrutiny for infractions, which discourages use of the process for legitimate concerns. An independent ombuds would help eliminate the group think in DOC. Unmonitored contracts with private vendors should also be reviewed. I have provided cost information of ombuds offices in other states. My organization runs programs on disability issues in prisons while other states run these programs through grants. Prisons had been infracting and violating people who are doing self-harm or misusing solitary confinement misuse. Dealing with these issues outside of litigation results in savings. Fifth year testifying in support of legislation. Independency from agency is an important component to an ombuds. This will decrease the millions paid out in lawsuits against DOC. First bill for a DOC ombuds was introduced from Quaker organization almost 10 years ago. Based on a major conference of 150 people throughout the country to improve the criminal justice system was creating ombuds offices. Gives transparency and accountability to agency. It is an insurance policy against litigation.

Persons Testifying (Ways & Means): PRO: Senator Mark Miloscia, Prime Sponsor; Ari Kohn, Post-Prison Education Program; Julie Tackett, citizen; Tiff Renfro, citizen; Rachael Seevers, Disability Rights Washington; Tom Ewell, Quaker Voice on WA Public Policy;

Daniel Pens, Quaker Voice on WA Public Policy; Loretta Rafay, Statewide Family Council;
Melody Simle, Statewide Family Council.

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