
SECOND SUBSTITUTE SENATE BILL 5295

State of Washington

60th Legislature

2008 Regular Session

By Senate Human Services & Corrections (originally sponsored by Senators Kastama, Swecker, Fraser, Kohl-Welles, Marr, Regala, Rasmussen, and McAuliffe)

READ FIRST TIME 02/07/08.

1 AN ACT Relating to creating an office of corrections ombudsman; 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 ombudsman is intended to assist in strengthening procedures and
6 practices which lessen the possibility of actions occurring within the
7 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 ombudsman 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 governor
15 and the legislature to act upon; and ensuring compliance with relevant
16 statutes, rules, and policies pertaining to corrections facilities,
17 services, and treatment of offenders under the jurisdiction of the
18 department.

1 The ombudsman shall report directly to the governor and shall
2 exercise his or her powers and duties independently of the secretary.

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

- 5 (1) "Department" means the department of corrections.
- 6 (2) "Offender" means an offender as defined in RCW 9.94A.030 who is
7 under the control of the department or its contracted agencies,
8 entities, or programs.
- 9 (3) "Secretary" means the secretary of the department of
10 corrections.

11 NEW SECTION. **Sec. 4.** (1) Subject to confirmation by the senate,
12 the governor shall appoint an ombudsman who shall be a person of
13 recognized judgment, independence, objectivity, and integrity, and
14 shall be qualified by training or experience in corrections law and
15 policy. Prior to the appointment, the governor shall consult with, and
16 may receive recommendations from, the appropriate committees of the
17 legislature regarding the selection of the ombudsman.

18 (2) The person appointed ombudsman shall hold office for a term of
19 three years and shall continue to hold office until reappointed or
20 until his or her successor is appointed. The governor may remove the
21 ombudsman only for neglect of duty, misconduct, or inability to perform
22 duties. Any vacancy shall be filled by similar appointment for the
23 remainder of the unexpired term.

24 (3) The ombudsman may employ technical experts and other employees
25 to complete the purposes of this chapter.

26 NEW SECTION. **Sec. 5.** The ombudsman shall:

- 27 (1) Provide to the public as appropriate information on the rights
28 and responsibilities of offenders and their family members;
- 29 (2) Maintain a statewide toll-free telephone number, a collect
30 telephone number to be operated during normal business hours, a web
31 site, and a mailing address for the receipt of complaints and
32 inquiries;
- 33 (3) Provide information to interested members of the public
34 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 to
3 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 ombudsman 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, a member of the offender's immediate
11 family, or an offender under the jurisdiction of the department,
12 including offenders housed in other states, regarding:

13 (i) Decisions;

14 (ii) Administrative actions;

15 (iii) Inactions or omissions;

16 (iv) Policies;

17 (v) Procedures and rules; or

18 (vi) Alleged violations of law

19 of the department which may adversely affect the health, safety,
20 welfare, rehabilitation, and rights of offenders.

21 (b) A person is not entitled as a right to be heard by the
22 ombudsman. The ombudsman may decline to investigate any complaint as
23 provided by rules adopted under this chapter.

24 (c) If the ombudsman does not investigate a complaint, the
25 ombudsman shall notify the complainant of the decision not to
26 investigate and the reasons for the decision.

27 (d) The ombudsman shall not investigate a complaint from an
28 employee of the department that relates to the employee's employment
29 relationship with the department.

30 (e) The ombudsman may refer complainants and others to appropriate
31 resources, agencies, or departments.

32 (f) The ombudsman shall not levy any fees for the submission or
33 investigation of complaints.

34 (g) Prior to any person in the custody of the department obtaining
35 ombudsman services, the person shall have reasonably pursued a
36 resolution of the complaint through any existing internal grievance,
37 administrative, or appellate procedures. This subsection (6)(g) shall

1 not apply to complaints related to threats of bodily harm, including
2 but not limited to sexual or physical assaults or the denial of
3 necessary medical treatment.

4 (h) At the conclusion of an investigation of a complaint, the
5 ombudsman shall render a decision on the merits of each complaint and
6 communicate the decision to the complainant and to the department. The
7 ombudsman shall state the recommendations and reasons if, in the
8 ombudsman's opinion, the department or any employee thereof 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;
- 13 (v) Rectify an omission; or
- 14 (vi) Take any other action.

15 (i) If the ombudsman so requests, the department shall, within the
16 time specified, inform the ombudsman about the action taken on the
17 recommendations or the reasons for not complying with them.

18 (j) If the ombudsman believes that any action or omission has or
19 continues to pose significant prisoner health, safety, welfare, and
20 rehabilitation issues, the ombudsman shall report the finding to the
21 governor and the appropriate committees of the legislature.

22 (k) Before announcing a conclusion or recommendation that expressly
23 or by implication criticizes a person or the department, the ombudsman
24 shall consult with that person or the department. The ombudsman may
25 request to be notified by the department, within a specified time, of
26 any action taken on any recommendation presented.

27 (l) The ombudsman shall notify the complainant of the actions taken
28 by the office and by the department;

29 (7) Submit annually to the governor and the appropriate committees
30 of the legislature by November 1st of each year a report analyzing the
31 work of the office including any recommendations; and

32 (8) Adopt rules necessary to implement this chapter and act in
33 accordance with the policies and procedures established by the office.

34 This section shall not be construed as requiring offenders to file
35 a complaint with the ombudsman in order to exhaust available
36 administrative remedies for purposes of the prison litigation reform
37 act of 1995, P.L. 104-134.

1 NEW SECTION. **Sec. 6.** (1) The department shall permit the
2 ombudsman or the ombudsman's designee to enter and inspect at any
3 reasonable time any correctional facility for the purpose of carrying
4 out his or her duties under this chapter.

5 (2) Upon the ombudsman's request, the department shall grant the
6 ombudsman or the ombudsman's designee the right to access, inspect, and
7 copy all relevant information, records, or documents in the possession
8 or control of the department that the ombudsman considers necessary in
9 an investigation of a complaint filed under this chapter; and assist
10 the ombudsman in obtaining the necessary releases of those documents
11 which are specifically restricted or privileged for use by the
12 ombudsman.

13 (3) If the ombudsman or any employee of the office acting as an
14 ombudsman who has been delegated in writing the authority granted is
15 denied access to any premises under the control of the secretary, the
16 secretary or the secretary's designee, within twenty-four hours after
17 the denial, shall give the ombudsman a written statement of the reason
18 for the denial of access.

19 (4) A state or local government agency or entity that has records
20 that are relevant to a complaint or an investigation conducted by the
21 ombudsman shall provide the ombudsman with access to the records.

22 (5) The department shall ensure that correspondence from inmates to
23 the ombudsman is not reviewed or inspected, except to ensure that such
24 correspondence does not contain contraband.

25 NEW SECTION. **Sec. 7.** (1) The office of corrections ombudsman
26 shall establish confidentiality rules and procedures for all
27 information maintained by the office.

28 (2) Investigative records of the office of corrections ombudsman
29 are confidential and are exempt from public disclosure under chapter
30 42.56 RCW during the course of an ongoing investigation. Such records
31 shall not be considered privileged or exempt from discovery in criminal
32 proceedings or in civil litigation if otherwise discoverable under the
33 rules of civil procedure.

34 (3) Whenever in the course of providing ombudsman services, the
35 ombudsman or a member of the ombudsman's staff becomes aware of a
36 criminal act or a threat to the health and safety of any individual or

1 the security of a correctional facility, the ombudsman shall notify the
2 secretary and the appropriate facility administrator of such act or
3 threat and the nature and target thereof.

4 NEW SECTION. **Sec. 8.** (1) An employee of the office of corrections
5 ombudsman is not liable for good faith performance of responsibilities
6 under this chapter.

7 (2) No discriminatory, disciplinary, or retaliatory action may be
8 taken against an employee of the department, an employee of a
9 contracting agency of the department, an offender, or a member of an
10 offender's immediate family for any communication made, or information
11 given or disclosed, to aid the office of corrections ombudsman in
12 carrying out its responsibilities, unless the communication or
13 information is made, given, or disclosed maliciously or without good
14 faith.

15 (3) A person or the department shall not hinder the lawful actions
16 of the ombudsman or employees of the office, or willfully refuse to
17 comply with lawful demands of the office.

18 (4) This section is not intended to infringe on the rights of an
19 employer to supervise, discipline, or terminate an employee for other
20 reasons.

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

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