

SENATE BILL REPORT

SB 6399

As of February 5, 2014

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

Brief Description: Creating an office of corrections ombuds.

Sponsors: Senators Darneille, O'Ban, Cleveland, Kohl-Welles, McAuliffe and Conway.

Brief History:

Committee Activity: Human Services & Corrections: 2/03/14.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Staff: Shani Bauer (786-7468)

Background: In general, an ombudsman 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 ombudsman finds a complaint to be substantiated, the problem may get rectified, or an ombudsman report is published making recommendations for change. The typical duties of an ombudsman are to investigate complaints and attempt to resolve them, usually through recommendations. Ombudsmen sometimes also aim to identify systemic issues leading to poor service or breaches of peoples' rights.

In Washington State, there are the following ombudsman offices: The Long Term Care Ombudsman; the Office of the Family and Children's Ombudsman; the Office of the Educational Ombudsman; the Health Care Authority Ombudsman; and a mental health ombudsman office in each regional support network.

The Department of Corrections (DOC) currently has 18,130 offenders in confinement.

Summary of Bill: The Office of the Corrections Ombuds is created within the Governor's Office. The purpose of the ombuds' office is to provide information to offenders and their families, promote public awareness and understanding of the rights and responsibilities of offenders, identify system issues and compliance with relevant statutes, rules, and policies pertaining to corrections facilities, services, and treatment of offenders under the jurisdiction of the DOC.

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.

The Office of Corrections Ombuds is appointed by the Governor and is subject to confirmation by the Senate. Before appointing the ombuds, the Governor must consult with, and receive recommendations by, the appropriate committees of the Legislature. The ombuds' term of office is three years and they must remain in office until reappointed or a successor is named.

The ombuds has the following duties and responsibilities:

- provide the public with appropriate information on the rights and responsibilities of offenders and their family members;
- maintain a statewide toll-free number, a collect phone number to be operated during normal business hours, a web site, and a mailing list for the receipt of complaints and inquiries;
- provide information to the public about the state corrections system;
- monitor the development and implementation of statutes and rules regarding correctional facilities in the state with a view toward the appropriate health, safety, welfare, and rehabilitation of offenders;
- establish a statewide uniform reporting system to collect and analyze data relating to complaints against DOC;
- establish procedures to receive and investigate complaints received from a legislator, an offender in the physical custody of DOC, or a member of the offender's immediate family.

The ombuds does not have to investigate complaints and if they do not, they must notify the complainant of the decision not to investigate and the reasons for that decision. The ombuds cannot investigate a complaint for a DOC employee that relates to that person's employment relationship with DOC. If the ombuds does investigate a complaint, they cannot charge a fee for doing so.

A person in DOC custody who wishes to file a complaint with the ombuds must first reasonably pursue a resolution through an existing grievance, administrative, or appellate procedure before filing a complaint with the ombuds unless the complaint involves threats of bodily harm or the denial of necessary medical treatment.

At the conclusion of an investigation, the ombuds must render a decision on the merits of each complaint and communicate that decision to the complainant and DOC. If the ombuds believes any action or omission has or continues to pose significant problems to offender health, safety, welfare, and rehabilitation issues, the ombuds must report the finding to the Governor and the appropriate committees of the Legislature. Before announcing a conclusion or recommendation that expressly or by implication criticizes a person or DOC, the ombuds must consult with that person or DOC.

By November 1 each year, the ombuds must submit a report to the Governor and the appropriate committees of the Legislature analyzing the work of the office including any recommendations.

DOC must permit the ombuds or their designee to enter and inspect any correctional facility at any time. If the ombuds requests, DOC must provide the ombuds the right to access, inspect, and copy relevant information, records, or documents in DOC's possession or control

that the ombuds considers necessary in the investigation of a complaint. DOC also must assist the ombuds in obtaining the necessary releases of those documents which are restricted or privileged for use by the ombuds. If the ombuds is denied access to any DOC premises, the Secretary of DOC must provide the ombuds with the reasons for the denial in writing.

If a state or local government has relevant records, it must also provide the ombuds with access to those records.

DOC must ensure that correspondence between an offender and the ombuds is not reviewed or inspected, other than to ensure that it does not contain contraband.

The ombuds must establish confidentiality rules and procedures for all information maintained by the office. Investigative records of the ombuds are confidential and not subject to public disclosure. These records are not to be considered privileged or exempt from discovery in criminal proceedings or in civil litigation if the records are otherwise discoverable under the rules of civil procedure.

Employees of the ombuds' office are not liable for good faith performance of responsibilities.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This bill is long overdue and is needed to ensure a better reputation for DOC in how they deal with offenders and their loved ones. Offender families have complaints about medical care, mental health, nutrition, and the lack of opportunities for rehabilitation. DOC is overwhelmed with the numbers of prisoners. In considering this bill, I ask that you give thought to the universal principal to do unto others as you would have them do unto you. An ombuds is a responsible way to provide a pathway to problem resolution. The vertical structure of DOC does not allow different programs to talk together about problem resolution. An ombuds would provide a bridge into an insular agency that has a design that keeps it that way and gives families very little access and voice. An ombuds will help facilitate access for families and collaboration and provide separation. When individuals have a family member who is incarcerated for a significant period of time, they fear retaliation from filing a grievance or complaint with DOC. The systems that are currently in place are not working. The Family Council opened up the lines of communication but does not help the family to reach a satisfactory conclusion. There are also problems with the grievance process. DOC has not been made accountable for their actions. You would see more change in prisoners if you would deal with them more humanely. You heard much today about issues in dealing with those who are mentally ill. This story continues with those housed in DOC. Those that are mentally ill have specific difficulties in moving ahead when they have a grievance or complaint. It would help if those persons could get assistance in moving forward. It would also be helpful to have a provision for the identification of systemic issues. The committee has been provided with a copy of a

lawsuit that could have been avoided had an ombuds been in place. This lawsuit cost the state \$1 million. Indiana has had a successful, collaborative process that has reduced litigation and increased satisfaction between offenders and their families and DOC. Washington would benefit from a similar process.

OTHER: DOC is proud of the work we do and feel that we have a compassionate and humane system. There are many aspects to dealing with families and support people. The grievance procedure is one way we do that. Last year 24,000 grievances were filed and 89 percent of those were handled at the local level without the need to bump to a higher level. In addition, we have the Family Council, both in the facilities around the state and statewide. We value our collaboration with families and others in assisting offenders and would like to continue to work on that collaboration.

Persons Testifying: PRO: Bob Cooper, Post Prison Education Program; Melody Simle, DOC Statewide Family Council; Georgia Paul, Family Council; Lesta Rogers, Re-Entry Housing, White Feather Re-Entry; Susan Ford, Advocates for WA DOC Incarcerated and Affected Individuals; Steven Aldrich, Friends Committee on WA Public Policy; David Lord, Disability Rights WA; Julie Tackett, Janice Adams, Bob Kastama, Derrick Paul, Suzanne Cook, citizens.

OTHER: Anmarie Aylward, DOC.