
HOUSE BILL 2817

State of Washington

64th Legislature

2016 Regular Session

By Representatives Moscoso, Pettigrew, Appleton, Orwall, Sawyer, Ryu, Stanford, Pollet, Hickel, Bergquist, and Santos

Read first time 01/21/16. Referred to Committee on Public Safety.

1 AN ACT Relating to creating an office of the corrections ombuds;
2 adding a new chapter to Title 43 RCW; and prescribing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The legislature intends to create an
5 independent entity, the office of the corrections ombuds, to work for
6 improved conditions and programs, and support fair treatment of
7 inmates in Washington state. The legislature further intends that the
8 ombuds support changes that facilitate the successful reentry of
9 inmates into the community, and promote high standards of justice,
10 accountability, and transparency in the state correctional system.

11 NEW SECTION. **Sec. 2.** The legislature hereby authorizes the
12 creation of the office of the corrections ombuds for the purpose of
13 providing information to inmates, family members, representatives of
14 inmates, department employees, and others regarding the rights of
15 inmates; providing technical assistance to support inmate self-
16 advocacy, alternative dispute resolution, and individual
17 representation; identifying systemic issues, reporting to the
18 legislature, and advocating for systemic reform; and monitoring and
19 promoting compliance with statutes, rules, and policies pertaining to
20 conditions of correctional facilities and the rights of inmates.

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

4 (1) "Abuse" means any act or failure to act by a department
5 employee, subcontractor, or volunteer which was performed, or which
6 was failed to be performed, knowingly, recklessly, or intentionally,
7 and which caused, or may have caused, injury or death to an inmate.

8 (2) "Corrections ombuds" or "ombuds" means the corrections
9 ombuds, staff of the corrections ombuds, and volunteers with the
10 office of the corrections ombuds.

11 (3) "Council" means the ombuds advisory council established in
12 section 4(1) of this act.

13 (4) "Department" means the department of corrections.

14 (5) "Inmate" means a person committed to the custody of the
15 department, including, but not limited to, persons residing in a
16 correctional institution or facility; persons released from such
17 facility on furlough, work release, or community custody; and persons
18 received from another state, another state agency, a county, or the
19 federal government.

20 (6) "Neglect" means a negligent act or omission by any department
21 employee, subcontractor, or volunteer which caused, or may have
22 caused, injury or death to an inmate.

23 (7) "Office" means the office of the corrections ombuds.

24 (8) "Organization" means the private nonprofit organization that
25 operates the office of the corrections ombuds.

26 NEW SECTION. **Sec. 4.** (1) No later than July 1, 2016, the
27 governor shall convene an ombuds advisory council with several
28 purposes in support of the ombuds function. The council shall
29 participate in a priority setting process for the purpose of
30 developing priority recommendations to the ombuds, review data
31 collected by the ombuds, review reports issued by the ombuds prior to
32 their release, and make recommendations to the ombuds regarding the
33 accomplishment of its purposes. The council also has authority to
34 issue its own reports and recommendations. The council must
35 biannually review ombuds performance, reporting to the governor and
36 the legislature regarding its findings. The council must provide the
37 legislature and the governor with recommendations regarding the
38 ombuds budget and changes in the law that would enhance the ombuds
39 effectiveness.

1 (2) The council initially consists of the following four members:
2 (a) The president of the senate shall appoint one member from
3 each of the two largest caucuses of the senate.
4 (b) The speaker of the house of representatives shall appoint one
5 member from each of the two largest caucuses of the house of
6 representatives.
7 (3) The council membership in subsection (2) of this section
8 shall select the following additional members:
9 (a) One former inmate, who has successfully reintegrated into the
10 community and is no longer in the custody of the department.
11 (b) Two family members of current inmates.
12 (c) One expert with significant criminal justice or correctional
13 experience who is not an employee or contractor with Washington
14 state.
15 (d) A community member with extensive knowledge and experience in
16 issues related to racial, ethnic, or religious diversity within the
17 correctional system.
18 (e) A community member with extensive knowledge and experience in
19 the accommodation needs of individuals with disabilities.
20 (f) An individual with dispute resolution training who has
21 experience working in the criminal justice or corrections fields.
22 (4) The governor shall select the following two additional
23 members of the council:
24 (a) A representative of the department.
25 (b) A representative of the collective bargaining unit of
26 employees of the department.
27 (5) After the full membership is attained, the council shall
28 develop a process for replacing members in case of resignation or
29 expiration of terms.
30 (6) Council members serve a term of three years, except that the
31 council shall create and implement a system of staggered terms, and
32 no member may serve more than two consecutive terms. The council
33 shall convene at least quarterly. Council members will serve without
34 compensation, except that funds appropriated for the implementation
35 of this act may be used to reimburse members who are not employees of
36 Washington state for expenses necessary to the performance of their
37 duties.

38 NEW SECTION. **Sec. 5.** (1) The governor shall designate, by a
39 competitive bidding process, the nonprofit organization that will

1 contract to operate the office of the corrections ombuds. The
2 selection process must include direct stakeholder participation in
3 the development of the request for proposals, evaluation of bids, and
4 final selection. The governor shall select an organization that
5 possesses, directly or through subcontracts, significant legal
6 expertise, competence with mediation and alternative dispute
7 resolution, and experience working within criminal justice and
8 correctional environments addressing issues relating to chemical
9 dependency treatment, disability and disability-related
10 accommodation, respect for racial, ethnic, and religious diversity,
11 and other civil rights and conditions issues. The selected
12 organization must have experience and the capacity to effectively
13 communicate regarding criminal justice issues with policymakers,
14 stakeholders, and the general public, and must be prepared and able
15 to provide all program and staff support necessary, directly or
16 through subcontracts, to carry out all duties of the office.

17 (2) The contracting organization and its subcontractors, if any,
18 are not state agencies or departments, but instead are private,
19 independent entities operating under contract with the state.

20 (3) The governor or state may not revoke the designation of the
21 organization contracted to provide the services of the office of the
22 corrections ombuds except upon a showing of neglect of duty,
23 misconduct, or inability to perform duties. Prior to revoking the
24 designation, the state must provide notice and an opportunity for the
25 organization, the ombuds, and the public to comment upon the proposed
26 revocation, and must provide the organization an opportunity to
27 appeal the decision to the state supreme court.

28 NEW SECTION. **Sec. 6.** (1) The ombuds shall:

29 (a) Establish priorities for use of the limited resources
30 appropriated to implement this act;

31 (b) Maintain a statewide toll-free telephone number, a collect
32 telephone number, a web site, and a mailing address for the receipt
33 of complaints and inquiries;

34 (c) Provide information, as appropriate, to inmates, family
35 members, representatives of inmates, department employees, and others
36 regarding the rights of inmates;

37 (d) Provide technical assistance to support inmate participation
38 in self-advocacy, utilizing existing kite, grievance, and appeal
39 procedures;

1 (e) Monitor department compliance with applicable federal, state,
2 and local laws, rules, regulations, and policies with a view toward
3 protecting the rights of inmates;

4 (f) Monitor and participate in legislative and policy
5 developments affecting correctional facilities and advocate for
6 systemic reform aimed toward protecting the rights of inmates;

7 (g) Establish a statewide uniform reporting system to collect and
8 analyze data related to complaints regarding the department;

9 (h) Establish procedures to receive, investigate, and resolve
10 complaints;

11 (i) Submit annually to the council, by November 1st of each year,
12 a report analyzing the work of the office, including any
13 recommendations; and

14 (j) Adopt and comply with policies and procedures necessary to
15 implement this chapter.

16 (2)(a) The ombuds may initiate and attempt to resolve an
17 investigation upon his or her own initiative, or upon receipt of a
18 complaint from an inmate, a family member, a representative of an
19 inmate, a department employee, or others, regarding:

20 (i) Abuse or neglect;

21 (ii) Department decisions or actions;

22 (iii) Inactions or omissions;

23 (iv) Policies, rules, or procedures; or

24 (v) Alleged violations of law.

25 (b) The ombuds may decline to investigate any complaint as
26 provided by the rules adopted under this chapter.

27 (c) The ombuds may not investigate any complaints relating to an
28 inmate's underlying criminal conviction.

29 (d) The ombuds may not investigate a complaint from a department
30 employee that relates to the employee's employment relationship with
31 the department.

32 (e) The ombuds may refer complainants and others to appropriate
33 resources, agencies, or departments.

34 (f) The ombuds may not levy any fees for the submission or
35 investigation of complaints.

36 (g) At the conclusion of an investigation of a complaint, the
37 ombuds must render a public decision on the merits of each complaint,
38 except that the documents supporting the decision are subject to the
39 confidentiality provisions of section 8 of this act. The ombuds must
40 communicate the decision to the inmate, if any, and to the

1 department. The ombuds must state their recommendations and reasoning
2 if, in the ombuds' opinion, the department or any employee thereof
3 should:

- 4 (i) Consider the matter further;
- 5 (ii) Modify or cancel any action;
- 6 (iii) Alter a rule, practice, or ruling;
- 7 (iv) Explain in detail the administrative action in question;
- 8 (v) Rectify an omission; or
- 9 (vi) Take any other action.

10 (h) If the ombuds so requests, the department must, within the
11 time specified, inform the ombuds about any action taken on the
12 recommendations or the reasons for not complying with the
13 recommendations.

14 (i) After the conclusion of an investigation, if the ombuds
15 believes that additional action is warranted, the ombuds may:

16 (i) Report a finding of abuse, neglect, or other rights violation
17 to the appropriate committees of the legislature.

18 (ii) Commence litigation, but state funds may not be used for
19 purposes of litigation.

20 (iii) Take any additional action that the ombuds considers
21 appropriate.

22 (j) Before announcing a conclusion or recommendation that
23 expressly, or by implication, criticizes a person or the department,
24 the ombuds must attempt to notify the person or the department. The
25 ombuds may request to be notified by the department, within a
26 specified time, of any action taken on any recommendation presented.
27 The ombuds must notify the inmate, if any, of the actions taken by
28 the department in response to the ombuds' recommendations.

29 (3) This chapter does not require inmates to file a complaint
30 with the ombuds in order to exhaust available administrative remedies
31 for purposes of the prison litigation reform act of 1995, P.L.
32 104-134.

33 NEW SECTION. **Sec. 7.** (1) The ombuds must have reasonable
34 unaccompanied access to correctional facilities at all times
35 necessary to conduct a full investigation of an incident of abuse or
36 neglect. This authority includes the opportunity to interview any
37 inmate, department employee, or other person, including the person
38 thought to be the victim of such abuse, who might be reasonably

1 believed to have knowledge of the incident under investigation. Such
2 access must be afforded, upon request by the ombuds, when:

- 3 (a) An incident is reported or a complaint is made to the office;
- 4 (b) The ombuds determines there is probable cause to believe that
5 an incident has or may have occurred; or
- 6 (c) The ombuds determines that there is or may be imminent danger
7 of serious abuse or neglect of an inmate.

8 (2) The ombuds must have reasonable unaccompanied access to
9 department facilities, including all areas which are used by inmates,
10 all areas which are accessible to inmates, and to programs for
11 inmates at reasonable times, which at a minimum must include normal
12 working hours and visiting hours. This access is for the purpose of:

- 13 (a) Providing information about individual rights and the
14 services available from the office, including the name, address, and
15 telephone number of the office;
- 16 (b) Monitoring compliance with respect to the rights and safety
17 of inmates; and
- 18 (c) Inspecting, viewing, photographing, and video recording all
19 areas of the facility which are used by inmates or are accessible to
20 inmates.

21 (3) Unaccompanied access to inmates includes the opportunity to
22 meet and communicate privately and confidentially with individuals
23 regularly, both formally and informally, by telephone, mail, and in
24 person.

25 (4) If the department or a department employee denies access to
26 any premises under the control of the department to the ombuds, or
27 subcontractors or volunteers who are performing ombuds functions or
28 acting under the supervision of the ombuds, the department is liable
29 for a fine of up to one thousand dollars per day of denied access.

30 (5) The ombuds has the right to access, inspect, and copy all
31 relevant information, records, or documents in the possession or
32 control of the department that the ombuds considers necessary in an
33 investigation of a complaint filed under this chapter, and the
34 department must assist the ombuds in obtaining the necessary releases
35 for those documents which are specifically restricted or privileged
36 for use by the ombuds.

37 (a) When conducting an investigation of potential abuse or
38 neglect, the ombuds must have access to relevant records not later
39 than three business days after the ombuds makes a written request for
40 such records.

1 (b) The ombuds must have immediate access, not later than twenty-
2 four hours after the ombuds makes such a request, to relevant
3 records, without consent from another party, if the ombuds determines
4 there is probable cause to believe that the health or safety of an
5 inmate is in serious and immediate jeopardy, or in any case of death
6 of an inmate while in department custody.

7 (6) A state or local government agency or entity that has records
8 that are relevant to a complaint or an investigation conducted by the
9 ombuds must provide the ombuds with access to such records.

10 NEW SECTION. **Sec. 8.** (1) Correspondence between the office and
11 an inmate is confidential and must be processed as privileged
12 correspondence in the same manner as legal correspondence between
13 inmates and courts, attorneys, or public officials.

14 (2) The office shall establish confidentiality rules and
15 procedures for all information maintained by the office.

16 (3) The office shall preserve the confidentiality of information
17 obtained while providing services, including general information,
18 technical assistance, and investigations, to individuals, including
19 inmates, family members and representatives of inmates, department
20 employees, and others. Confidential information may not be disclosed
21 unless the individual gives informed consent, the disclosure is
22 impliedly authorized in order to carry out ombuds services, or the
23 disclosure is authorized by subsection (4) of this section.

24 (4) To the extent the ombuds reasonably believes necessary, the
25 ombuds:

26 (a) Must reveal information obtained in the course of providing
27 ombuds services to prevent reasonably certain death or substantial
28 bodily harm; and

29 (b) May reveal information obtained in the course of providing
30 ombuds services to prevent the commission of a crime.

31 NEW SECTION. **Sec. 9.** (1) A civil action may not be brought
32 against any employee of the office for good faith performance of
33 responsibilities under this chapter.

34 (2) No discriminatory, disciplinary, or retaliatory action may be
35 taken against a department employee, subcontractor, or volunteer, an
36 inmate, or a family member or representative of an inmate for any
37 communication made, or information given or disclosed, to aid the
38 office in carrying out its responsibilities, unless the communication

1 or information is made, given, or disclosed maliciously or without
2 good faith.

3 (3) The department may not hinder the lawful actions of the
4 ombuds or employees of the office, or willfully refuse to comply with
5 lawful demands of the office. If the department or a department
6 employee willfully hinders the lawful actions of the ombuds or
7 willfully refuses to comply with the lawful demands of the ombuds,
8 the department is liable to a fine of up to one thousand dollars per
9 incident of hindrance or noncompliance.

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

13 NEW SECTION. **Sec. 10.** Sections 1 through 9 of this act
14 constitute a new chapter in Title 43 RCW.

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