

**E2SHB 1889** - S COMM AMD

By Committee on Human Services & Corrections

OUT OF ORDER 02/28/2018

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature intends to create an  
4 independent and impartial office of the corrections ombuds to assist  
5 in strengthening procedures and practices that lessen the possibility  
6 of actions occurring within the department of corrections that may  
7 adversely impact the health, safety, welfare, and rehabilitation of  
8 offenders, and that will effectively reduce the exposure of the  
9 department to litigation.

10 NEW SECTION. **Sec. 2.** There is hereby created an office of  
11 corrections ombuds within the office of the governor for the purpose  
12 of providing information to inmates and their families; promoting  
13 public awareness and understanding of the rights and responsibilities  
14 of inmates; identifying system issues and responses for the governor  
15 and the legislature to act upon; and ensuring compliance with  
16 relevant statutes, rules, and policies pertaining to corrections  
17 facilities, services, and treatment of inmates under the jurisdiction  
18 of the department.

19 The ombuds reports directly to the governor and exercises his or  
20 her powers and duties independently of the secretary.

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

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

1 (2) "Corrections ombuds" or "ombuds" means the corrections  
2 ombuds, staff of the corrections ombuds, and volunteers with the  
3 office of the corrections ombuds.

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

5 (4) "Inmate" means a person committed to the physical custody of  
6 the department, including persons residing in a correctional  
7 institution or facility and persons received from another state,  
8 another state agency, a county, or the federal government.

9 (5) "Neglect" means a negligent act or omission by any department  
10 employee, subcontractor, or volunteer which caused, or may have  
11 caused, injury or death to an inmate.

12 (6) "Office" means the office of the corrections ombuds.

13 (7) "Secretary" means the secretary of the department of  
14 corrections.

15 (8) "Statewide family council" means the family council  
16 maintained by the department that is comprised of representatives  
17 from local family councils.

18 NEW SECTION. **Sec. 4.** (1) The governor shall appoint an ombuds  
19 who must be a person of recognized judgment, independence,  
20 objectivity, and integrity, and be qualified by training or  
21 experience in corrections law and policy. Prior to the appointment,  
22 the governor shall consult with, and may receive recommendations  
23 from, the appropriate committees of the legislature, delegates of the  
24 statewide family council as selected by the members of the council,  
25 and other relevant stakeholders, regarding the selection of the  
26 ombuds.

27 (2) The person appointed ombuds holds office for a term of three  
28 years and continues to hold office until reappointed or until his or  
29 her successor is appointed. The governor may remove the ombuds only  
30 for neglect of duty, misconduct, or the inability to perform duties.  
31 Any vacancy must be filled by similar appointment for the remainder  
32 of the unexpired term.

33 (3) The ombuds may employ technical experts and other employees  
34 to complete the purposes of this chapter.

35 NEW SECTION. **Sec. 5.** (1) The ombuds shall:

36 (a) Establish priorities for use of the limited resources  
37 available to the ombuds;

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

4 (c) Provide information, as appropriate, to inmates, family  
5 members, representatives of inmates, department employees, and others  
6 regarding the rights of inmates;

7 (d) Provide technical assistance to support inmate participation  
8 in self-advocacy;

9 (e) Monitor department compliance with applicable federal, state,  
10 and local laws, rules, regulations, and policies as related to the  
11 health, safety, welfare, and rehabilitation of inmates;

12 (f) Monitor and participate in legislative and policy  
13 developments affecting correctional facilities;

14 (g) Establish a statewide uniform reporting system to collect and  
15 analyze data related to complaints received by the ombuds regarding  
16 the department;

17 (h) Establish procedures to receive, investigate, and resolve  
18 complaints;

19 (i) Establish procedures to gather stakeholder input into the  
20 ombuds' activities and priorities, which must include at a minimum  
21 quarterly public meetings;

22 (j) Submit annually to the governor's office, the legislature,  
23 and the statewide family council, by November 1st of each year, a  
24 report that includes, at a minimum, the following information:

25 (i) The budget and expenditures of the ombuds;

26 (ii) The number of complaints received and resolved by the  
27 ombuds;

28 (iii) A description of significant systemic or individual  
29 investigations or outcomes achieved by the ombuds during the prior  
30 year;

31 (iv) Any outstanding or unresolved concerns or recommendations of  
32 the ombuds; and

33 (v) Input and comments from stakeholders, including the statewide  
34 family council, regarding the ombuds' activities during the prior  
35 year; and

36 (k) Adopt and comply with rules, policies, and procedures  
37 necessary to implement this chapter.

38 (2)(a) The ombuds may initiate and attempt to resolve an  
39 investigation upon his or her own initiative, or upon receipt of a  
40 complaint from an inmate, a family member, a representative of an

1 inmate, a department employee, or others, regarding any of the  
2 following that may adversely affect the health, safety, welfare, and  
3 rights of inmates:

4 (i) Abuse or neglect;

5 (ii) Department decisions or administrative actions;

6 (iii) Inactions or omissions;

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

8 (v) Alleged violations of law by the department that may  
9 adversely affect the health, safety, welfare, and rights of inmates.

10 (b) Prior to filing a complaint with the ombuds, a person shall  
11 have reasonably pursued resolution of the complaint through the  
12 internal grievance, administrative, or appellate procedures with the  
13 department. However, in no event may an inmate be prevented from  
14 filing a complaint more than ninety business days after filing an  
15 internal grievance, regardless of whether the department has  
16 completed the grievance process. This subsection (2)(b) does not  
17 apply to complaints related to threats of bodily harm including, but  
18 not limited to, sexual or physical assaults or the denial of  
19 necessary medical treatment.

20 (c) The ombuds may decline to investigate any complaint as  
21 provided by the rules adopted under this chapter.

22 (d) If the ombuds does not investigate a complaint, the ombuds  
23 shall notify the complainant of the decision not to investigate and  
24 the reasons for the decision.

25 (e) The ombuds may not investigate any complaints relating to an  
26 inmate's underlying criminal conviction.

27 (f) The ombuds may not investigate a complaint from a department  
28 employee that relates to the employee's employment relationship with  
29 the department or the administration of the department, unless the  
30 complaint is related to the health, safety, welfare, and  
31 rehabilitation of inmates.

32 (g) The ombuds must attempt to resolve any complaint at the  
33 lowest possible level.

34 (h) The ombuds may refer complainants and others to appropriate  
35 resources, agencies, or departments.

36 (i) The ombuds may not levy any fees for the submission or  
37 investigation of complaints.

38 (j) The ombuds must remain neutral and impartial and may not act  
39 as an advocate for the complainant or for the department.

1 (k) At the conclusion of an investigation of a complaint, the  
2 ombuds must render a public decision on the merits of each complaint,  
3 except that the documents supporting the decision are subject to the  
4 confidentiality provisions of section 7 of this act. The ombuds must  
5 communicate the decision to the inmate, if any, and to the  
6 department. The ombuds must state its recommendations and reasoning  
7 if, in the ombuds' opinion, the department or any employee thereof  
8 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; or

13 (v) Rectify an omission.

14 (l) If the ombuds so requests, the department must, within the  
15 time specified, inform the ombuds about any action taken on the  
16 recommendations or the reasons for not complying with the  
17 recommendations.

18 (m) If the ombuds believes, based on the investigation, that  
19 there has been or continues to be a significant inmate health,  
20 safety, welfare, or rehabilitation issue, the ombuds must report the  
21 finding to the governor and the appropriate committees of the  
22 legislature.

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

30 (3) This chapter does not require inmates to file a complaint  
31 with the ombuds in order to exhaust available administrative remedies  
32 for purposes of the prison litigation reform act of 1995, P.L.  
33 104-134.

34 NEW SECTION. **Sec. 6.** (1) The ombuds must have reasonable access  
35 to correctional facilities at all times necessary to conduct a full  
36 investigation of an incident of abuse or neglect. This authority  
37 includes the opportunity to interview any inmate, department  
38 employee, or other person, including the person thought to be the  
39 victim of such abuse, who might be reasonably believed by the

1 facility 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 access to department  
9 facilities, including all areas which are used by inmates, all areas  
10 which are accessible to inmates, and to programs for inmates at  
11 reasonable times, which at a minimum must include normal working  
12 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) Access to inmates includes the opportunity to meet and  
22 communicate privately and confidentially with individuals regularly,  
23 both formally and informally, by telephone, mail, and in person.

24 (4) The ombuds has the right to access, inspect, and copy all  
25 relevant information, records, or documents in the possession or  
26 control of the department that the ombuds considers necessary in an  
27 investigation of a complaint filed under this chapter, and the  
28 department must assist the ombuds in obtaining the necessary releases  
29 for those documents which are specifically restricted or privileged  
30 for use by the ombuds.

31 (5) Following notification from the ombuds with a written demand  
32 for access to agency records, the delegated department staff must  
33 provide the ombuds with access to the requested documentation not  
34 later than twenty business days after the ombuds' written request for  
35 the records. Where the records requested by the ombuds pertain to an  
36 inmate death, threats of bodily harm including, but not limited to,  
37 sexual or physical assaults, or the denial of necessary medical  
38 treatment, the records shall be provided within five days unless the  
39 ombuds consents to an extension of that time frame.

1 (6) Upon notice and a request by the ombuds, a state or local  
2 government agency or entity that has records that are relevant to a  
3 complaint or an investigation conducted by the ombuds must provide  
4 the ombuds with access to such records.

5 (7) The ombuds must work with the department to minimize  
6 disruption to the operations of the department due to ombuds  
7 activities and must comply with the department's security clearance  
8 processes, provided those processes do not impede the activities  
9 outlined in this section.

10 NEW SECTION. **Sec. 7.** (1) Correspondence and communication with  
11 the office is confidential and must be protected as privileged  
12 correspondence in the same manner as legal correspondence or  
13 communication.

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

16 (3) The ombuds shall treat all matters under investigation,  
17 including the identities of recipients of ombuds services,  
18 complainants, and individuals from whom information is acquired, as  
19 confidential, except as far as disclosures may be necessary to enable  
20 the ombuds to perform the duties of the office and to support any  
21 recommendations resulting from an investigation. Upon receipt of  
22 information that by law is confidential or privileged, the ombuds  
23 shall maintain the confidentiality of such information and shall not  
24 further disclose or disseminate the information except as provided by  
25 applicable state or federal law or as authorized by subsection (4) of  
26 this section. All records exchanged and communications between the  
27 office of the corrections ombuds and the department to include the  
28 investigative record are confidential and are exempt from public  
29 disclosure under chapter 42.56 RCW.

30 (4) To the extent the ombuds reasonably believes necessary, the  
31 ombuds:

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

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

37 (5) If the ombuds believes it is necessary to reveal  
38 investigative records for any of the reasons outlined in section 4 of  
39 this act, the ombuds shall provide a copy of what they intend to

1 disclose to the department for review and application of legal  
2 exemptions prior to releasing to any other persons. If the ombuds  
3 receives personally identifying information about individual  
4 corrections staff during the course of an investigation that the  
5 ombuds determines is unrelated or unnecessary to the subject of the  
6 investigation or recommendation for action, the ombuds will not  
7 further disclose such information. If the ombuds determines that such  
8 disclosure is necessary to an investigation or recommendation, the  
9 ombuds will contact the staff member as well as the bargaining unit  
10 representative before any disclosure.

11 NEW SECTION. **Sec. 8.** (1) A civil action may not be brought  
12 against any employee of the office for good faith performance of  
13 responsibilities under this chapter.

14 (2) No discriminatory, disciplinary, or retaliatory action may be  
15 taken against a department employee, subcontractor, or volunteer, an  
16 inmate, or a family member or representative of an inmate for any  
17 communication made, or information given or disclosed, to aid the  
18 office in carrying out its responsibilities, unless the communication  
19 or information is made, given, or disclosed maliciously or without  
20 good faith.

21 (3) This section is not intended to infringe on the rights of an  
22 employer to supervise, discipline, or terminate an employee for other  
23 reasons.

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

26 NEW SECTION. **Sec. 10.** A new section is added to chapter 43.131  
27 RCW to read as follows:

28 The office of the corrections ombuds is terminated July 1, 2028,  
29 as provided in section 11 of this act.

30 NEW SECTION. **Sec. 11.** A new section is added to chapter 43.131  
31 RCW to read as follows:

32 The following acts or parts of acts, as now existing or hereafter  
33 amended, are each repealed, effective July 1, 2029:

- 34 (1) Section 1 of this act;  
35 (2) Section 2 of this act;  
36 (3) Section 3 of this act;



- 1 (4) Section 4 of this act;
- 2 (5) Section 5 of this act;
- 3 (6) Section 6 of this act;
- 4 (7) Section 7 of this act; and
- 5 (8) Section 8 of this act."

**E2SHB 1889** - S COMM AMD

By Committee on Human Services & Corrections

**OUT OF ORDER 02/28/2018**

6 On page 1, line 2 of the title, after "RCW;" strike the remainder  
7 of the title and insert "and adding a new chapter to Title 43 RCW."

EFFECT: 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 the department, 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 requirement for the Ombuds to have a clearly delineated budget separate from the overall budget for the Office of the Governor.

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