

HOUSE BILL REPORT

HB 1889

As Reported by House Committee On:
Public Safety

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

Brief Description: Creating an office of the corrections ombuds.

Sponsors: Representatives Pettigrew, Appleton, Peterson, Stanford and Pollet.

Brief History:

Committee Activity:

Public Safety: 2/14/17, 2/16/17 [DPS].

Brief Summary of Substitute Bill

- Creates the Office of the Corrections Ombuds (Ombuds), which monitors state correctional facilities, and serves informational, investigative, and advocacy functions related to the rights of incarcerated persons.
- Requires the Governor to convene an Ombuds Advisory Council to support the functions of the Ombuds and to designate, by a competitive bidding process, a nonprofit organization that will contract to operate the Ombuds office.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Goodman, Chair; Pellicciotti, Vice Chair; Hayes, Assistant Ranking Minority Member; Appleton, Chapman, Orwall and Pettigrew.

Minority Report: Do not pass. Signed by 4 members: Representatives Klippert, Ranking Minority Member; Griffey, Holy and Van Werven.

Staff: Omeara Harrington (786-7136).

Background:

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.

Ombuds Programs.

An ombuds is an appointed person or office charged with representing the interests of the public or a particular group by providing information and receiving, investigating, and addressing complaints regarding a system or agency. Washington has several ombuds offices, including the Family and Children's Ombuds, the Education Ombuds, The Health Care Authority Ombuds, the Ombuds for Self-Insured Workers, the Long-Term Care Ombuds, and the Developmental Disabilities Ombuds.

The Department of Corrections Internal Ombuds.

In 2016 the Department of Corrections (DOC) created an ombuds position within the DOC's Executive Policy Office. The ombuds is intended to act as a resource for families and inmates by providing impartial assistance and investigating and attempting to resolve allegations of noncompliance of DOC policies and state law. In addition, the DOC ombuds may recommend changes in DOC policies, procedures, and statutes if systemic problems are identified.

The Department of Corrections Offender Grievance Program.

The DOC has a formal grievance process overseen at the facility level by grievance coordinators. Only incidents, policies, or practices within DOC jurisdiction that affect an offender personally and that do not have an established appeals process are grievable. Examples of grievance topics include: conduct of employees or other offenders, health services, policies, prison operations, and food services. The grievance program contains an appeals system that allows an offender to request review at a higher level if he or she is not satisfied with a response.

The Department of Corrections Family Council.

The DOC facilitates local and statewide family councils that are charged with enhancing communication with the DOC, assisting in developing policies, procedures, and programs that support family reunification, and working with the DOC to improve offender quality of life and successful reentry. Local family councils are established at every prison to address facility-specific issues. One family member from each local family council must be selected to serve as a representative on the Statewide Family Council, which focuses on issues and concerns that impact a broad range of offenders and their families.

Summary of Substitute Bill:

Office of the Corrections Ombuds.

An Office of the Corrections Ombuds (Ombuds) is created for the purpose of:

- increasing transparency and accountability in Washington's prisons and providing information to inmates, family members, representatives of inmates, employees of the DOC, and others regarding the rights of inmates;
- providing technical assistance to support inmate self-advocacy, alternative dispute resolution, and individual representation;
- identifying systemic issues, reporting to the Legislature, 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.

The Governor must designate, by a competitive bidding process, a nonprofit organization that will contract to operate the Ombuds office. The selection process must include direct stakeholder participation in the development of the request for proposals, evaluation of bids, and final selection.

The selected organization must: (1) possess significant legal expertise, competence with mediation and alternative dispute resolution, and experience working within criminal justice and correctional environments addressing issues relating to chemical dependency treatment, disability and disability-related accommodation, respect for racial, ethnic, and religious diversity, and other civil rights and conditions issues; (2) have experience and the capacity to effectively communicate criminal justice issues with policymakers, stakeholders, and the public; and (3) be prepared and able to provide all program and staff support necessary to carry out all duties of the Ombuds.

The designation of the organization contracted to provide the services to the Ombuds cannot be revoked except upon a showing of neglect of duty, misconduct, or inability to perform duties.

Responsibilities of the Ombuds.

The Ombuds is responsible for:

- establishing priorities for the use of limited resources;
- maintaining a statewide toll-free telephone number, a collect telephone number, a website, and a mailing address for the receipt of complaints and inquiries;
- providing information to inmates, inmates' families, employees, and others on the rights of inmates;
- providing technical assistance to support inmate participation in self-advocacy, utilizing existing kite, grievance, and appeal procedures;
- monitoring the DOC compliance with applicable federal, state, and local laws, rules, regulations, and policies with a view toward protecting the rights of inmates;
- monitoring and participating in legislative and policy developments affecting correctional facilities and advocating for systemic reform aimed toward protecting the rights of inmates;
- establishing a statewide uniform reporting system to collect and analyze complaints of the DOC and establishing procedures for investigating and resolving those complaints;
- submitting an annual report to the Ombuds Advisory Council (Council), the Governor, and the Legislature analyzing the work of the Ombuds; and
- adopting and complying with policies and procedures necessary to implement the responsibilities of the Ombuds.

Ombuds Advisory Council.

By August 1, 2107, the Governor must convene a Council. The Council must participate in a priority setting process to develop priority recommendations to the Ombuds, review data collected by the Ombuds, review reports issued by the Ombuds prior to their release, and make recommendations to the Ombuds regarding the accomplishment of its purposes. The

Council has authority to issue its own reports and recommendations and must biannually review the Ombuds' performance, make recommendations regarding the Ombuds budget, make recommendations for changes in the law that would enhance the Ombuds' effectiveness, and report its findings and recommendations to the Governor and the Legislature.

The Council is composed of the following members, serving three-year terms:

- one member of the House of Representatives and one member of the Senate;
- two former inmates who have successfully reintegrated;
- two family members of a current inmate;
- an expert with significant criminal justice or correctional experience who is not a state employee or contractor;
- two community members with extensive knowledge and experience in specified areas: one with knowledge of the accommodation needs of individuals with disabilities; and the other with knowledge of issues related to racial, ethnic, or religious diversity within the correctional system;
- a community member with dispute resolution training with experience working in corrections or criminal justice;
- the DOC staff serving as the internal ombuds, if any;
- a bargaining unit representative; and
- a representative of the Office of the Governor.

Ombuds Investigations.

The Ombuds may initiate and attempt to resolve any complaint or issue upon its own initiative, or upon receiving a complaint from an inmate, family member or other representative of an inmate, an employee, or others, regarding: abuse or neglect; DOC decisions, actions, inactions, or omissions; policies, procedures, and rules; or alleged violations of the law. The Ombuds may decline to investigate any complaint, and cannot investigate complaints related to an inmate's underlying criminal conviction or a complaint related to a DOC employee's employment relationship with the DOC.

At the conclusion of an investigation of a complaint, the Ombuds must render a decision on the merits of each complaint, including any recommendations regarding further action, and communicate the decision to the inmate, if any, and to the DOC. Before announcing a conclusion or recommendation that criticizes a person or the DOC, the Ombuds must attempt to notify the person or the DOC.

If the Ombuds believes additional action is warranted following an investigation, the Ombuds may choose to report a finding of abuse, neglect, or other rights violation to the Legislature or the Governor; commence litigation (though state funds cannot be used for this purpose); or take other action.

Access to Prisons and Records.

The Ombuds must have reasonable access to correctional facilities at all times necessary to conduct a full investigation of an incident of abuse or neglect. This includes the opportunity to interview and communicate with any inmate, employee of the DOC, or other person, including the person thought to be the victim of the abuse, who might be reasonably believed to have knowledge of the incident under investigation. Access must be afforded upon request

when an incident is reported to the Ombuds, when the Ombuds determines there is probable cause of a reported incident, or when the Ombuds determines the inmate may be in imminent danger of serious abuse or neglect.

The Ombuds must also have reasonable access to all DOC facilities and to programs for inmates for the purpose of providing information about inmate rights and Ombuds services, monitoring compliance, and inspecting, photographing, and recording areas of the facility that are accessible to inmates. At a minimum, the Ombuds must have access during normal working and visiting hours.

An Ombuds also has the right to access, inspect, and copy information, records, or documents in the possession or control of the DOC that the Ombuds considers necessary in an investigation of a complaint. When the Ombuds is investigating potential abuse or neglect, the DOC must respond promptly to records requests, and within five business days of a request the DOC must: provide the records; acknowledge the request and provide a timeline within which the records will be provided; or deny the request because of safety or security concerns. If there is probable cause to believe an inmate's health or safety is in serious immediate jeopardy, or if an inmate dies while in custody, records must be provided within 24 hours.

The Ombuds must work with the DOC to minimize disruption, and must comply with security clearance processes unless those processes impede the Ombuds' activities.

Information Collected and Maintained by the Ombuds.

Any correspondence between the Ombuds and an inmate is confidential, and may not be disclosed except with informed consent, or when disclosure is impliedly authorized in order for the Ombuds to carry out its duties. Additionally, to the extent the Ombuds reasonably believes necessary, the Ombuds must reveal information obtained in the course of providing its services to prevent reasonably certain death or substantial bodily harm, and may reveal information obtained in the course of providing its services to prevent the commission of a crime. The Ombuds must not disclose any inadvertently obtained personally identifying information about individual DOC staff unrelated to an investigation.

Protection Against Retaliation.

No civil action may be brought against any Ombuds employee for good faith performance of his or her responsibilities. No discriminatory, disciplinary, or retaliatory action may be taken against a DOC employee, an inmate, a family member, or other person for any communication or information exchanged to aid the Ombuds in carrying out its responsibilities, unless the communication or information is made, given, disclosed maliciously, or without good faith.

Substitute Bill Compared to Original Bill:

The Ombuds must be granted reasonable access, rather than reasonable "unaccompanied" access, to DOC facilities and programs. The provision is removed that requires that the Ombuds have access to records in possession of the DOC related to an abuse or neglect investigation within three business days. Instead, the DOC must respond promptly to records requests, and within five business days of a request the DOC must: provide the records;

acknowledge the request and provide a timeline within which the records will be provided; or deny the request because of safety or security concerns.

Appropriation: None.

Fiscal Note: Requested on February 10, 2017. New fiscal note requested on February 16, 2017.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The purpose of this bill is to create an independent Ombuds office. It is important to have adequate due diligence measures in place and to have an independent body that can hear concerns and work within the proper channels. The internal grievance process within the DOC is broken and is a stymied way of moving through concerns. Requiring exhaustion of all of those policies, coupled with the internal ombuds, will not bring resolve. The time involved in advocating through the existing system leads to costs both to complainants as well as the DOC. The problematic internal grievance process highlights the need for an external ombuds that is available even if the internal processes have not been exhausted.

This is an opportunity to open the doors and create positive and meaningful changes. Having an independent ombuds provides assurance that there will be a well-managed DOC where staff and inmates are working together in an effective manner. Disability Rights Washington had a grant to provide a service like this for inmates with disabilities, and in the course of carrying out those services it found many issues. For example, people were held in solitary confinement due to matters that were the result of having a disability. An ombuds will be able to change policies in a way that makes things better for everybody.

This bill has been a 10-year process supported by a diverse coalition of stakeholders. An independently contracted ombuds can provide peace of mind to loved ones and help them navigate the system, and can also further the goal of supporting aging prisoners. Ombuds reviews can be viewed as preventative measures that will save money down the road. Additionally, an ombuds would be useful to contractors and volunteers who work in the prison. A group providing college level courses could not get papers, books, or supplies into facilities. It took six years to get a computer laboratory approved, even though the computers were donated. The system exists basically the same as it has for decades, and instituting an office of independent review is highly recommended.

(Opposed) None.

(Other) The DOC believes that having an internal ombuds allows the DOC to resolve issues internally and identify systemic issues in its facilities. Circumventing the process and going to an external ombuds does not give the DOC the opportunity to identify things it can

change. The timelines for providing records is problematic. The language of the bill requires information to be provided in three days. Those timelines are very difficult, if not impossible, for the DOC to achieve given workload. Additionally, the DOC must provide unaccompanied access under the bill; though it is understood that there are many conversations that require confidentiality, there are safety and security issues with this requirement.

Persons Testifying: (In support) Representative Pettigrew, prime sponsor; Suzanne Cook; Melody Simle; David Lord, Disability Rights Washington; Carol Estes, Prison Voice Washington; Noah Martin, Quaker Voice on Washington Public Policy; and Zachary Kinneman.

(Other) Alex MacBain, Department of Corrections.

Persons Signed In To Testify But Not Testifying: None.