
SECOND SUBSTITUTE HOUSE BILL 1889

State of Washington

65th Legislature

2018 Regular Session

By House Public Safety (originally sponsored by Representatives Pettigrew, Appleton, Peterson, Stanford, and Pollet)

READ FIRST TIME 02/02/18.

1 AN ACT Relating to creating an office of the corrections ombuds;
2 adding new sections to chapter 43.131 RCW; and adding a new chapter
3 to Title 43 RCW.

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

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

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

1 The ombuds reports directly to the governor and exercises his or
2 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
5 otherwise.

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

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

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

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

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

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

22 (7) "Secretary" means the secretary of the department of
23 corrections.

24 (8) "Statewide family council" means the family council
25 maintained by the department that is comprised of representatives
26 from local family councils.

27 NEW SECTION. **Sec. 4.** (1) The governor shall appoint an ombuds
28 who must be a person of recognized judgment, independence,
29 objectivity, and integrity, and be qualified by training or
30 experience in corrections law and policy. Prior to the appointment,
31 the governor shall consult with, and may receive recommendations
32 from, the appropriate committees of the legislature, delegates of the
33 statewide family council as selected by the members of the council,
34 and other relevant stakeholders, regarding the selection of the
35 ombuds.

36 (2) The person appointed ombuds holds office for a term of three
37 years and continues to hold office until reappointed or until his or
38 her successor is appointed. The governor may remove the ombuds only

1 for neglect of duty, misconduct, or the inability to perform duties.
2 Any vacancy must be filled by similar appointment for the remainder
3 of the unexpired term.

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

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

7 (a) Establish priorities for use of the limited resources
8 available to the ombuds;

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

12 (c) Provide information, as appropriate, to inmates, family
13 members, representatives of inmates, department employees, and others
14 regarding the rights of inmates;

15 (d) Provide technical assistance to support inmate participation
16 in self-advocacy;

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

20 (f) Monitor and participate in legislative and policy
21 developments affecting correctional facilities;

22 (g) Establish a statewide uniform reporting system to collect and
23 analyze data related to complaints received by the ombuds regarding
24 the department;

25 (h) Establish procedures to receive, investigate, and resolve
26 complaints;

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

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

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

34 (ii) The number of complaints received and resolved by the
35 ombuds;

36 (iii) A description of significant systemic or individual
37 investigations or outcomes achieved by the ombuds during the prior
38 year;

1 (iv) Any outstanding or unresolved concerns or recommendations of
2 the ombuds; and

3 (v) Input and comments from stakeholders, including the statewide
4 family council, regarding the ombuds' activities during the prior
5 year; and

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

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

12 (i) Abuse or neglect;

13 (ii) Department decisions or administrative actions;

14 (iii) Inactions or omissions;

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

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

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

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

30 (d) If the ombuds does not investigate a complaint, the ombuds
31 shall notify the complainant of the decision not to investigate and
32 the reasons for the decision.

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

35 (f) The ombuds may not investigate a complaint from a department
36 employee that relates to the employee's employment relationship with
37 the department or the administration of the department, unless the
38 complaint is related to the health, safety, welfare, and
39 rehabilitation of inmates.

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

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

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

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

9 (k) At the conclusion of an investigation of a complaint, the
10 ombuds must render a public decision on the merits of each complaint,
11 except that the documents supporting the decision are subject to the
12 confidentiality provisions of section 7 of this act. The ombuds must
13 communicate the decision to the inmate, if any, and to the
14 department. The ombuds must state its recommendations and reasoning
15 if, in the ombuds' opinion, the department or any employee thereof
16 should:

17 (i) Consider the matter further;

18 (ii) Modify or cancel any action;

19 (iii) Alter a rule, practice, or ruling;

20 (iv) Explain in detail the administrative action in question; or

21 (v) Rectify an omission.

22 (l) If the ombuds so requests, the department must, within the
23 time specified, inform the ombuds about any action taken on the
24 recommendations or the reasons for not complying with the
25 recommendations.

26 (m) If the ombuds believes, based on the investigation, that
27 there has been or continues to be a significant inmate health,
28 safety, welfare, or rehabilitation issue, the ombuds must report the
29 finding to the governor and the appropriate committees of the
30 legislature.

31 (n) Before announcing a conclusion or recommendation that
32 expressly, or by implication, criticizes a person or the department,
33 the ombuds shall consult with that person or the department. The
34 ombuds may request to be notified by the department, within a
35 specified time, of any action taken on any recommendation presented.
36 The ombuds must notify the inmate, if any, of the actions taken by
37 the department in response to the ombuds' recommendations.

38 (3) This chapter does not require inmates to file a complaint
39 with the ombuds in order to exhaust available administrative remedies

1 for purposes of the prison litigation reform act of 1995, P.L.
2 104-134.

3 NEW SECTION. **Sec. 6.** (1) The ombuds must have reasonable access
4 to correctional facilities at all times necessary to conduct a full
5 investigation of an incident of abuse or neglect. This authority
6 includes the opportunity to interview any inmate, department
7 employee, or other person, including the person thought to be the
8 victim of such abuse, who might be reasonably believed by the
9 facility to have knowledge of the incident under investigation. Such
10 access must be afforded, upon request by the ombuds, when:

11 (a) An incident is reported or a complaint is made to the office;

12 (b) The ombuds determines there is probable cause to believe that
13 an incident has or may have occurred; or

14 (c) The ombuds determines that there is or may be imminent danger
15 of serious abuse or neglect of an inmate.

16 (2) The ombuds must have reasonable access to department
17 facilities, including all areas which are used by inmates, all areas
18 which are accessible to inmates, and to programs for inmates at
19 reasonable times, which at a minimum must include normal working
20 hours and visiting hours. This access is for the purpose of:

21 (a) Providing information about individual rights and the
22 services available from the office, including the name, address, and
23 telephone number of the office;

24 (b) Monitoring compliance with respect to the rights and safety
25 of inmates; and

26 (c) Inspecting, viewing, photographing, and video recording all
27 areas of the facility which are used by inmates or are accessible to
28 inmates.

29 (3) Access to inmates includes the opportunity to meet and
30 communicate privately and confidentially with individuals regularly,
31 both formally and informally, by telephone, mail, and in person.

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

1 (5) Following notification from the ombuds with a written demand
2 for access to agency records, the delegated department staff must
3 provide the ombuds with access to the requested documentation not
4 later than twenty business days after the ombuds' written request for
5 the records. Where the records requested by the ombuds pertain to an
6 inmate death, threats of bodily harm including, but not limited to,
7 sexual or physical assaults, or the denial of necessary medical
8 treatment, the records shall be provided within five days unless the
9 ombuds consents to an extension of that time frame.

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

14 (7) The ombuds must work with the department to minimize
15 disruption to the operations of the department due to ombuds
16 activities and must comply with the department's security clearance
17 processes, provided those processes do not impede the activities
18 outlined in this section.

19 NEW SECTION. **Sec. 7.** (1) Correspondence and communication with
20 the office is confidential and must be protected as privileged
21 correspondence in the same manner as legal correspondence or
22 communication.

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

25 (3) The ombuds shall treat all matters under investigation,
26 including the identities of recipients of ombuds services,
27 complainants, and individuals from whom information is acquired, as
28 confidential, except as far as disclosures may be necessary to enable
29 the ombuds to perform the duties of the office and to support any
30 recommendations resulting from an investigation. Upon receipt of
31 information that by law is confidential or privileged, the ombuds
32 shall maintain the confidentiality of such information and shall not
33 further disclose or disseminate the information except as provided by
34 applicable state or federal law or as authorized by subsection (4) of
35 this section. Investigative records of the office are confidential
36 and are exempt from public disclosure under chapter 42.56 RCW.

37 (4) To the extent the ombuds reasonably believes necessary, the
38 ombuds:

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

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

6 (5) If the ombuds receives personally identifying information
7 about individual corrections staff during the course of an
8 investigation that the ombuds determines is unrelated or unnecessary
9 to the subject of the investigation or recommendation for action, the
10 ombuds will not further disclose such information. If the ombuds
11 determines that such disclosure is necessary to an investigation or
12 recommendation, the ombuds will contact the staff member as well as
13 the bargaining unit representative before any disclosure.

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

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

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

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

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

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

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

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

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

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