

WSR 21-07-009
PROPOSED RULES
OFFICE OF THE
CORRECTIONS OMBUDS

[Filed March 4, 2021, 11:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-24-012.

Title of Rule and Other Identifying Information: Confidentiality and investigations rules for the office of the corrections ombuds.

Hearing Location(s): On April 29, 2021, at 4:30 p.m. Microsoft Teams meeting; join on your computer or mobile app, click here to join meeting [contact agency for link], or call in (audio only) +1 253-372-2181,,571052512# United States, Tacoma, phone conference ID 571 052 512#. Please go to <https://oco.wa.gov/public-meetings> to access the link.

Date of Intended Adoption: April 30, 2021, or later.

Submit Written Comments to: Joanna Carns, Director, 2700 Evergreen Parkway N.W., Olympia, WA 98505, email Joanna.carns@gov.wa.gov, by April 22, 2021.

Assistance for Persons with Disabilities: Contact Joanna Carns, director, phone 360-764-3168, email Joanna.carns@gov.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to implement rules that are required under chapter 43.06C RCW related to confidentiality and investigations. No changes or other impacts to existing rules.

Reasons Supporting Proposal: Establishment of rules is required under chapter 43.06C RCW.

Statutory Authority for Adoption: RCW 43.06C.040 (1)(k), (2)(c), and 43.06C.060(2).

Statute Being Implemented: RCW 43.06C.040 (1)(k), (2)(c), and 43.06C.060(2).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Joanna Carns, office of the corrections ombuds, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Joanna Carns, 2700 Evergreen Parkway N.W., Olympia, WA 98505, 360-764-3168.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rule content is explicitly and specifically dictated by statute.

March 4, 2021
Joanna Carns
Director

OTS-2714.2

Chapter 138-10 WAC
OFFICE OF THE CORRECTIONS OMBUDS

NEW SECTION

WAC 138-10-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Abuse" means any act or failure to act by a department employee, subcontractor, or volunteer which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an inmate.
- (2) "Corrections ombuds" or "ombuds" means the corrections ombuds, staff of the corrections ombuds, and volunteers with the office of the corrections ombuds.
- (3) "Complaint" means communication relayed to the ombuds through the ombuds' online complaint form or through use of the ombuds' review request form.
- (4) "Department" means the department of corrections.
- (5) "Inmate" means a person committed to the physical custody of the department, including persons residing in a correctional institution or facility and persons received from another state, another state agency, a county, or the federal government.
- (6) "Neglect" means a negligent act or omission by any department employee, subcontractor, or volunteer which caused, or may have caused, injury or death to an inmate.
- (7) "Office" means the office of the corrections ombuds.
- (8) "Secretary" means the secretary of the department of corrections.
- (9) "Statewide family council" means the family council maintained by the department that is comprised of representatives from local family councils.

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NEW SECTION

WAC 138-10-020 Authority. Office of the corrections ombuds was created and receives its authority from chapter 43.06C RCW.

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NEW SECTION

WAC 138-10-030 Duties. Office of the corrections ombuds shall:

- (1) Establish priorities for use of the limited resources available to the ombuds;
- (2) Maintain a statewide toll-free telephone number, a collect telephone number, a website, and a mailing address for the receipt of complaints and inquiries;

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

(4) Provide technical assistance to support inmate participation in self-advocacy;

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

(6) Monitor and participate in legislative and policy developments affecting correctional facilities;

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

(8) Establish procedures to receive, investigate, and resolve complaints;

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

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

(a) The budget and expenditures of the ombuds;

(b) The number of complaints received and resolved by the ombuds;

(c) A description of significant systemic or individual investigations or outcomes achieved by the ombuds during the prior year;

(d) Any outstanding or unresolved concerns or recommendations of the ombuds; and

(e) Input and comments from stakeholders, including the statewide family council, regarding the ombuds' activities during the prior year.

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

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NEW SECTION

WAC 138-10-040 Investigations. (1) The ombuds may initiate and attempt to resolve an investigation upon his or her own initiative, or upon receipt of a complaint from an inmate, a family member, a representative of an inmate, a department employee, or others, regarding any of the following that may adversely affect the health, safety, welfare, and rights of inmates:

(a) Abuse or neglect;

(b) Department decisions or administrative actions;

(c) Inactions or omissions;

(d) Policies, rules, or procedures; or

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

(2) Prior to filing a complaint with the ombuds, a person shall have reasonably pursued resolution of the complaint through the internal grievance, administrative, or appellate procedures with the department. However, in no event may an inmate be prevented from filing a complaint more than ninety business days after filing an internal grievance, regardless of whether the department has completed the

grievance process. This subsection does not apply to complaints related to threats of bodily harm including, but not limited to, sexual or physical assaults or the denial of necessary medical treatment.

(3) The ombuds may decline to investigate any complaint or may close any investigation of any complaint for any of the following reasons:

(a) Lack jurisdiction over the complaint. At a minimum, complaints should meet the requirements in RCW 43.06C.040 and be:

(i) About an inmate;

(ii) About an alleged department action; and

(iii) Made after the inmate has reasonably pursued resolution of the issue through the internal grievance, administrative, or appellate procedures with the department.

(b) Department took action to resolve any alleged violations;

(c) The nature and quality of evidence;

(d) The complaint does not allege violation of policy, procedure, or law;

(e) The requested resolution is not within the ombuds' statutory power and authority;

(f) The alleged violation is a past rather than ongoing issue; or

(g) Any other reasons the ombuds deems relevant to the complaint including, but not limited to, the priority and weight given to these and other relevant factors.

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

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

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

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NEW SECTION

WAC 138-10-050 Confidentiality. (1) Ombuds' investigative records are confidential and exempt from disclosure under the Public Records Act, chapter 42.56 RCW, and RCW 43.06C.060, except so far as disclosures may be necessary to enable the office to perform its duties and to support recommendations resulting from an investigation.

(2) The ombuds shall treat all correspondence and communication as confidential and protect it in the same manner as legal correspondence or communication pursuant to the Public Records Act, chapter 42.56 RCW, and RCW 43.06C.060(1).

(3) All records exchanged and communications between the ombuds and the department to include the investigative record are confidential and are exempt from public disclosure under chapter 42.56 RCW and RCW 43.06C.060(3).

(4) Confidential records received by the ombuds shall be maintained as provided for under the law.

(5) To the extent the ombuds reasonably believes necessary, the ombuds:

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

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

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