

SENATE BILL REPORT

SB 5177

As of February 8, 2013

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

Brief Description: Creating an office of corrections ombuds.

Sponsors: Senators Carrell and Conway.

Brief History:

Committee Activity: Human Services & Corrections: 1/31/13, 2/04/13 [DP-WM].
Ways & Means:

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Carrell, Chair; Pearson, Vice Chair; Darneille, Ranking Member; Harper and Padden.

Staff: Shani Bauer (786-7468)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Carma Matti-Jackson (786-7454)

Background: In general, an ombudsman is a state official appointed to provide a check on government activity in the interests of the citizens, and oversee the investigation of complaints of improper government activity against the citizens. If the ombudsman finds a complaint to be substantiated, the problem may get rectified, or an ombudsman report is published making recommendations for change. The typical duties of an ombudsman are to investigate complaints and attempt to resolve them, usually through recommendations. Ombudsmen sometimes also aim to identify systemic issues leading to poor service or breaches of peoples' rights.

In Washington State, there are the following ombudsman offices: The Long Term Care Ombudsman; the Office of the Family and Children's Ombudsman; the Office of the Educational Ombudsman; the Health Care Authority Ombudsman; and a mental health ombudsman office in each regional support network.

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.

The Department of Corrections (DOC) provides supervision for approximately 33,000 adult offenders in prisons and community custody.

Summary of Bill: The Office of the Corrections Ombuds is created within the Governor's Office. The purpose of the ombuds' office is to provide information to offenders and their families, promote public awareness and understanding of the rights and responsibilities of offenders, identify system issues and compliance with relevant statutes, rules, and policies pertaining to corrections facilities, services, and treatment of offenders under the jurisdiction of the DOC.

The Office of Corrections Ombuds is appointed by the Governor and is subject to confirmation by the Senate. Before appointing the ombuds, the Governor must consult with, and receive recommendations by, the appropriate committees of the Legislature. The ombuds' term of office is three years and they must remain in office until reappointed or a successor is named.

The ombuds has the following duties and responsibilities:

- provide the public with appropriate information on the rights and responsibilities of offenders and their family members;
- maintain a statewide toll-free number, a collect phone number to be operated during normal business hours, a web site, and a mailing list for the receipt of complaints and inquiries;
- provide information to the public about the state corrections system;
- monitor the development and implementation of statutes and rules regarding correctional facilities in the state with a view toward the appropriate health, safety, welfare, and rehabilitation of offenders;
- establish a statewide uniform reporting system to collect and analyze data relating to complaints against DOC;
- establish procedures to receive and investigate complaints.

The ombuds does not have to investigate complaints and if they do not, they must notify the complainant of the decision not to investigate and the reasons for that decision. The ombuds cannot investigate a complaint for a DOC employee that relates to that person's employment relationship with DOC. If the ombuds does investigate a complaint, they cannot charge a fee for doing so.

A person in DOC custody who wishes to file a complaint with the ombuds must first reasonably pursue a resolution through an existing grievance, administrative, or appellate procedure before filing a complaint with the ombuds unless the complaint involves threats of bodily harm or the denial of necessary medical treatment.

At the conclusion of an investigation, the ombuds must render a decision on the merits of each complaint and communicate that decision to the complainant and DOC. If the ombuds believes any action or omission has or continues to pose significant problems to offender health, safety, welfare, and rehabilitation issues, the ombuds must report the finding to the Governor and the appropriate committees of the Legislature. Before announcing a conclusion or recommendation that expressly or by implication criticizes a person or DOC, the ombuds must consult with that person or DOC.

By November 1 each year, the ombuds must submit a report to the Governor and the appropriate committees of the Legislature analyzing the work of the office including any recommendations.

DOC must permit the ombuds or their designee to enter and inspect any correctional facility at any time. If the ombuds requests, DOC must provide the ombuds the right to access, inspect, and copy relevant information, records, or documents in DOC's possession or control that the ombuds considers necessary in the investigation of a complaint. DOC also must assist the ombuds in obtaining the necessary releases of those documents which are restricted or privileged for use by the ombuds. If the ombuds is denied access to any DOC premises, the Secretary of DOC must provide the ombuds with the reasons for the denial in writing.

If a state or local government has relevant records, it must also provide the ombuds with access to those records.

DOC must ensure that correspondence between an offender and the ombuds is not reviewed or inspected, other than to ensure that it does not contain contraband.

The ombuds must establish confidentiality rules and procedures for all information maintained by the office. Investigative records of the ombuds are confidential and not subject to public disclosure. These records are not to be considered privileged or exempt from discovery in criminal proceedings or in civil litigation if the records are otherwise discoverable under the rules of civil procedure.

Employees of the ombuds' office are not liable for good faith performance of responsibilities.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony (Human Services & Corrections): PRO: This bill is needed to save the state money; the grievance system does not always work. The ombudsman's office is needed so family members of offenders have a place to turn. An ex-offender having spent 20 years behind bars, can say the grievance system does not work. There needs to be oversight of some sort. The state has been sued 27 times over various issues and lost 21 times. This would not have happened if the grievance system worked better. The ombudsman would help lower the high litigation costs at DOC. A corrections ombudsman in another state went to visit all the prisons once a month and spoke to prisoners, guards, prison administration, and family. There needs to be transparency in a very closed system, like DOC, and having an ombudsman is one way to accomplish that. Having a corrections ombudsman allows policy makers to get real information about what goes on in DOC. Prisons are an isolated and hidden environment and the ombudsman would help with that. There is need for an avenue where issues of abuse in prison can be addressed. There is

a need for a balance when one entity holds all the power. The family councils are helpful for dealing with global issues, but not for individual issues, and that is where the ombudsman would be so helpful.

Persons Testifying (Human Services & Corrections): PRO: Ari Kohn, Post-Prison Education program; Julie Tackett, Monroe Correctional Complex Local Family Council; Susan Ford, Jan Adams, Rodger Smith, Shirley Butler, citizens; Melody Simle, DOC Statewide Family Council; Lesta Roberts, White Feather Reentry, Tom Ewell, Friends Committee on WA Public Policy.