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**SENATE BILL 5505**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senators McAuliffe, Darneille, Chase, Frockt, Hasegawa, Kohl-Welles, Keiser, O'Ban, Pearson, and Conway

AN ACT Relating to creating an office of corrections ombuds; and adding a new chapter to Title 43 RCW.

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

NEW SECTION. **Sec.**  The creation of the office of corrections ombuds is intended to assist in strengthening procedures and practices which lessen the possibility of actions occurring within the department of corrections which may adversely impact the health, safety, welfare, and rehabilitation of offenders, and which will effectively reduce the exposure of the department to litigation.

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

The ombuds shall report directly to the governor and shall exercise his or her powers and duties independently of the secretary.

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

(1) "Department" means the department of corrections.

(2) "Director" means the director of the office of corrections ombuds.

(3) "Offender" means an offender as defined in RCW 9.94A.030 who is under the control of the department or its contracted agencies, entities, or programs.

(4) "Office" means the office of corrections ombuds.

(5) "Secretary" means the secretary of the department of corrections.

NEW SECTION. **Sec.**  (1) Subject to confirmation by the senate, the governor shall appoint an ombuds who shall be a person of recognized judgment, independence, objectivity, and integrity, and shall be qualified by training or experience in corrections law and policy. Prior to the appointment, the governor shall consult with, and may receive recommendations from, the appropriate committees of the legislature regarding the selection of the ombuds.

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

(3) The ombuds may employ technical experts and other employees to complete the purposes of this chapter, subject to funding. In the implementation phase during the 2015-2017 biennium, staffing shall be limited to two ombuds, including the director.

NEW SECTION. **Sec.**  The ombuds shall:

(1) Provide to the public as appropriate information on the rights and responsibilities of offenders and their family members;

(2) Maintain a statewide toll-free telephone number, a collect telephone number to be operated during normal business hours, a web site, and a mailing address for the receipt of complaints and inquiries;

(3) Provide information to interested members of the public regarding the state's correctional system;

(4) Monitor the development and implementation of federal, state, and departmental laws, rules, regulations, and policies with respect to corrections facilities in Washington state with a view toward the appropriate health, safety, welfare, and rehabilitation of offenders;

(5) Establish a statewide uniform reporting system to collect and analyze data relating to complaints regarding the department;

(6) Establish procedures to receive and investigate complaints.

(a) The ombuds may initiate and attempt to resolve an investigation upon his or her own initiative, or upon receipt of a complaint from a legislator, or an offender in the physical custody of the department, including offenders who are initially received into the physical custody of the department and transferred to a county facility or facility in another state, and a member of the offender's immediate family, regarding:

(i) Decisions;

(ii) Administrative actions;

(iii) Inactions or omissions;

(iv) Policies;

(v) Procedures and rules; or

(vi) Alleged violations of law

of the department which may adversely affect the health, safety, welfare, rehabilitation, and rights of offenders.

(b) A person is not entitled as a right to be heard by the ombuds. The ombuds may decline to investigate any complaint as provided by rules adopted under this chapter.

(c) 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.

(d) The ombuds shall not investigate a complaint from an employee of the department that relates to the employee's employment relationship with the department.

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

(f) The ombuds shall not levy any fees for the submission or investigation of complaints.

(g) Prior to any person in the custody of the department obtaining ombuds services, the person shall have reasonably pursued a resolution of the complaint through any existing internal grievance, administrative, or appellate procedures. This subsection (6)(g) shall 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.

(h) At the conclusion of an investigation of a complaint, the ombuds shall render a decision on the merits of each complaint and communicate the decision to the complainant and to the department. The ombuds shall state the recommendations and reasons if, in the ombuds' opinion, the department or any employee thereof should:

(i) Consider the matter further;

(ii) Modify or cancel any action;

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

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

(v) Rectify an omission; or

(vi) Take any other action.

(i) If the ombuds so requests, the department shall, within the time specified, inform the ombuds about the action taken on the recommendations or the reasons for not complying with them.

(j) If the ombuds believes that any action or omission has or continues to pose significant prisoner health, safety, welfare, and rehabilitation issues, the ombuds shall report the finding to the governor and the appropriate committees of the legislature.

(k) Before announcing a conclusion or recommendation that expressly or by implication criticizes a person or the department, the ombuds shall consult with that person or the department. The ombuds may request to be notified by the department, within a specified time, of any action taken on any recommendation presented.

(l) The ombuds shall notify the complainant of the actions taken by the office and by the department;

(7) Submit annually to the governor and the appropriate committees of the legislature by November 1st of each year a report analyzing the work of the office including any recommendations; and

(8) Adopt rules necessary to implement this chapter and act in accordance with the policies and procedures established by the office.

This section shall not be construed as requiring offenders to file a complaint with the ombuds in order to exhaust available administrative remedies for purposes of the prison litigation reform act of 1995, P.L. 104-134.

NEW SECTION. **Sec.**  (1) The department shall permit the ombuds or the his or her designee to enter and inspect at any reasonable time any correctional facility for the purpose of carrying out his or her duties under this chapter.

(2) Upon the ombuds' request, the department shall grant the ombuds or his or her designee the right to access, inspect, and copy all relevant information, records, or documents in the possession or control of the department that the ombuds considers necessary in an investigation of a complaint filed under this chapter; and assist the ombuds in obtaining the necessary releases of those documents which are specifically restricted or privileged for use by the ombuds.

(3) If the ombuds or any employee of the office acting as an ombuds who has been delegated in writing the authority granted is denied access to any premises under the control of the secretary, the secretary or the secretary's designee, within twenty-four hours after the denial, shall give the ombuds a written statement of the reason for the denial of access.

(4) A state or local government agency or entity that has records that are relevant to a complaint or an investigation conducted by the ombuds shall provide the ombuds with access to the records.

(5) The department shall ensure that correspondence from inmates to the ombuds is not reviewed or inspected, except to ensure that such correspondence does not contain contraband.

NEW SECTION. **Sec.**  (1) The office shall establish confidentiality rules and procedures for all information maintained by the office.

(2) Investigative records of the office are confidential and are exempt from public disclosure under chapter 42.56 RCW during the course of an ongoing investigation. Such records shall not be considered privileged or exempt from discovery in criminal proceedings or in civil litigation if otherwise discoverable under the rules of civil procedure.

(3) Whenever in the course of providing ombuds services, the ombuds or a member of the ombuds' staff becomes aware of a criminal act or a threat to the health and safety of any individual or the security of a correctional facility, the ombuds shall notify the secretary and the appropriate facility administrator of such act or threat and the nature and target thereof.

NEW SECTION. **Sec.**  (1) An employee of the office is not liable for good faith performance of responsibilities under this chapter.

(2) No discriminatory, disciplinary, or retaliatory action may be taken against an employee of the department, an employee of a contracting agency of the department, an offender, or a member of an offender's immediate family for any communication made, or information given or disclosed, to aid the office in carrying out its responsibilities, unless the communication or information is made, given, or disclosed maliciously or without good faith.

(3) A person or the department shall not hinder the lawful actions of the ombuds or employees of the office, or willfully refuse to comply with lawful demands of the office.

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

NEW SECTION. **Sec.**  Funding for the office shall be provided from the proceeds of the department's institutional offender betterment accounts, after distribution is made to the crime victims' compensation program under RCW 72.09.095.

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

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