

HOUSE BILL REPORT

HB 2005

As Reported by House Committee On: Public Safety

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

Brief Description: Creating an office of corrections ombuds.

Sponsors: Representatives Moscoso, Goodman, Pettigrew, Appleton, Orwall, Ormsby and Jinkins.

Brief History:

Committee Activity:

Public Safety: 2/18/15, 2/20/15 [DP].

Brief Summary of Bill

- Creates an Office of Corrections Ombuds (Office) within the Office of the Governor for the purpose of providing information to offenders and their families.
- Authorizes an ombuds to initiate and attempt to resolve any complaint regarding decisions, administrative actions, inactions or omissions, policies, procedures and rules, or alleged violations of law by the Department of Corrections (DOC).
- Requires the ombuds to render a decision on the merits of each complaint and communicate the decision to the complainant and the DOC.
- Requires the DOC to permit the ombuds to enter and inspect any correctional facility, as well as access documents in the possession of the DOC necessary for an investigation of a complaint.
- Provides that a person or the DOC must not hinder the lawful actions or willfully refuse to comply with lawful demands of the ombuds.
- Requires the Office to establish confidentiality rules and procedures for all information maintained by the Office, and provides that all investigative records of the Office are confidential and exempt from public disclosure during the course of an ongoing investigation.
- Provides that no discriminatory, disciplinary, or retaliatory action may be taken against a DOC employee, an offender, or an offender's family member

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for any communication or information exchanged to aid an ombuds in carrying out his or her responsibilities.

- Funds the Office from proceeds of the DOC's Institutional Offender Betterment Account.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: Do pass. Signed by 5 members: Representatives Goodman, Chair; Orwall, Vice Chair; Appleton, Moscoso and Pettigrew.

Minority Report: Do not pass. Signed by 4 members: Representatives Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Griffey and Wilson.

Staff: Yvonne Walker (786-7841).

Background:

Generally, an ombuds or public advocate is appointed by the government, but with a significant degree of independence, who is charged with representing the interests of the public by receiving, investigating, and addressing complaints of maladministration or a violation of rights. The typical duties of an ombuds are to investigate complaints and attempt to resolve them, usually through recommendations or mediation.

Department of Corrections Family Council. The Department of Corrections (DOC) operates a Statewide Family Council which is charged with enhancing communication and assisting in developing policies, procedures, and programs that support family reunification. The focus is limited to issues and concerns that impact a broad range of offenders and their families. Pursuant to the DOC policy, the Statewide Family Council meets several times per year, the meetings are coordinated by the Family Services Unit, and are open to representatives from local family councils.

Not all of the issues that are addressed at Statewide Family Council meetings are statewide issues. In an effort to recognize and address specific facility issues, the DOC established local family councils at every prison. The goal of the local family councils is to enhance communication between the facility and families, assist in developing policies, operational processes, and programs that support family reunification.

At most facilities, approved participants may attend a local family council meeting in person or by telephone by calling a toll-free number. At the local council meetings family members are able to ask questions, gather information, and share their perspective on the facility. The local council meetings are generally attended by the superintendent or associate superintendent of the correctional facility, a visit room staff person, a custody staff person, the staff responsible for family centered programming, and others as needed. Local family councils must meet at least four times per year. One family member from each local family council must be selected to serve as a representative on the Statewide Family Council.

Department of Corrections Offender Grievance Program. Each DOC correctional facility has a grievance coordinator. All offenders are expected to attempt informal resolution of a grievance prior to filing a complaint, as well as participate in the resolution of their individual grievances. An offender may grieve his or her place of confinement or conditions of supervision as it relates to policies, application of policies, lack of policies that directly affect living conditions, actions of employees, and actions of other offenders. Only incidents, policies, or practices that affect the offender personally and which the DOC has jurisdiction over, including health related issues, are grievable. Some items are not grievable under the DOC offender grievance program, such as: state and federal laws, court decisions, Indeterminate Sentence Review Board decisions, court ordered pre-sentence investigation reports, and any DOC-approved procedure that has a formal appeal process.

The grievance program contains an appeal system that allows an offender to request review at a higher level if he or she is not satisfied with a response. The offender is entitled to a final review by an employee not assigned to the facility.

Department of Corrections Institutional Offender Betterment Account. The Offender Betterment Account (also known as OBF - Offender Better Funds) is an internally managed special revenue fund administered by the DOC and used solely for offender betterment activities. It receives its revenue from rates charged for offenders to use the phone, vending commissions, television rentals, and other kinds of miscellaneous revenue from internal activities at the DOC facilities. The money in the fund is used to pay for a variety of family-centered capital and special projects related to "offender betterment" such as prison libraries, recreation facilities, and visiting supplies and expenses. The DOC must transfer 25 percent of all annual OBF revenue received to the Department of Labor and Industries' Crime Victims' Compensation Account.

Summary of Bill:

An Office of Corrections Ombuds (Office) is created 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 DOC.

Subject to confirmation by the Senate, the Governor after consultation with the appropriate committees of the Legislature, must appoint an ombuds. The ombuds will hold office for a three-year term and will report directly to the Governor. The Governor can only remove the ombuds for neglect of duty, misconduct, or inability to perform duties.

The Office is funded from the proceeds of the DOC's institutional OBF, after distribution is made to the Crime Victims' Compensation Program. Subject to funding, the ombuds may employ technical experts and others to fulfill the mission of his or her duties. In the implementation phase during the 2015-2017 biennium, staffing must be limited to two ombuds, including the director.

Responsibilities of Ombuds. The ombuds is responsible for:

- providing information on the rights and responsibilities of offenders and their family members to the public;
- maintaining a statewide toll-free telephone number, collect a telephone number, website, and a mailing address for the receipt of complaints and inquiries;
- providing information to the public regarding the state's correctional system;
- monitoring the development and implementation of federal, state, and the DOC laws, rules, and policies with respect to correctional facilities in Washington;
- establishing a statewide uniform reporting system to collect and analyze data relating to complaints regarding the DOC;
- establishing procedures to receive and investigate complaints;
- requesting to be notified by the DOC, within a specified time, of any action taken on any recommendation presented;
- notifying the complainant of the actions taken by the Office and by the DOC;
- submitting to the Governor and the appropriate committees of the Legislature by November 1 of each year an annual report analyzing the work of the Office including any recommendations; and
- adopting rules necessary to implement the policies and procedures established by the Office.

Dealings With the Department of Corrections Ombuds. The ombuds may initiate and attempt to resolve any complaint or issue upon his or her own initiative, from a legislator, an offender, or a member of the offender's immediate family, regarding decisions, administrative actions, inactions or omissions, policies, procedures and rules; or alleged violations of the law by the DOC which may adversely affect the health, safety, welfare, rehabilitation, and rights of offenders. The ombuds must not levy any fees for the submission or investigation of complaints.

Except for threats of bodily harm, including but not limited to sexual or physical assaults or the denial of necessary medical treatment, prior to an offender obtaining ombuds services, the person must have reasonably pursued a resolution of the complaint through any existing internal grievance, administrative, or appellate procedures. A person is not entitled as a right to be heard by the ombuds. The ombuds may decline to investigate any complaint, however, he or she must notify the complainant of the decision and the reasons for the decision. The ombuds may also refer complainants and others to appropriate resources, agencies, or the DOC.

The ombuds must not investigate a complaint from an employee of the DOC that relates to the 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 and communicate the decision to the complainant and to the DOC. The ombuds must state the recommendations and reasons if the DOC or any employee thereof should: (1) consider the matter further; (2) modify or cancel any action; (3) alter a rule, practice, or ruling; (4) explain in detail the administrative action in question; (5) rectify an omission; or (6) take any other action.

If the ombuds so requests, the DOC must, within the time specified, inform the ombuds about the action taken on the recommendations or the reasons for not complying with them. If the ombuds believes that any action or omission has or continues to pose significant prisoner 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 the DOC, the ombuds must consult with that person or the DOC.

The requirements and policies set forth in the act are not to 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.

The Department of Corrections and Ombuds. The DOC must permit the ombuds or 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; and
- access, inspect, and copy all relevant information, records, or documents in the possession or control of the DOC that the ombuds considers necessary in an investigation of a complaint. The DOC must assist in obtaining the necessary releases of those documents which may be specifically restricted or privileged.

A person or the DOC must: (1) not hinder the lawful actions; or (2) willfully refuse to comply with lawful demands of the ombuds, or employees of the Office. If an ombuds, who has been delegated authority in writing, is denied access to any DOC facility, the Secretary of the DOC or his or her designee must provide a reason for the denial within 24 hours after denial.

The DOC must ensure that inmate correspondence to the ombuds is not reviewed or inspected, except to ensure that such correspondence does not contain contraband.

In addition, a state or local government agency, or entity that has records that are relevant to a complaint or an investigation conducted by the ombuds must provide the ombuds with access to those records.

Information Collected and Maintained by Ombuds. The Office must establish confidentiality rules and procedures for all information maintained by the Office. Investigative records of the Office are confidential and are exempt from public disclosure during the course of an ongoing investigation. Such records must not be considered privileged or exempt from discovery in criminal proceedings or in civil litigation if otherwise discoverable under the rules of civil procedure.

If, in the course of providing 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 must notify the Secretary of the DOC and the appropriate facility administrator.

Retaliation. An ombuds employee is not liable for good-faith performance of responsibilities while performing his or her job. No discriminatory, disciplinary, or retaliatory action may be

taken against a DOC employee, an employee of a contracting agency of the DOC, an offender, or a member of an offender's immediate family 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. It is not the intent to infringe on the rights of an employer to supervise, discipline, or terminate an employee for other reasons.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill was introduced on behalf of some local family councils who felt they had issues that were not being resolved.

In 2007 the DOC created Statewide Family Council as an introduction to the first ombuds bill. Although it opened the lines of communication between family members and the DOC, there is still a large gap that needs to be bridged. Offenders' medical treatment needs are often ignored, significantly delayed, set aside, or insufficient at times, and family members cannot mitigate care for prisoners nor be involved when critical care is needed. Open lines of communication with the DOC is difficult.

When grievances are ignored, family members often get involved but the voice of family is often ignored. Oversight will compel the DOC to follow policies and will stop the DOC from retaliating against offenders or their family members. Currently, the only way that some retaliation can be stopped in some instances is by having an outside person such as a state representative or senator get involved. Outside independent oversight is needed.

The content of this bill is well overdue. In addition to inmate medical care, there are problems with the DOC in terms of the lack of opportunities for redemption, rehabilitation, phone usage, food issues, property issues, visitation issues, and lack of respect. Family members need to have someone in authority and a more neutral source with whom to discuss their problems as they relate to the DOC. It is hopeful that this bill will set aside agency needs and will take into consideration the needs of inmates and their family members. The DOC grievance process is a very unfair one-way system. Inmates are at a powerless place.

It is requested that the ombuds be located under the authority of the Office of the Governor. This can help reduce liability issues with the DOC. In addition, the provision of the bill that requires offenders to exhaust the internal grievance process first should be eliminated. If the ombuds is located in the DOC, the chain of command will always come first and impartial decisions will not be made.

(With concerns) When a loved one goes to prison it impacts the entire family. The Family Services Unit of the DOC works to develop and implement consistent and unified strategies, policies, and evidence-based programs that support offenders and families. The Family Services Unit also provides support for local and Statewide Family Councils. These councils provide an opportunity for families to work together with DOC staff to identify facility and system-wide issues and resolutions.

There is concern that if the funding from the OBF is used to pay for external ombuds positions then that will reduce funding that currently pays for enhanced parenting and relationship skills, increase literacy, and items that prepare offenders for re-entry back into the community. Potential reductions in the OBF will result in a 64-percent reduction in the Family Services Unit's annual budget.

The greatest source of revenue to the OBF is telephone revenue; however, that revenue has declined significantly over the last year. Due to the decline of resources in the OBF each year, this OBF account will not be sufficient to pay for an ombuds office in future years.

Creating an ombuds office will duplicate the DOC internal mechanisms like the councils and the internal grievance system. The intent of the grievance system is to promote effective communication between offenders and staff in an effort to reduce issues at the lowest level. In 2014 offenders filed over 23,000 grievances and 95 percent of all grievances were resolved at the local level. Food, healthcare, and communication are the most common grievances.

(Opposed) None.

Persons Testifying: (In support) Representative Moscoso, prime sponsor; Melody Simile; Julie Tackett; Diane Sifres; Lorraine St. Michell; Bob Kastama; Suzanne Cook; Madherri Chundra; Diane Durall; Diane Bidon, Hearts of Hope; Bob Cooper, Post-Prison Education Program and Alliance for Fiscal Responsibility and Public Safety; and David Lord, Disability Rights Washington.

(With concerns) Dan Pacholke, Department of Corrections; and Jody Becker-Green, Department of Corrections, Family Council.

Persons Signed In To Testify But Not Testifying: None.