
Public Safety Committee

HB 2817

Brief Description: Creating an office of the corrections ombuds.

Sponsors: Representatives Moscoso, Pettigrew, Appleton, Orwall, Sawyer, Ryu, Stanford, Pollet, Hickel, Bergquist and Santos.

Brief Summary of Bill

- Creates the Office of the Corrections Ombuds (Ombuds Office) to monitor conditions of correctional facilities and the rights of inmates.
- Requires the Governor to: (1) convene an Ombuds Advisory Council to support the functions of ombuds; and (2) designate, by a competitive bidding process, a nonprofit organization that will contract to operate the Ombuds Office.
- Authorizes 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 ombuds to render decisions on complaints and communicate the decisions to complainants and the DOC.
- Requires the DOC to permit ombuds to enter and inspect any correctional facilities, as well as access documents necessary for investigations of complaints.
- Subjects the DOC to a: (1) \$1,000 per day fine for denying an ombuds access to any premises under the DOC's control; and (2) \$1,000 fine for hindering the lawful actions of ombuds or willfully refusing to comply with the lawful demands of ombuds.
- Requires the Ombuds Office to establish confidentiality rules and procedures for all information that it maintains and requires that correspondence between the Ombuds Office and an inmate to be confidential.
- Provides that retaliatory action may not be taken against a DOC employee, an offender, or an offender's family member for any information exchanged to aid an ombuds in carrying out his or her responsibilities.

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.

Hearing Date: 2/2/16

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.

The 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 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.

The 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.

Summary of Bill:

An Office of the Corrections Ombuds (Ombuds Office) is created for the purpose of providing information to inmates, family members, representatives of inmates, employees of the DOC, and others regarding the rights of inmates; providing technical assistance to support inmate self-advocacy, alternative dispute resolution, and individual representation; identifying systemic issues, reporting to the Legislature, and advocating for systemic reform; and monitoring and promoting compliance with statutes, rules, and policies pertaining to conditions of correctional facilities and the rights of inmates.

Ombuds Advisory Council.

By no later than July 1, 2016, the Governor must convene an Ombuds Advisory Council (Council) consisting of 12 members. The Council must participate in a priority setting process to develop priority recommendations to the ombuds, review data collected by the ombuds, review reports issued by the ombuds prior to their release, and make recommendations to the ombuds regarding the accomplishment of its purposes. The Council has authority to issue its own reports and recommendations and must biannually review ombuds performance, make recommendations regarding the ombuds budget, make recommendations for changes in the law that would enhance the ombuds effectiveness, and report its findings and recommendations to the Governor and the Legislature.

The Council must convene at least quarterly. Council members serve a term of three years, without compensation, however reimbursement may be provided to Council members who are non-state employees for expenses necessary to the performance of their duties.

Operation and Staff Support to the Office of the Corrections Ombuds.

The Governor must designate, by a competitive bidding process, a nonprofit organization that will contract to operate the Ombuds Office. The selection process must include direct stakeholder participation in the development of the request for proposals, evaluation of bids, and final selection. The selected organization must: (1) possess significant legal expertise, competence with mediation and alternative dispute resolution, and experience working within criminal justice and correctional environments addressing issues relating to chemical dependency treatment, disability and disability-related accommodation, respect for racial, ethnic, and religious diversity, and other civil rights and conditions issues; (2) have experience and the capacity to effectively communicate criminal justice issues with policymakers, stakeholders, and the public; and (3) must be prepared and able to provide all program and staff support necessary to carry out all duties of the Ombuds Office.

The selection of the organization contracted to provide the services to the Ombuds Office cannot be revoked except upon a showing of neglect of duty, misconduct, or inability to perform duties. Prior to revoking the designation, the State of Washington must provide notice and an opportunity for the organization, the ombuds, and the public to comment upon the proposed revocation, and must provide the organization an opportunity to appeal the decision to the state supreme court.

Responsibilities of Ombuds.

The ombuds is responsible for:

- establishing priorities for the use of limited resources;
- maintaining a statewide toll-free telephone number, a collect telephone number, website, and a mailing address for the receipt of complaints and inquiries;
- providing information to inmates, inmates' families, employees, and others on the rights of inmates;
- providing technical assistance to support inmate participation in self-advocacy, utilizing existing grievance, and appeal procedures;
- monitoring the DOC compliance with applicable federal, state, and local laws, rules, regulations, and policies with a view toward protecting the rights of inmates;
- monitoring and participating in legislative and policy developments affecting correctional facilities and advocating for systemic reform aimed toward protecting the rights of inmates;
- establishing a statewide uniform reporting system to collect and analyze complaints of the DOC and establishing procedures for investigating and resolving those complaints;
- submitting an annual report to Council analyzing the work of the Ombuds Office; and
- adopting and complying with policies and procedures necessary to implement the responsibilities of the Ombuds Office.

Decisions of the Ombuds.

An ombuds may initiate and attempt to resolve any complaint or issue upon his or her own initiative, from an offender, an employee or others, regarding decisions, administrative actions, inactions or omissions, policies, procedures and rules; or alleged violations of the law by the DOC. The ombuds may: (1) decline to investigate any complaint as provided by adopted rules; (2) not investigate any complaints relating to an inmate's underlying criminal conviction; (3) not investigate a complaint from a DOC employee that relates to the employee's employment relationship with the DOC; (4) refer complainants and others to appropriate resources; and (5) not levy any fees for the submission or investigation of complaints.

At the conclusion of an investigation of a complaint, the ombuds must render a public 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 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.

Upon request, 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. After the conclusion of an investigation, if the ombuds believes that additional action is warranted, the ombuds may report the findings or violations to the Legislature, commence litigation (but state funds may not be used for purposes of litigation), or take any additional action that the ombuds considers appropriate.

Before announcing a conclusion or recommendation that criticizes a person or the DOC, the ombuds must attempt to notify the person or the DOC. The ombuds may request to be notified by the DOC, within a specified time, of any action taken on any recommendation presented. The

ombuds must notify the inmate, if any, of the actions taken by the DOC in response to the ombuds' recommendations.

Access to Prisons and Records.

The ombuds must have reasonable unaccompanied access to correctional facilities at all times necessary to conduct a full investigation of an incident of abuse or neglect. This includes the opportunity to interview and communicate with any inmate, employee of the DOC, or other person, including the person thought to be the victim of such abuse, who might be reasonably believed to have knowledge of the incident under investigation. Such access must be provided when: (1) an incident is reported or a complaint is made to the Ombuds Office; (2) the ombuds determines there is probable cause to believe that an incident has or may have occurred; or (3) the ombuds determines that there is or may be imminent danger of serious abuse or neglect of an inmate.

An ombuds' access to correctional facilities is for the purpose of: (1) providing information about individual rights and the services available from the Ombuds Office; (2) monitoring compliance with respect to the rights and safety of inmates; and (3) inspecting, viewing, photographing, and video recording all areas of the facility which are used by inmates or are accessible to inmates.

If the DOC denies access to any premises under the control of the DOC to the ombuds, or others functioning or acting under the supervision of the ombuds, the DOC is liable for a fine of up to \$1,000 per day of denied access.

An ombuds also has the right to access, inspect, and copy 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 the ombuds in obtaining the necessary releases for those documents which are specifically restricted or privileged for use by the ombuds. When conducting an investigation of potential abuse or neglect, the ombuds must have access to relevant records not later than: three business days after the ombuds has made a written request for such records; or 24 hours after making a request, if the ombuds determines there is probable cause to believe that the health or safety of an inmate is in serious and immediate jeopardy, or in any case of death of an inmate while in the DOC custody. A state or local government agency or entity that has records that are relevant to an investigation conducted by the ombuds must provide the ombuds with access to such records.

Information Collected and Maintained by Ombuds.

Any correspondence between the Ombuds Office and an inmate is confidential and the Ombuds Office must establish confidentiality rules and procedures for all information that it maintains.

To the extent the ombuds reasonably believes necessary, the ombuds: (1) must reveal information obtained in the course of providing its services to prevent reasonably certain death or substantial bodily harm; and (2) may reveal information obtained in the course of providing its services to prevent the commission of a crime.

Retaliation.

A civil action may not be brought against any ombuds employee for good faith performance of his or her responsibilities. No discriminatory, disciplinary, or retaliatory action may be taken

against a DOC employee, an inmate, a family member or other person 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.

If the DOC hinders the lawful actions of employees of the Ombuds Office or willfully refuses to comply with lawful demands of the Ombuds Office, the DOC may be fined up to \$1,000 per incident.

Appropriation: None.

Fiscal Note: Requested on January 26, 2016.

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