

SENATE BILL REPORT

SB 6154

As Reported by Senate Committee On:
Law & Justice, February 3, 2016
Ways & Means, February 9, 2016

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

Brief Description: Creating an office of the corrections ombuds.

Sponsors: Senators Miloscia, Rolfes, Pearson, O'Ban, Conway and McAuliffe.

Brief History:

Committee Activity: Law & Justice: 1/28/16, 2/03/16 [DP-WM, w/oRec].
Ways & Means: 2/08/16, 2/09/16 [DPS].

SENATE COMMITTEE ON LAW & JUSTICE

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

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Darneille, Frockt and Roach.

Minority Report: That it be referred without recommendation.

Signed by Senator Pearson.

Staff: Lindsay Erickson (786-7465)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6154 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hill, Chair; Braun, Vice Chair; Dammeier, Vice Chair; Honeyford, Vice Chair, Capital Budget Chair; Hargrove, Ranking Member; Keiser, Assistant Ranking Member on the Capital Budget; Ranker, Ranking Minority Member, Operating; Bailey, Becker, Billig, Brown, Conway, Darneille, Hasegawa, Hewitt, Nelson, O'Ban, Padden, Pedersen, Rolfes, Schoesler and Warnick.

Staff: Travis Sugarman (786-7446)

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.

Background: In general, an ombudsman is a state official appointed to provide a check on government activity in the interest 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 be corrected, 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 may also aim to identify systemic issues leading to poor service or breaches of people's 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; and a mental health ombudsman office in each regional support network.

Summary of Bill (Recommended Substitute): The Office of the Corrections Ombuds is created for the purpose of providing information to inmates, family members, representatives of inmates, department employees, and others regarding the following:

- the rights of inmates;
- inmate self-advocacy, alternative dispute resolution, and individual representation;
- identification of systemic issues and areas for systemic reform;
- reports to the Legislature; and
- monitoring and promoting compliance with statutes, rules, and policies pertaining to conditions of correctional facilities.

The Governor must designate the nonprofit organization that will contract to operate the Office of the Corrections Ombuds. The Governor or state may not revoke the designation of the organization contracted to provide the services of the office except upon a showing of neglect of duty, misconduct, or inability to perform duties. Prior to revoking the designation, the state 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 Washington Supreme Court.

Office of the Corrections Ombuds Duties. The ombuds must:

- establish priorities for use of the limited resources;
- maintain a statewide toll-free telephone number, a collect telephone number, a web site, and a mailing address for the receipt of complaints and inquiries;
- provide information, as appropriate, to inmates, family members, representatives of inmates, department employees, and others regarding the rights of inmates;
- provide technical assistance to support inmate participation in self-advocacy, utilizing existing kite, grievance, and appeal procedures;
- monitor department compliance with applicable federal, state, and local laws, rules, regulations, and policies with a view toward protecting the rights of inmates;
- monitor and participate in legislative and policy developments affecting correctional facilities and advocate for systemic reform aimed toward protecting the rights of inmates;
- establish a statewide uniform reporting system to collect and analyze data related to complaints regarding the department;
- establish procedures to receive, investigate, and resolve complaints;

- submit annually to the Council, by November 1 of each year, a report analyzing the work of the office, including any recommendations; and
- adopt and comply with necessary policies and procedures.

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:

- abuse or neglect;
- department decisions or actions;
- inactions or omissions;
- policies, rules, or procedures; or
- alleged violations of law.

The ombuds may not:

- investigate any complaints relating to an inmate's underlying criminal conviction;
- investigate a complaint from a DOC employee that relates to the employee's employment relationship with DOC; or
- 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, except that the documents supporting the decision are subject to confidentiality provisions. The ombuds must communicate the decision to the inmate, if any, and to DOC. The ombuds must state their recommendations and reasoning if, in the ombuds' opinion, DOC or any employee thereof should:

- consider the matter further;
- modify or cancel any action;
- alter a rule, practice, or ruling;
- explain in detail the administrative action in question;
- rectify an omission; or
- take any other action.

If the ombuds so requests, DOC must, within the time specified, inform the ombuds about any action taken on the recommendations or the reasons for not complying with the recommendations.

After the conclusion of an investigation, if the ombuds believes that additional action is warranted, the ombuds may:

- report a finding of abuse, neglect, or other rights violation to the appropriate committees of the Legislature.
- commence litigation, but state funds may not be used for purposes of litigation.
- take any additional action that the ombuds considers appropriate.

Before announcing a conclusion or recommendation that expressly, or by implication, criticizes a person or DOC, the ombuds must attempt to notify the person or DOC. The ombuds may request to be notified by 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 DOC in response to the ombuds' recommendations.

Ombuds Advisory Council. No later than July 1, 2016, the Governor must convene an Ombuds Advisory Council to support the ombuds function and with the following purposes:

- develop priority recommendations to the ombuds;
- review data collected by the ombuds;
- review reports issued by the ombuds prior to release; and
- make recommendations to the ombuds regarding the accomplishment of its purposes.

The council must biannually review ombuds performance, reporting to the Governor and the Legislature regarding its findings, to include recommendations regarding the ombuds budget and changes in the law that would enhance the ombuds' effectiveness.

Council Membership. The council members serve a term of three years, and no member may serve more than two consecutive terms. The council must convene at least quarterly.

The council will initially consist of the following four members:

- one member each from the two largest Senate caucuses, and
- one member each from the two largest House caucuses.

These four members must select the following additional members:

- one former inmate, who has successfully reintegrated into the community and is no longer in the custody of DOC;
- two family members of current inmates;
- one expert with significant criminal justice or correctional experience who is not an employee or contractor with the state of Washington;
- a community member with extensive knowledge and experience in issues related to racial, ethnic, or religious diversity within the correctional system;
- a community member with extensive knowledge and experience in the accommodation needs of individuals with disabilities; and
- an individual with dispute resolution training who has experience working in the criminal justice or corrections fields.

The Governor must select the following two additional members of the council:

- a representative of DOC; and
- a representative of the collective bargaining unit of employees of DOC.

Ombuds Access and Sanctions. The ombuds must have reasonable unaccompanied access to DOC facilities at all times necessary to conduct a full investigation of an incident of abuse or neglect. This authority includes the opportunity to interview any inmate, DOC employee, 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.

The ombuds has the right to access, inspect, and copy all relevant information, records, or documents in the possession or control of DOC that the ombuds considers necessary in an investigation of a complaint. DOC must assist the ombuds in obtaining 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 makes a written request for such records. If the ombuds determines there is probable cause to believe the

health or safety of an inmate is in serious or immediate jeopardy, or in any case of an inmate death while in DOC custody, the ombuds must have immediate access, not later than 24 hours after the ombuds request, to relevant records, without consent from another party.

Correspondence between the ombuds and an inmate is confidential and must be processed as privileged correspondence in the same manner as legal correspondence between inmates and courts, attorneys, or public officials.

If DOC or a DOC employee willfully hinders the access or lawful actions of the ombuds, subcontractors, or volunteers or willfully refuses to comply with the lawful demands of the ombuds, DOC is liable to a fine of up to \$1,000 per day of denied access and \$1,000 per incident of hindrance or noncompliance. A civil action may not be brought against any employee of the ombuds for good faith performance of responsibilities. Additionally, no discriminatory, disciplinary, or retaliatory action may be taken against a DOC employee, subcontractor, or volunteer, an inmate, or a family member or representative of an inmate for any communication made, or information given or disclosed, to aid the ombuds in carrying out its responsibilities, unless the communication or information is made, given, or disclosed maliciously or without good faith.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Substitute): Makes requirements of the bill subject to appropriations in the budget bill for its specific purpose.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: Yes.

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

Staff Summary of Public Testimony on Original Bill (Law & Justice): PRO: This bill provides for independent oversight, which is necessary for DOC. The bill imposes fines against DOC because information needs to get to the people making the complaints and fines will help the ombuds accomplish this goal. Lawsuits, bad press, or calls from state senators compel DOC to follow its own policies, but without these outside influences, family members are ignored or retaliated against. Families of inmates have a front row seat to the corrections system, but they are often overlooked as major stakeholders. It is difficult for family complaints to be investigated, and independent oversight would fix this problem and bring fairness and accountability to an agency that is too insular. While a family council does exist, the council cannot address individual concerns. People are frustrated by the lack of results these meetings produce. DOC also maintains the family service unit, but this unit has little authority to bring serious conflicts to a close. DOC announced it would create an internal ombuds, but that money would be better spent on an independent ombuds. This can also save future litigation costs and will provide greater access to inmates with disabilities. DOC would not need an ombuds if its internal grievance process worked. Inmates would not feel comfortable going to an ombuds that is run through DOC.

OTHER: DOC is willing to work on the issues that have been raised. There are offender grievance programs in place, and over 20,000 are filed per year. Of those grievances, 95 percent are resolved at the local level. The top three grievance issues are food, health care, and communication. DOC also helps to contract for inmate legal services in the correctional facilities. The DOC Secretary is implementing a mechanism to respond to family complaints, and it will be an ombuds housed in the Office of Executive Policy created for the purpose of performing investigations, monitoring compliance with policy, and identifying systemic issues for the Legislature to act upon. The family services unit is an integral part to the DOC's ongoing efforts to improve safety and reduce recidivism. The unit helps families navigate the corrections system with the goal of resolving issues at the lowest agency levels. DOC is also engaged in family councils, which enhance communication with family members, support family engagement, and address systemic issues.

Persons Testifying on Original Bill (Law & Justice): PRO: Senator Miloscia, prime sponsor; Julie Tackett, WA Citizens for DOC Ombuds; Terri Campbell, Family Council Member; Melody Simle, WA Citizens for DOC Ombuds; Lori James, Family Council Member; Rachael Seevers, Amplifying Voices of Inmates with Disabilities/Disability Rights WA; Bob Cooper, Post Prison Education Program/WA Assoc. of Criminal Defense Lawyers/WA Defender Assoc.; Victoria Chipps, Citizen; Seth Dawson, National Alliance on Mental Illness; Nicole Scott, Citizen; Loretta Fisher, WA Coalition for Parole; Tom Ewell, Friends Committee on WA Public Policy; Jeffrey Conner, University Beyond Bars; Suzanne Cook, Constituent; Sue McCarthy, Dispute Resolution Center.

OTHER: Alex MacBain, DOC; Jody Becker-Green, DOC.

Persons Signed In to Testify But Not Testifying: Lorraine St. Michell.

Staff Summary of Public Testimony on Original Bill (Ways & Means): PRO: This bill will save money and will allow inmates to complain early and have things resolved. It will reduce the possibilities for litigation. Corrections ombuds could reduce litigation, hold the department accountable, and give families a voice. Corrections has become a great repository for people with mental illness, this bill will save money and reduce civil liability. Disability Rights Washington has been running an ombuds like system and can show that there is significant evidence of savings. Ombuds can help with disputes between the Department, prisoners and their families.

Persons Testifying on Original Bill (Ways & Means): PRO: Seth Dawson, National Alliance on Mental Illness, NAMI Wa.; Bob Cooper, Post Prison Education Program; Julie Tackett, Family Member of an Incarcerated person; Suzanne Cook, Family member of a prisoner; Samuel Merrill, Friends Committee on Washington Public Policy; Carol Estes; David Lord, Disability Rights Washington.

Persons Signed In To Testify But Not Testifying: No one.