

HOUSE BILL REPORT

HB 1889

As Reported by House Committee On:

Public Safety
Appropriations

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

Brief Description: Creating an office of the corrections ombuds.

Sponsors: Representatives Pettigrew, Appleton, Peterson, Stanford and Pollet.

Brief History:

Committee Activity:

Public Safety: 2/14/17, 2/16/17 [DPS], 1/15/18, 2/1/18 [DP2S];

Appropriations: 2/5/18, 2/6/18 [DP2S(PS)].

Brief Summary of Second Substitute Bill

- Creates the Office of the Corrections Ombuds.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass. Signed by 9 members: Representatives Goodman, Chair; Pellicciotti, Vice Chair; Hayes, Assistant Ranking Minority Member; Appleton, Chapman, Griffey, Holy, Orwall and Pettigrew.

Minority Report: Do not pass. Signed by 2 members: Representatives Klippert, Ranking Minority Member; Van Werven.

Staff: Omeara Harrington (786-7136).

Background:

Ombuds Programs.

An ombuds is an appointed person or office charged with representing the interests of the public or a particular group by providing information and receiving, investigating, and addressing complaints regarding a system or agency. Washington has several ombuds

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offices, including the Family and Children's Ombuds, the Education Ombuds, the Health Care Authority Ombuds, the Ombuds for Self-Insured Workers, the Long-Term Care Ombuds, and the Developmental Disabilities Ombuds.

Department of Corrections Internal Ombuds.

In 2016 the Department of Corrections (DOC) created an Ombuds position within the DOC's Executive Policy Office. The Ombuds is intended to act as a resource for families and inmates by providing impartial assistance and investigating and attempting to resolve allegations of noncompliance with the DOC policies and state law. In addition, the DOC Ombuds may recommend changes in DOC policies, procedures, and statutes if systemic problems are identified.

The Department of Corrections Offender Grievance Program.

The DOC has a formal grievance process overseen at the facility level by grievance coordinators. Only incidents, policies, or practices within DOC jurisdiction that affect an offender personally and that do not have an established appeals process are grievable. Examples of grievance topics include: conduct of employees or other offenders, health services, policies, prison operations, and food services. The grievance program contains an appeals system that allows an offender to request a review at a higher level if he or she is not satisfied with a response.

The Department of Corrections Family Council.

The DOC facilitates local and statewide family councils that are charged with enhancing communication with the DOC, assisting in developing policies, procedures, and programs that support family reunification, and working with the DOC to improve offender quality of life and successful reentry. Local family councils are established at every prison to address facility-specific issues. One family member from each local family council must be selected to serve as a representative on the Statewide Family Council, which focuses on issues and concerns that impact a broad range of offenders and their families.

Summary of Second Substitute Bill:

Office of the Corrections Ombuds.

An Office of the Corrections Ombuds (Ombuds) is created within the Office of the Governor for the purpose of providing information to inmates and their families; promoting public awareness and understanding of the rights and responsibilities of inmates; 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 inmates under the jurisdiction of the DOC.

The Governor must appoint an Ombuds who is a person of recognized judgment, independence, objectivity, and integrity. The appointed Ombuds must be qualified by training or experience in corrections law and policy. Prior to making the appointment, the Governor must consult with, and may receive recommendations from, the Legislature, delegates of the Statewide Family Council, and other relevant stakeholders regarding selection of the Ombuds.

The appointed Ombuds holds office for a term of three years, and may be reappointed. The Governor may remove the Ombuds only for neglect of duty, misconduct, or the inability to perform duties. The Ombuds may employ technical experts and other employees.

Responsibilities of the 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, a website, and a mailing address for the receipt of complaints and inquiries;
- providing information to inmates, inmates' families, employees, and others regarding the rights of inmates;
- providing technical assistance to support inmate participation in self-advocacy;
- monitoring the DOC compliance with applicable federal, state, and local laws, rules, regulations, and policies as related to the health, safety, welfare, and rehabilitation of inmates;
- monitoring and participating in legislative and policy developments affecting correctional facilities;
- establishing a statewide uniform reporting system to collect and analyze complaints received by the Ombuds relating to the DOC, and establishing procedures for investigating and resolving those complaints;
- establishing procedures to gather stakeholder input into the Ombuds' activities and priorities;
- submitting an annual report to the Office of the Governor and the Legislature, analyzing the work of the Ombuds; and
- adopting and complying with rules, policies, and procedures necessary to implement the responsibilities of the Ombuds.

Ombuds Investigations.

The Ombuds may initiate and attempt to resolve an investigation upon its own initiative, or upon receiving a complaint from an inmate, family member or other representative of an inmate, an employee, or others, regarding: abuse or neglect; DOC decisions, administrative actions, inactions, or omissions; policies, procedures, and rules; or alleged violations of the law. Except in cases involving a complaint related to threats of bodily harm, prior to filing a complaint with the Ombuds, a person must reasonably pursue resolution of the complaint through the internal DOC grievance process and other internal procedures. The Ombuds may decline to investigate any complaint.

At the conclusion of an investigation of a complaint, the Ombuds must render a public decision on the merits of the complaint, including any recommendations regarding further action, and communicate the decision to the inmate, if any, and to the DOC. If the Ombuds believes that there has been or continues to be a significant inmate health, safety, welfare, or rehabilitation issue, the Ombuds must report to the Governor and the Legislature.

Access to Correctional Facilities and Records.

The DOC must permit the Ombuds to enter and inspect the DOC facilities at any reasonable time, and to have reasonable access to inmates. The Ombuds may inspect, view, photograph, and video record all areas of the facilities that are accessible to inmates.

Upon request, the DOC must grant the Ombuds access to all relevant information, records, or documents in the DOC's control that the Ombuds considers necessary in an investigation of a complaint. The DOC must respond to written demands for agency records from the Ombuds by providing access within 20 business days of the request. When the requested records pertain to an inmate death or threats of bodily harm, records must be provided within five days, unless the Ombuds agrees to an extension. Other governmental entities that have relevant records must also provide those records to the Ombuds. The Ombuds must work with the DOC to minimize disruption, and comply with security clearance processes when possible.

Confidentiality.

Correspondence with the Ombuds is confidential, and the Ombuds must treat matters under investigation as confidential except as far as disclosures are necessary for the Ombuds to perform its duties. The Ombuds must maintain the confidentiality of privileged information, and investigative records of the office are exempt from public disclosure. However, to the extent the Ombuds reasonably believes necessary, it must reveal information to prevent reasonably certain death or substantial bodily harm and may reveal information to prevent the commission of a crime.

Protection Against Retaliation.

No civil action may 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.

Sunset.

The Office of the Corrections Ombuds terminates July 1, 2028, and is subject to a sunset review.

Second Substitute Bill Compared to Original Bill:

The intent section is revised, and changes are made to the stated purposes of the Ombuds. The Ombuds Advisory Council is removed.

Rather than requiring the Governor to designate a nonprofit to contract to operate the Ombuds office, the Ombuds office is placed within the Office of the Governor by gubernatorial appointment. In selecting the Ombuds, the Governor must consult with, and may receive recommendations from, the appropriate committees of the Legislature, delegates of the Statewide Family Council, and other relevant stakeholders.

The duties of the Ombuds are altered to: remove specific references to assistance with kite, grievance, and appeal procedures, and the directive to advocate for systemic reform aimed toward protecting the rights of inmates; specify that the Ombuds must monitor the DOC's compliance with laws and polices "as related to the health, safety, welfare and rehabilitation of inmates;" provide that the requirement to establish a system to collect and analyze data

related to complaints regarding the DOC pertains to complaints received by the Ombuds; and require the Ombuds to establish procedures to gather stakeholder input into the Ombuds' activities and priorities. Minimum requirements are outlined for the information that must be contained in the annual report to the Governor and the Legislature.

The complaint and resolution process is changed. The scope of reviewable complaints is narrowed. When the Ombuds does not investigate a complaint, it must notify the complainant and provide a reason. The internal DOC grievance process must be reasonably pursued prior to filing a complaint with the Ombuds. The Ombuds must render a public decision on the merits of a complaint. The DOC must respond regarding follow-up actions taken within a "specified," rather than "agreed-upon," timeframe. Before announcing a criticism of a person or the DOC, the Ombuds must consult with, rather than attempt to notify, that person or the DOC. The Ombuds is required to report significant prisoner health, safety, welfare, or rehabilitation issues to the Legislature and Governor, rather than being authorized to report abuse, neglect or other rights violation to the Legislature or take additional action. The Ombuds must attempt to resolve any complaint at the lowest possible level, and to remain neutral and impartial.

Changes are made relating to the Ombuds' access to facilities and records. The Ombuds must be granted reasonable access, rather than reasonable "unaccompanied" access, to DOC facilities and programs. The DOC must provide the Ombuds with access to requested documentation not later than 20 business days after the Ombuds' written request. Requested records pertaining to an inmate death or threat of bodily harm must be provided within five days unless the Ombuds consents to an extension, rather than three business days in abuse or neglect investigations and 24 hours in cases of serious immediate jeopardy or inmate death.

Provisions relating to the confidentiality of information in the possession of the Ombuds are amended. Language is removed stating that the Ombuds must preserve confidentiality of information obtained while providing services, except upon informed consent or other legal authorization. Instead: the Ombuds must treat all matters under investigation as confidential, except as far as disclosure may be necessary to enable the Ombuds to perform its duties and to support any recommendations; the Ombuds must maintain confidentiality of any privileged or confidential material it receives, except as provided by law; and investigative records of the Ombuds office are exempt from public disclosure.

The Ombuds program terminates on July 1, 2028, and is subject to a sunset review.

Appropriation: None.

Fiscal Note: Requested on February 3, 2018.

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

Staff Summary of Public Testimony:

(In support) In any large organization, it is important to have a perspective that allows the organization to improve and evolve. The objective of this measure is not to punish the administration or entirely support those in the facilities; the objective is to fulfill the state's duty to create an environment in which people incarcerated can be successful, as they will be released into the community at some point. The Ombuds position will open a system of communication, allowing families and inmates to bring forth issues, and also giving the organization an opportunity to reflect on itself and improve.

This proposal gives an independent voice to families and people serving sentences in the prison system. When there are concerns about food, visitation, and medical care, it can be hard to find support within the institution. The DOC policy requires that an inmate exhaust the grievance process before accessing the internal Ombuds, but there are multiple problems with that process. Also, the internal Ombuds is an employee of the DOC, and people are scared to engage with an internal person.

Inmate health and safety issues need to be addressed. There is nobody to turn to if a guard is harassing an inmate or treating a family member poorly. Sexual assault and rape are common occurrences, and there is no recourse. One woman who had been institutionalized constantly since the age of 14 was in her forties and had three children. In another instance, a medically trained inmate noticed that another inmate was showing signs of pneumonia. It was reported to the DOC, but an initial checkup and confirmation of the diagnosis did not occur for five days. Inmates have been misdiagnosed and have suffered long term effects or death from inadequate treatment, and have lost good time through infractions for repeat medical visits. Medical care is difficult to access on holidays and weekends. Improving the physical and mental health of those serving time will help with recidivism and save money.

There is a vital need for corrections oversight, and having an ombuds function for prison systems has been recommended on a national scale. Hopefully, the Ombuds can cut through the red tape and provide an unbiased perspective to the Legislature and the Governor, and improve transparency, communication, and mediation. This could improve management of the system because inmates and families will realize they have an independent voice that can hear complaints and try to help. It could also cut down on lawsuits, which come at a tremendous cost.

People are coming out of confinement hurt and worse off than when they went in because of the experience during incarceration. Violent criminals or not, inmates are people; people can commit horrendous crimes at a young age; brain research shows that adolescents lack life experience and are impulsive, but they change. There is no good reason to not do this.

(Opposed) None.

Persons Testifying: Representative Pettigrew, prime sponsor; Melody Simle, Department of Corrections, Family Council; Suzanne Cook; Al O'Brien; Paul Benz, Faith Action Network; Tom Ewell, Quaker Voice; Zachary Kinneman; and Yoshikovasha Garcia, Portia Hinton, Ronna LaBree, Dana Drew, and Michelle Domreus, I Did the Time.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill by Committee on Public Safety be substituted therefor and the second substitute bill do pass. Signed by 25 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Chandler, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Bergquist, Caldier, Cody, Fitzgibbon, Haler, Hansen, Harris, Hudgins, Jinkins, Kagi, Lytton, Manweller, Pettigrew, Pollet, Sawyer, Senn, Springer, Stanford, Sullivan, Tharinger and Wilcox.

Minority Report: Do not pass. Signed by 7 members: Representatives Buys, Condotta, Graves, Schmick, Taylor, Vick and Volz.

Minority Report: Without recommendation. Signed by 1 member: Representative Stokesbary, Assistant Ranking Minority Member.

Staff: Rachelle Harris (786-7137).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Public Safety:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Requested on February 3, 2018.

Effective Date of Second Substitute Bill: 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 has been worked on by all interested parties including the DOC, the Governor's Office, and the Family Council. Everyone agrees that something needs to be done, and that this is an opportunity to improve the DOC. Washington pays millions of dollars in tort claims and attorneys costs related to the DOC claims. It is likely that the Ombuds office could help save the state some of this money. Many people who interact with the DOC feel that they are treated with indifference and that there is nowhere to go to get grievances dealt with. Simple requests can be difficult to deal with and can seem futile. The fiscal note from 2017 is not the optimal place to look for accurate costs. Other previous bills are closer in cost estimates. In particular the 2017 bill included both inmates and those supervised, which means the scope of the work would be much larger than under this bill, which only contemplates Ombuds' jurisdiction over incarcerated individuals. This external Ombuds position will help to reduce litigation and will be a contributing factor in assisting with efforts to reduce recidivism.

(Opposed) None.

(Other) The DOC is neutral on the bill. There are potential gaps in confidentiality provisions in the bill that are concerning, and language may be needed to clarify the confidentiality of records exchanged. The release of confidential documents by the Ombuds should be clarified to outline a process to review and redact confidential information in a way that is consistent with the Public Records Act. Finally, investigations should be clarified to ensure that they pertain to health and safety of inmates.

Persons Testifying: (In support) Representative Pettigrew, prime sponsor; and Melody Simle, Department of Corrections Statewide Family Council; Paul Benz, Faith Action Network; and Rachael Seevers, Disability Rights Washington.

(Other) Alex MacBain, Department of Corrections.

Persons Signed In To Testify But Not Testifying: None.