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ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1889

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State of Washington

65th Legislature

2018 Regular Session

By House Public Safety (originally sponsored by Representatives Pettigrew, Appleton, Peterson, Stanford, and Pollet)

READ FIRST TIME 02/02/18.

1 AN ACT Relating to creating an office of the corrections ombuds;  
2 adding new sections to chapter 43.131 RCW; and adding a new chapter  
3 to Title 43 RCW.

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

5 NEW SECTION. **Sec. 1.** The legislature intends to create an  
6 independent and impartial office of the corrections ombuds to assist  
7 in strengthening procedures and practices that lessen the possibility  
8 of actions occurring within the department of corrections that may  
9 adversely impact the health, safety, welfare, and rehabilitation of  
10 offenders, and that will effectively reduce the exposure of the  
11 department to litigation.

12 NEW SECTION. **Sec. 2.** There is hereby created an office of  
13 corrections ombuds within the office of the governor for the purpose  
14 of providing information to inmates and their families; promoting  
15 public awareness and understanding of the rights and responsibilities  
16 of inmates; identifying system issues and responses for the governor  
17 and the legislature to act upon; and ensuring compliance with  
18 relevant statutes, rules, and policies pertaining to corrections  
19 facilities, services, and treatment of inmates under the jurisdiction  
20 of the department.

1 The ombuds exercises his or her powers and duties independently  
2 of the secretary. The office of the corrections ombuds must have a  
3 clearly delineated budget separate from the overall budget for the  
4 office of the governor.

5 NEW SECTION. **Sec. 3.** The definitions in this section apply  
6 throughout this chapter unless the context clearly requires  
7 otherwise.

8 (1) "Abuse" means any act or failure to act by a department  
9 employee, subcontractor, or volunteer which was performed, or which  
10 was failed to be performed, knowingly, recklessly, or intentionally,  
11 and which caused, or may have caused, injury or death to an inmate.

12 (2) "Corrections ombuds" or "ombuds" means the corrections  
13 ombuds, staff of the corrections ombuds, and volunteers with the  
14 office of the corrections ombuds.

15 (3) "Department" means the department of corrections.

16 (4) "Inmate" means a person committed to the physical custody of  
17 the department, including persons residing in a correctional  
18 institution or facility and persons received from another state,  
19 another state agency, a county, or the federal government.

20 (5) "Neglect" means a negligent act or omission by any department  
21 employee, subcontractor, or volunteer which caused, or may have  
22 caused, injury or death to an inmate.

23 (6) "Office" means the office of the corrections ombuds.

24 (7) "Secretary" means the secretary of the department of  
25 corrections.

26 (8) "Statewide family council" means the family council  
27 maintained by the department that is comprised of representatives  
28 from local family councils.

29 NEW SECTION. **Sec. 4.** (1) The governor shall appoint an ombuds  
30 who must be a person of recognized judgment, independence,  
31 objectivity, and integrity, and be qualified by training or  
32 experience in corrections law and policy. Prior to the appointment,  
33 the governor shall consult with, and may receive recommendations  
34 from, the appropriate committees of the legislature, delegates of the  
35 statewide family council as selected by the members of the council,  
36 and other relevant stakeholders, regarding the selection of the  
37 ombuds.

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

7 (3) The ombuds may employ technical experts and other employees  
8 to complete the purposes of this chapter.

9 NEW SECTION. **Sec. 5.** (1) The ombuds shall:

10 (a) Establish priorities for use of the limited resources  
11 available to the ombuds;

12 (b) Maintain a statewide toll-free telephone number, a collect  
13 telephone number, a web site, and a mailing address for the receipt  
14 of complaints and inquiries;

15 (c) Provide information, as appropriate, to inmates, family  
16 members, representatives of inmates, department employees, and others  
17 regarding the rights of inmates;

18 (d) Provide technical assistance to support inmate participation  
19 in self-advocacy;

20 (e) Monitor department compliance with applicable federal, state,  
21 and local laws, rules, regulations, and policies as related to the  
22 health, safety, welfare, and rehabilitation of inmates;

23 (f) Monitor and participate in legislative and policy  
24 developments affecting correctional facilities;

25 (g) Establish a statewide uniform reporting system to collect and  
26 analyze data related to complaints received by the ombuds regarding  
27 the department;

28 (h) Establish procedures to receive, investigate, and resolve  
29 complaints;

30 (i) Establish procedures to gather stakeholder input into the  
31 ombuds' activities and priorities, which must include at a minimum  
32 quarterly public meetings;

33 (j) Submit annually to the governor's office, the legislature,  
34 and the statewide family council, by November 1st of each year, a  
35 report that includes, at a minimum, the following information:

36 (i) The budget and expenditures of the ombuds;

37 (ii) The number of complaints received and resolved by the  
38 ombuds;

1 (iii) A description of significant systemic or individual  
2 investigations or outcomes achieved by the ombuds during the prior  
3 year;

4 (iv) Any outstanding or unresolved concerns or recommendations of  
5 the ombuds; and

6 (v) Input and comments from stakeholders, including the statewide  
7 family council, regarding the ombuds' activities during the prior  
8 year; and

9 (k) Adopt and comply with rules, policies, and procedures  
10 necessary to implement this chapter.

11 (2)(a) The ombuds may initiate and attempt to resolve an  
12 investigation upon his or her own initiative, or upon receipt of a  
13 complaint from an inmate, a family member, a representative of an  
14 inmate, a department employee, or others, regarding:

15 (i) Abuse or neglect;

16 (ii) Department decisions or administrative actions;

17 (iii) Inactions or omissions;

18 (iv) Policies, rules, or procedures; or

19 (v) Alleged violations of law by the department that may  
20 adversely affect the health, safety, welfare, and rights of inmates.

21 (b) Prior to filing a complaint with the ombuds, a person shall  
22 have reasonably pursued resolution of the complaint through the  
23 internal grievance, administrative, or appellate procedures with the  
24 department. However, in no event may an inmate be prevented from  
25 filing a complaint more than ninety business days after filing an  
26 internal grievance, regardless of whether the department has  
27 completed the grievance process. This subsection (2)(b) does not  
28 apply to complaints related to threats of bodily harm including, but  
29 not limited to, sexual or physical assaults or the denial of  
30 necessary medical treatment.

31 (c) The ombuds may decline to investigate any complaint as  
32 provided by the rules adopted under this chapter.

33 (d) If the ombuds does not investigate a complaint, the ombuds  
34 shall notify the complainant of the decision not to investigate and  
35 the reasons for the decision.

36 (e) The ombuds may not investigate any complaints relating to an  
37 inmate's underlying criminal conviction.

38 (f) The ombuds may not investigate a complaint from a department  
39 employee that relates to the employee's employment relationship with  
40 the department or the administration of the department, unless the

1 complaint is related to the health, safety, welfare, and  
2 rehabilitation of inmates.

3 (g) The ombuds must attempt to resolve any complaint at the  
4 lowest possible level.

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

7 (i) The ombuds may not levy any fees for the submission or  
8 investigation of complaints.

9 (j) The ombuds must remain neutral and impartial and may not act  
10 as an advocate for the complainant or for the department.

11 (k) At the conclusion of an investigation of a complaint, the  
12 ombuds must render a public decision on the merits of each complaint,  
13 except that the documents supporting the decision are subject to the  
14 confidentiality provisions of section 7 of this act. The ombuds must  
15 communicate the decision to the inmate, if any, and to the  
16 department. The ombuds must state its recommendations and reasoning  
17 if, in the ombuds' opinion, the department or any employee thereof  
18 should:

19 (i) Consider the matter further;

20 (ii) Modify or cancel any action;

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

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

23 (v) Rectify an omission.

24 (l) If the ombuds so requests, the department must, within the  
25 time specified, inform the ombuds about any action taken on the  
26 recommendations or the reasons for not complying with the  
27 recommendations.

28 (m) If the ombuds believes, based on the investigation, that  
29 there has been or continues to be a significant inmate health,  
30 safety, welfare, or rehabilitation issue, the ombuds must report the  
31 finding to the governor and the appropriate committees of the  
32 legislature.

33 (n) Before announcing a conclusion or recommendation that  
34 expressly, or by implication, criticizes a person or the department,  
35 the ombuds shall consult with that person or the department. The  
36 ombuds may request to be notified by the department, within a  
37 specified time, of any action taken on any recommendation presented.  
38 The ombuds must notify the inmate, if any, of the actions taken by  
39 the department in response to the ombuds' recommendations.

1 (3) This chapter does not require inmates to file a complaint  
2 with the ombuds in order to exhaust available administrative remedies  
3 for purposes of the prison litigation reform act of 1995, P.L.  
4 104-134.

5 NEW SECTION. **Sec. 6.** (1) The ombuds must have reasonable access  
6 to correctional facilities at all times necessary to conduct a full  
7 investigation of an incident of abuse or neglect. This authority  
8 includes the opportunity to interview any inmate, department  
9 employee, or other person, including the person thought to be the  
10 victim of such abuse, who might be reasonably believed by the  
11 facility to have knowledge of the incident under investigation. Such  
12 access must be afforded, upon request by the ombuds, when:

13 (a) An incident is reported or a complaint is made to the office;

14 (b) The ombuds determines there is probable cause to believe that  
15 an incident has or may have occurred; or

16 (c) The ombuds determines that there is or may be imminent danger  
17 of serious abuse or neglect of an inmate.

18 (2) The ombuds must have reasonable access to department  
19 facilities, including all areas which are used by inmates, all areas  
20 which are accessible to inmates, and to programs for inmates at  
21 reasonable times, which at a minimum must include normal working  
22 hours and visiting hours. This access is for the purpose of:

23 (a) Providing information about individual rights and the  
24 services available from the office, including the name, address, and  
25 telephone number of the office;

26 (b) Monitoring compliance with respect to the rights and safety  
27 of inmates; and

28 (c) Inspecting, viewing, photographing, and video recording all  
29 areas of the facility which are used by inmates or are accessible to  
30 inmates.

31 (3) Access to inmates includes the opportunity to meet and  
32 communicate privately and confidentially with individuals regularly,  
33 both formally and informally, by telephone, mail, and in person.

34 (4) The ombuds has the right to access, inspect, and copy all  
35 relevant information, records, or documents in the possession or  
36 control of the department that the ombuds considers necessary in an  
37 investigation of a complaint filed under this chapter, and the  
38 department must assist the ombuds in obtaining the necessary releases

1 for those documents which are specifically restricted or privileged  
2 for use by the ombuds.

3 (5) Following notification from the ombuds with a written demand  
4 for access to agency records, the delegated department staff must  
5 provide the ombuds with access to the requested documentation not  
6 later than twenty business days after the ombuds' written request for  
7 the records. Where the records requested by the ombuds pertain to an  
8 inmate death, threats of bodily harm including, but not limited to,  
9 sexual or physical assaults, or the denial of necessary medical  
10 treatment, the records shall be provided within five days unless the  
11 ombuds consents to an extension of that time frame.

12 (6) Upon notice and a request by the ombuds, a state or local  
13 government agency or entity that has records that are relevant to a  
14 complaint or an investigation conducted by the ombuds must provide  
15 the ombuds with access to such records.

16 (7) The ombuds must work with the department to minimize  
17 disruption to the operations of the department due to ombuds  
18 activities and must comply with the department's security clearance  
19 processes, provided those processes do not impede the activities  
20 outlined in this section.

21 NEW SECTION. **Sec. 7.** (1) Correspondence and communication with  
22 the office is confidential and must be protected as privileged  
23 correspondence in the same manner as legal correspondence or  
24 communication.

25 (2) The office shall establish confidentiality rules and  
26 procedures for all information maintained by the office.

27 (3) The ombuds shall treat all matters under investigation,  
28 including the identities of recipients of ombuds services,  
29 complainants, and individuals from whom information is acquired, as  
30 confidential, except as far as disclosures may be necessary to enable  
31 the ombuds to perform the duties of the office and to support any  
32 recommendations resulting from an investigation. Upon receipt of  
33 information that by law is confidential or privileged, the ombuds  
34 shall maintain the confidentiality of such information and shall not  
35 further disclose or disseminate the information except as provided by  
36 applicable state or federal law or as authorized by subsection (4) of  
37 this section. Investigative records of the office are confidential  
38 and are exempt from public disclosure under chapter 42.56 RCW.

1 (4) To the extent the ombuds reasonably believes necessary, the  
2 ombuds:

3 (a) Must reveal information obtained in the course of providing  
4 ombuds services to prevent reasonably certain death or substantial  
5 bodily harm; and

6 (b) May reveal information obtained in the course of providing  
7 ombuds services to prevent the commission of a crime.

8 (5) If the ombuds receives personally identifying information  
9 about individual corrections staff during the course of an  
10 investigation that the ombuds determines is unrelated or unnecessary  
11 to the subject of the investigation or recommendation for action, the  
12 ombuds will not further disclose such information. If the ombuds  
13 determines that such disclosure is necessary to an investigation or  
14 recommendation, the ombuds will contact the staff member as well as  
15 the bargaining unit representative before any disclosure.

16 NEW SECTION. **Sec. 8.** (1) A civil action may not be brought  
17 against any employee of the office for good faith performance of  
18 responsibilities under this chapter.

19 (2) No discriminatory, disciplinary, or retaliatory action may be  
20 taken against a department employee, subcontractor, or volunteer, an  
21 inmate, or a family member or representative of an inmate for any  
22 communication made, or information given or disclosed, to aid the  
23 office in carrying out its responsibilities, unless the communication  
24 or information is made, given, or disclosed maliciously or without  
25 good faith.

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

29 NEW SECTION. **Sec. 9.** Sections 1 through 8 of this act  
30 constitute a new chapter in Title 43 RCW.

31 NEW SECTION. **Sec. 10.** A new section is added to chapter 43.131  
32 RCW to read as follows:

33 The office of the corrections ombuds is terminated July 1, 2028,  
34 as provided in section 11 of this act.

35 NEW SECTION. **Sec. 11.** A new section is added to chapter 43.131  
36 RCW to read as follows:



1       The following acts or parts of acts, as now existing or hereafter  
2 amended, are each repealed, effective July 1, 2029:  
3       (1) Section 1 of this act;  
4       (2) Section 2 of this act;  
5       (3) Section 3 of this act;  
6       (4) Section 4 of this act;  
7       (5) Section 5 of this act;  
8       (6) Section 6 of this act;  
9       (7) Section 7 of this act; and  
10       (8) Section 8 of this act.

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