
ENGROSSED SUBSTITUTE SENATE BILL 5465

State of Washington

65th Legislature

2017 Regular Session

By Senate Law & Justice (originally sponsored by Senators Miloscia, Hasegawa, Rolfes, O'Ban, Darneille, Angel, and Frockt)

READ FIRST TIME 02/17/17.

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

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

4 NEW SECTION. **Sec. 1.** The legislature intends to increase
5 transparency and accountability in Washington's correctional system
6 by creating an independent entity, the office of the corrections
7 ombuds, which will work for improved conditions and programs, and
8 support fair treatment of inmates in Washington state. The
9 legislature further intends that the ombuds will support changes that
10 facilitate the successful reentry of inmates into the community, and
11 promote high standards of justice throughout the state correctional
12 system.

13 NEW SECTION. **Sec. 2.** Subject to the availability of amounts
14 appropriated for this specific purpose, the office of the corrections
15 ombuds is funded through the office of the state auditor for the
16 purpose of providing information to inmates, family members,
17 representatives of inmates, department employees, and others
18 regarding the rights of inmates; providing technical assistance to
19 support inmate self-advocacy, alternative dispute resolution, and
20 individual representation; identifying systemic issues, reporting to

1 the legislature, and advocating for systemic reform; and monitoring
2 and promoting compliance with statutes, rules, and policies
3 pertaining to conditions of correctional facilities and the rights of
4 inmates.

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) "Council" means the ombuds advisory council established in
16 section 4(1) of this act.

17 (4) "Department" means the department of corrections.

18 (5) "Inmate" means a person committed to the custody of the
19 department, including, but not limited to, persons residing in a
20 correctional institution or facility; persons released from such
21 facility on furlough, work release, or community custody; and persons
22 received from another state, another state agency, a county, or the
23 federal government.

24 (6) "Neglect" means a negligent act or omission by any department
25 employee, subcontractor, or volunteer which caused, or may have
26 caused, injury or death to an inmate.

27 (7) "Office" means the office of the corrections ombuds.

28 (8) "Organization" means the private nonprofit organization that
29 operates the office of the corrections ombuds.

30 NEW SECTION. **Sec. 4.** (1) No later than August 1, 2017, the
31 governor shall convene an ombuds advisory council with several
32 purposes in support of the ombuds function. The council shall
33 participate in a priority setting process for the purpose of
34 developing priority recommendations to the ombuds, review data
35 collected by the ombuds, review reports issued by the ombuds prior to
36 their release, and make recommendations to the ombuds regarding the
37 accomplishment of its purposes. The council also has authority to
38 issue its own reports and recommendations. The council must

1 biannually review ombuds performance, reporting to the governor and
2 the legislature regarding its findings. The council must provide the
3 legislature with recommendations regarding the ombuds budget and
4 changes in the law that would enhance ombuds effectiveness.

5 (2) The council initially consists of one democrat and one
6 republican member of the legislature. The chairs of the senate
7 committee on law and justice and the house of representatives
8 committee on public safety shall make recommendations to the
9 president of the senate and the speaker of the house of
10 representatives, who shall make the final appointments. These
11 appointed members shall select the following additional members:

12 (a) One former inmate who has successfully reintegrated into the
13 community and is no longer in the custody of the department;

14 (b) Two family members of a current inmate;

15 (c) One expert with significant criminal justice or correctional
16 experience who is not an employee or contractor with the state of
17 Washington;

18 (d) A community member with extensive knowledge and experience in
19 issues related to racial, ethnic, or religious diversity within the
20 correctional system;

21 (e) A community member with extensive knowledge and experience in
22 the accommodation needs of individuals with disabilities; and

23 (f) A community member with dispute resolution training who has
24 experience working in the criminal justice or corrections field.

25 (3) The council also includes:

26 (a) The department staff serving as the internal ombuds, if any;
27 and

28 (b) A bargaining unit representative, as selected by the
29 membership of the bargaining unit.

30 (4) After the full membership is attained, the council shall
31 develop a process for replacing members in case of resignation or
32 expiration of terms.

33 (5) Councilmembers serve a term of three years, except that the
34 council shall create and implement a system of staggered terms, and
35 no member may serve more than two consecutive terms. The council
36 shall convene at least quarterly. Councilmembers will serve without
37 compensation, except that funds appropriated for the implementation
38 of this act may be used to reimburse members who are not employees of
39 Washington state for expenses necessary to the performance of their
40 duties.

1 NEW SECTION. **Sec. 5.** (1) Subject to the availability of amounts
2 appropriated for this specific purpose, the state auditor shall
3 designate, by a competitive bidding process, the nonprofit
4 organization that will contract to operate the office of the
5 corrections ombuds. The selection process must include direct
6 stakeholder participation in the development of the request for
7 proposals, evaluation of bids, and final selection. The state auditor
8 shall select an organization that possesses, directly or through
9 subcontracts, significant legal expertise, competence with mediation
10 and alternative dispute resolution, and experience working within
11 criminal justice and correctional environments addressing issues
12 relating to chemical dependency treatment, disability and disability-
13 related accommodation, respect for racial, ethnic, and religious
14 diversity, and other civil rights and conditions issues. The selected
15 organization must have experience and the capacity to effectively
16 communicate regarding criminal justice issues with policymakers,
17 stakeholders, and the general public, and must be prepared and able
18 to provide all program and staff support necessary, directly or
19 through subcontracts, to carry out all duties of the office.

20 (2) The contracting organization and its subcontractors, if any,
21 are not state agencies or departments, but instead are private,
22 independent entities operating under contract with the state.

23 (3) The state auditor or state may not revoke the designation of
24 the organization contracted to provide the services of the office of
25 the corrections ombuds except upon a showing of neglect of duty,
26 misconduct, or inability to perform duties. Prior to revoking the
27 designation, the state must provide notice and an opportunity for the
28 organization, the ombuds, and the public to comment upon the proposed
29 revocation, and must provide the organization an opportunity to
30 appeal the decision to a court.

31 NEW SECTION. **Sec. 6.** (1) The ombuds shall:

32 (a) Establish priorities for use of the limited resources
33 appropriated to implement this act;

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

37 (c) Provide information, as appropriate, to inmates, family
38 members, representatives of inmates, department employees, and others
39 regarding the rights of inmates;

1 (d) Provide technical assistance to support inmate participation
2 in self-advocacy, utilizing existing kite, grievance, and appeal
3 procedures;

4 (e) Monitor department compliance with applicable federal, state,
5 and local laws, rules, regulations, and policies with a view toward
6 protecting the rights of inmates;

7 (f) Monitor and participate in legislative and policy
8 developments affecting correctional facilities and advocate for
9 systemic reform aimed toward protecting the rights of inmates;

10 (g) Establish a statewide uniform reporting system to collect and
11 analyze data related to complaints regarding the department;

12 (h) Establish procedures to receive, investigate, and resolve
13 complaints;

14 (i) Submit annually to the council, by November 1st of each year,
15 a report analyzing the work of the office, including any
16 recommendations; and

17 (j) Adopt and comply with rules, policies, and procedures
18 necessary to implement this chapter.

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

- 23 (i) Abuse or neglect;
- 24 (ii) Department decisions or actions;
- 25 (iii) Inactions or omissions;
- 26 (iv) Policies, rules, or procedures; or
- 27 (v) Alleged violations of law.

28 (b) Prior to filing a complaint with the ombuds, an inmate shall
29 have reasonably pursued resolution of the complaint through the
30 internal grievance process with the department of corrections.
31 However, in no event may an inmate be prevented from filing a
32 complaint more than ninety days after filing an internal grievance,
33 regardless of whether the department has completed the grievance
34 process. This subsection (2)(b) does not apply to complaints related
35 to threats of bodily harm including, but not limited to, sexual or
36 physical assaults or the denial of necessary medical treatment.

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

39 (d) The ombuds may not investigate any complaints relating to an
40 inmate's underlying criminal conviction.

1 (e) The ombuds may not investigate a complaint from a department
2 employee that relates to the employee's employment relationship with
3 the department.

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

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

8 (h) At the conclusion of an investigation of a complaint, the
9 ombuds must render a public decision on the merits of each complaint,
10 except that the documents supporting the decision are subject to the
11 confidentiality provisions of section 8 of this act. The ombuds must
12 communicate the decision to the inmate, if any, and to the
13 department. The ombuds must state their recommendations and reasoning
14 if, in the ombuds' opinion, the department or any employee thereof
15 should:

16 (i) Consider the matter further;

17 (ii) Modify or cancel any action;

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

19 (iv) Explain in detail the administrative action in question;

20 (v) Rectify an omission; or

21 (vi) Take any other action.

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

26 (j) After the conclusion of an investigation, if the ombuds
27 believes that additional action is warranted, the ombuds may:

28 (i) Report a finding of abuse, neglect, or other rights violation
29 to the appropriate committees of the legislature.

30 (ii) Take any additional action that the ombuds considers
31 appropriate.

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

39 (3) This chapter does not require inmates to file a complaint
40 with the ombuds in order to exhaust available administrative remedies

1 for purposes of the prison litigation reform act of 1995, P.L.
2 104-134.

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

11 (a) An incident is reported or a complaint is made to the office;
12 (b) The ombuds determines there is reasonable suspicion that an
13 incident has or may have occurred; or

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

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

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

24 (b) Monitoring compliance with respect to the rights and safety
25 of inmates; and

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

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

33 (4) The ombuds has the right to access, inspect, and obtain
34 copies of all relevant information, records, or documents in the
35 possession or control of the department that the ombuds considers
36 necessary in an investigation of a complaint filed under this
37 chapter, and the department must assist the ombuds in obtaining the
38 necessary releases for those documents which are specifically
39 restricted or privileged for use by the ombuds.

1 (a) When conducting an investigation of potential abuse or
2 neglect, the ombuds must have access to relevant records not later
3 than ten business days after the ombuds makes a written request for
4 such records.

5 (b) The ombuds must have immediate access, not later than
6 seventy-two hours after the ombuds makes such a request, to relevant
7 records, without consent from another party, if the ombuds determines
8 there is reasonable suspicion that the health or safety of an inmate
9 is in serious and immediate jeopardy, or in any case of death of an
10 inmate while in department custody.

11 (5) A state or local government agency or entity that has records
12 that are relevant to a complaint or an investigation conducted by the
13 ombuds must provide the ombuds with access to such records.

14 NEW SECTION. **Sec. 8.** (1) Correspondence and communication with
15 the office is confidential and must be protected as privileged
16 correspondence in the same manner as legal correspondence or
17 communication.

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

20 (3) The office shall preserve the confidentiality of information
21 obtained while providing services, including general information,
22 technical assistance, and investigations, to individuals, including
23 inmates, family members and representatives of inmates, department
24 employees, and others. Confidential information may not be disclosed
25 unless the individual gives informed consent, the disclosure is
26 impliedly authorized in order to carry out ombuds services, or the
27 disclosure is authorized by subsection (4) of this section.

28 (4) To the extent the ombuds reasonably believes necessary, the
29 ombuds:

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

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

35 (5) If the ombuds receives personally identifying information
36 about individual corrections staff during the course of an
37 investigation that the ombuds determines is unrelated or unnecessary
38 to the subject of the investigation or recommendation for action, the
39 ombuds will not further disclose such information. If the ombuds

1 determines that such disclosure is necessary to an investigation or
2 recommendation, the ombuds will contact the staff member as well as
3 the bargaining unit representative before any disclosure.

4 NEW SECTION. **Sec. 9.** (1) A civil action may not be brought
5 against any employee of the office for good faith performance of
6 responsibilities under this chapter.

7 (2) No discriminatory, disciplinary, or retaliatory action may be
8 taken against a department employee, subcontractor, or volunteer, an
9 inmate, or a family member or representative of an inmate for any
10 communication made, or information given or disclosed, to aid the
11 office in carrying out its responsibilities, unless the communication
12 or information is made, given, or disclosed maliciously or without
13 good faith.

14 (3) The department may not hinder the lawful actions of the
15 ombuds or employees of the office, or willfully refuse to comply with
16 lawful demands of the office.

17 (4) This section is not intended to infringe on the rights of an
18 employer to supervise, discipline, or terminate an employee for other
19 reasons.

20 NEW SECTION. **Sec. 10.** Sections 1 through 9 of this act
21 constitute a new chapter in Title 43 RCW.

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