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**SUBSTITUTE SENATE BILL 5465**

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**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 legislature hereby  
15 authorizes the creation of the office of the corrections ombuds for  
16 the 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.** (1) Subject to confirmation by the senate,  
6 the governor shall appoint an ombuds who must be a person of  
7 recognized judgment, independence, objectivity, and integrity, and  
8 must be qualified by training or experience, or both,  
9 in providing information to inmates, family members, representatives  
10 of inmates, department employees, and others regarding the rights of  
11 inmates; providing technical assistance to support inmate self-  
12 advocacy, alternative dispute resolution, and individual  
13 representation; identifying systemic issues, reporting to the  
14 legislature, and advocating for systemic reform; and monitoring and  
15 promoting compliance with statutes, rules, and policies pertaining to  
16 conditions of correctional facilities and the rights of inmates.  
17 Prior to the appointment, the governor shall consult with and may  
18 receive recommendations from the ombuds advisory council regarding  
19 the selection of the ombuds.

20 (2) The person appointed ombuds shall hold office for a term of  
21 three years and continue to hold office until reappointed or until  
22 his or her successor is appointed. The governor may remove the ombuds  
23 only for neglect of duty, misconduct, or inability to perform duties.  
24 Any vacancy shall be filled by similar appointment for the remainder  
25 of the unexpired term.

26 NEW SECTION. **Sec. 4.** The definitions in this section apply  
27 throughout this chapter unless the context clearly requires  
28 otherwise.

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

33 (2) "Corrections ombuds" or "ombuds" means the corrections  
34 ombuds, staff of the corrections ombuds, and volunteers with the  
35 office of the corrections ombuds.

36 (3) "Council" means the ombuds advisory council established in  
37 section 5(1) of this act.

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

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

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

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

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

13 NEW SECTION. **Sec. 5.** (1) No later than August 1, 2017, the  
14 governor shall convene an ombuds advisory council with several  
15 purposes in support of the ombuds function. The council shall  
16 participate in a priority setting process for the purpose of  
17 developing priority recommendations to the ombuds, review data  
18 collected by the ombuds, review reports issued by the ombuds prior to  
19 their release, and make recommendations to the ombuds regarding the  
20 accomplishment of its purposes. The council also has authority to  
21 issue its own reports and recommendations. The council must  
22 biannually review ombuds performance, reporting to the governor and  
23 the legislature regarding its findings. The council must provide the  
24 legislature with recommendations regarding the ombuds budget and  
25 changes in the law that would enhance ombuds effectiveness.

26 (2) The council initially consists of one democrat and one  
27 republican member of the legislature. The chairs of the senate  
28 committee on law and justice and the house of representatives  
29 committee on public safety shall make recommendations to the  
30 president of the senate and the speaker of the house of  
31 representatives, who shall make the final appointments. These  
32 appointed members shall select the following additional members:

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

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

36 (c) One expert with significant criminal justice or correctional  
37 experience who is not an employee or contractor with the state of  
38 Washington;

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

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

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

8 (3) The council also includes:

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

11 (b) A bargaining unit representative, as selected by the  
12 membership of the bargaining unit.

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

16 (5) Councilmembers serve a term of three years, except that the  
17 council shall create and implement a system of staggered terms, and  
18 no member may serve more than two consecutive terms. The council  
19 shall convene at least quarterly. Councilmembers will serve without  
20 compensation, except that funds appropriated for the implementation  
21 of this act may be used to reimburse members who are not employees of  
22 Washington state for expenses necessary to the performance of their  
23 duties.

24 NEW SECTION. **Sec. 6.** (1) The state auditor shall designate, by  
25 a competitive bidding process, the nonprofit organization that will  
26 contract to operate the office of the corrections ombuds. The  
27 selection process must include direct stakeholder participation in  
28 the development of the request for proposals, evaluation of bids, and  
29 final selection. The state auditor shall select an organization that  
30 possesses, directly or through subcontracts, significant legal  
31 expertise, competence with mediation and alternative dispute  
32 resolution, and experience working within criminal justice and  
33 correctional environments addressing issues relating to chemical  
34 dependency treatment, disability and disability-related  
35 accommodation, respect for racial, ethnic, and religious diversity,  
36 and other civil rights and conditions issues. The selected  
37 organization must have experience and the capacity to effectively  
38 communicate regarding criminal justice issues with policymakers,  
39 stakeholders, and the general public, and must be prepared and able

1 to provide all program and staff support necessary, directly or  
2 through subcontracts, to carry out all duties of the office.

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

6 (3) The state auditor or state may not revoke the designation of  
7 the organization contracted to provide the services of the office of  
8 the corrections ombuds except upon a showing of neglect of duty,  
9 misconduct, or inability to perform duties. Prior to revoking the  
10 designation, the state must provide notice and an opportunity for the  
11 organization, the ombuds, and the public to comment upon the proposed  
12 revocation, and must provide the organization an opportunity to  
13 appeal the decision to a court.

14 NEW SECTION. **Sec. 7.** (1) The ombuds shall:

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

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

20 (c) Provide information, as appropriate, to inmates, family  
21 members, representatives of inmates, department employees, and others  
22 regarding the rights of inmates;

23 (d) Provide technical assistance to support inmate participation  
24 in self-advocacy, utilizing existing kite, grievance, and appeal  
25 procedures;

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

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

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

34 (h) Establish procedures to receive, investigate, and resolve  
35 complaints;

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

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

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

- 7 (i) Abuse or neglect;
- 8 (ii) Department decisions or actions;
- 9 (iii) Inactions or omissions;
- 10 (iv) Policies, rules, or procedures; or
- 11 (v) Alleged violations of law.

12 (b) The ombuds may decline to investigate any complaint as  
13 provided by the rules adopted under this chapter.

14 (c) The ombuds may not investigate any complaints relating to an  
15 inmate's underlying criminal conviction.

16 (d) The ombuds may not investigate a complaint from a department  
17 employee that relates to the employee's employment relationship with  
18 the department.

19 (e) The ombuds may refer complainants and others to appropriate  
20 resources, agencies, or departments.

21 (f) The ombuds may not levy any fees for the submission or  
22 investigation of complaints.

23 (g) At the conclusion of an investigation of a complaint, the  
24 ombuds must render a public decision on the merits of each complaint,  
25 except that the documents supporting the decision are subject to the  
26 confidentiality provisions of section 9 of this act. The ombuds must  
27 communicate the decision to the inmate, if any, and to the  
28 department. The ombuds must state their recommendations and reasoning  
29 if, in the ombuds' opinion, the department or any employee thereof  
30 should:

- 31 (i) Consider the matter further;
- 32 (ii) Modify or cancel any action;
- 33 (iii) Alter a rule, practice, or ruling;
- 34 (iv) Explain in detail the administrative action in question;
- 35 (v) Rectify an omission; or
- 36 (vi) Take any other action.

37 (h) If the ombuds so requests, the department must, within the  
38 time specified, inform the ombuds about any action taken on the  
39 recommendations or the reasons for not complying with the  
40 recommendations.

1 (i) After the conclusion of an investigation, if the ombuds  
2 believes that additional action is warranted, the ombuds may:

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

5 (ii) Take any additional action that the ombuds considers  
6 appropriate.

7 (j) Before announcing a conclusion or recommendation that  
8 expressly, or by implication, criticizes a person or the department,  
9 the ombuds must attempt to notify the person or the department. The  
10 ombuds may request to be notified by the department, within a  
11 specified time, of any action taken on any recommendation presented.  
12 The ombuds must notify the inmate, if any, of the actions taken by  
13 the department in response to the ombuds' recommendations.

14 (3) This chapter does not require inmates to file a complaint  
15 with the ombuds in order to exhaust available administrative remedies  
16 for purposes of the prison litigation reform act of 1995, P.L.  
17 104-134.

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

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

27 (b) The ombuds determines there is reasonable suspicion that an  
28 incident has or may have occurred; or

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

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

36 (a) Providing information about individual rights and the  
37 services available from the office, including the name, address, and  
38 telephone number of the office;

1 (b) Monitoring compliance with respect to the rights and safety  
2 of inmates; and

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

6 (3) Reasonable access to inmates includes the opportunity to meet  
7 and communicate privately and confidentially with individuals  
8 regularly, both formally and informally, by telephone, mail, and in  
9 person.

10 (4) The ombuds has the right to access, inspect, and obtain  
11 copies of all relevant information, records, or documents in the  
12 possession or control of the department that the ombuds considers  
13 necessary in an investigation of a complaint filed under this  
14 chapter, and the department must assist the ombuds in obtaining the  
15 necessary releases for those documents which are specifically  
16 restricted or privileged for use by the ombuds.

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

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

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

30 NEW SECTION. **Sec. 9.** (1) Correspondence and communication with  
31 the office is confidential and must be protected as privileged  
32 correspondence in the same manner as legal correspondence or  
33 communication.

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

36 (3) The office shall preserve the confidentiality of information  
37 obtained while providing services, including general information,  
38 technical assistance, and investigations, to individuals, including  
39 inmates, family members and representatives of inmates, department



1 employees, and others. Confidential information may not be disclosed  
2 unless the individual gives informed consent, the disclosure is  
3 impliedly authorized in order to carry out ombuds services, or the  
4 disclosure is authorized by subsection (4) of this section.

5 (4) To the extent the ombuds reasonably believes necessary, the  
6 ombuds:

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

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

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

20 NEW SECTION. **Sec. 10.** (1) A civil action may not be brought  
21 against any employee of the office for good faith performance of  
22 responsibilities under this chapter.

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

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

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

1        NEW SECTION.    **Sec. 11.**    Sections 1 through 10 of this act  
2    constitute a new chapter in Title 43 RCW.

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