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SENATE BILL 5465

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State of Washington

65th Legislature

2017 Regular Session

By Senators Miloscia, Hasegawa, Rolfes, O'Ban, Darneille, Angel, and Frockt

Read first time 01/25/17. Referred to Committee on Law & Justice.

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

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.** The legislature hereby authorizes the  
14 creation of an office of the corrections ombuds for the purpose of  
15 increasing transparency and accountability in Washington state's  
16 prisons and 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, to be nominated by the chairs  
7 of the senate committee on law and justice and the house of  
8 representatives committee on public safety. These members shall  
9 select the following additional members:

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

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

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

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

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

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

23 (3) The council also includes:

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

26 (b) A bargaining unit representative, as selected by the  
27 membership of the bargaining unit.

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

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

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

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

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

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

31        (a) Establish priorities for use of the limited resources  
32 appropriate pursuant to this act;

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

36        (c) Provide information, as appropriate, to inmates, family  
37 members, representatives of inmates, department employees, and others  
38 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 policies and procedures necessary to  
18 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) The ombuds may decline to investigate any complaint as  
29 provided by the rules adopted under this chapter.

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

32 (d) The ombuds may not investigate a complaint from a department  
33 employee that relates to the employee's employment relationship with  
34 the department.

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

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

39 (g) At the conclusion of an investigation of a complaint, the  
40 ombuds must render a decision on the merits of each complaint and,

1 subject to the confidentiality provisions of section 8 of this act,  
2 communicate the decision to the inmate, if any, and to the  
3 department. The ombuds must state their recommendations and reasoning  
4 if, in the ombuds' opinion, the department or any employee thereof  
5 should:

- 6 (i) Consider the matter further;
- 7 (ii) Modify or cancel any action;
- 8 (iii) Alter a rule, practice, or ruling;
- 9 (iv) Explain in detail the administrative action in question;
- 10 (v) Rectify an omission; or
- 11 (vi) Take any other action.

12 (h) If the ombuds so requests, the department must, within the  
13 time specified, inform the ombuds about any action taken on the  
14 recommendations or the reasons for not complying with the  
15 recommendations.

16 (i) After the conclusion of an investigation, if the ombuds  
17 believes that additional action is warranted, the ombuds may choose  
18 to:

- 19 (i) Report a finding of abuse, neglect, or other rights violation  
20 to the appropriate committees of the legislature;
- 21 (ii) Commence litigation, but state funds may not be used for  
22 purposes of litigation;
- 23 (iii) Take any additional action that the ombuds considers  
24 appropriate.

25 (j) Before announcing a conclusion or recommendation that  
26 expressly, or by implication, criticizes a person or the department,  
27 the ombuds must attempt to notify the person or the department. The  
28 ombuds may request to be notified by the department, within a  
29 specified time, of any action taken on any recommendation presented.  
30 The ombuds must notify the inmate, if any, of the actions taken by  
31 the department in response to the ombuds' recommendations.

32 (3) This chapter does not require inmates to file a complaint  
33 with the ombuds in order to exhaust available administrative remedies  
34 for purposes of the prison litigation reform act of 1995, P.L.  
35 104-134.

36 NEW SECTION. **Sec. 7.** (1) The ombuds must have reasonable  
37 unaccompanied access to correctional facilities at all times  
38 necessary to conduct a full investigation of an incident of abuse or  
39 neglect. This authority includes the opportunity to interview any

1 inmate, department employee, or other person, including the person  
2 thought to be the victim of such abuse, who might be reasonably  
3 believed by the facility to have knowledge of the incident under  
4 investigation. Such access must be afforded, upon request by the  
5 ombuds, when:

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

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

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

11 (2) The ombuds must have reasonable unaccompanied access to  
12 department facilities, including all areas which are used by inmates,  
13 all areas which are accessible to inmates, and to programs for  
14 inmates at reasonable times, which at a minimum must include normal  
15 working hours and visiting hours. This access is for the purpose of:

16 (a) Providing information about individual rights and the  
17 services available from the office, including the name, address, and  
18 telephone number of the office;

19 (b) Monitoring compliance with respect to the rights and safety  
20 of inmates; and

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

24 (3) Unaccompanied access to inmates includes the opportunity to  
25 meet and communicate privately and confidentially with individuals  
26 regularly, both formally and informally, by telephone, mail, and in  
27 person.

28 (4) The ombuds has the right to access, inspect, and copy all  
29 relevant information, records, or documents in the possession or  
30 control of the department that the ombuds considers necessary in an  
31 investigation of a complaint filed under this chapter, and the  
32 department must assist the ombuds in obtaining the necessary releases  
33 for those documents which are specifically restricted or privileged  
34 for use by the ombuds.

35 (a) When conducting an investigation of potential abuse or  
36 neglect, the ombuds must have access to relevant records not later  
37 than three business days after the ombuds makes a written request for  
38 such records.

39 (b) The ombuds must have immediate access, not later than twenty-  
40 four hours after the ombuds makes such a request, to relevant

1 records, without consent from another party, if the ombuds determines  
2 there is probable cause to believe that the health or safety of an  
3 inmate is in serious and immediate jeopardy, or in any case of death  
4 of an inmate while in department custody.

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

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

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

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

22 (4) To the extent the ombuds reasonably believes necessary, the  
23 ombuds:

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

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

29 (5) If the ombuds receives personally identifying information  
30 about individual corrections staff during the course of an  
31 investigation that the ombuds determines is unrelated or unnecessary  
32 to the subject of the investigation or recommendation for action, the  
33 ombuds will not further disclose such information. If the ombuds  
34 determines that such disclosure is necessary to an investigation or  
35 recommendation, the ombuds will contact the staff member as well as  
36 the bargaining unit representative before any disclosure.



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

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

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

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

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