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**SENATE BILL 6322**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Senators O'Ban, Padden, and Wagoner

AN ACT Relating to addressing the department of corrections early release and inmate medical care errors; amending RCW 43.06C.010, 43.06C.020, 43.06C.040, 43.06C.060, 49.60.210, and 43.131.426; adding new sections to chapter 43.06C RCW; creating new sections; and repealing RCW 43.06C.030.

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

NEW SECTION. **Sec.**  In response to the numerous incidents related to the department of corrections, including early release errors, escapes, and administrative failures related to inmate health, the legislature finds that it is necessary to implement reforms to address these serious miscarriages. The legislature also finds that while the office of the corrections ombuds has been implemented, its ability to perform independent and unbiased investigations is diminished due to its placement within the executive branch. It is therefore the intent of the legislature to reestablish the ombuds office as an independent entity free from governmental conflicts of interest.

**PART I**

**TRANSFER OF THE DEPARTMENT OF CORRECTIONS OMBUDS**

**Sec.**  RCW 43.06C.010 and 2018 c 270 s 3 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

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

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

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

((~~(4)~~)) (5) "Inmate" means a person committed to the physical custody of the department, including persons residing in a correctional institution or facility and persons received from another state, another state agency, a county, or the federal government.

((~~(5)~~)) (6) "Neglect" means a negligent act or omission by any department employee, subcontractor, or volunteer which caused, or may have caused, injury or death to an inmate.

((~~(6)~~)) (7) "Office" means the office of the corrections ombuds.

((~~(7)~~)) (8) "Secretary" means the secretary of the department of corrections.

((~~(8)~~)) (9) "Statewide family council" means the family council maintained by the department that is comprised of representatives from local family councils.

**Sec.**  RCW 43.06C.020 and 2018 c 270 s 2 are each amended to read as follows:

Subject to the availability of amounts appropriated for this specific purpose, there is hereby created an office of corrections ombuds ((~~within the office of the governor~~)) for the purpose of providing information to inmates and their families, representatives of inmates, department employees, and others regarding the rights of inmates; providing technical assistance to support inmate self-advocacy; 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 department.

((~~The ombuds reports directly to the governor and exercises his or her powers and duties independently of the secretary.~~))

NEW SECTION. **Sec.**  A new section is added to chapter 43.06C RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, no later than August 1, 2020, the governor shall convene an ombuds advisory council with several purposes in support of the ombuds function. The council shall participate in a priority setting process for the purpose of developing priority recommendations to the ombuds, review data collected by the ombuds, review reports issued by the ombuds prior to their release, and make recommendations to the ombuds regarding the accomplishment of its purposes. The council also has authority to issue its own reports and recommendations. The council must biannually review the ombuds' performance, including its compliance with its internal bylaws and other adopted standards of practice, reporting to the governor and the legislature regarding its findings. The council must provide the legislature with recommendations regarding the ombuds budget and changes in the law that would enhance the effectiveness of the ombuds.

(2) The council initially consists of the following four members:

(a) The majority leader and minority leader in the senate shall appoint one member from each of their respective caucuses of the senate; and

(b) The speaker of the house of representatives shall appoint one member from each of the two largest caucuses of the house of representatives.

(3) The remaining council members consist of the following members, appointed by the governor, and subject to senate confirmation:

(a) Two former inmates who have successfully reintegrated into the community and are no longer in the custody of the department;

(b) Two family members of current inmates;

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

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

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

(f) Two former department of corrections employees;

(g) A current department of corrections chaplain; and

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

(4) The council also includes:

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

(b) A bargaining unit representative; and

(c) A representative of the governor's office.

(5) After the full membership is attained, the council shall develop a process for replacing members in case of resignation or expiration of terms. The council must meet at least once a year.

(6) Councilmembers serve a term of two years, except that the council shall create and implement a system of staggered terms, and no member other than the department staff serving as the internal ombuds may serve more than two consecutive terms. The council shall convene at least quarterly. Councilmembers serve without compensation, except that funds appropriated for the implementation of this chapter may be used to reimburse members who are not employees of Washington state for expenses necessary to the performance of their duties.

NEW SECTION. **Sec.**  A new section is added to chapter 43.06C RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the department of commerce shall designate, by a competitive bidding process, the nonprofit organization that will contract to operate the office. The contract must last for a period of two years and may be renewed at the end of the term. The department of commerce shall select an organization that possesses, directly or through subcontracts, significant legal expertise, competence with mediation and alternative dispute resolution, and experience working within criminal justice and correctional environments. Other relevant experience may include, but is not limited to, addressing issues relating to chemical dependency treatment, disability and disability-related accommodation, respect for racial, ethnic, and religious diversity, and other civil rights and conditions issues. The selected organization must have experience and the capacity to communicate effectively regarding criminal justice issues with policymakers, stakeholders, and the general public, and must be prepared and able to provide all program and staff support necessary, directly or through subcontracts, to carry out all duties of the office.

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

(3) The organization must be an objective and neutral entity that will impartially investigate complaints.

(4) The organization is subject to financial and other audits by the state auditor's office, and its employees must abide by the provisions of chapter 42.52 RCW.

**Sec.**  RCW 43.06C.040 and 2018 c 270 s 5 are each amended to read as follows:

(1) The ombuds shall:

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

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

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

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

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

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

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

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

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

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

(i) The budget and expenditures of the ombuds;

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

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

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

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

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

(2)(a) The ombuds may initiate and attempt to resolve an investigation upon his or her own initiative, or upon receipt of a complaint from an inmate, a family member, a representative of an inmate, a department employee, or others, regarding ((~~any of the following that may adversely affect the health, safety, welfare, and rights of inmates~~)):

(i) Abuse or neglect;

(ii) Department decisions or administrative actions;

(iii) Inactions or omissions;

(iv) Policies, rules, or procedures; or

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

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

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

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

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

(f) The ombuds may not investigate a complaint from a department employee that relates to the employee's employment relationship with the department ((~~or the administration of the department, unless the complaint is related to the health, safety, welfare, and rehabilitation of inmates~~)).

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

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

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

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

(k) At the conclusion of an investigation of a complaint, the ombuds must render a public decision on the merits of each complaint, except that the documents supporting the decision are subject to the confidentiality provisions of RCW 43.06C.060. The ombuds must communicate the decision to the inmate, if any, and to the department. The ombuds must state its recommendations and reasoning if, in the ombuds' opinion, the department or any employee thereof should:

(i) Consider the matter further;

(ii) Modify or cancel any action;

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

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

(v) Rectify an omission; or

(vi) Take any other action.

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

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

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

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

**Sec.**  RCW 43.06C.060 and 2018 c 270 s 7 are each amended to read as follows:

(1) Correspondence and communication with the office is confidential and must be protected as privileged correspondence in the same manner as legal correspondence or communication.

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

(3) The ombuds shall treat all matters under investigation, including the identities of recipients of ombuds services, complainants, and individuals from whom information is acquired, as confidential, except as far as disclosures may be necessary to enable the ombuds to perform the duties of the office and to support any recommendations resulting from an investigation. Upon receipt of information that by law is confidential or privileged, the ombuds shall maintain the confidentiality of such information and shall not further disclose or disseminate the information except as provided by applicable state or federal law or as authorized by subsection (4) of this section. All records exchanged and communications between the office of the corrections ombuds and the department to include the investigative record are confidential and are exempt from public disclosure under chapter 42.56 RCW.

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

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

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

(5) If the ombuds believes it is necessary to reveal investigative records for any of the reasons outlined in ((~~section 4 of this act~~)) subsection (4) of this section, the ombuds shall provide a copy of what they intend to disclose to the department for review and application of legal exemptions prior to releasing to any other persons. If the ombuds receives personally identifying information about individual corrections staff during the course of an investigation that the ombuds determines is unrelated or unnecessary to the subject of the investigation or recommendation for action, the ombuds will not further disclose such information. If the ombuds determines that such disclosure is necessary to an investigation or recommendation, the ombuds will contact the staff member as well as the bargaining unit representative before any disclosure.

NEW SECTION. **Sec.**  (1) The office of the corrections ombuds is transferred to the nonprofit organization selected by the competitive bidding process outlined in section 5 of this act.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the office of the corrections ombuds shall be delivered to the custody of the nonprofit organization selected by the competitive bidding process outlined in section 5 of this act. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the nonprofit organization selected by the competitive bidding process outlined in section 5 of this act.

(b) Any appropriations made to the office of the corrections ombuds shall, on the effective date of this section, be transferred and credited to the nonprofit organization selected by the competitive bidding process outlined in section 5 of this act.

(c) If any question arises as to the transfer of any funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All rules and all pending business before the office of the corrections ombuds shall be continued and acted upon by the nonprofit organization selected by the competitive bidding process outlined in section 5 of this act. All existing contracts and obligations shall remain in full force and shall be performed by the nonprofit organization selected by the competitive bidding process outlined in section 5 of this act.

(4) The transfer of the powers, duties, and functions of the office of the corrections ombuds shall not affect the validity of any act performed before the effective date of this section.

(5) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

**PART II**

**GENERAL PROVISIONS**

**Sec.**  RCW 49.60.210 and 2011 1st sp.s. c 42 s 25 are each amended to read as follows:

(1) It is an unfair practice for any employer, employment agency, labor union, or other person to discharge, expel, or otherwise discriminate against any person because he or she has opposed any practices forbidden by this chapter, or because he or she has filed a charge, testified, or assisted in any proceeding under this chapter.

(2)(a) It is an unfair practice for a government agency or government manager or supervisor to retaliate against a whistleblower as defined in chapter 42.40 RCW.

(b) A settlement of any cause of action brought by an employee under this subsection may not contain a provision prohibiting the employee from future work in state government unless the government agency has a significant ongoing concern for the public health, safety, or welfare as a result of the person's future employment.

(3) It is an unfair practice for any employer, employment agency, labor union, government agency, government manager, or government supervisor to discharge, expel, discriminate, or otherwise retaliate against an individual assisting with an office of fraud and accountability investigation under RCW 74.04.012, unless the individual has willfully disregarded the truth in providing information to the office.

NEW SECTION. **Sec.**  In the contract for the next regularly scheduled performance audit under RCW 42.40.110 following the effective date of this section, the office of financial management must require the audit to review the ability of department of corrections employees to use the state employee whistleblower program. The audit must include findings and recommendations, including possible changes to improve the effectiveness of the whistleblower program.

NEW SECTION. **Sec.**  RCW 43.06C.030 (Appointment of ombuds—Term—Other employees) and 2018 c 270 s 4 are each repealed.

**Sec.**  RCW 43.131.426 and 2018 c 270 s 11 are each amended to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective July 1, 2029:

(1) RCW 43.06C.005 and 2018 c 270 s 1;

(2) RCW 43.06C.020 and 2020 c . . . s 3 (section 3 of this act) & 2018 c 270 s 2;

(3) RCW 43.06C.010 and 2020 c . . . s 2 (section 2 of this act) & 2018 c 270 s 3;

(4) ((~~RCW 43.06C.030 and 2018 c 270 s 4;~~

~~(5)~~)) RCW 43.06C.040 and 2020 c . . . s 6 (section 6 of this act) & 2018 c 270 s 5;

((~~(6)~~)) (5) RCW 43.06C.050 and 2018 c 270 s 6;

((~~(7)~~)) (6) RCW 43.06C.060 and 2020 c . . . s 7 (section 7 of this act) & 2018 c 270 s 7; ((~~and~~

~~(8)~~)) (7) RCW 43.06C.070 and 2018 c 270 s 8;

(8) RCW 43.06C.--- and 2020 c . . . s 4 (section 4 of this act); and

(9) RCW 43.06C.--- and 2020 c . . . s 5 (section 5 of this act).

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