

SENATE BILL REPORT

SB 5686

As of January 27, 2022

Title: An act relating to improving department of corrections operations and oversight by transferring the office of corrections ombuds to the department of social and health services and designating public safety as the department of corrections highest duty.

Brief Description: Improving department of corrections operations and oversight by transferring the office of corrections ombuds to the department of social and health services and designating public safety as the department of corrections highest duty.

Sponsors: Senators McCune, Padden and Wagoner.

Brief History:

Committee Activity: Human Services, Reentry & Rehabilitation: 1/27/22.

Brief Summary of Bill

- Transfers the Office of Corrections Ombuds (OCO) from the Governor's Office to the Department of Social and Health Services (DSHS).
- Requires DSHS to contract with a nonprofit organization to operate OCO for a two-year term, subject to appropriations.
- Removes conditions that limit OCO investigations to matters that adversely affect the health, safety, welfare, and rights of inmates.
- Provides that the highest duty of the Department of Corrections (DOC) and the secretary is to ensure public safety.
- Requires DOC to make every reasonable effort and prioritize staffing to pursue active warrants for community supervision violators.

SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

Staff: Kelsey-anne Fung (786-7479)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background: Office of Corrections Ombuds. The Office of Corrections Ombuds (OCO) was created in 2018 as an independent and impartial office in the Governor's Office to provide information to inmates and their families; promote public awareness and understanding of the rights and responsibilities of inmates; identify system issues and responses for the Governor and the Legislature; and ensure compliance with relevant statutes, rules, and policies pertaining to corrections facilities, services, and treatment of inmates under the jurisdiction of the Department of Corrections (DOC). The 2018 enacting legislation included a sunset provision and OCO terminates July 1, 2028.

Appointment. The Governor is required to appoint an ombuds who is a person of recognized judgment, independence, objectivity, and integrity, and qualified by training or experience in corrections law and policy. Prior to making the appointment, the Governor must consult with, and may receive recommendations from the Legislature, delegates of the Statewide Family Council (SFC), and other relevant stakeholders regarding selection of the ombuds. The appointed ombuds holds office for a term of three years, and may be reappointed. The Governor may remove the ombuds only for neglect of duty, misconduct, or the inability to perform duties. The ombuds may employ technical experts and other employees.

Responsibilities. The ombuds is responsible for:

- establishing priorities for the use of limited resources;
- maintaining a statewide toll-free telephone number, a collect telephone number, a website, and a mailing address for the receipt of complaints and inquiries;
- providing information to inmates, inmates' families and representatives, employees, and others regarding the rights of inmates;
- providing technical assistance to support inmate participation in self-advocacy;
- monitoring DOC's compliance with applicable federal, state, and local laws, rules, regulations, and policies as related to the health, safety, welfare, and rehabilitation of inmates;
- monitoring and participating in legislative and policy developments affecting correctional facilities;
- establishing a statewide uniform reporting system to collect and analyze complaints received by the ombuds regarding DOC, and establishing procedures for investigating and resolving those complaints;
- establishing procedures to gather stakeholder input into the ombuds' activities and priorities;
- submitting an annual report to the Governor's Office, Legislature, and SFC analyzing the work of the ombuds; and
- adopting and complying with rules, policies, and procedures necessary to implement the responsibilities of the ombuds.

Investigations. The ombuds may initiate and attempt to resolve an investigation upon its own initiative, or upon receiving a complaint from an inmate, family member, representative of an inmate, an employee, or others, regarding the following that may

adversely affect the health, safety, welfare, and rights of inmates:

- abuse or neglect;
- DOC decisions or administrative actions,
- inactions or omissions;
- policies, rules, or procedures; or
- alleged violations of the law by DOC that may adversely affect the health, safety, welfare, and rights of inmates.

Except in cases involving a complaint related to threats of bodily harm, prior to filing a complaint with the ombuds, a person must reasonably pursue resolution of the complaint through the internal DOC grievance process and other internal administrative procedures. The ombuds may decline to investigate any complaint. The ombuds may not investigate any complaints relating to an inmate's underlying conviction. The ombuds may not investigate a complaint from a DOC employee that relates to the employee's employment relationship with DOC or the administration of DOC, unless the complaint is related to the health, safety, welfare, and rehabilitation of inmates.

At the conclusion of an investigation of a complaint, the ombuds must render a public decision on the merits of the complaint. The ombuds must state its recommendations and reasoning whether DOC should consider the matter further; modify or cancel any action; alter a rule, practice, or ruling; explain the administrative action in question; or rectify an omission. If the ombuds requests, DOC must respond about any action taken on the recommendations or the reasons for not complying with the recommendations. If the ombuds believes there has been, or continues to be, a significant inmate health, safety, welfare, or rehabilitation issue, the ombuds must report to the Governor and Legislature.

Access to Correctional Facilities and Records. The ombuds must have reasonable access to correctional facilities and access to inmates. The ombuds has the right to access, inspect, and copy all relevant information, records, or documents in DOC's control that the ombuds considers necessary in an investigation of a complaint. DOC must respond to written demands for agency records from the ombuds by providing access within 20 business days of the request. When the requested records pertain to an inmate death or threats of bodily harm, records must be provided within five days unless the ombuds agrees to an extension. Other state or local agencies that have relevant records must also provide the ombuds access to those records.

Confidentiality. Correspondence with OCO is confidential. OCO must establish confidentiality rules and procedures for all information maintained by OCO. OCO must treat all matters under investigation as confidential except disclosures necessary for the ombuds to perform its duties. The ombuds must maintain the confidentiality of privileged information, and all communications and records exchanged between DOC and OCO, including investigative records, are exempt from public disclosure under the Public Records Act. To the extent the ombuds reasonably believes necessary, it must reveal information to prevent reasonably certain death or substantial bodily harm and may reveal information to

prevent the commission of a crime.

Other State Ombuds Offices. In addition to OCO, there is an Education Ombuds, Developmental Disabilities Ombuds, Long-Term Care Ombuds, and Family and Children's Ombuds. Both the Education Ombuds and Family and Children's Ombuds are located within the Governor's Office. The Long-Term Care Ombuds and Developmental Disabilities Ombuds are operated by private nonprofit organizations through contracts with the Department of Commerce.

DSHS operates the Special Commitment Center (SCC) which houses and provides specialized mental health treatment for civilly committed sex offenders who have completed their prison sentences. The SCC also has an ombuds to conduct independent, neutral reviews of program conformance with internal policies in the care, control, and treatment of residents at the SCC; investigate complaints related to residents' health, safety, welfare, and rights; identify systemic issues and make recommendations for change or improvement; and monitor and ensure compliance with relevant statutes, rules, and policies on the treatment of residents.

Community Custody Supervision. Community custody is the portion of a person's sentence served in the community under DOC supervision after their release from confinement. While on community custody, a person is subject to conditions imposed by the court and DOC. DOC may establish and modify conditions based on risks to community safety. DOC may issue warrants for the arrest of any person who violates a condition of community custody.

Corrections System. A comprehensive system of corrections for convicted law violators within the state has been established since 1981. Objectives of the system include, among others, that the system should ensure public safety; the system should punish the offender for violating the laws of the state; the system should positively impact offenders by stressing personal responsibility and accountability and by discouraging recidivism; and the system should provide for prudent management of resources.

Strategic Plan. State agencies are responsible for the development of strategic plans that include the mission of the agency and its programs, measurable goals, strategies, and performance measurement systems. In DOC's 2019-2023 Strategic Plan, its mission is to improve public safety by positively changing lives. DOC's commitment is to operate a safe and humane corrections system and partner with others to transform lives for a better Washington. DOC's vision is to work together for safer communities. DOC's values are to cultivate an environment of integrity and trust, respectful and inclusive interactions, people's safety, positivity in words and actions, and supporting people's success.

Summary of Bill: OCO is transferred from the Governor's Office to the Department of Social and Health Services (DSHS). The Governor's authority to appoint the ombuds is repealed. Subject to appropriations, DSHS must use a competitive bidding process to

contract with a nonprofit organization to operate OCO for a period of two years that may be renewed at the end of the term. DSHS must select an organization that possesses directly or through subcontracts significant legal expertise, mediation and alternative dispute resolution competence, and experience working within criminal justice and correctional environments. The selected organization must have experience and the capacity to effectively communicate on criminal justice issues with policymakers, stakeholders, and the general public, and must be able to provide all program and staff support directly or through subcontracts to carry out the duties of the office. The selected organization is a private, independent entity operating under a state contract and is subject to financial and other state audits. The organization must be an objective and neutral entity that will impartially investigate complaints.

All reports, documents, surveys, books, records, files, paper, or written materials in OCO's possession must be delivered to the custody of DSHS, and all funds, credits, or other assets shall be assigned to DSHS. All powers, duties, and functions of OCO, including any appropriations made to OCO, are transferred to DSHS. DSHS must use the transfers to facilitate operation of OCO by the selected nonprofit organization.

The purpose of OCO is expanded to include providing information to representatives of inmates, DOC employees, and others regarding the rights of inmates, and providing technical assistance to support inmate self-advocacy. Restrictions limiting the scope of OCO investigations to matters that may adversely affect the health, safety, welfare, and rights of inmates is removed. An exception is removed that allows OCO to investigate complaints related to employee's employment relationship with DOC or the administration of DOC if a complaint is related to the health, safety, welfare, and rehabilitation of inmates.

At the conclusion of an investigation, in addition to the options of considering the matter further; modifying or canceling any action; altering a rule, practice, or ruling; explaining the administrative action in question; or rectifying an omission, OCO may recommend DOC take any other action.

DOC must make every reasonable effort and prioritize staffing to pursue active warrants for offenders who have violated the terms of their supervision.

Instead of stating that a comprehensive system of corrections for convicted law violators should ensure the public safety, the bill provides that the highest duty of DOC and the secretary is to ensure public safety.

Appropriation: The bill contains a section or sections to limit implementation to the availability of amounts appropriated for that specific purpose.

Fiscal Note: Requested on January 6, 2022.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The bill provides that the highest duty of DOC and the secretary is to ensure public safety. Rehabilitation and reentry are critical aspects of protecting public safety and this bill fits squarely within that mission. This bill also transfers OCO from the Governor's Office to DSHS and requires DSHS to contract with a nonprofit to operate OCO. This bill will ensure that we have a more independent voice in the OCO. OCO was established a couple of years ago and they have produced great reports that have been very helpful in guiding policy changes. This bill requires DOC to prioritize arrest warrants for community custody violators, which is important since violent crime has increased in the state and the Legislature should hold them accountable.

Persons Testifying: PRO: Senator Jim McCune, Prime Sponsor.

Persons Signed In To Testify But Not Testifying: No one.