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**SENATE BILL 5686**

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**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** Senators McCune, Padden, and Wagoner

Prefiled 01/05/22. Read first time 01/10/22. Referred to Committee on Human Services, Reentry & Rehabilitation.

1 AN ACT Relating to improving department of corrections operations  
2 and oversight by transferring the office of corrections ombuds to the  
3 department of social and health services and designating public  
4 safety as the department of corrections highest duty; amending RCW  
5 43.06C.020, 43.06C.040, 43.06C.060, 72.09.010, 9.94A.704, and  
6 43.131.426; adding a new section to chapter 43.06C RCW; creating a  
7 new section; and repealing RCW 43.06C.030.

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

9 **Sec. 1.** RCW 43.06C.020 and 2018 c 270 s 2 are each amended to  
10 read as follows:

11 Subject to the availability of amounts appropriated for this  
12 specific purpose, there is hereby created an office of corrections  
13 ombuds within the (~~office of the governor~~) department of social and  
14 health services for the purpose of providing information to inmates  
15 and their families, representatives of inmates, department employees,  
16 and others regarding the rights of inmates; providing technical  
17 assistance to support inmate self-advocacy; promoting public  
18 awareness and understanding of the rights and responsibilities of  
19 inmates; identifying system issues and responses for the governor and  
20 the legislature to act upon; and ensuring compliance with relevant  
21 statutes, rules, and policies pertaining to corrections facilities,

1 services, and treatment of inmates under the jurisdiction of the  
2 department.

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

5 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.06C  
6 RCW to read as follows:

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

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

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

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

34 **Sec. 3.** RCW 43.06C.040 and 2018 c 270 s 5 are each amended to  
35 read as follows:

36 (1) The ombuds shall:

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

1 (b) Maintain a statewide toll-free telephone number, a collect  
2 telephone number, a website, and a mailing address for the receipt of  
3 complaints and inquiries;

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

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

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

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

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

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

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

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

25 (i) The budget and expenditures of the ombuds;

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

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

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

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

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

38 (2)(a) The ombuds may initiate and attempt to resolve an  
39 investigation upon his or her own initiative, or upon receipt of a  
40 complaint from an inmate, a family member, a representative of an

1 inmate, a department employee, or others, regarding (~~any of the~~  
2 ~~following that may adversely affect the health, safety, welfare, and~~  
3 ~~rights of inmates~~)):

4 (i) Abuse or neglect;

5 (ii) Department decisions or administrative actions;

6 (iii) Inactions or omissions;

7 (iv) Policies, rules, or procedures; or

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

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

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

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

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

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

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

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

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

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

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

9 (i) Consider the matter further;

10 (ii) Modify or cancel any action;

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

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

13 (~~(v)~~)

14 (v) Rectify an omission; or

15 (vi) Take any other action.

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

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

25 (n) Before announcing a conclusion or recommendation that  
26 expressly, or by implication, criticizes a person or the department,  
27 the ombuds shall consult with that 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 **Sec. 4.** RCW 43.06C.060 and 2018 c 270 s 7 are each amended to  
37 read as follows:

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

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

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

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

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

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

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

1        NEW SECTION.    **Sec. 5.**    (1) The office of the corrections ombuds  
2 is transferred to the department of social and health services.

3        (2)(a) All reports, documents, surveys, books, records, files,  
4 papers, or written material in the possession of the office of the  
5 corrections ombuds shall be delivered to the custody of the  
6 department of social and health services. All funds, credits, or  
7 other assets held in connection with the powers, functions, and  
8 duties transferred shall be assigned to the department of social and  
9 health services.

10        (b) Any appropriations made to the office of the corrections  
11 ombuds shall, on the effective date of this section, be transferred  
12 and credited to the department of social and health services.

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

19        (3) All rules and all pending business before the office of the  
20 corrections ombuds shall be continued and acted upon by the  
21 department of social and health services. All existing contracts and  
22 obligations shall remain in full force and shall be performed by the  
23 department of social and health services.

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

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

33        (6) The transfers to the department of social and health services  
34 in this section shall be used by the department to facilitate  
35 operation of the office of corrections ombuds by the nonprofit  
36 organization selected by the competitive bidding process outlined in  
37 section 2 of this act.

38        **Sec. 6.**    RCW 72.09.010 and 1995 1st sp.s. c 19 s 2 are each  
39 amended to read as follows:

1 It is the intent of the legislature to establish a comprehensive  
2 system of corrections for convicted law violators within the state of  
3 Washington to accomplish the following objectives.

4 (1) The (~~system should~~) highest duty of the department and the  
5 secretary is to ensure the public safety. The system should be  
6 designed and managed to provide the maximum feasible safety for the  
7 persons and property of the general public, the staff, and the  
8 inmates.

9 (2) The system should punish the offender for violating the laws  
10 of the state of Washington. This punishment should generally be  
11 limited to the denial of liberty of the offender.

12 (3) The system should positively impact offenders by stressing  
13 personal responsibility and accountability and by discouraging  
14 recidivism.

15 (4) The system should treat all offenders fairly and equitably  
16 without regard to race, religion, sex, national origin, residence, or  
17 social condition.

18 (5) The system, as much as possible, should reflect the values of  
19 the community including:

20 (a) Avoiding idleness. Idleness is not only wasteful but  
21 destructive to the individual and to the community.

22 (b) Adoption of the work ethic. It is the community expectation  
23 that all individuals should work and through their efforts benefit  
24 both themselves and the community.

25 (c) Providing opportunities for self improvement. All individuals  
26 should have opportunities to grow and expand their skills and  
27 abilities so as to fulfill their role in the community.

28 (d) Linking the receipt or denial of privileges to responsible  
29 behavior and accomplishments. The individual who works to improve  
30 himself or herself and the community should be rewarded for these  
31 efforts. As a corollary, there should be no rewards for no effort.

32 (e) Sharing in the obligations of the community. All citizens,  
33 the public and inmates alike, have a personal and fiscal obligation  
34 in the corrections system. All communities must share in the  
35 responsibility of the corrections system.

36 (6) The system should provide for prudent management of  
37 resources. The avoidance of unnecessary or inefficient public  
38 expenditures on the part of offenders and the department is  
39 essential. Offenders must be accountable to the department, and the  
40 department to the public and the legislature. The human and fiscal



1 resources of the community are limited. The management and use of  
2 these resources can be enhanced by wise investment, productive  
3 programs, the reduction of duplication and waste, and the joining  
4 together of all involved parties in a common endeavor. Since most  
5 offenders return to the community, it is wise for the state and the  
6 communities to make an investment in effective rehabilitation  
7 programs for offenders and the wise use of resources.

8 (7) The system should provide for restitution. Those who have  
9 damaged others, persons or property, have a responsibility to make  
10 restitution for these damages.

11 (8) The system should be accountable to the citizens of the  
12 state. In return, the individual citizens and local units of  
13 government must meet their responsibilities to make the corrections  
14 system effective.

15 (9) The system should meet those national standards which the  
16 state determines to be appropriate.

17 **Sec. 7.** RCW 9.94A.704 and 2019 c 263 s 601 are each amended to  
18 read as follows:

19 (1) Every person who is sentenced to a period of community  
20 custody shall report to and be placed under the supervision of the  
21 department, subject to RCW 9.94A.501.

22 (2)(a) The department shall assess the offender's risk of  
23 reoffense and may establish and modify additional conditions of  
24 community custody based upon the risk to community safety.

25 (b) Within the funds available for community custody, the  
26 department shall determine conditions on the basis of risk to  
27 community safety, and shall supervise offenders during community  
28 custody on the basis of risk to community safety and conditions  
29 imposed by the court. The secretary shall adopt rules to implement  
30 the provisions of this subsection (2)(b).

31 (3) If the offender is supervised by the department, the  
32 department shall at a minimum instruct the offender to:

33 (a) Report as directed to a community corrections officer;

34 (b) Remain within prescribed geographical boundaries;

35 (c) Notify the community corrections officer of any change in the  
36 offender's address or employment;

37 (d) Pay the supervision fee assessment; and

1 (e) Disclose the fact of supervision to any mental health,  
2 chemical dependency, or domestic violence treatment provider, as  
3 required by RCW 9.94A.722.

4 (4) The department may require the offender to participate in  
5 rehabilitative programs, or otherwise perform affirmative conduct,  
6 and to obey all laws.

7 (5) If the offender was sentenced pursuant to a conviction for a  
8 sex offense or domestic violence, the department may:

9 (a) Require the offender to refrain from direct or indirect  
10 contact with the victim of the crime or immediate family member of  
11 the victim of the crime. If a victim or an immediate family member of  
12 a victim has requested that the offender not contact him or her after  
13 notice as provided in RCW 72.09.340, the department shall require the  
14 offender to refrain from contact with the requestor. Where the victim  
15 is a minor, the parent or guardian of the victim may make a request  
16 on the victim's behalf. This subsection is not intended to reduce the  
17 preexisting authority of the department to impose no-contact  
18 conditions regardless of the offender's crime and regardless of who  
19 is protected by the no-contact condition, where such condition is  
20 based on risk to community safety.

21 (b) Impose electronic monitoring. Within the resources made  
22 available by the department for this purpose, the department shall  
23 carry out any electronic monitoring using the most appropriate  
24 technology given the individual circumstances of the offender. As  
25 used in this section, "electronic monitoring" has the same meaning as  
26 in RCW 9.94A.030.

27 (6) The department may not impose conditions that are contrary to  
28 those ordered by the court and may not contravene or decrease court-  
29 imposed conditions.

30 (7) (a) The department shall notify the offender in writing of any  
31 additional conditions or modifications.

32 (b) By the close of the next business day after receiving notice  
33 of a condition imposed or modified by the department, an offender may  
34 request an administrative review under rules adopted by the  
35 department. The condition shall remain in effect unless the reviewing  
36 officer finds that it is not reasonably related to the crime of  
37 conviction, the offender's risk of reoffending, or the safety of the  
38 community.

39 (8) The department shall notify the offender in writing upon  
40 community custody intake of the department's violation process.

1 (9) The department may require offenders to pay for special  
2 services rendered including electronic monitoring, day reporting, and  
3 telephone reporting, dependent on the offender's ability to pay. The  
4 department may pay for these services for offenders who are not able  
5 to pay.

6 (10)(a) When an offender on community custody is under the  
7 authority of the board, the department shall assess the offender's  
8 risk of recidivism and shall recommend to the board any additional or  
9 modified conditions based upon the offender's risk to community  
10 safety and may recommend affirmative conduct or electronic monitoring  
11 consistent with subsections (4) through (6) of this section.

12 (b) The board may impose conditions in addition to court-ordered  
13 conditions. The board must consider and may impose department-  
14 recommended conditions. The board must impose a condition requiring  
15 the offender to refrain from contact with the victim or immediate  
16 family member of the victim as provided in subsection (5)(a) of this  
17 section.

18 (c) By the close of the next business day, after receiving notice  
19 of a condition imposed by the board or the department, an offender  
20 may request an administrative hearing under rules adopted by the  
21 board. The condition shall remain in effect unless the hearing  
22 examiner finds that it is not reasonably related to any of the  
23 following:

- 24 (i) The crime of conviction;
- 25 (ii) The offender's risk of reoffending;
- 26 (iii) The safety of the community;
- 27 (iv) The offender's risk of domestic violence reoffense.

28 (d) If the department finds that an emergency exists requiring  
29 the immediate imposition of additional conditions in order to prevent  
30 the offender from committing a crime, the department may impose such  
31 conditions. The department may not impose conditions that are  
32 contrary to those set by the board or the court and may not  
33 contravene or decrease court-imposed or board-imposed conditions.  
34 Conditions imposed under this subsection shall take effect  
35 immediately after notice to the offender by personal service, but  
36 shall not remain in effect longer than seven working days unless  
37 approved by the board.

38 (11) In setting, modifying, and enforcing conditions of community  
39 custody, the department shall be deemed to be performing a  
40 quasi-judicial function.

1       (12) The department shall make every reasonable effort and  
2 prioritize staffing to pursue active warrants of offenders who have  
3 violated the terms of their supervision.

4       NEW SECTION. Sec. 8. RCW 43.06C.030 (Appointment of ombuds—Term  
5 —Other employees) and 2018 c 270 s 4 are each repealed.

6       **Sec. 9.** RCW 43.131.426 and 2018 c 270 s 11 are each amended to  
7 read as follows:

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

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

11       (2) RCW 43.06C.020 and 2022 c ... s 1 (section 1 of this act) &  
12 2018 c 270 s 2;

13       (3) RCW 43.06C.010 and 2018 c 270 s 3;

14       (4) (~~RCW 43.06C.030 and 2018 c 270 s 4~~) RCW 43.06C.--- and 2022  
15 c ... s 2 (section 2 of this act);

16       (5) RCW 43.06C.040 and 2022 c ... s 3 (section 3 of this act) &  
17 2018 c 270 s 5;

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

19       (7) RCW 43.06C.060 and 2022 c ... s 4 (section 4 of this act) &  
20 2018 c 270 s 7; and

21       (8) RCW 43.06C.070 and 2018 c 270 s 8.

--- **END** ---