

SENATE BILL REPORT

SHB 2287

As of February 15, 2024

Title: An act relating to creating an advisory board to the office of the corrections ombuds.

Brief Description: Creating an advisory board to the office of the corrections ombuds.

Sponsors: House Committee on Community Safety, Justice, & Reentry (originally sponsored by Representatives Farivar, Goodman, Simmons, Chopp, Nance, Street, Davis, Ortiz-Self, Ramel, Peterson and Ormsby).

Brief History: Passed House: 2/9/24, 58-39.

Committee Activity: Human Services: 2/15/24.

Brief Summary of Bill

- Creates an Advisory Board to the Office of the Corrections Ombuds.

SENATE COMMITTEE ON HUMAN SERVICES

Staff: Kelsey-anne Fung (786-7479)

Background: Office of the Corrections Ombuds. The Office of the Corrections Ombuds (OCO) was created in 2018 as an independent and impartial office in the Governor's Office to:

- provide information to incarcerated individuals and their families;
- promote public awareness and understanding of the rights and responsibilities of incarcerated individuals;
- 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 incarcerated individuals under the jurisdiction of the Department of Corrections (DOC).

The OCO's statutory duties and responsibilities include, among other duties:

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- maintaining a statewide toll-free confidential hotline for receiving complaints and inquiries;
- providing information and technical assistance to incarcerated individuals and stakeholders;
- receiving, investigating, and resolving complaints;
- monitoring compliance with applicable laws, rules, regulations, and policies related to the health, safety, welfare, and rehabilitation of incarcerated individuals;
- monitoring and providing legislative and policy developments affecting correctional facilities;
- submitting an annual report by November 1st of each year to the Governor, the Legislature, and the Statewide Family Council; and
- submitting an annual report to the Legislature on the status of the implementation of unexpected fatality review recommendations.

The OCO may initiate and attempt to resolve an investigation on its own initiative or upon receipt of a complaint regarding abuse or neglect, DOC decisions or administrative actions, inactions or omissions, policies, rules, or procedures, or alleged violations of law by DOC that may adversely affect the health, safety, welfare, and rights of incarcerated individuals.

Correspondence and communication with the OCO is confidential and must be protected as privileged correspondence in the same manner as legal correspondence or communication.

The OCO must have reasonable access to correctional facilities at all times necessary to conduct a full investigation of an incident of abuse or neglect. The OCO must have reasonable access to areas of department facilities used or accessible by incarcerated individuals and to programs for incarcerated individuals at reasonable times for purposes of providing information about individual rights and the OCO's available services, monitoring compliance with respect to the rights and safety of incarcerated individuals, and inspecting, viewing, photographing, and video recording all areas of the facility used by or are accessible to incarcerated individuals.

Summary of Bill: Subject to appropriations, the Governor must convene an Advisory Board (Board) to the OCO by December 1, 2024. The Board must help the OCO create a priority setting process and will provide input on priorities each year. The Board must receive briefings or reports from the OCO relating to deidentified data, trends, and other relevant issues, and make recommendations to the OCO. The Board does not participate in any OCO investigations and is not authorized to receive confidential records. The Board may issue its own report to the Governor and Legislature with recommendations on the OCO's performance, budget, and changes in law that would enhance the OCO's effectiveness.

The Governor must appoint Board members. The Governor may consider the recommendations of the OCO when making appointments. The Board must consist of the following 11 members:

- one person currently incarcerated in medium or close custody at DOC men's division;
- one person currently incarcerated in medium or close custody at DOC's women's division;
- one person currently incarcerated at DOC who was sentenced to a term of life imprisonment;
- two persons who were formerly incarcerated in medium or close custody at DOC;
- two family members of persons who are currently or were formerly incarcerated at DOC;
- a community member with knowledge and experience in issues related to racial, ethnic, or religious diversity within DOC;
- a community member with knowledge and experience in the accommodation needs of individuals with disabilities;
- a community member with a gender responsive background; and
- a licensed health care provider, who preferably has knowledge and experience in behavioral health care.

In making appointments, the Governor must strive to reflect the racial and ethnic makeup of persons incarcerated at DOC. Any vacancies on the Board must be filled in the same manner as the original appointments.

Board members may serve up to two consecutive terms of two years. The Board must create and implement a system of staggered terms. The Board will designate two co-chairs by vote, and one must be currently or formerly incarcerated.

Eligible Board members, including persons currently incarcerated, must receive stipends. DOC must work with the OCO to develop a process where currently incarcerated and eligible Board members may be paid stipends for their participation.

The Board must convene at least quarterly and is subject to the Open Meetings Act. The OCO must provide administrative and clerical assistance to the Board. Board members must complete training to utilize an antiracist lens in their duties as Board members.

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

Fiscal Note: Available.

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 original 2018 legislation that created OCO had an advisory board but it was removed before final passage. There have been conversations about the OCO creating an advisory board outside of statute, but it should be

codified so that it is grounded in community and those directly impacted and it is clear what the group is doing. This bill provides accountability and transparency in a fair and neutral manner. This will be a resource for the OCO so they have the expertise available at their fingertips.

It is common for state agencies to have advisory boards. Many states have some type of advisory board in their correctional ombuds offices. Advisory boards help guide the work of state agencies and add a layer of accountability to the people they serve. This bill is not intended to undermine or suggest that OCO is not committed to their work, but an opportunity to enhance their work to ensure more incarcerated voices are heard and families can offer guidance to OCO. This will increase buy in from the incarcerated population and their families that OCO is supposed to represent and protect.

Incorporating the voice of those with lived experience is critical to guiding the OCO's work and leading the charge for advocating for meaningful changes in prisons. This gives shared experience power without fear of retaliation. There is no diversity on OCO staff and none of the staff have served incarceration inside a prison. There are dire consequences for lack of medical care, mental health treatment, and abuse and neglect in facilities. Incarcerated individuals and families are fearful to use the grievance and complaint process to report medical, mental health, or safety issues because of the power dynamic inside institutions. Incarcerated individuals understand the unique issues of incarceration better than anyone else, and can bring their insight to the table and help OCO learn and align priorities with the needs inside. It is important to codify this board in statute so that it will lead the current OCO and the next OCO's work.

OTHER: There are concerns that the bill would introduce outside influence and impact OCO's impartiality and independence. Staff go to prisons every week, talk to incarcerated individuals, and receive many confidential letters. OCO should be able to continue to prioritize direct feedback from those in prison.

OCO is held accountable by incarcerated individuals, family members, and community members. OCO's casework is confidential and often occurs behind the scenes but this should not be mistaken for lack of effectiveness or transparency. This is not a housekeeping bill and would set a precedence and weaken the independence and objectivity of the office. There are three ombuds offices in the Governor's Office - one for corrections, family and children, and education. None of these ombuds offices answer to an advisory board. Among the 240 cited, none of them oversee an ombuds office in the Governor's Office.

Persons Testifying: PRO: Representative Darya Farivar, Prime Sponsor; Melody Simle; Jim Chambers; Qudaffi Howell; Vidal "Blaze" Vincent; Brian Funk; Jacob Ivan Schmitt; Kehaulani Walker, FOTi (Families of the Incarcerated) PUA (People United Alliance); Noreen Light, Information For A Change.

OTHER: Barbara Serrano, Office of the Governor; Elisabeth Kingsbury, Office of the

Corrections Ombuds.

Persons Signed In To Testify But Not Testifying: OTHER: Caitlin Robertson, Office of the Corrections Ombuds.