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HOUSE BILL 1889

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State of Washington

65th Legislature

2017 Regular Session

By Representative Pettigrew

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 physical custody of  
19 the department including persons residing in a correctional  
20 institution or facility and persons received from another state,  
21 another state agency, a county, or the federal government.

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

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

26 (8) "Organization" means the private nonprofit organization that  
27 operates the office of the corrections ombuds.

28 NEW SECTION. **Sec. 4.** (1) No later than August 1, 2017, the  
29 governor shall convene an ombuds advisory council with several  
30 purposes in support of the ombuds function. The council shall  
31 participate in a priority setting process for the purpose of  
32 developing priority recommendations to the ombuds, review data  
33 collected by the ombuds, review reports issued by the ombuds prior to  
34 their release, and make recommendations to the ombuds regarding the  
35 accomplishment of its purposes. The council also has authority to  
36 issue its own reports and recommendations. The council must  
37 biannually review ombuds performance, reporting to the governor and  
38 the legislature regarding its findings. The council must provide the

1 legislature with recommendations regarding the ombuds budget and  
2 changes in the law that would enhance ombuds effectiveness.

3 (2) The council initially consists of one legislative member from  
4 the largest caucus of the house of representatives, appointed by the  
5 speaker of the house of representatives, and one legislative member  
6 from the largest caucus of the senate, appointed by the president of  
7 the senate. The legislative members shall select the following  
8 additional members:

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

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

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

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

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

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

22 (3) The council also includes:

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

24 (b) A bargaining unit representative, as selected by the  
25 membership of the bargaining unit; and

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

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

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

38 NEW SECTION. **Sec. 5.** (1) The governor shall designate, by a  
39 competitive bidding process, the nonprofit organization that will

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

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

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

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

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

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

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

37 (d) Provide technical assistance to support inmate participation  
38 in self-advocacy, utilizing existing kite, grievance, and appeal  
39 procedures;

1 (e) Monitor department compliance with applicable federal, state,  
2 and local laws, rules, regulations, and policies with a view toward  
3 protecting the rights of inmates;

4 (f) Monitor and participate in legislative and policy  
5 developments affecting correctional facilities and advocate for  
6 systemic reform aimed toward protecting the rights of inmates;

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

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

11 (i) Submit annually to the council, the governor's office, and  
12 the legislature, by November 1st of each year, a report analyzing the  
13 work of the office, including any recommendations; and

14 (j) Adopt and comply with policies and procedures necessary to  
15 implement this chapter.

16 (2)(a) The ombuds may initiate and attempt to resolve an  
17 investigation upon his or her own initiative, or upon receipt of a  
18 complaint from an inmate, a family member, a representative of an  
19 inmate, a department employee, or others, regarding:

20 (i) Abuse or neglect;

21 (ii) Department decisions or actions;

22 (iii) Inactions or omissions;

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

24 (v) Alleged violations of law.

25 (b) The ombuds may decline to investigate or respond to any  
26 complaint or report, including those deemed by the ombuds to be  
27 frivolous or nonmeritorious, as provided by the rules adopted under  
28 this chapter.

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

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

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

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

38 (g) At the conclusion of an investigation of a complaint, the  
39 ombuds must render a decision on the merits of each complaint and,  
40 subject to the confidentiality provisions of section 8 of this act,

1 communicate the decision to the inmate, if any, and to the  
2 department. The ombuds must state their recommendations and reasoning  
3 if, in the ombuds' opinion, the department or any employee thereof  
4 should:

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

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

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

18 (i) Report a finding of abuse, neglect, or other rights violation  
19 to the appropriate committees of the legislature;

20 (ii) Report a finding of abuse, neglect, other rights violation,  
21 or other relevant information to the governor;

22 (iii) Commence litigation, but state funds may not be used for  
23 purposes of litigation;

24 (iv) Take any additional action that the ombuds considers  
25 appropriate.

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

33 (3) This chapter does not require inmates to file a complaint  
34 with the ombuds in order to exhaust available administrative remedies  
35 for purposes of the prison litigation reform act of 1995, P.L.  
36 104-134, nor does it require the ombuds to investigate or otherwise  
37 respond to all reports or complaints received by the office.

38 NEW SECTION. **Sec. 7.** (1) The ombuds must have reasonable  
39 unaccompanied access to correctional facilities at all times

1 necessary to conduct a full investigation of an incident of abuse or  
2 neglect. This authority includes the opportunity to interview any  
3 inmate, department employee, or other person, including the person  
4 thought to be the victim of such abuse, who might be reasonably  
5 believed by the facility to have knowledge of the incident under  
6 investigation. Such access must be afforded, upon request by the  
7 ombuds, when:

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

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

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

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

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

21 (b) Monitoring compliance with respect to the rights and safety  
22 of inmates; and

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

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

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

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

1 (b) The ombuds must have immediate access, not later than twenty-  
2 four hours after the ombuds makes such a request, to relevant  
3 records, without consent from another party, if the ombuds determines  
4 there is probable cause to believe that the health or safety of an  
5 inmate is in serious and immediate jeopardy, or in any case of death  
6 of an inmate while in department custody.

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

10 (6) The ombuds must work with the department to minimize  
11 disruption to the operations of the department due to ombuds  
12 activities and must comply with the department's security clearance  
13 processes, provided those processes do not impede the activities  
14 outlined in this section.

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

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

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

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

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

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

36 (5) If the ombuds receives personally identifying information  
37 about individual corrections staff during the course of an  
38 investigation that the ombuds determines is unrelated or unnecessary  
39 to the subject of the investigation or recommendation for action, the

1 ombuds will not further disclose such information. If the ombuds  
2 determines that such disclosure is necessary to an investigation or  
3 recommendation, the ombuds will contact the staff member as well as  
4 the bargaining unit representative before any disclosure.

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

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

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

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

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