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ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1889

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AS AMENDED BY THE SENATE

Passed Legislature - 2018 Regular Session

**State of Washington**                      **65th Legislature**                      **2018 Regular Session**

**By** House Public Safety (originally sponsored by Representatives Pettigrew, Appleton, Peterson, Stanford, and Pollet)

READ FIRST TIME 02/02/18.

1            AN ACT Relating to creating an office of the corrections ombuds;  
2 adding new sections to chapter 43.131 RCW; and adding a new chapter  
3 to Title 43 RCW.

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

5            NEW SECTION.    **Sec. 1.**    The legislature intends to create an  
6 independent and impartial office of the corrections ombuds to assist  
7 in strengthening procedures and practices that lessen the possibility  
8 of actions occurring within the department of corrections that may  
9 adversely impact the health, safety, welfare, and rehabilitation of  
10 offenders, and that will effectively reduce the exposure of the  
11 department to litigation.

12           NEW SECTION.    **Sec. 2.**    Subject to the availability of amounts  
13 appropriated for this specific purpose, there is hereby created an  
14 office of corrections ombuds within the office of the governor for  
15 the purpose of providing information to inmates and their families;  
16 promoting public awareness and understanding of the rights and  
17 responsibilities of inmates; identifying system issues and responses  
18 for the governor and the legislature to act upon; and ensuring  
19 compliance with relevant statutes, rules, and policies pertaining to

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

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

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) "Department" means the department of corrections.

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

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

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

24 (7) "Secretary" means the secretary of the department of  
25 corrections.

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

29 NEW SECTION. **Sec. 4.** (1) Subject to the availability of amounts  
30 appropriated for this specific purpose, the governor shall appoint an  
31 ombuds who must be a person of recognized judgment, independence,  
32 objectivity, and integrity, and be qualified by training or  
33 experience in corrections law and policy. Prior to the appointment,  
34 the governor shall consult with, and may receive recommendations  
35 from, the appropriate committees of the legislature, delegates of the  
36 statewide family council as selected by the members of the council,  
37 and other relevant stakeholders, regarding the selection of the  
38 ombuds.

1 (2) The person appointed ombuds holds office for a term of three  
2 years and continues to hold office until reappointed or until his or  
3 her successor is appointed. The governor may remove the ombuds only  
4 for neglect of duty, misconduct, or the inability to perform duties.  
5 Any vacancy must be filled by similar appointment for the remainder  
6 of the unexpired term.

7 (3) The ombuds may employ technical experts and other employees  
8 to complete the purposes of this chapter.

9 NEW SECTION. **Sec. 5.** (1) The ombuds shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (i) Abuse or neglect;

18 (ii) Department decisions or administrative actions;

19 (iii) Inactions or omissions;

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

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

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

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

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

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

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

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

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

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

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

14 (k) At the conclusion of an investigation of a complaint, the  
15 ombuds must render a public decision on the merits of each complaint,  
16 except that the documents supporting the decision are subject to the  
17 confidentiality provisions of section 7 of this act. The ombuds must  
18 communicate the decision to the inmate, if any, and to the  
19 department. The ombuds must state its recommendations and reasoning  
20 if, in the ombuds' opinion, the department or any employee thereof  
21 should:

22 (i) Consider the matter further;

23 (ii) Modify or cancel any action;

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

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

26 (v) Rectify an omission.

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

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

36 (n) Before announcing a conclusion or recommendation that  
37 expressly, or by implication, criticizes a person or the department,  
38 the ombuds shall consult with that person or the department. The  
39 ombuds may request to be notified by the department, within a  
40 specified time, of any action taken on any recommendation presented.

1 The ombuds must notify the inmate, if any, of the actions taken by  
2 the department in response to the ombuds' recommendations.

3 (3) This chapter does not require inmates to file a complaint  
4 with the ombuds in order to exhaust available administrative remedies  
5 for purposes of the prison litigation reform act of 1995, P.L.  
6 104-134.

7 NEW SECTION. **Sec. 6.** (1) The ombuds must have reasonable access  
8 to correctional facilities at all times necessary to conduct a full  
9 investigation of an incident of abuse or neglect. This authority  
10 includes the opportunity to interview any inmate, department  
11 employee, or other person, including the person thought to be the  
12 victim of such abuse, who might be reasonably believed by the  
13 facility to have knowledge of the incident under investigation. Such  
14 access must be afforded, upon request by the ombuds, when:

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

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

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

20 (2) The ombuds must have reasonable access to department  
21 facilities, including all areas which are used by inmates, all areas  
22 which are accessible to inmates, and to programs for inmates at  
23 reasonable times, which at a minimum must include normal working  
24 hours and visiting hours. This access is for the purpose of:

25 (a) Providing information about individual rights and the  
26 services available from the office, including the name, address, and  
27 telephone number of the office;

28 (b) Monitoring compliance with respect to the rights and safety  
29 of inmates; and

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

33 (3) Access to inmates includes the opportunity to meet and  
34 communicate privately and confidentially with individuals regularly,  
35 both formally and informally, by telephone, mail, and in person.

36 (4) The ombuds has the right to access, inspect, and copy all  
37 relevant information, records, or documents in the possession or  
38 control of the department that the ombuds considers necessary in an  
39 investigation of a complaint filed under this chapter, and the

1 department must assist the ombuds in obtaining the necessary releases  
2 for those documents which are specifically restricted or privileged  
3 for use by the ombuds.

4 (5) Following notification from the ombuds with a written demand  
5 for access to agency records, the delegated department staff must  
6 provide the ombuds with access to the requested documentation not  
7 later than twenty business days after the ombuds' written request for  
8 the records. Where the records requested by the ombuds pertain to an  
9 inmate death, threats of bodily harm including, but not limited to,  
10 sexual or physical assaults, or the denial of necessary medical  
11 treatment, the records shall be provided within five days unless the  
12 ombuds consents to an extension of that time frame.

13 (6) Upon notice and a request by the ombuds, a state or local  
14 government agency or entity that has records that are relevant to a  
15 complaint or an investigation conducted by the ombuds must provide  
16 the ombuds with access to such records.

17 (7) The ombuds must work with the department to minimize  
18 disruption to the operations of the department due to ombuds  
19 activities and must comply with the department's security clearance  
20 processes, provided those processes do not impede the activities  
21 outlined in this section.

22 NEW SECTION. **Sec. 7.** (1) Correspondence and communication with  
23 the office is confidential and must be protected as privileged  
24 correspondence in the same manner as legal correspondence or  
25 communication.

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

28 (3) The ombuds shall treat all matters under investigation,  
29 including the identities of recipients of ombuds services,  
30 complainants, and individuals from whom information is acquired, as  
31 confidential, except as far as disclosures may be necessary to enable  
32 the ombuds to perform the duties of the office and to support any  
33 recommendations resulting from an investigation. Upon receipt of  
34 information that by law is confidential or privileged, the ombuds  
35 shall maintain the confidentiality of such information and shall not  
36 further disclose or disseminate the information except as provided by  
37 applicable state or federal law or as authorized by subsection (4) of  
38 this section. All records exchanged and communications between the  
39 office of the corrections ombuds and the department to include the

1 investigative record are confidential and are exempt from public  
2 disclosure under chapter 42.56 RCW.

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

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

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

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

23 NEW SECTION. **Sec. 8.** (1) A civil action may not be brought  
24 against any employee of the office for good faith performance of  
25 responsibilities under this chapter.

26 (2) No discriminatory, disciplinary, or retaliatory action may be  
27 taken against a department employee, subcontractor, or volunteer, an  
28 inmate, or a family member or representative of an inmate for any  
29 communication made, or information given or disclosed, to aid the  
30 office in carrying out its responsibilities, unless the communication  
31 or information is made, given, or disclosed maliciously or without  
32 good faith.

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

36 NEW SECTION. **Sec. 9.** Sections 1 through 8 of this act  
37 constitute a new chapter in Title 43 RCW.



1        NEW SECTION.    **Sec. 10.**    A new section is added to chapter 43.131  
2    RCW to read as follows:  
3        The office of the corrections ombuds is terminated July 1, 2028,  
4    as provided in section 11 of this act.

5        NEW SECTION.    **Sec. 11.**    A new section is added to chapter 43.131  
6    RCW to read as follows:

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

- 9        (1) Section 1 of this act;
- 10       (2) Section 2 of this act;
- 11       (3) Section 3 of this act;
- 12       (4) Section 4 of this act;
- 13       (5) Section 5 of this act;
- 14       (6) Section 6 of this act;
- 15       (7) Section 7 of this act; and
- 16       (8) Section 8 of this act.

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