
SENATE BILL 5177

State of Washington

63rd Legislature

2013 Regular Session

By Senators Carrell and Conway

Read first time 01/22/13. Referred to Committee on Human Services & Corrections.

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

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

4 NEW SECTION. **Sec. 1.** The creation of the office of corrections
5 ombuds is intended to assist in strengthening procedures and practices
6 which lessen the possibility of actions occurring within the department
7 of corrections which may adversely impact the health, safety, welfare,
8 and rehabilitation of offenders, and which will effectively reduce the
9 exposure of the department to litigation.

10 NEW SECTION. **Sec. 2.** There is hereby created an office of
11 corrections ombuds within the office of the governor for the purpose of
12 providing information to offenders and their families; promoting public
13 awareness and understanding of the rights and responsibilities of
14 offenders; identifying system issues and responses for the governor and
15 the legislature to act upon; and ensuring compliance with relevant
16 statutes, rules, and policies pertaining to corrections facilities,
17 services, and treatment of offenders under the jurisdiction of the
18 department.

1 The ombuds shall report directly to the governor and shall exercise
2 his or her powers and duties independently of the secretary.

3 NEW SECTION. **Sec. 3.** The definitions in this section apply
4 throughout this chapter unless the context clearly requires otherwise.

5 (1) "Department" means the department of corrections.

6 (2) "Offender" means an offender as defined in RCW 9.94A.030 who is
7 under the control of the department or its contracted agencies,
8 entities, or programs.

9 (3) "Secretary" means the secretary of the department of
10 corrections.

11 NEW SECTION. **Sec. 4.** (1) Subject to confirmation by the senate,
12 the governor shall appoint an ombuds who shall be a person of
13 recognized judgment, independence, objectivity, and integrity, and
14 shall be qualified by training or experience in corrections law and
15 policy. Prior to the appointment, the governor shall consult with, and
16 may receive recommendations from, the appropriate committees of the
17 legislature regarding the selection of the ombuds.

18 (2) The person appointed ombuds shall hold office for a term of
19 three years and shall continue to hold office until reappointed or
20 until his or her successor is appointed. The governor may remove the
21 ombuds only for neglect of duty, misconduct, or inability to perform
22 duties. Any vacancy shall be filled by similar appointment for the
23 remainder of the unexpired term.

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

26 NEW SECTION. **Sec. 5.** The ombuds shall:

27 (1) Provide to the public as appropriate information on the rights
28 and responsibilities of offenders and their family members;

29 (2) Maintain a statewide toll-free telephone number, a collect
30 telephone number to be operated during normal business hours, a web
31 site, and a mailing address for the receipt of complaints and
32 inquiries;

33 (3) Provide information to interested members of the public
34 regarding the state's correctional system;

1 (4) Monitor the development and implementation of federal, state,
2 and departmental laws, rules, regulations, and policies with respect to
3 corrections facilities in Washington state with a view toward the
4 appropriate health, safety, welfare, and rehabilitation of offenders;

5 (5) Establish a statewide uniform reporting system to collect and
6 analyze data relating to complaints regarding the department;

7 (6) Establish procedures to receive and investigate complaints.

8 (a) The ombuds may initiate and attempt to resolve an investigation
9 upon his or her own initiative, or upon receipt of a complaint from a
10 legislator, a member of the offender's immediate family, or an offender
11 under the jurisdiction of the department, including offenders housed in
12 other states, regarding:

13 (i) Decisions;

14 (ii) Administrative actions;

15 (iii) Inactions or omissions;

16 (iv) Policies;

17 (v) Procedures and rules; or

18 (vi) Alleged violations of law

19 of the department which may adversely affect the health, safety,
20 welfare, rehabilitation, and rights of offenders.

21 (b) A person is not entitled as a right to be heard by the ombuds.
22 The ombuds may decline to investigate any complaint as provided by
23 rules adopted under this chapter.

24 (c) If the ombuds does not investigate a complaint, the ombuds
25 shall notify the complainant of the decision not to investigate and the
26 reasons for the decision.

27 (d) The ombuds shall not investigate a complaint from an employee
28 of the department that relates to the employee's employment
29 relationship with the department.

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

32 (f) The ombuds shall not levy any fees for the submission or
33 investigation of complaints.

34 (g) Prior to any person in the custody of the department obtaining
35 ombuds services, the person shall have reasonably pursued a resolution
36 of the complaint through any existing internal grievance,
37 administrative, or appellate procedures. This subsection (6)(g) shall

1 not apply to complaints related to threats of bodily harm, including
2 but not limited to sexual or physical assaults or the denial of
3 necessary medical treatment.

4 (h) At the conclusion of an investigation of a complaint, the
5 ombuds shall render a decision on the merits of each complaint and
6 communicate the decision to the complainant and to the department. The
7 ombuds shall state the recommendations and reasons if, in the ombuds'
8 opinion, the department or any employee thereof 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) Rectify an omission; or
- 14 (vi) Take any other action.

15 (i) If the ombuds so requests, the department shall, within the
16 time specified, inform the ombuds about the action taken on the
17 recommendations or the reasons for not complying with them.

18 (j) If the ombuds believes that any action or omission has or
19 continues to pose significant prisoner health, safety, welfare, and
20 rehabilitation issues, the ombuds shall report the finding to the
21 governor and the appropriate committees of the legislature.

22 (k) Before announcing a conclusion or recommendation that expressly
23 or by implication criticizes a person or the department, the ombuds
24 shall consult with that person or the department. The ombuds may
25 request to be notified by the department, within a specified time, of
26 any action taken on any recommendation presented.

27 (l) The ombuds shall notify the complainant of the actions taken by
28 the office and by the department;

29 (7) Submit annually to the governor and the appropriate committees
30 of the legislature by November 1st of each year a report analyzing the
31 work of the office including any recommendations; and

32 (8) Adopt rules necessary to implement this chapter and act in
33 accordance with the policies and procedures established by the office.

34 This section shall not be construed as requiring offenders to file
35 a complaint with the ombuds in order to exhaust available
36 administrative remedies for purposes of the prison litigation reform
37 act of 1995, P.L. 104-134.

1 NEW SECTION. **Sec. 6.** (1) The department shall permit the ombuds
2 or the ombuds' designee to enter and inspect at any reasonable time any
3 correctional facility for the purpose of carrying out his or her duties
4 under this chapter.

5 (2) Upon the ombuds' request, the department shall grant the ombuds
6 or the ombuds' designee the right to access, inspect, and copy all
7 relevant information, records, or documents in the possession or
8 control of the department that the ombuds considers necessary in an
9 investigation of a complaint filed under this chapter; and assist the
10 ombuds in obtaining the necessary releases of those documents which are
11 specifically restricted or privileged for use by the ombuds.

12 (3) If the ombuds or any employee of the office acting as an ombuds
13 who has been delegated in writing the authority granted is denied
14 access to any premises under the control of the secretary, the
15 secretary or the secretary's designee, within twenty-four hours after
16 the denial, shall give the ombuds a written statement of the reason for
17 the denial of access.

18 (4) A state or local government agency or entity that has records
19 that are relevant to a complaint or an investigation conducted by the
20 ombuds shall provide the ombuds with access to the records.

21 (5) The department shall ensure that correspondence from inmates to
22 the ombuds is not reviewed or inspected, except to ensure that such
23 correspondence does not contain contraband.

24 NEW SECTION. **Sec. 7.** (1) The office of corrections ombuds shall
25 establish confidentiality rules and procedures for all information
26 maintained by the office.

27 (2) Investigative records of the office of corrections ombuds are
28 confidential and are exempt from public disclosure under chapter 42.56
29 RCW during the course of an ongoing investigation. Such records shall
30 not be considered privileged or exempt from discovery in criminal
31 proceedings or in civil litigation if otherwise discoverable under the
32 rules of civil procedure.

33 (3) Whenever in the course of providing ombuds services, the ombuds
34 or a member of the ombuds' staff becomes aware of a criminal act or a
35 threat to the health and safety of any individual or the security of a
36 correctional facility, the ombuds shall notify the secretary and the

1 appropriate facility administrator of such act or threat and the nature
2 and target thereof.

3 NEW SECTION. **Sec. 8.** (1) An employee of the office of corrections
4 ombuds is not liable for good faith performance of responsibilities
5 under this chapter.

6 (2) No discriminatory, disciplinary, or retaliatory action may be
7 taken against an employee of the department, an employee of a
8 contracting agency of the department, an offender, or a member of an
9 offender's immediate family for any communication made, or information
10 given or disclosed, to aid the office of corrections ombuds in carrying
11 out its responsibilities, unless the communication or information is
12 made, given, or disclosed maliciously or without good faith.

13 (3) A person or the department shall not hinder the lawful actions
14 of the ombuds or employees of the office, or willfully refuse to comply
15 with lawful demands of the office.

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

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

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