
SUBSTITUTE SENATE BILL 5295

State of Washington

60th Legislature

2007 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Kastama, Swecker, Fraser, Kohl-Welles, Marr, Regala, Rasmussen and McAuliffe)

READ FIRST TIME 02/22/07.

1 AN ACT Relating to creating an office of corrections ombudsman; 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 ombudsman is intended to assist in strengthening procedures and
6 practices which lessen the possibility of actions occurring within the
7 department of corrections which may adversely impact the health,
8 safety, welfare, and rehabilitation of offenders, and which will
9 effectively reduce the exposure of the department to litigation.

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

1 The ombudsman shall report directly to the governor and shall
2 exercise 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 ombudsman 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 ombudsman.

18 (2) The person appointed ombudsman 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 ombudsman 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 ombudsman may employ technical experts and other employees
25 to complete the purposes of this chapter.

26 (4) The ombudsman may utilize volunteers to the greatest extent
27 possible to complete the purposes of this chapter. The office shall
28 set up criteria and processes for selecting neutral volunteers with the
29 appropriate professional background to investigate the complaints.

30 (5) The ombudsman may accept any and all donations and grants of
31 money, equipment, supplies, materials, and services, and may receive,
32 utilize, and dispose of same to complete the purposes of this chapter.

33 NEW SECTION. **Sec. 5.** The ombudsman shall:

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

1 (2) Maintain a statewide toll-free telephone number and web site
2 for the receipt of complaints and inquiries;

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

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

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

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

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

17 (i) Decisions;

18 (ii) Administrative actions;

19 (iii) Inactions or omissions;

20 (iv) Policies;

21 (v) Procedures and rules; or

22 (vi) Alleged violations of law

23 of the department which may adversely affect the health, safety,
24 welfare, rehabilitation, and rights of confined offenders.

25 (b) A person is not entitled as a right to be heard by the
26 ombudsman. The ombudsman may decline to investigate any complaint as
27 provided by rules adopted under this chapter.

28 (c) If the ombudsman does not investigate a complaint, the
29 ombudsman shall notify the complainant of the decision not to
30 investigate and the reasons for the decision.

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

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

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

1 (g) Prior to any person in the custody of the department obtaining
2 ombudsman services, the person shall have reasonably pursued a
3 resolution of the complaint through any existing internal grievance,
4 administrative, or appellate procedures.

5 (h) At the conclusion of an investigation of a complaint, the
6 ombudsman shall render a decision on the merits of each complaint and
7 communicate the decision to the complainant and to the department. The
8 ombudsman shall state the recommendations and reasons if, in the
9 ombudsman's opinion, the department or any employee thereof should:

10 (i) Consider the matter further;

11 (ii) Modify or cancel any action;

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

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

14 (v) Rectify an omission; or

15 (vi) Take any other action.

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

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

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

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

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

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

35 NEW SECTION. **Sec. 6.** (1) The department shall permit the
36 ombudsman or the ombudsman's designee to enter and inspect at any

1 reasonable time any correctional facility for the purpose of carrying
2 out his or her duties under this chapter.

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

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

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

20 NEW SECTION. **Sec. 7.** (1) The office of corrections ombudsman
21 shall establish confidentiality rules and procedures for all
22 information maintained by the office.

23 (2) Investigative records of the office of corrections ombudsman
24 are confidential and are exempt from public disclosure under chapter
25 42.56 RCW.

26 (3) Whenever in the course of providing ombudsman services, the
27 ombudsman or a member of the ombudsman's staff becomes aware of a
28 criminal act or a threat to the health and safety of any individual or
29 the security of a correctional facility, the ombudsman shall notify the
30 secretary and the appropriate facility administrator of such act or
31 threat and the nature and target thereof.

32 NEW SECTION. **Sec. 8.** (1) An employee of the office of corrections
33 ombudsman is not liable for good faith performance of responsibilities
34 under this chapter.

35 (2) No discriminatory, disciplinary, or retaliatory action may be
36 taken against an employee of the department, an employee of a

1 contracting agency of the department, an offender, or a member of an
2 offender's immediate family for any communication made, or information
3 given or disclosed, to aid the office of corrections ombudsman in
4 carrying out its responsibilities, unless the communication or
5 information is made, given, or disclosed maliciously or without good
6 faith.

7 (3) A person or the department shall not hinder the lawful actions
8 of the ombudsman or employees of the office, or willfully refuse to
9 comply with lawful demands of the office.

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

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

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