
SENATE BILL 6322

State of Washington

66th Legislature

2020 Regular Session

By Senators O'Ban, Padden, and Wagoner

1 AN ACT Relating to addressing the department of corrections early
2 release and inmate medical care errors; amending RCW 43.06C.010,
3 43.06C.020, 43.06C.040, 43.06C.060, 49.60.210, and 43.131.426; adding
4 new sections to chapter 43.06C RCW; creating new sections; and
5 repealing RCW 43.06C.030.

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

7 NEW SECTION. **Sec. 1.** In response to the numerous incidents
8 related to the department of corrections, including early release
9 errors, escapes, and administrative failures related to inmate
10 health, the legislature finds that it is necessary to implement
11 reforms to address these serious miscarriages. The legislature also
12 finds that while the office of the corrections ombuds has been
13 implemented, its ability to perform independent and unbiased
14 investigations is diminished due to its placement within the
15 executive branch. It is therefore the intent of the legislature to
16 reestablish the ombuds office as an independent entity free from
17 governmental conflicts of interest.

18 **PART I**

19 **TRANSFER OF THE DEPARTMENT OF CORRECTIONS OMBUDS**

1 **Sec. 2.** RCW 43.06C.010 and 2018 c 270 s 3 are each amended to
2 read as follows:

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

5 (1) "Abuse" means any act or failure to act by a department
6 employee, subcontractor, or volunteer which was performed, or which
7 was failed to be performed, knowingly, recklessly, or intentionally,
8 and which caused, or may have caused, injury or death to an inmate.

9 (2) "Corrections ombuds" or "ombuds" means the corrections
10 ombuds, staff of the corrections ombuds, and volunteers with the
11 office of the corrections ombuds.

12 (3) "Council" means the ombuds advisory council established in
13 section 4(1) of this act.

14 (4) "Department" means the department of corrections.

15 ~~((+4))~~ (5) "Inmate" means a person committed to the physical
16 custody of the department, including persons residing in a
17 correctional institution or facility and persons received from
18 another state, another state agency, a county, or the federal
19 government.

20 ~~((+5))~~ (6) "Neglect" means a negligent act or omission by any
21 department employee, subcontractor, or volunteer which caused, or may
22 have caused, injury or death to an inmate.

23 ~~((+6))~~ (7) "Office" means the office of the corrections ombuds.

24 ~~((+7))~~ (8) "Secretary" means the secretary of the department of
25 corrections.

26 ~~((+8))~~ (9) "Statewide family council" means the family council
27 maintained by the department that is comprised of representatives
28 from local family councils.

29 **Sec. 3.** RCW 43.06C.020 and 2018 c 270 s 2 are each amended to
30 read as follows:

31 Subject to the availability of amounts appropriated for this
32 specific purpose, there is hereby created an office of corrections
33 ombuds ~~((within the office of the governor))~~ for the purpose of
34 providing information to inmates and their families, representatives
35 of inmates, department employees, and others regarding the rights of
36 inmates; providing technical assistance to support inmate self-
37 advocacy; promoting public awareness and understanding of the rights
38 and responsibilities of inmates; identifying system issues and
39 responses for the governor and the legislature to act upon; and

1 ensuring compliance with relevant statutes, rules, and policies
2 pertaining to corrections facilities, services, and treatment of
3 inmates under the jurisdiction of the department.

4 ~~((The ombuds reports directly to the governor and exercises his
5 or her powers and duties independently of the secretary.))~~

6 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.06C
7 RCW to read as follows:

8 (1) Subject to the availability of amounts appropriated for this
9 specific purpose, no later than August 1, 2020, the governor shall
10 convene an ombuds advisory council with several purposes in support
11 of the ombuds function. The council shall participate in a priority
12 setting process for the purpose of developing priority
13 recommendations to the ombuds, review data collected by the ombuds,
14 review reports issued by the ombuds prior to their release, and make
15 recommendations to the ombuds regarding the accomplishment of its
16 purposes. The council also has authority to issue its own reports and
17 recommendations. The council must biannually review the ombuds'
18 performance, including its compliance with its internal bylaws and
19 other adopted standards of practice, reporting to the governor and
20 the legislature regarding its findings. The council must provide the
21 legislature with recommendations regarding the ombuds budget and
22 changes in the law that would enhance the effectiveness of the
23 ombuds.

24 (2) The council initially consists of the following four members:

25 (a) The majority leader and minority leader in the senate shall
26 appoint one member from each of their respective caucuses of the
27 senate; and

28 (b) The speaker of the house of representatives shall appoint one
29 member from each of the two largest caucuses of the house of
30 representatives.

31 (3) The remaining council members consist of the following
32 members, appointed by the governor, and subject to senate
33 confirmation:

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

36 (b) Two family members of current inmates;

37 (c) One expert with significant criminal justice or correctional
38 experience who is not an employee or contractor with the state of
39 Washington;

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

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

6 (f) Two former department of corrections employees;

7 (g) A current department of corrections chaplain; and

8 (h) A community member with dispute resolution training who has
9 experience working in the criminal justice or corrections field.

10 (4) The council also includes:

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

12 (b) A bargaining unit representative; and

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

14 (5) After the full membership is attained, the council shall
15 develop a process for replacing members in case of resignation or
16 expiration of terms. The council must meet at least once a year.

17 (6) Councilmembers serve a term of two years, except that the
18 council shall create and implement a system of staggered terms, and
19 no member other than the department staff serving as the internal
20 ombuds may serve more than two consecutive terms. The council shall
21 convene at least quarterly. Councilmembers serve without
22 compensation, except that funds appropriated for the implementation
23 of this chapter may be used to reimburse members who are not
24 employees of Washington state for expenses necessary to the
25 performance of their duties.

26 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.06C
27 RCW to read as follows:

28 (1) Subject to the availability of amounts appropriated for this
29 specific purpose, the department of commerce shall designate, by a
30 competitive bidding process, the nonprofit organization that will
31 contract to operate the office. The contract must last for a period
32 of two years and may be renewed at the end of the term. The
33 department of commerce shall select an organization that possesses,
34 directly or through subcontracts, significant legal expertise,
35 competence with mediation and alternative dispute resolution, and
36 experience working within criminal justice and correctional
37 environments. Other relevant experience may include, but is not
38 limited to, addressing issues relating to chemical dependency
39 treatment, disability and disability-related accommodation, respect

1 for racial, ethnic, and religious diversity, and other civil rights
2 and conditions issues. The selected organization must have experience
3 and the capacity to communicate effectively regarding criminal
4 justice issues with policymakers, stakeholders, and the general
5 public, and must be prepared and able to provide all program and
6 staff support necessary, directly or through subcontracts, to carry
7 out all duties of the office.

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

11 (3) The organization must be an objective and neutral entity that
12 will impartially investigate complaints.

13 (4) The organization is subject to financial and other audits by
14 the state auditor's office, and its employees must abide by the
15 provisions of chapter 42.52 RCW.

16 **Sec. 6.** RCW 43.06C.040 and 2018 c 270 s 5 are each amended to
17 read as follows:

18 (1) The ombuds shall:

19 (a) Establish priorities for use of the limited resources
20 available to the ombuds;

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

24 (c) Provide information, as appropriate, to inmates, family
25 members, representatives of inmates, department employees, and others
26 regarding the rights of inmates;

27 (d) Provide technical assistance to support inmate participation
28 in self-advocacy;

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

32 (f) Monitor and participate in legislative and policy
33 developments affecting correctional facilities;

34 (g) Establish a statewide uniform reporting system to collect and
35 analyze data related to complaints received by the ombuds regarding
36 the department;

37 (h) Establish procedures to receive, investigate, and resolve
38 complaints;

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

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

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

9 (ii) The number of complaints received and resolved by the
10 ombuds;

11 (iii) A description of significant systemic or individual
12 investigations or outcomes achieved by the ombuds during the prior
13 year;

14 (iv) Any outstanding or unresolved concerns or recommendations of
15 the ombuds; and

16 (v) Input and comments from stakeholders, including the statewide
17 family council, regarding the ombuds' activities during the prior
18 year; and

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

21 (2)(a) The ombuds may initiate and attempt to resolve an
22 investigation upon his or her own initiative, or upon receipt of a
23 complaint from an inmate, a family member, a representative of an
24 inmate, a department employee, or others, regarding (~~any of the~~
25 ~~following that may adversely affect the health, safety, welfare, and~~
26 ~~rights of inmates~~):

27 (i) Abuse or neglect;

28 (ii) Department decisions or administrative actions;

29 (iii) Inactions or omissions;

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

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

33 (b) Prior to filing a complaint with the ombuds, a person shall
34 have reasonably pursued resolution of the complaint through the
35 internal grievance, administrative, or appellate procedures with the
36 department. However, in no event may an inmate be prevented from
37 filing a complaint more than ninety business days after filing an
38 internal grievance, regardless of whether the department has
39 completed the grievance process. This subsection (2)(b) does not
40 apply to complaints related to threats of bodily harm including, but

1 not limited to, sexual or physical assaults or the denial of
2 necessary medical treatment.

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

5 (d) If the ombuds does not investigate a complaint, the ombuds
6 shall notify the complainant of the decision not to investigate and
7 the reasons for the decision.

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

10 (f) The ombuds may not investigate a complaint from a department
11 employee that relates to the employee's employment relationship with
12 the department (~~(or the administration of the department, unless the~~
13 ~~complaint is related to the health, safety, welfare, and~~
14 ~~rehabilitation of inmates)~~).

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

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

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

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

23 (k) At the conclusion of an investigation of a complaint, the
24 ombuds must render a public decision on the merits of each complaint,
25 except that the documents supporting the decision are subject to the
26 confidentiality provisions of RCW 43.06C.060. The ombuds must
27 communicate the decision to the inmate, if any, and to the
28 department. The ombuds must state its recommendations and reasoning
29 if, in the ombuds' opinion, the department or any employee thereof
30 should:

31 (i) Consider the matter further;

32 (ii) Modify or cancel any action;

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

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

35 (~~(v)~~)

36 (v) Rectify an omission; or

37 (vi) Take any other action.

38 (l) If the ombuds so requests, the department must, within the
39 time specified, inform the ombuds about any action taken on the

1 recommendations or the reasons for not complying with the
2 recommendations.

3 (m) If the ombuds believes, based on the investigation, that
4 there has been or continues to be a significant inmate health,
5 safety, welfare, or rehabilitation issue, the ombuds must report the
6 finding to the governor and the appropriate committees of the
7 legislature.

8 (n) Before announcing a conclusion or recommendation that
9 expressly, or by implication, criticizes a person or the department,
10 the ombuds shall consult with that person or the department. The
11 ombuds may request to be notified by the department, within a
12 specified time, of any action taken on any recommendation presented.
13 The ombuds must notify the inmate, if any, of the actions taken by
14 the department in response to the ombuds' recommendations.

15 (3) This chapter does not require inmates to file a complaint
16 with the ombuds in order to exhaust available administrative remedies
17 for purposes of the prison litigation reform act of 1995, P.L.
18 104-134.

19 **Sec. 7.** RCW 43.06C.060 and 2018 c 270 s 7 are each amended to
20 read as follows:

21 (1) Correspondence and communication with the office is
22 confidential and must be protected as privileged correspondence in
23 the same manner as legal correspondence or communication.

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

26 (3) The ombuds shall treat all matters under investigation,
27 including the identities of recipients of ombuds services,
28 complainants, and individuals from whom information is acquired, as
29 confidential, except as far as disclosures may be necessary to enable
30 the ombuds to perform the duties of the office and to support any
31 recommendations resulting from an investigation. Upon receipt of
32 information that by law is confidential or privileged, the ombuds
33 shall maintain the confidentiality of such information and shall not
34 further disclose or disseminate the information except as provided by
35 applicable state or federal law or as authorized by subsection (4) of
36 this section. All records exchanged and communications between the
37 office of the corrections ombuds and the department to include the
38 investigative record are confidential and are exempt from public
39 disclosure under chapter 42.56 RCW.

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

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

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

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

22 NEW SECTION. **Sec. 8.** (1) The office of the corrections ombuds
23 is transferred to the nonprofit organization selected by the
24 competitive bidding process outlined in section 5 of this act.

25 (2)(a) All reports, documents, surveys, books, records, files,
26 papers, or written material in the possession of the office of the
27 corrections ombuds shall be delivered to the custody of the nonprofit
28 organization selected by the competitive bidding process outlined in
29 section 5 of this act. All funds, credits, or other assets held in
30 connection with the powers, functions, and duties transferred shall
31 be assigned to the nonprofit organization selected by the competitive
32 bidding process outlined in section 5 of this act.

33 (b) Any appropriations made to the office of the corrections
34 ombuds shall, on the effective date of this section, be transferred
35 and credited to the nonprofit organization selected by the
36 competitive bidding process outlined in section 5 of this act.

37 (c) If any question arises as to the transfer of any funds,
38 books, documents, records, papers, files, equipment, or other
39 tangible property used or held in the exercise of the powers and the

1 performance of the duties and functions transferred, the director of
2 financial management shall make a determination as to the proper
3 allocation and certify the same to the state agencies concerned.

4 (3) All rules and all pending business before the office of the
5 corrections ombuds shall be continued and acted upon by the nonprofit
6 organization selected by the competitive bidding process outlined in
7 section 5 of this act. All existing contracts and obligations shall
8 remain in full force and shall be performed by the nonprofit
9 organization selected by the competitive bidding process outlined in
10 section 5 of this act.

11 (4) The transfer of the powers, duties, and functions of the
12 office of the corrections ombuds shall not affect the validity of any
13 act performed before the effective date of this section.

14 (5) If apportionments of budgeted funds are required because of
15 the transfers directed by this section, the director of financial
16 management shall certify the apportionments to the agencies affected,
17 the state auditor, and the state treasurer. Each of these shall make
18 the appropriate transfer and adjustments in funds and appropriation
19 accounts and equipment records in accordance with the certification.

20 **PART II**
21 **GENERAL PROVISIONS**

22 **Sec. 9.** RCW 49.60.210 and 2011 1st sp.s. c 42 s 25 are each
23 amended to read as follows:

24 (1) It is an unfair practice for any employer, employment agency,
25 labor union, or other person to discharge, expel, or otherwise
26 discriminate against any person because he or she has opposed any
27 practices forbidden by this chapter, or because he or she has filed a
28 charge, testified, or assisted in any proceeding under this chapter.

29 (2) (a) It is an unfair practice for a government agency or
30 government manager or supervisor to retaliate against a whistleblower
31 as defined in chapter 42.40 RCW.

32 (b) A settlement of any cause of action brought by an employee
33 under this subsection may not contain a provision prohibiting the
34 employee from future work in state government unless the government
35 agency has a significant ongoing concern for the public health,
36 safety, or welfare as a result of the person's future employment.

37 (3) It is an unfair practice for any employer, employment agency,
38 labor union, government agency, government manager, or government

1 supervisor to discharge, expel, discriminate, or otherwise retaliate
2 against an individual assisting with an office of fraud and
3 accountability investigation under RCW 74.04.012, unless the
4 individual has willfully disregarded the truth in providing
5 information to the office.

6 NEW SECTION. **Sec. 10.** In the contract for the next regularly
7 scheduled performance audit under RCW 42.40.110 following the
8 effective date of this section, the office of financial management
9 must require the audit to review the ability of department of
10 corrections employees to use the state employee whistleblower
11 program. The audit must include findings and recommendations,
12 including possible changes to improve the effectiveness of the
13 whistleblower program.

14 NEW SECTION. **Sec. 11.** RCW 43.06C.030 (Appointment of ombuds—
15 Term—Other employees) and 2018 c 270 s 4 are each repealed.

16 **Sec. 12.** RCW 43.131.426 and 2018 c 270 s 11 are each amended to
17 read as follows:

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

- 20 (1) RCW 43.06C.005 and 2018 c 270 s 1;
21 (2) RCW 43.06C.020 and 2020 c . . . s 3 (section 3 of this act) &
22 2018 c 270 s 2;
23 (3) RCW 43.06C.010 and 2020 c . . . s 2 (section 2 of this act) &
24 2018 c 270 s 3;
25 (4) (~~RCW 43.06C.030 and 2018 c 270 s 4;~~
26 ~~5))~~ RCW 43.06C.040 and 2020 c . . . s 6 (section 6 of this act)
27 & 2018 c 270 s 5;
28 (~~6))~~ (5) RCW 43.06C.050 and 2018 c 270 s 6;
29 (~~7))~~ (6) RCW 43.06C.060 and 2020 c . . . s 7 (section 7 of
30 this act) & 2018 c 270 s 7; (and
31 ~~8))~~ (7) RCW 43.06C.070 and 2018 c 270 s 8;
32 (8) RCW 43.06C.--- and 2020 c . . . s 4 (section 4 of this act);
33 and
34 (9) RCW 43.06C.--- and 2020 c . . . s 5 (section 5 of this act).

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