

AN ACT strengthening Department of Corrections accountability

Sec 1. RCW 72.09.050 and 2020 c 318 § 5 are each amended to read as follows:

(1) The secretary shall manage the department of corrections and shall be responsible for the administration of adult correctional programs, including but not limited to the operation of all state correctional institutions or facilities used for the confinement of convicted felons. In addition, the secretary shall have broad powers to enter into agreements with any federal agency, or any other state, or any Washington state agency or local government providing for the operation of any correctional facility or program for persons convicted of felonies or misdemeanors or for juvenile offenders. Such agreements for counties with local law and justice councils shall be required in the local law and justice plan pursuant to RCW [72.09.300](#). The agreements may provide for joint operation or operation by the department of corrections, alone, for by any of the other governmental entities, alone. The secretary may employ persons to aid in performing the functions and duties of the department. The secretary may delegate any of his or her functions or duties to department employees, including the authority to certify and maintain custody of records and documents on file with the department. The secretary is authorized to promulgate standards for the department of corrections within appropriation levels authorized by the legislature.

(2) Pursuant to the authority granted in chapter [34.05](#) RCW, the secretary shall adopt rules providing for inmate restitution when restitution is determined appropriate as a result of a disciplinary action.

(3) The secretary shall twice annually submit a report to the governor and to the legislature compiling all recommendations from the office of the corrections ombuds. These reports shall include the department's action plan for addressing each recommendation, the name of the contact person responsible for the implementation of each plan, the anticipated completion date, and a description of legislative or regulatory changes necessary, if any, to implement the recommendations. If the secretary does not agree with the recommendations or believes action is not required, then the relevant action plan shall include an explanation and specific reasons. The secretary may delay a report release by 180 days if the secretary determines the delay necessary. The appropriate Senate and House committees shall hold public hearings to provide an opportunity for public comment, feedback, and input on the department's compliance or non-compliance as detailed in these reports.

Sec 2. RCW 43.06C.40 and 2018 c 270 § 5 are each amended to read as follows:

- (1) The ombuds shall:
- (a) Establish priorities for use of the limited resources available to the ombuds;
 - (b) Maintain a statewide toll-free telephone number, a collect telephone number, a web site, and a mailing address for the receipt of complaints and inquiries;
 - (c) Provide information, as appropriate, to inmates, family members, representatives of inmates, department employees, and others regarding the rights of inmates;
 - (d) Provide technical assistance to support inmate participation in self-advocacy;
 - (e) Monitor department compliance with applicable federal, state, and local laws, rules, regulations, and policies as related to the health, safety, welfare, and rehabilitation of inmates;
 - (f) Monitor and participate in legislative and policy developments affecting correctional facilities;
 - (g) Establish a statewide uniform reporting system to collect and analyze data related to complaints received by the ombuds regarding the department;

- (h) Establish procedures to receive, investigate, and resolve complaints;
 - (i) Establish procedures to gather stakeholder input into the ombuds' activities and priorities, which must include at a minimum quarterly public meetings;
 - (j) Submit annually to the governor's office, the legislature, and the statewide family council, by November 1st of each year, a report that includes, at a minimum, the following information:
 - (i) The budget and expenditures of the ombuds;
 - (ii) The number of complaints received and resolved by the ombuds;
 - (iii) A description of significant systemic or individual investigations or outcomes achieved by the ombuds during the prior year;
 - (iv) Any outstanding or unresolved concerns or recommendations of the ombuds; and
 - (v) Input and comments from stakeholders, including the statewide family council, regarding the ombuds' activities during the prior year; and
 - (k) Adopt and comply with rules, policies, and procedures necessary to implement this chapter.
- (2)(a) The ombuds may initiate and attempt to resolve an investigation upon his or her own initiative, or upon receipt of a complaint from an inmate, a family member, a representative of an inmate, a department employee, or others, regarding any of the following that may adversely affect the health, safety, welfare, and rights of inmates:
- (i) Abuse or neglect;
 - (ii) Department decisions or administrative actions;
 - (iii) Inactions or omissions;
 - (iv) Policies, rules, or procedures; or
 - (v) Alleged violations of law by the department that may adversely affect the health, safety, welfare, and rights of inmates.
- (b) Prior to filing a complaint with the ombuds, a person shall have reasonably pursued resolution of the complaint through the internal grievance, administrative, or appellate procedures with the department. However, in no event may an inmate be prevented from filing a complaint more than ninety business days after filing an internal grievance, regardless of whether the department has completed the grievance process. This subsection (2)(b) does not apply to complaints related to threats of bodily harm including, but not limited to, sexual or physical assaults or the denial of necessary medical treatment.
- (c) The ombuds may decline to investigate any complaint as provided by the rules adopted under this chapter.
- (d) If the ombuds does not investigate a complaint, the ombuds shall notify the complainant of the decision not to investigate and the reasons for the decision.
- (e) The ombuds may not investigate any complaints relating to an inmate's underlying criminal conviction.
- (f) The ombuds may not investigate a complaint from a department employee that relates to the employee's employment relationship with the department or the administration of the department, unless the complaint is related to the health, safety, welfare, and rehabilitation of inmates.
- (g) The ombuds must attempt to resolve any complaint at the lowest possible level.
- (h) The ombuds may refer complainants and others to appropriate resources, agencies, or departments.
- (i) The ombuds may not levy any fees for the submission or investigation of complaints.
 - (j) The ombuds must remain neutral and impartial and may not act as an advocate for the complainant or for the department.
 - (k) At the conclusion of an investigation of a complaint, the ombuds must render a public decision on the merits of each complaint, except that the documents supporting the decision are subject to the confidentiality provisions of RCW [43.06C.060](#). The ombuds must communicate the decision to the

inmate, if any, and to the department. The ombuds must state its recommendations and reasoning if, in the ombuds' opinion, the department or any employee thereof should:

- (i) Consider the matter further;
- (ii) Modify or cancel any action;
- (iii) Alter a rule, practice, or ruling;
- (iv) Explain in detail the administrative action in question; or
- (v) Rectify an omission.

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

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

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

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

Sec. 3. RCW 43.06C.050 and 2018 c 270 § 6 are each amended to read as follows:

(1) The ombuds must have reasonable access to correctional facilities at all times necessary to conduct a full investigation of an incident of abuse or neglect. Reasonable access shall not require an advance request by the office. This authority includes the opportunity to interview any inmate, department employee, or other person, including the person thought to be the victim of such abuse, who might be reasonably believed by the facility to have knowledge of the incident under investigation. ~~Such access must be afforded, upon request by the ombuds, when:~~

- ~~(a) An incident is reported or a complaint is made to the office;~~
- ~~(b) The ombuds determines there is probable cause to believe that an incident has or may have occurred; or~~
- ~~(c) The ombuds determines that there is or may be imminent danger of serious abuse or neglect of an inmate.~~

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

- (a) Providing information about individual rights and the services available from the office, including the name, address, and telephone number of the office;
- (b) Monitoring compliance with respect to the rights and safety of inmates; and
- (c) Inspecting, viewing, photographing, and video recording all areas of the facility which are used by inmates or are accessible to inmates.

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

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

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

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

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