



**State of Washington
Department of Corrections**

**DOC K11930
OCO K189**

This INTER-AGENCY AGREEMENT (Agreement) is hereby made and entered into by and between the Office of the Corrections Ombuds (OCO) and the Department of Corrections (DOC), collectively the Parties, pursuant to the authority granted by chapter 39.34 RCW.

A. PURPOSE of this INTER-AGENCY AGREEMENT

1. To set forth the roles and responsibilities of the OCO and DOC and provide a framework for the working relationship between the Parties.
2. To set forth a credible review process, which includes in part, an opportunity for DOC to be consulted and provided an opportunity to review, comment, or respond to OCO reports prior to their publication. The review process is intended to ensure that the conclusions, findings, and recommendations of the OCO, in its oversight of DOC, are fair, accurate, and credible.
3. To facilitate communication between the Parties and to improve oversight of DOC by the OCO. This Agreement, developed jointly by the Parties, does not take the place of existing law. Should a conflict arise between this Agreement and existing law, the Parties agree that existing law governs.

B. THE PERIOD OF PERFORMANCE

The Period of Performance of this Agreement shall begin upon execution by the final Party, and will terminate on July 1, 2029, unless terminated sooner as provided herein.

C. MISSION OF THE OCO

The Mission of the OCO is to protect incarcerated individuals from agency action or inaction that may adversely impact the health, safety, welfare, and rehabilitation of the individual and to effectively reduce the exposure of DOC to litigation. (See RCW 43.06C.005).

D. MISSION OF DOC

The Mission of DOC is to improve public safety. (See RCW 72.09.010.)

E. INTER-AGENCY AGREEMENT MANAGERS

The Agreement Manager for each of the Parties shall be responsible for, and shall be the contact person for, all communications and reports regarding the performance of this Agreement.

1. Agreement Manager for OCO: Joanna Carns, Director, Telephone: (360) 764-3168,
Email joanna.carns@gov.wa.gov
2. Agreement Manager for DOC: Jeremy Barclay, Director of Engagement, Telephone: (360) 515-6661,
Email: jeremy.barclay@doc.wa.gov

F. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT OCO and DOC are each operating according to certain guiding principles and procedures:

1. OCO Guiding Principles and Procedures.

Pursuant to chapter 43.06C RCW, the OCO is an independent and impartial office that will assist in strengthening procedures and practices that lessen the possibility of actions occurring within the department of corrections that may adversely impact the health, safety, welfare, and rehabilitation of offenders, and that will effectively reduce the exposure of the department to litigation.

The OCO's purpose is to provide information to inmates and their families; to promote public awareness and understanding of the rights and responsibilities of inmates; to identify system issues and responses for the governor and the legislature to act upon; and ensure compliance with relevant statutes, rules, and policies pertaining to corrections facilities, services, and treatment of inmates under the jurisdiction of the department.

2. DOC Guiding Principles and Procedures.

Statutes, WAC's, and policy guide DOC in its mission to improve public safety, and keep incarcerated individuals safe while striving to strengthen and preserve families. (See 72.09.010). DOC recognizes that the OCO provides an important and essential oversight role and will work cooperatively and support open communication during complaint investigations.

3. DOC Security Clearance, Security Training, and Facility/Records/Data Systems Access.

a. DOC requires that OCO staff meet DOC's Pre-Employment Security Clearance process to obtain a "Yellow Badge" for access to DOC facilities by:

- ✓ Submitting to a fingerprint-based Employee Background Check, which includes a criminal history disclosure and records check, on or before the first day of employment with the OCO.
- ✓ Completing the on-line Prison Rape Elimination Act (PREA) training through the Learning Management System (LMS) and submitting the required PREA forms.

b. DOC may provide the same security training it provides its own employees, to the OCO Director and OCO staff.

c. After issuance of a "Yellow Badge", OCO staff will have access to correctional facilities to conduct investigations of incidents of alleged abuse or neglect. The OCO will have access to the correctional facility including areas that are used by and accessible to incarcerated individuals and to incarcerated individual programs, at reasonable times, which at a minimum, includes normal working and visiting hours. (See 43.06C.050 (1)(2)).

d. The OCO may conduct monitoring site visits at correctional facilities because they have the

authority to visit correctional facilities, even if no complaint has been made. Should the OCO wish to conduct a monitoring site visit they will set up a time that does not place an undue burden on DOC staff resources.

- e. The OCO shall establish confidentiality rules and procedures for all information, relating to DOC and DOC incarcerated individuals that is maintained by the OCO. (See RCW 43.06C.060(2)). Further, all records exchanged and communications between the OCO and DOC, including investigative records, are confidential and exempt from public disclosure under chapter 42.56 RCW. However, the OCO may share complaint-related information with the complainant, but shall not disclose to the complainant actual DOC communications, underlying documents, or information that by law is confidential or privileged.
- f. OCO staff, prior to being allowed access to records and data systems, must read and sign a Statement of Confidentiality and Non-Disclosure. Any forms used for such statements must be provided or reviewed and approved by DOC.
- g. OCO staff may request Data Confidentiality training through DOC to assist its staff to understand the importance of data classification when handling complaint investigations.
- h. The OCO has the authority to examine DOC documents and files, and electronic/computerized records and to physically examine facilities as necessary to investigate a complaint under RCW 43.06C. (See RCW 70.02.200).

Exception: For authority to access/examine medical records, relating to treatment of mental health, substance abuse, or sexually transmitted diseases the OCO must first obtain the appropriate written "Release" from the incarcerated individual. (The appropriate forms are DOC 03-475 Health Information Release specifically to be used for Mental Health, STD's, HIV's release and/or DOC 14-172 the Substance Abuse Release). DOC must assist the OCO in obtaining any necessary Releases within a reasonable time period.

- i. The OCO shall have the authority and reasonable opportunity to interview incarcerated individuals relating to a complaint investigation. (See RCW 43.06C.050). DOC staff will provide incarcerated individuals with access to either telephones or interview rooms, when needed by OCO staff for resolution of a complaint or investigation so they can conduct confidential interviews. DOC shall provide reasonable accommodation to ensure interviews are confidential. This may require DOC staff shifting to ensure adequate supervision and security for on-site interviews.
- j. As per RCW 43.06C.050 the OCO shall have the authority and reasonable opportunity to interview DOC staff relating to a complaint investigation. A represented employee has the right to a union representative at an interview.
- k. Following OCO written demand for an incarcerated individual's records, the DOC has twenty (20) business days to provide the requested records, if they are in DOC's possession, and if required, a Release is appropriately submitted. The time period does not begin to run until the written demand and any necessary Releases are in DOC's possession.

Exception: Records in DOC possession that pertain to an incarcerated individual's death, threats of bodily harm, including, but not limited to sexual or physical assaults, or the denial of necessary medical treatment shall be provided within five (5) days unless the OCO consents to an extension of the time period. Such extension shall not be unreasonably withheld if DOC does not yet have the requested records in its possession and DOC is providing diligent and timely assistance to the OCO to obtain any necessary Releases within a reasonable time period.

- l.** DOC agrees to notify the OCO when a death occurs at a correctional facility or a PREA allegation is made and to provide the follow-up investigative report to the OCO.
- m.** In an active investigation, if the OCO receives a record from DOC that is unresponsive or does not have the necessary Release, the OCO will immediately return the record/document to DOC and delete any copies that are in its possession except as may be required by law. The Parties agree that both the OCO and DOC will have acted in good faith and will be held harmless.
- n.** If the OCO receives a document that is attorney client privileged, the OCO will immediately return the document to DOC and delete any copies that are in its possession. Inadvertent sharing of a privileged document shall not destroy the privilege. If the OCO receives a document that is marked "Attorney-Client Privilege" the OCO will notify DOC.
- o.** The OCO, prior to releasing DOC records related to a complaint investigation, must send the records to the DOC Information Governance/Public Disclosure Office for review and redaction according to RCW 43.06C.060.

Note: Any unfavorable findings on a Background Check for the OCO Director or staff must be taken to the DOC Secretary for consideration prior to hiring.

4. Complaint Resolution and/or Investigation.

- a.** The OCO has the authority and responsibility to investigate complaints involving incarcerated individuals where DOC actions may have adversely affected their health, safety, welfare, and rehabilitation.
- b.** The objective of a complaint investigation is to determine whether DOC has violated law, policy or procedure, or unreasonably exercised its authority, or to assist in strengthening procedures and practices that lessen the possibility of actions occurring within DOC that may adversely impact the health, safety, welfare, and rehabilitation of offenders or that will effectively reduce the exposure of DOC to litigation.
- c.** The OCO procedures, will clarify how complaints are made, received, and acted upon by the OCO, including the scope and manner of investigation as defined in RCW 43.06C and applicable WAC's.
- d.** DOC will provide a confidential/non-monitored toll-free hotline line that an incarcerated individual can call to file a complaint during normal business hours with the OCO. The number of the toll-free hotline will be posted in each correctional facility living unit.

- e. DOC will post an OCO flyer or poster regarding its services in the living units, including segregation units and intensive management units (IMU), and the law and/or state library.
- f. DOC will include a brief notice and a link to the OCO office on its public webpage.
- g. DOC will ensure that mail to and from the OCO is treated as privileged and confidential. DOC mailroom staff will receive regular training and instruction on the confidential nature of mail to and from the OCO and its proper handling.
- h. The OCO must remain neutral and impartial and may not act as an advocate for the complainant or the DOC during an investigation.
- i. The OCO retains discretion over which complaints to accept or deny within the OCO's jurisdiction. If a complaint is not investigated, the OCO must explain to the complainant why the complaint was not accepted for investigation.
- j. The OCO may not investigate any complaint relating to an incarcerated individual's underlying criminal conviction.
- k. The OCO may not investigate a complaint from a DOC employee that relates to an employee's relationship with the DOC, unless it relates to the health, safety, or welfare of an incarcerated individual.
- l. The OCO must attempt to resolve any complaint at the lowest possible level. The Ombuds has the discretion and may initiate and attempt to resolve complaints from incarcerated individuals, their families, representatives of the incarcerated individual, DOC employees, or others, informally, such as, providing information and referrals, or mediating disagreements.

5. Conclusion of Complaint Investigation.

- a. At the conclusion of the complaint investigation, the OCO must issue and communicate its decision, based on the merits of the complaint, to the incarcerated individual and to DOC.

The OCO must provide its recommendations and the reasoning. Specifically, whether in its opinion, the DOC or any employee, should: 1) Consider the matter further; 2) Modify or cancel any action; 3) Alter a rule, practice, or ruling; 4) Explain the administrative action in question; and 5) Rectify an omission.

In cases where the OCO finds that DOC has properly carried out its duties, no further action is taken by the OCO other than to inform the complainant of its decision.

- b. The OCO may request a response from DOC for each recommendation made by them to DOC.
- c. If the OCO requests, based on the investigation conclusions or recommendations, that DOC take specific action related to the complaint, DOC must notify the OCO within the time period set by the OCO, whether action was taken per the OCO recommendation, or if not, the reasons

for not complying with the recommendations.

- d. The OCO, before announcing conclusions or recommendations that expressly or by implication criticize a person or the DOC, must inform/consult with the person or the DOC of its conclusions and recommendations.

At a minimum, this consultation will ensure that all of the facts included in the public report are accurate. If the person or DOC wishes to provide further explanation it may be included in the report, but DOC does not have the authority to change the report or recommendation.

- e. The OCO must notify the incarcerated individual of any actions taken by DOC in response to the OCO conclusions and recommendations.
- f. If the OCO believes, based on its investigation, that there continues to be significant incarcerated individual health, safety, welfare, or rehabilitation issues, the OCO must report the findings to the governor and the appropriate committees of the legislature.

6. OCO Annual Report.

- a. The OCO Annual Report is a tool for educating legislators and other policy makers about the need to make, change or set aside laws, policies or agency practices so that incarcerated individuals are better protected in the correctional system.
- b. The OCO will provide an advance copy of the Annual Report and brief the DOC Secretary prior to publication of the Report to the Governor, the Legislature, and SFC.
- c. The OCO publishes annually its investigative findings and recommendations to improve the correctional system in an annual report to the Governor, the Legislature, and the Statewide Family Council (SFC). The annual report includes the following OCO information: their budget and expenditures, the number of significant/individual investigations, or outcomes achieved during the prior year, any outstanding or unresolved concerns, and input from stakeholders regarding the OCO activities.

G. AMENDMENT OF INTER-AGENCY AGREEMENT. Modifications within the scope of this AGREEMENT shall be made with mutual consent of the Parties, by the issuance of a written Amendment, signed and dated by an authorized representative of each Party, prior to any changes being performed.

H. TERMINATION OF INTER-AGENCY AGREEMENT. Either Party, may terminate this AGREEMENT, in whole or in part by giving the other Party thirty (30) days written notice.

This AGREEMENT consisting of seven (7) pages is executed by the persons signing below who warrant they have the authority to execute this Agreement.

OFFICE OF CORRECTIONS OMBUDS

Joanne Carns
(Signature)
Joanna Carns
(Printed Name)
Director
(Title)
1/29/19
(Date)

DEPARTMENT OF CORRECTIONS

Debra J. Eisen
(Signature)
Debra J. Eisen
(Printed Name)
Contracts Administrator
(Title)
1/29/19
(Date)

Approved as to Form:

This Contract format was approved by the Office of the Attorney General.

Approval on file.