



SPONSOR: Sen. Pinkney & Rep. Minor-Brown & Rep. Longhurst  
Sens. Gay, Hansen, Lockman, S. McBride, Poore, Sokola,  
Sturgeon, Townsend, Walsh; Reps. Baumbach, Bentz,  
Dorsey Walker, Griffith, Heffernan, K. Johnson, Lambert,  
Lynn, S. Moore, Morrison, Wilson-Anton

DELAWARE STATE SENATE  
151st GENERAL ASSEMBLY

SENATE BILL NO. 150

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE OFFICE OF CORRECTIONS  
OMBUDSPERSON.

1 WHEREAS, individuals incarcerated in Department of Correction ("Department") facilities depend, by virtue of  
2 their incarceration, on the Department to ensure their safety, health, and well-being; and

3 WHEREAS, incarcerated individuals are especially vulnerable to mistreatment as a result of their dependence on  
4 the Department; and

5 WHEREAS, incarcerated individuals may not feel comfortable reporting mistreatment or abuse they experience  
6 due to fear of reprisal; and

7 WHEREAS, the creation of an Office of Corrections Ombudsperson will reduce the exposure of the Department to  
8 litigation; and

9 WHEREAS, with over 2,500 employees, the Department is the second largest executive branch agency and the  
10 largest law-enforcement agency in this State; and

11 WHEREAS, the General Assembly established the Department as the state agency responsible for providing  
12 treatment, rehabilitation, and restoration of offenders to useful, law abiding citizens within the community; and

13 WHEREAS, the Department's mission is to protect the public by supervising adult offenders through safe and  
14 humane services, programs, and facilities; and

15 WHEREAS, it is the policy of the Department to provide a range of services and programs appropriate to meet the  
16 needs of the offender population; and

17 WHEREAS, the Department has identified the importance of all offender rights, including all of the following: a  
18 safe and healthy living environment, due process for alleged rule violations, freedom of speech, access to the courts, access  
19 to counsel, access to media, access to programs and services, and a grievance process that allows for administrative and  
20 judicial review.

21 NOW, THEREFORE:

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 25, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter VI. Office of Corrections Ombudsperson.

§ 2561. Definitions.

For purposes of this subchapter:

(1) “Abuse” means any act or failure to act by a Department employee, contractor, or volunteer which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an inmate.

(2) “Commissioner” means the Commissioner of the Department of Correction.

(3) “Corrections Ombudsperson” or “Ombudsperson” or “Office” means the Office of Corrections Ombudsperson, staff of the Office of Corrections Ombudsperson, and volunteers with the Office of Corrections Ombudsperson.

(4) “Department” means the Department of Correction.

(5) “Employee” or “Department employee” means an employee, contractor, or volunteer of the Department.

(6) “Inmate” means an individual committed to the physical custody of the Department. “Inmate” includes all individuals residing in a Department correctional institution or facility, including individuals received from other governmental agencies.

(7) “Neglect” means a negligent act or omission by any Department employee, contractor, or volunteer which caused, or may have caused, injury, or death to an inmate.

§ 2562. Office of Corrections Ombudsperson; establishment.

(a) The Office of Corrections Ombudsperson is established within the Department of Justice to do all of the following:

(1) Provide information to inmates and their families.

(2) Promote public awareness and understanding of the rights and responsibilities of inmates.

(3) Identify systemic problems and recommend solutions.

(4) Ensure compliance with relevant laws, rules, and policies pertaining to correctional facilities, services, and treatment of inmates.

(b) The Attorney General may appoint, from the practicing members of the Bar of this State, a lawyer who shall serve on a full-time basis under the direct control of the Chief Deputy Attorney General as the Corrections Ombudsperson.

51           (c) The Corrections Ombudsperson shall direct and supervise the work of the Office of Corrections  
52 Ombudsperson. In addition to hiring the staff of the Office of Corrections Ombudsperson, the Corrections Ombudsperson  
53 may utilize technical experts and volunteers.

54           § 2563. Powers and duties.

55           (a) The Corrections Ombudsperson shall do all of the following:

56               (1) Establish priorities for the Office.

57               (2) Maintain a statewide toll-free telephone number, a collect telephone number, a web site, e-mail address,  
58 and a mailing address for the receipt of complaints and inquiries.

59               (3) Provide information, as appropriate, to inmates, family members, representatives of inmates, Department  
60 employees, and others regarding the rights of inmates.

61               (4) Provide technical assistance to support inmate participation in self-advocacy.

62               (5) Monitor Department compliance with applicable federal, state, and local laws, rules, regulations, and  
63 policies as related to the health, safety, welfare, and rights of inmates.

64               (6) Monitor and participate in legislative and policy developments affecting correctional facilities.

65               (7) Establish a statewide uniform reporting system to collect and analyze data related to complaints received  
66 by the Ombudsperson regarding the Department.

67               (8) Establish procedures to receive, investigate, and resolve complaints.

68               (9) Establish procedures to gather stakeholder input into the Ombudsperson's activities and priorities, which  
69 must include, at a minimum, quarterly public meetings.

70               (10) Adopt and comply with rules, policies, and procedures necessary to implement this subchapter.

71           § 2564. Jurisdiction.

72           (a) The Ombudsperson may investigate and attempt to resolve any situation if the health, safety, welfare, or a  
73 right of an inmate is alleged to have been or is at risk of being adversely affected by any of the following:

74               (1) Abuse or neglect.

75               (2) A Department decision or administrative action.

76               (3) A Department inaction or omission.

77               (4) A Department policy, rule, or procedure.

78               (5) A violation of law.

(b) The Ombudsperson may initiate an investigation or act on receipt of a complaint. Complaints may be made by any individual or entity, including an inmate, a family member of an inmate, a representative of an inmate, or a Department employee.

(c) The Ombudsperson may not investigate complaints from employees that relate to their employment relationship with the Department, unless the complaint is directly related to the health, safety, welfare, or a right of an inmate.

(d) The Ombudsperson may not investigate a complaint relating to an inmate's underlying criminal conviction.

(e) If a provision of this subchapter conflicts with the Law-Enforcement Officers' Bill of Rights, Chapter 92 of Title 11, the requirements of this subchapter apply.

§ 2565. Investigation procedure.

(a) An individual may file a complaint with the Ombudsperson whether or not the individual pursued resolution of the complaint through the internal grievance, administrative, or appellate procedures within the Department.

(b) The Ombudsperson may decline to investigate a complaint as provided by the rules adopted under this subchapter.

(c) If the Ombudsperson does not investigate a complaint, the Ombudsperson shall notify the complainant of the decision not to investigate the complaint and the reason for that decision.

(d) The Ombudsperson must attempt to resolve a complaint at the lowest possible level in the Department's organizational structure.

(e) The Ombudsperson may refer a complainant, and others, to appropriate resources, agencies, or departments.

(f) The Ombudsperson may not levy a fee for the submission or investigation of a complaint.

(g) The Ombudsperson must remain neutral and impartial and may not act as an advocate for the complainant or for the Department.

(h) At the conclusion of an investigation of each complaint, the Ombudsperson must issue a public decision on the merits of the complaint.

(1) The public decision must not contain documents that are confidential under § 2567 of this title.

(2) The Ombudsperson must communicate the decision to all of the following:

a. The complainant.

b. The inmate, if not the complainant.

c. The Department.

(3) The Ombudsperson must state its recommendations and reasoning if, in the Ombudsperson's opinion, the Department or any employee should do any of the following:

a. Consider the matter further.

b. Modify or cancel an action.

c. Alter a rule, practice, or ruling.

d. Explain in detail the administrative action in question.

e. Rectify an omission.

(i) If requested by the Ombudsperson, the Department must, within the time specified, inform the Ombudsperson about any action taken on a recommendation or the reasons for not following a recommendation.

(j) If the Ombudsperson believes, based on the investigation, that there has been or continues to be a significant problem regarding inmate health, safety, welfare, or rights, the Ombudsperson must report the finding to the Attorney General, Governor, and the House and Senate corrections committees.

(k) Before announcing a conclusion or recommendation that expressly, or by implication, criticizes an employee or the Department, the Ombudsperson shall consult with the Department, and as appropriate, that contractor or individual. The Ombudsperson may request to be notified by the Department, within the time specified, of any action taken on any recommendation presented. The Ombudsperson must notify the complainant, and the inmate if the inmate is not the complainant, of the actions taken by the Department in response to the Ombudsperson's recommendations.

(l) This subchapter does not require the filing of a complaint with the Ombudsperson in order to exhaust available administrative remedies for purposes of the Prison Litigation Reform Act of 1995, 42 USCS § 1997e.

§ 2566. Access to facilities and records.

(a) The Ombudsperson must have reasonable access to Department facilities at all times necessary to conduct a full investigation of a complaint. This authority includes the opportunity to interview an inmate, employee, or any other individual who may have knowledge relating to the complaint under investigation.

(b) The Ombudsperson 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 any of the following:

(1) Providing information about individual rights and the services available from the Office, including contact information for the Office.

(2) Monitoring compliance with respect to the health, safety, welfare, and rights of inmates.

(3) Inspecting, viewing, photographing, and video recording all areas of the facility which are used by inmates or are accessible to inmates.

(c) 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.

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

(e) Following notification from the Ombudsperson with a written demand for access to the Department's records, the Department must provide the Ombudsperson with access to the requested documentation not later than 20 business days after the Ombudsperson's written request for the records. If the records requested by the Ombudsperson pertain to an inmate death; threats of bodily harm including, sexual or physical assault; or the denial of necessary medical treatment, the records must be provided within 5 days, unless the Ombudsperson consents to an extension of that time frame.

(f) On notice and a request by the Ombudsperson, a state or local government agency or any entity that has records that are relevant to a complaint or an investigation conducted by the Ombudsperson must provide the Ombudsperson with access to these records.

(g) The Ombudsperson must work with the Department to minimize disruption to the operations of the Department due to Ombudsperson activities and must comply with the Department's security clearance processes, provided those processes do not impede the Ombudsperson's activities under this section.

#### § 2567. Confidentiality.

(a) Correspondence or other communication with the Office is confidential and must be protected as privileged correspondence in the same manner as legal correspondence or communication.

(b) The Office shall establish confidentiality rules and procedures for all information maintained by the Office.

(c) The Ombudsperson shall treat all matters under investigation, including the identities of recipients of Ombudsperson services, complainants, and individuals from whom information is acquired, as confidential, except as far as disclosures may be necessary to enable the Ombudsperson to perform the duties of the Office and to support any recommendations resulting from an investigation. On receipt of information that by law is confidential or privileged, the Ombudsperson shall maintain the confidentiality of the information and may not further disclose or disseminate the information, except as provided under subsection (d) of this section or other applicable state or federal law. All records exchanged and communications between the Office and the Department that include the investigative record, including

personnel matters, are confidential and are exempt from public disclosure under the Freedom of Information Act, Chapter 100 of Title 29.

(d) To the extent the Ombudsperson reasonably believes necessary, the Ombudsperson may reveal information obtained in the course of providing Ombudsperson services for any of the following purposes:

a. To prevent reasonably certain death or substantial bodily harm.

b. To prevent the commission of a crime.

c. To report an alleged commission of a crime to the appropriate law-enforcement agency.

(e)(1) If the Ombudsperson believes it is necessary to reveal investigative records under subsections (a) through (c) of this section, the Ombudsperson shall provide a copy of what the Ombudsperson intends to disclose to the Department for review and application of legal exemptions before releasing to any other persons. Unless otherwise stated by the Ombudsperson, the Department has 10 days to respond to the Ombudsperson with any concerns.

(2)a. If the Ombudsperson receives personally identifying information about an individual employee during the course of an investigation that the Ombudsperson determines is unrelated or unnecessary to the subject of the investigation or recommendation for action, the Ombudsperson may not further disclose the information.

b. If the Ombudsperson determines that the disclosure of information is necessary to an investigation or recommendation, the Ombudsperson shall contact the employee, and the employee's bargaining unit representative if applicable, before any disclosure.

#### § 2568. Report.

(a) Beginning July 2023, the Corrections Ombudsperson shall produce an annual report, published on the Ombudsperson's website, submitted to the Governor, Attorney General, President Pro Tempore of the Senate, Speaker of the House of Representatives, the chairs of House and Senate corrections committees, Commissioner of Correction, Adult Correction Healthcare Review Committee, with copies to the Director and the Librarian of the Division of Research of Legislative Council and the Delaware Public Archives.

(b) The annual report shall contain all of the following:

(1) The number of complaints received and the number of complaints resolved.

(2) A description of significant systemic or individual investigations or outcomes achieved by the Ombudsperson during the prior year.

(3) Any outstanding or unresolved concerns or recommendations of the Ombudsperson.

(4) Input and comments from stakeholders, including the Council on Correction, regarding the Ombudsperson's activities during the prior year.

§ 2569. Limitations.

(a) A civil action may not be brought against an employee of the Office for good faith performance of  
bilities under this subchapter.

(b) A discriminatory, disciplinary, or retaliatory action may not be taken against a Department employee, subcontractor, or volunteer or inmate or a family member or representative of an inmate for any communication made, or information given or disclosed, to aid the Office in carrying out the Office's responsibilities, unless the communication or information is made, given, or disclosed maliciously or in bad faith.

(c) A disciplinary action that is based solely on an investigation, report, or recommendation under this subchapter may not be taken against a Department employee, subcontractor, or volunteer, if the individual's conduct was in compliance with Department policies and procedures at the time of the conduct.

(d) This section is not intended to infringe on the rights of the Department to supervise, discipline, or terminate an employee for other reasons.

## SYNOPSIS

This Act creates the Office of Corrections Ombudsperson (Ombudsperson or Office) within the Department of Justice. The purpose of the Ombudsperson is to do all of the following:

1. Provide information to inmates and their families.
2. Promote public awareness and understanding of the rights and responsibilities of inmates.
3. Identify systemic problems and recommend solutions.
4. Ensure compliance with relevant laws, rules, and policies pertaining to correction facilities, services, and treatment of inmates.

Under this Act, the Ombudsperson may investigate and attempt to resolve any situation if the health, safety, welfare, or a right of an inmate of the Department of Correction (Department) may be adversely affected by any of the following:

1. Abuse or neglect.
2. A Department decision or administrative action.
3. A Department inaction or omission.
4. A Department policy, rule, or procedure.
5. A violation of law.

The Ombudsperson may not investigate a complaint relating to an inmate's underlying criminal conviction or complaints from employees that relate to their employment relationship with the Department, unless the complaint is directly related to the health, safety, welfare, or a right of an inmate. An individual may file a complaint with the Ombudsperson whether or not the individual pursued resolution of the complaint through the internal grievance, administrative, or appellate procedures within the Department.

The Ombudsperson shall treat all matters under investigation, including the identities of recipients of Ombudsperson services, complainants, and individuals from whom information is acquired, as confidential, except as far as disclosures may be necessary to enable the Ombudsperson to perform the duties of the Office and to support any recommendations resulting from an investigation. To the extent the Ombudsperson reasonably believes necessary, the Ombudsperson may reveal information obtained in the course of providing Ombudsperson services for any of the following purposes:

1. To prevent reasonably certain death or substantial bodily harm.
2. To prevent the commission of a crime.
3. To report an alleged commission of a crime to the appropriate law-enforcement agency.

At the conclusion of an investigation of each complaint, the Ombudsperson must issue a public decision on the merits of the complaint, but the public decision must not contain documents that are confidential, including personnel matters. Before announcing a conclusion or recommendation that expressly, or by implication, criticizes an employee of the Department or the Department, the Ombudsperson shall consult with the Department, and as appropriate, that individual or contractor. While the Law-Enforcement Officers' Bill of Rights (LEOBOR) does not cover correctional officers or employees of the Department, this Act provides that if a provision of this subchapter conflicts with LEOBOR, the requirements of this subchapter apply. The Ombudsperson may request to be notified by the Department, within a time specified, of any action taken on any recommendation presented. The Ombudsperson must notify the complainant, and the inmate if the inmate is not the complainant, of the actions taken by the Department in response to the Ombudsperson's recommendations. This Act provides that a Department employee may not be subject to disciplinary action based solely on an investigation under this subchapter if the individual's conduct was in compliance with Department policies and procedures at the time of the conduct.

This Act also requires that the Ombudsperson produce an annual report that contains all of the following:

1. The number of complaints received and the number of complaints resolved.
2. A description of significant systemic or individual investigations or outcomes achieved by the Ombudsperson during the prior year.
3. Any outstanding or unresolved concerns or recommendations of the Ombudsperson.
4. Input and comments from stakeholders, including the Council on Correction, regarding the Ombudsperson's activities during the prior year.

Author: Senator Pinkney