

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

HOUSE BILL HB1761

By: Lindley and Toure

AS INTRODUCED

An Act relating to prisons and reformatories; enacting the Oklahoma Corrections Ombudsman Act; defining terms; creating the Office of Corrections Ombudsman; authorizing the creation of Board of Corrections Ombudsman; providing powers and duties; establishing scope of investigations; establishing access to records; exempting from civil liability; prohibiting retaliation; prohibiting identification of clients; establishing notification to complainant; providing for agency response; providing for privileges of witnesses; providing for relation to other laws; establishing Office of Corrections Ombudsman Revolving Fund; amending 22 O.S. 2001, Section 1508, which relates to powers of Oklahoma Sentencing Commission; adding duties; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 630 of Title 57, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Corrections Ombudsman Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 631 of Title 57, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Corrections Ombudsman Act:

1. "Commission" means the Oklahoma Sentencing Commission;
2. "Client" means an individual who requests, or on whose behalf a request is made for, ombudsman services, and who is:
 - a. an offender housed by the Department of Corrections, or by any entity housing offenders under contract with the Department,

- b. friend or relative of an offender consigned to the Department of Corrections,
- c. an employee of the Department of Corrections,
- d. an elected government official, or
- e. a nongovernmental organization whose goals include prison and criminal justice matters;

3. "Department" means the Department of Corrections;

4. "Director" means the Director of the Department of Corrections;

5. "Egregious complaint" means a complaint that, should it prove to be accurate, constitutes a serious violation of state or federal law or constitutional guarantees; and

6. "Ombudsman" means the person employed by the Legislative Service Bureau to serve as corrections ombudsman.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 632 of Title 57, unless there is created a duplication in numbering, reads as follows:

A. There is hereby established in the Legislative Service Bureau, the Office of Corrections Ombudsman. The Office of Corrections Ombudsman shall be overseen by the Oklahoma Sentencing Commission. The Commission shall hire the Ombudsman.

B. The Commission shall employ an ombudsman. The ombudsman may employ such staff as may be necessary to carry out the duties of the office within the budgeting limits set by the Speaker of the House of Representatives and the President Pro Tempore of the Senate. The staff shall include professional investigators with experience in criminal or civil investigations, having no conflict of interest with either the Department of Corrections or inmates. The salary of the ombudsman shall be the same salary and benefits as a district court judge. The salary of the ombudsman shall not be diminished during the term of office of the ombudsman, unless by general law applying to all officers of the state.

C. The Legislative Service Bureau shall provide office space, equipment, and other administrative support required by the Office of Corrections Ombudsman.

D. The Ombudsman shall submit a budget request by July 1 of each year which shall be approved by the Speaker of the House of Representatives and the President Pro Tempore of the Senate.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 633 of Title 57, unless there is created a duplication in numbering, reads as follows:

The ombudsman may investigate in a neutral fact-finding approach any egregious complaints that may include medical neglect, physical and sexual abuse, torture, deprivation of basic needs, or other issues deemed serious by the ombudsman. The ombudsman may refer cases to state or federal prosecutors when a clear violation of state or federal law has occurred or when a seeming violation requiring expert judgment by a prosecutor is needed and where a mediated settlement is not possible. The ombudsman may investigate any administrative act which the ombudsman believes might be:

1. Contrary to law or regulation;
2. Based on mistaken facts or irrelevant considerations; or
3. Unreasonable, unfair, or otherwise objectionable even though in accordance with the law.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 634 of Title 57, unless there is created a duplication in numbering, reads as follows:

A. The ombudsman shall investigate and attempt to resolve complaints from clients and shall:

1. Gather information and evaluate any act, practice, policy, procedure, or administrative action, without regard to the finality of the administrative act, in any facility housing clients under control of or having a contract with the Department of Corrections;

2. Mediate and resolve egregious complaints on behalf of clients if the complaints are determined to be justified based on the facts of the complaint;

3. Monitor the development and implementation of federal, state, and local laws, rules, policies, and practices affecting the rights and well-being of offenders;

4. Recommend to the House of Representatives, the Senate, the Governor, the Department, and other public and private agencies changes in laws, rules, policies, and practices to reduce egregious complaints of clients;

5. Inform public agencies with responsibilities for particular problems, such as mental illness or other disabilities, about the problems of clients;

6. Conduct or participate in public forums to obtain information about and inform the public about issues affecting clients;

7. Collect and analyze data relating to complaints, conditions, and services that are under the scope of responsibility of the ombudsman;

8. Issue an annual report containing the number and nature of complaints, the way that they were resolved, and unresolved or irresolvable issues remaining; and

9. Adopt, promulgate, amend, and rescind rules required for the discharge of the duties of the ombudsman, including procedures for receiving and processing complaints, conducting investigations, and reporting findings, conclusions, and recommendations.

B. In carrying out the duties of the Oklahoma Corrections Ombudsman Act, the ombudsman may not levy any fee for the submission of investigation of complaints.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 635 of Title 57, unless there is created a duplication in numbering, reads as follows:

A. The Director of the Department of Corrections shall provide the ombudsman and the staff of the ombudsman with access to records, any correctional facilities, and any clients, employees, or prisoners without advance notice to the facilities or to the Department to interview clients, employees, and offenders and to observe services, conditions, and treatment being provided offenders as part of an investigation of a matter that is within the scope of the authority of the ombudsman and to interview persons under the jurisdiction of the Director or under contract with the Department to house offenders. The ombudsman may delegate such authority to employees of the ombudsman. The Director shall provide full cooperation to the ombudsman in conducting an investigation.

B. The ombudsman shall not be denied access to records, premises of facilities, or any section of a facility, staff, or prisoners.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 636 of Title 57, unless there is created a duplication in numbering, reads as follows:

The ombudsman and the staff of the ombudsman are immune from civil liability that otherwise might result from actions or omissions which are performed in good faith, are within the scope of the responsibility of the ombudsman, and do not constitute willful or reckless misconduct.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 637 of Title 57, unless there is created a duplication in numbering, reads as follows:

No entity or person shall take discriminatory, disciplinary, or retaliatory actions against an employee, volunteer, offender, family member, witness, or client for filing in good faith a complaint with or providing information to the ombudsman or a designee of the ombudsman.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 638 of Title 57, unless there is created a duplication in numbering, reads as follows:

Notwithstanding any other provision of the law to the contrary, records of the Office of Corrections Ombudsman which relate to the identity of clients, offenders, witnesses, or employees of the Department shall be public except as authorized by the ombudsman or by a majority vote of the Oklahoma Sentencing Commission, but no client shall be identified without the written permission of the client. Data maintained by the ombudsman that does not relate to the identity of a client, offender, witness, or employee of the Department may be released at the discretion of the ombudsman. Data relating to the identity of a client may be released only with the written consent of the client or by court order.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 639 of Title 57, unless there is created a duplication in numbering, reads as follows:

After the ombudsman has decided whether or not to investigate a complaint, the ombudsman shall suitably notify the complainant. The ombudsman, if requested by the complainant, shall report the status of the investigation within thirty (30) days to the complainant. Within sixty (60) days of completing an investigation of a complaint, the ombudsman shall inform the complainant of the conclusion, recommendation and, if appropriate, an action taken or to be taken by the agency involved. A letter to the ombudsman from a person held in custody, including by detention, incarceration, or hospitalization, by a Department of Corrections facility or contract facility with the Department shall be forwarded immediately, unopened, to the ombudsman. A letter from the ombudsman to such person shall be immediately delivered, unopened, to the person. Telephone and personal contacts between the ombudsman and a person

in custody shall not be prohibited, monitored, or electronically recorded.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 640 of Title 57, unless there is created a duplication in numbering, reads as follows:

Before formally issuing a conclusion or recommendation that is significantly critical or adverse to an agency, the ombudsman shall have consulted with that agency and permitted the agency to reply within thirty (30) days. If the ombudsman makes a conclusion or recommendation available to the agency to facilitate a reply, the conclusion or recommendation is confidential and may not be disclosed publicly by the agency but may be disclosed by the ombudsman.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 641 of Title 57, unless there is created a duplication in numbering, reads as follows:

Any person who provides information under this act may be accompanied and advised by counsel of their choosing and shall be paid the same fees and travel allowances and accorded the same privileges and immunities as witnesses whose attendance has been required in district court. However, a representative of an agency providing information under this act during business hours shall not be entitled to receive such fees and allowances.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 642 of Title 57, unless there is created a duplication in numbering, reads as follows:

The provisions of this act are in addition to and do not limit any other provisions of law under which any remedy or right of appeal is provided for any person. The powers conferred on the ombudsman may be exercised on final administrative actions.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 643 of Title 57, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the Office of Corrections Ombudsman within the Legislative Service Bureau to be designated the Office of Corrections Ombudsman Revolving Fund. The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all grants, gifts, bequests and any other lawful monies received for the benefit of the Office of Corrections Ombudsman. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Ombudsman for the operation of the Office of Corrections Ombudsman or other purposes authorized by law. Expenditures from said fund shall be for the general operating expenses of the Office of Corrections Ombudsman or other purposes authorized by law.

SECTION 15. AMENDATORY 22 O.S. 2001, Section 1508, is amended to read as follows:

Section 1508. A. The Oklahoma Sentencing Commission shall serve as an advisory board to the Oklahoma Criminal Justice Resource Center and the Office of the Corrections Ombudsman.

B. The Oklahoma Sentencing Commission may establish subcommittees or advisory committees composed of Commission members or others to accomplish duties imposed by this section.

C. It is the legislative intent that the Commission attach priority to accomplish the formulation of proposals and recommendations as described in Section 1512 of this title and the Oklahoma Corrections Ombudsman Act.

D. In addition, the Commission may make recommendations to the Legislature for the recodification of the Penal Code of the State of Oklahoma.

E. The Commission shall have the continuing duty to monitor and review the criminal justice and corrections systems in this state to ensure that sentencing remains uniform and consistent, and that the goals and policies established by the state are being implemented by sentencing practices, and it shall recommend methods by which this ongoing work may be accomplished and by which the correctional population simulation model shall continue to be used by the state.

F. The Commission shall review all proposed legislation which creates a new criminal offense or increases the punishment for an existing criminal offense and shall make recommendations to the Legislature.

G. The Oklahoma Criminal Justice Resource Center under the direction of the Oklahoma Sentencing Commission shall prepare a report within twenty (20) days after the last day for filing bills in the Legislature containing a review of bills as described in this ~~subsection~~ section. The Oklahoma Criminal Justice Resource Center may include in its report on a bill an impact analysis based upon an application of the correctional population simulation model to the provisions of the bill. The bill analysis report shall be delivered to the chair of the legislative committee to which the bill is assigned.

SECTION 16. This act shall become effective July 1, 2003.

SECTION 17. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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