

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 SENATE BILL 2321

By: Johnson (Constance)

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6 AS INTRODUCED

7 An Act relating to courts; creating the Integrity in
8 Corrections Ombudsman Act; defining terms; creating
9 Office of the Integrity in Corrections Ombudsman
10 within the Court of Criminal Appeals; stating duties
11 of the Office; authorizing the designation of certain
12 local entities; providing authorization for access to
13 certain records and facilities; clarifying certain
14 meaning; limiting personal liability for certain
15 persons; assuring certain legal counsel is available
16 under certain circumstances; stating limitation of
17 counsel; providing promulgation of certain rules;
18 providing for codification; and providing an
19 effective date.

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

21 SECTION 1. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 57 of Title 20, unless there is
23 created a duplication in numbering, reads as follows:

24 This act shall be known and may be cited as the "Integrity in
Corrections Ombudsman Act".

SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 58 of Title 20, unless there is
created a duplication in numbering, reads as follows:

1 As used in the Integrity in Corrections Ombudsman Act:

2 1. "Office" means the Office of the Integrity in Corrections
3 Ombudsman. For purposes of this act, any area or local ombudsman
4 entity designated by the Ombudsman shall be deemed to be a
5 subdivision of this Office;

6 2. "Ombudsman" means the individual employed by the Court of
7 Criminal Appeals to be the chief administrative officer of the
8 Office;

9 3. "Court" means the Oklahoma Court of Criminal Appeals;

10 4. "Representative" means the Ombudsman, and any state, area or
11 Ombudsman, whether paid or unpaid; and

12 5. "Inmate" means any person incarcerated by the Department of
13 Corrections.

14 SECTION 3. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 1-2243 of Title 63, unless there
16 is created a duplication in numbering, reads as follows:

17 A. There is hereby created within the Court of Criminal Appeals
18 the Office of the Integrity in Corrections Ombudsman. The Office,
19 under the auspices and general direction of the Ombudsman, shall
20 carry out an ombudsman program to be developed by the Court.

21 B. The Ombudsman shall, personally or through representatives
22 of the Office:

23 1. Identify, investigate and resolve complaints that:

24 a. are made by, or on behalf of, inmates, and

1 b. relate to action, inaction or decisions, of:

2 (1) facilities, or representatives of facilities, of
3 inmate care and available legal services,

4 (2) public agencies, or

5 (3) health and social service agencies,

6 that may adversely affect the health, safety, welfare or rights of
7 inmates;

8 2. Provide services to assist inmates in protecting their
9 health, safety, welfare and rights;

10 3. Inform inmates about means of obtaining services offered by
11 facilities or agencies;

12 4. Ensure that inmates have regular and timely access to the
13 services provided through the Office;

14 5. Ensure that inmate complainants receive timely responses
15 from the Office and representatives of the Office regarding
16 complaints, whether filed through the Office or through any
17 available grievance procedure of a prison facility provided by law;

18 6. Provide administrative and technical assistance to area or
19 local ombudsman entities to assist the entities in participating in
20 the Ombudsman Program;

21 7. Analyze, comment on and monitor the development and
22 implementation of federal, state and local laws, rules and other
23 government policies and actions that pertain to the health, safety,
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1 welfare and rights of the inmates, with respect to the adequacy of
2 prison facilities in this state;

3 8. Recommend any changes in such laws, rules, policies and
4 actions as the Office determines to be appropriate;

5 9. Facilitate public comment on the laws, rules, policies and
6 actions;

7 10. Provide for training representatives of the Office; and

8 11. Carry out such other activities as the Court of Criminal
9 Appeals determines to be appropriate.

10 C. 1. In carrying out the duties of the Office, the Ombudsman
11 may designate an entity as an area or local Ombudsman entity, and
12 may designate an employee or volunteer to represent the entity.

13 2. An individual so designated shall, in accordance with the
14 policies and procedures established by the Office and the Court of
15 Criminal Appeals, carry out such duties and activities as required
16 by the Ombudsman pursuant to the authority granted by the Integrity
17 in Corrections Ombudsman Act and rules promulgated by the Court
18 thereto.

19 3. Entities eligible to be designated as area or local
20 Ombudsman entities, and individuals eligible to be designated as
21 representatives of such entities, shall:

22 a. have demonstrated capability to carry out the
23 responsibilities of the Office,

24 b. be free of conflicts of interest,

1 c. in the case of the entities, be public or nonprofit
2 private entities, and

3 d. meet such additional requirements as the Ombudsman may
4 specify.

5 D. 1. In accordance with the provisions of the Integrity in
6 Corrections Ombudsman Act, the Ombudsman and representatives of the
7 Office shall have:

8 a. access to prison facilities and inmates,

9 b. (1) access to review the medical and social records
10 of an inmate, if:

11 (a) the representative of the Office has the
12 permission of the inmate, or the legal
13 representative of the inmate, or

14 (b) the inmate is unable to consent to the
15 review and has no legal representative and
16 the representative of the Office obtains the
17 approval of the Ombudsman, or

18 (2) access to the medical and social records of an
19 inmate as is necessary to investigate a complaint
20 if:

21 (a) a legal guardian of the inmate refuses to
22 give the permission,

23 (b) a representative of the Office has
24 reasonable cause to believe that the

1 guardian is not acting in the best interests
2 of the inmate, and

3 (c) the representative obtains the approval of
4 the Ombudsman,

5 c. access to the administrative records, policies and
6 documents of prison facilities, to which the inmates
7 have or the general public has access, and

8 d. access to copies of all licensing and certification
9 records maintained by the Courts or any other agency
10 of this state with respect to prison facilities.

11 2. For purposes of this subsection, the term "Representative of
12 the Office" shall not include any unpaid or volunteer state, area,
13 or local ombudsman.

14 SECTION 4. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 1-2244 of Title 63, unless there
16 is created a duplication in numbering, reads as follows:

17 A. For purposes of the Governmental Tort Claims Act, any state,
18 area or ombudsman shall be deemed to be an employee of this state
19 and as such shall not be personally liable for any act or omission
20 made within the "scope of employment", as such term is defined by
21 the Governmental Tort Claims Act.

22 B. 1. The Court of Criminal Appeals shall assure that adequate
23 legal counsel is available to the Ombudsman for the advice and
24 consultation needed to protect the health, safety, welfare and

1 rights of inmates, and that legal representation is provided to any
2 representative of the Office:

3 a. against whom suit or other legal action is brought in
4 connection with any act or omission of a
5 representative made within the scope of employment, or

6 b. to assist the ombudsman and representatives of the
7 Office in the performance of their official duties.

8 2. The provisions of this section shall not be construed to
9 require or authorize any legal counsel provided by the Court of
10 Criminal Appeals to represent any inmate of a prison facility in an
11 individual capacity.

12 SECTION 5. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1-2245 of Title 63, unless there
14 is created a duplication in numbering, reads as follows:

15 A. No person shall willfully interfere with a representative of
16 the Office of the Integrity in Corrections Ombudsman in the
17 performance of official duties.

18 B. No person shall engage in retaliation or reprisal against
19 any resident or employee of a prison facility or other entity for
20 having filed a complaint with or provided information to the Office.

21 C. Any person convicted of violating any provisions of this
22 section shall be guilty of a misdemeanor.

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1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-2246 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

4 The Court of Criminal Appeals shall promulgate rules regarding:

5 1. The powers and official duties of the Ombudsman consistent
6 with applicable federal law and rules or as provided by the
7 Integrity in Corrections Ombudsman Act;

8 2. Minimum qualifications for persons to serve as
9 representatives of the Office of the Integrity in Corrections
10 Ombudsman;

11 3. The minimum number of visits that must be made by an
12 ombudsman to the assigned facilities;

13 4. The proper documentation and reporting of visits made to
14 facilities by the ombudsman;

15 5. Procedures to ensure that officers, employees or other
16 representatives of the Office are not subject to a conflict of
17 interest which would impair their ability to carry out their
18 official duties in an impartial manner; and

19 6. The disclosure by the Ombudsman or area or local ombudsman
20 entities of files maintained by the Integrity in Corrections
21 Ombudsman Program. Such rules shall:

22 a. provide that such files and records may be disclosed
23 only at the discretion of the Ombudsman or the person
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1 designated by the Ombudsman to disclose the files and
2 records, and

3 b. prohibit the disclosure of the identity of any
4 complainant or inmate with respect to whom the Office
5 maintains such files or records unless:

6 (1) the complainant or inmate, or the legal
7 representative of the complainant or inmate,
8 consents to the disclosure and the consent is
9 given in writing,

10 (2) (a) the complainant or inmate gives consent
11 orally, and

12 (b) the consent is documented contemporaneously
13 in a writing made by an Ombudsman
14 representative of the Office in accordance
15 with such rules as the Court shall
16 promulgate, or

17 (3) the disclosure is required by court order.

18 SECTION 7. This act shall become effective November 1, 2010.

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