

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 SENATE BILL 2106

By: Johnson (Constance)

4
5 AS INTRODUCED

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

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

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

23 This act shall be known and may be cited as the "Integrity in
24 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:

As used in the Integrity in Corrections Ombudsman Act:

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

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

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

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

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

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

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

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

- 22 1. Identify, investigate and resolve complaints that:
23 a. are made by, or on behalf of, inmates, and
24 b. relate to action, inaction or decisions, of:

1 (1) facilities, or representatives of facilities, of
2 inmate care and available legal services,
3 (2) public agencies, or
4 (3) health and social service agencies,
5 that may adversely affect the health, safety, welfare or rights of
6 inmates;

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

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

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

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

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

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

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

3 9. Facilitate public comment on the laws, rules, policies and
4 actions;

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

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

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

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

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

20 a. have demonstrated capability to carry out the
21 responsibilities of the Office,

22 b. be free of conflicts of interest,

23 c. in the case of the entities, be public or nonprofit
24 private entities, and

1 d. meet such additional requirements as the Ombudsman may
2 specify.

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

6 a. access to prison facilities and inmates,

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

9 (a) the representative of the Office has the
10 permission of the inmate, or the legal
11 representative of the inmate, or

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

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

19 (a) a legal guardian of the inmate refuses to
20 give the permission,

21 (b) a representative of the Office has
22 reasonable cause to believe that the
23 guardian is not acting in the best interests
24 of the inmate, and

1 (c) the representative obtains the approval of
2 the Ombudsman,

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

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

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

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

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

20 B. 1. The Court of Criminal Appeals shall assure that adequate
21 legal counsel is available to the Ombudsman for the advice and
22 consultation needed to protect the health, safety, welfare and
23 rights of inmates, and that legal representation is provided to any
24 representative of the Office:

- 1 a. against whom suit or other legal action is brought in
2 connection with any act or omission of a
3 representative made within the scope of employment, or
4 b. to assist the ombudsman and representatives of the
5 Office in the performance of their official duties.

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

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

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

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

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

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

24 The Court of Criminal Appeals shall promulgate rules regarding:

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

4 2. Minimum qualifications for persons to serve as
5 representatives of the Office of the Integrity in Corrections
6 Ombudsman;

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

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

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

15 6. The disclosure by the Ombudsman or area or local ombudsman
16 entities of files maintained by the Integrity in Corrections
17 Ombudsman Program. Such rules shall:

18 a. provide that such files and records may be disclosed
19 only at the discretion of the Ombudsman or the person
20 designated by the Ombudsman to disclose the files and
21 records, and

22 b. prohibit the disclosure of the identity of any
23 complainant or inmate with respect to whom the Office
24 maintains such files or records unless:

1 (1) the complainant or inmate, or the legal
2 representative of the complainant or inmate,
3 consents to the disclosure and the consent is
4 given in writing,

5 (2) (a) the complainant or inmate gives consent
6 orally, and

7 (b) the consent is documented contemporaneously
8 in a writing made by an Ombudsman
9 representative of the Office in accordance
10 with such rules as the Court shall
11 promulgate, or

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

13 SECTION 7. This act shall become effective November 1, 2014.

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