



## **FAMM Model Legislation: The Office of the Department of Corrections Ombudsman Act**

*Note: To ensure that the Ombudsman's Office is fully independent of the Departments of Corrections or Public Safety and operates pursuant to an independent funding stream, the code sections below should be created in their own chapter and/or title or placed in a chapter and/or title separate from those of the Departments of Corrections or Public Safety.*

**Be it enacted by the [Legislature of the State]:**

**Section 1. [State code title and chapter] is amended by adding section ###, to read:**

**###. Office of the Department of Corrections Ombudsman.**

### **(A) Creation of Office of the Department of Corrections Ombudsman.**

(1) Within 270 days of the enactment date, there shall be established an Office of the Department of Corrections Ombudsman (referred to in this section as the "Office").

(2) The Office shall consist of two sections: Inspections Section and Complaints Investigation Section.

(3) The Office shall:

- (a) Provide information, as appropriate, to inmates, family members, representatives of inmates, Department of Corrections employees and contractors, and others regarding the rights of inmates;
- (b) Monitor conditions of confinement and assess Department of Corrections compliance with applicable federal, state, and local rules, regulations, policies, and best practices as related to the health, safety, welfare, and rehabilitation of inmates;
- (c) Provide technical assistance to support inmate participation in self-advocacy;
- (d) Provide technical assistance to local governments in the creation of jail oversight bodies, as requested;
- (e) Establish a statewide uniform reporting system to collect and analyze data related to complaints received by the Department of Corrections, and data related to the following:
  - (i) deaths, suicides, and suicide attempts in custody;
  - (ii) physical and sexual assaults in custody;
  - (iii) number of people placed in administrative segregation or solitary confinement, and duration of stay in such confinement;
  - (iv) number of facility lockdowns lasting longer than 24 hours;
  - (v) number of staff vacancies at each facility;
  - (vi) inmate to staff ratios at each facility;
  - (vii) staff tenure and turnover;
  - (viii) numbers of in-person visits to inmates that were made and denied at each facility;



- (f) Establish procedures to gather stakeholder input into the Office’s activities and priorities, which must include, at a minimum, an annual 30-day period for receipt of and Office response to public comment;
- (g) Inspect each Department of Corrections facility at least once every three years, and at least once each year for each maximum security facility and each facility where the Office has found cause for more frequent inspection or monitoring;
- (h) Publicly issue periodic facility inspection reports and an annual report with recommendations on the state of Department of Corrections facilities and a summary of data and recommendations arising from any complaints investigated and resolved pursuant to this section and section #####, as added by this act, and any other thematic reports covering any topic the Office finds relevant to running a safe, secure, and humane corrections department.

(4) The Office shall be directed by an ombudsman, who shall be selected by the Corrections Oversight Committee established in subsection B of this section, and shall serve a term of six years, during which term the ombudsman may be removed only by the Governor and only for good cause. The ombudsman shall not be a current or former employee or contractor of the Department of Corrections, and the ombudsman’s spouse or domestic partner, parents, grandparents, children, or siblings shall not be a current employees or contractors of the Department of Corrections.

(5) The ombudsman shall have authority

- (a) to hire staff, contractors, and unpaid volunteers and secure office space, equipment, and other services necessary to carry out the duties of the Office pursuant to this section and section #####, as added by this act. Any employee, contractor, or unpaid volunteer hired or retained by the Office shall have the same authority and powers of the Office as described in this section and section #####, as added by this act; and
- (b) to contract with experts as needed to assist in the monitoring and inspection of facilities, the assessment of data, and the review, investigation, or resolution of complaints.

**(B) Corrections Oversight Committee** – Within 180 days of the enactment date, there shall be established a Corrections Oversight Committee that shall consist of the following members:

- (1) Two members of the Senate who are appointed by the President of the Senate and who are not members of the same political party. The President shall select one of these members to serve as a co-chairperson.
- (2) Two members of the House of Representatives who are appointed by the Speaker of the House of Representatives and who are not members of the same political party. The Speaker shall select one of these members to serve as co-chairperson.
- (3) The following members, who are appointed by the Governor:
  - (a) One representative of a prisoner advocacy organization.
  - (b) One representative of an organization that provides training or rehabilitation programs for incarcerated inmates.
  - (c) One man who was formerly incarcerated in the [State] Department of Corrections.
  - (d) One woman who was formerly incarcerated in the [State] Department of Corrections.

- (e) One physician who is licensed pursuant to [relevant code section for licensing of doctors] and who specializes in family medicine or internal medicine.
  - (f) One mental or behavioral health professional who is licensed pursuant to [relevant code section for licensing of mental health professionals] and who has a history of providing mental health services or counseling to adults.
  - (g) One person who is a grandparent, parent, child, sibling, or spouse or domestic partner of a person currently incarcerated in a Department of Corrections facility.
- (4) Members appointed pursuant to this subsection shall serve three-year terms.
- (5) Members appointed pursuant to this subsection shall not be current employees or contractors of the Department of Corrections, shall not have parents, children, or spouses or domestic partners who are current employees or contractors of the Department of Corrections, and shall not have been an employee or contractor of the Department of Corrections at any time during the 10 years prior to their appointment to the committee.
- (6) The committee shall meet whenever there is a vacancy in the ombudsman position, or as the co-chairpersons deem necessary, or on the call of the majority of the members.
- (7) Committee members are not eligible to receive compensation but are eligible for reimbursement of expenses.
- (8) The committee shall announce the ombudsman nominee publicly and shall vote to appoint the nominee after holding a public hearing, during which the committee shall hear and consider oral or written testimony from the ombudsman nominee, any witnesses the ombudsman nominee presents on his or her behalf, and any members of the public. The ombudsman shall take office upon a majority vote of the committee in his or her favor.
- (9) Initial terms of committee members --
- (a) Notwithstanding this section, as added by this act, the initial terms of committee members who are appointed pursuant to this section, subsection B, as added by this act, are:
    - (i) One term ending January 1, 2022.
    - (ii) Two terms ending January 1, 2023.
    - (iii) Two terms ending January 1, 2024.
  - (b) The governor shall make all subsequent appointments as prescribed by statute.
- (10) The committee shall hold at least one public hearing each year to present, review, and discuss the Office's inspections, findings, reports, and recommendations set forth in the Office's annual report, as described in this section and section #####, as added by this act, and shall hold quarterly public hearings to present, review, and discuss any other data, reports, or findings of the Office that the committee feels are relevant.

**(C) Access to facilities and records.**

- (1) The Office must have reasonable access, upon demand in person or in writing and with or without prior notice, to all Department of Corrections 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 authority includes the opportunity to conduct an interview with any inmate, Department of Corrections employee or contractor, or other person. This access is for the purposes of:
- (a) Providing information about individual rights and the services available from the Office, including the name, address, and telephone number of the Office facilities or staff;
  - (b) Conducting official inspections as defined in subsection (E) of this section;

(c) Conducting an official investigation as defined in subsection (F) of this section and as described in section #####, as added by this act;

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

(2) Access to inmates includes the opportunity to meet and communicate privately and confidentially with individuals regularly, with or without prior notice, both formally and informally, by telephone, mail, electronic communication, and in person. In the case of communications with inmates, these communications shall not be monitored by, recorded, or conducted in the presence of Department of Corrections employees or contractors.

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

(4) Following notification from the Office with a written demand for access to Department records, the designated Department staff must provide the Office with access to the requested documentation not later than 20 days after the Office's written request for the records. Where the records requested by the Office pertain to an inmate death, threats of bodily harm including, but not limited to, sexual or physical assaults, or the denial of necessary medical treatment, the records shall be provided within five days unless the Office consents to an extension of that time frame.

(5) The Office must work with the Department to minimize disruption to the operations of the Department due to Office activities and must comply with the Department's security clearance processes, provided these processes do not impede the activities outlined in this section.

#### **(D) Confidential communications.**

(1) Correspondence and communication with the Office, including that made pursuant to Section #####, as created by this act, is confidential and must be protected as privileged correspondence in the same manner as legal correspondence or communication.

(2) The Office shall establish confidentiality rules and procedures for all information maintained by the Office to ensure that:

(a) Department of Corrections employees or contractors are not aware of the identity of a complainant before, during, and after an investigation to the greatest extent practicable. The Office may disclose identifying information for the sole purpose of carrying out an investigation.

(b) Other Department of Corrections inmates are not aware of the identity of a complainant before, during, and after an investigation to the greatest extent practicable. The Office may disclose identifying information for the sole purpose of carrying out an investigation.

#### **(E) Inspection authority.**

(1) The Office shall conduct periodic inspections of each Department of Corrections facility.

(2) Initial inspection – The Office shall conduct an inspection of each Department of Corrections prison facility and release a public report within 3 years of the date of enactment of this section.

(3) Subsequent inspection – Subsequent inspections of each facility shall be conducted on a staggered schedule dependent on the facility's safety and compliance classification.

(4) Inspection assessment – An inspection of a Department of Corrections facility shall include an assessment of all of the following:

- (a) All policies and procedures in place by the facility related to care of inmates;
- (b) Conditions of confinement;
- (c) Availability of educational and rehabilitative programming, drug and mental health treatment, and inmate jobs and vocational training;
- (d) All policies and procedures related to visitation;
- (e) All medical facilities and medical procedures and policies;
- (f) Review of lockdowns at the facility in the time since the last audit. In the instance of an initial assessment the Office shall review lockdowns from the last 3 years;
- (g) Review of staffing at the facility, including the number and job assignments of correctional staff, the ratio of staff to inmates at the facility, and the staff position vacancy rate at the facility;
- (h) Review of physical and sexual assaults at the facility in the time since the last inspection. In the instance of an initial assessment, the Office shall review assaults from the last 3 years;
- (i) Review of any inmate or staff deaths that occurred at the facility in the time since the last inspection. In the instance of an initial assessment the Office shall review inmate and staff deaths from the last 3 years;
- (j) Review of Department staff recruitment, training, supervision, and discipline;
- (k) Any other aspect of the operation of the facility that the Office deems necessary over the course of an inspection.

(5) Report – Upon completion of an inspection, the Office shall produce a report to be made available to the public on the internet, and to be delivered to the Governor, the Attorney General, the Senate Judiciary Committee, the House Judiciary Committee, and the Director of the Department of Corrections. The report shall include:

- (a) A summary of the facility's policies and procedures related to care of the inmates;
- (b) A characterization of the conditions of confinement;
- (c) A catalogue of available educational and rehabilitative programming, drug and mental health treatment, and inmate jobs and vocational training;
- (d) A summary of visitation policies and procedures;
- (e) A summary of medical facilities and medical procedures and policies;
- (f) A summary of the lockdowns reviewed by the Office;
- (g) A summary of the staffing at the facility, including policies relating to staff recruitment, training, supervision, and discipline;
- (h) A summary of physical and sexual assaults reviewed by the Office;
- (i) A summary of any inmate or staff deaths that occurred at the facility;
- (j) Recommendations made to the facility to improve safety and conditions within the facility;
- (k) Safety and compliance classification with recommended timeline for the next inspection.

(6) Safety and compliance classification – Upon completion of an inspection, the Office shall assign the facility a safety and compliance classification. This classification system will be divided into 3 tiers and will be determined based on the factors described in subparagraph 4 of this subsection. The tiers are as follows:

- (a) Tier 1 – requires subsequent inspection within 12 months. Used for maximum security facilities and facilities that present clear violations of rights, risks to the safety of

prisoners, or severe lack of quality programming for the successful rehabilitation of individuals;

(b) Tier 2 – requires subsequent inspection between 18 months and 36 months. Used for facilities that may have violations of rights, substandard conditions of confinement, or substandard programming options;

(c) Tier 3 – requires subsequent inspection within 36 months. Used for facilities with adequate conditions of confinement and programming options.

(7) The Department of Corrections shall respond in writing to each inspection report issued by the Office within 20 days of the issuance of the report, and its response shall include a corrective action plan. The Office shall monitor the Department's compliance with the corrective action plan and may conduct further inspections or investigations as necessary to ensure such compliance.

**(F) Complaint investigation authority.**

(1) The Office may initiate and attempt to resolve an investigation upon its own initiative, or upon receipt of a complaint from an inmate, a family member, a representative of an inmate, a Department of Corrections employee or contractor, or others, regarding any of the following that may adversely affect the health, safety, welfare, and rights of inmates:

(a) Abuse or neglect;

(b) Conditions of confinement;

(c) Department of Corrections decisions or administrative actions;

(d) Department of Corrections inactions or omissions;

(e) Department of Corrections policies, rules, or procedures; or

(f) Alleged violations of law by Department of Corrections employees or contractors that may adversely affect the health, safety, welfare, and rights of inmates.

(2) The Office may decline to investigate any complaint, and shall decline to investigate a complaint if the inmate has failed to first utilize the Department of Corrections' policies and procedures regarding resolution of inmate grievances. If the Office does not investigate a complaint, the Office shall notify the complainant in writing of the decision not to investigate and the reasons for the decision.

(3) Any action or lack of action on a complaint by the Office shall not be deemed an administrative procedure required for exhaustion of remedies prior to bringing an action pursuant to the Prison Litigation Reform Act, 42 U.S.C. § 1997e et seq.

(4) The Office may not investigate any complaints relating to an inmate's underlying criminal conviction.

(5) The Office may not investigate a complaint from a Department of Corrections employee or contractor that relates to the employee or contractor's employment relationship with the Department unless the complaint is related to the health, safety, welfare, and rehabilitation of inmates.

(6) The Office may refer the complainant and others to appropriate resources or state, Tribal, or federal agencies.

(7) The Office may not levy any fees for the submission or investigation of complaints.

(8) At the conclusion of an investigation of a complaint, the Office must render a public decision on the merits of each complaint, except that the documents supporting the decision are subject to the confidentiality provision of this section. The Office must communicate the decision to the inmate, if any, and to the Department of Corrections. The Office must state its recommendations

and reasoning if, in the Office's opinion, the Department or any employee or contractor thereof should:

- (a) Consider the matter further;
- (b) Modify or cancel any action;
- (c) Alter a rule, practice, or ruling;
- (d) Explain in detail the administrative action in question; or
- (e) Rectify an omission.

(9) If the Office so requests, the Department must, within the time specified, inform the Office in writing about any action taken on the recommendations or the reasons for not complying with the recommendations.

(10) If the Office believes, based on the investigation, that there has been or continues to be a significant inmate health, safety, welfare, or rehabilitation issue, the Office must report the finding to the Governor, the Attorney General, the Senate Committee on the Judiciary, the House Committee on the Judiciary, and the Director of the Department of Corrections.

(11) In the event that the Department conducts an internal disciplinary investigation and review of one or more of its staff members as a result of an Office investigation, the Department's disciplinary review may be subject to additional review and investigation by the Office to ensure a fair and objective process.

(12) Before announcing a conclusion or recommendation that expressly, or by implication, criticizes a person or the Department, the Office shall consult with that person or the Department. The Office may request to be notified by the Department, within a specified time, of any action taken on any recommendation presented.

(13) The Department and its employees and contractors shall not discharge, retaliate against, or in any manner discriminate against any person because such person has filed any complaint or instituted or caused to be instituted any proceeding under or related to this subsection.

- (a) Any alleged discharge, retaliation against, or discrimination against a complainant may be considered by the Office as an appropriate subject of an investigation.
- (b) Any Department employee or contractor who believes that he or she has been discharged or otherwise discriminated against by any person in violation of this subsection may, within thirty days after such violation occurs, file a complaint [pursuant to the state's whistleblower and/or wrongful termination laws].

#### **(G) Annual report.**

(1) By December 31 of each calendar year, the Office shall produce an annual report to be made available to the public on the internet, and to be delivered to the Governor, the Attorney General, the Senate Judiciary Committee, the House Judiciary Committee, and the Director of the Department of Corrections. The report shall include:

- (a) A summary of the Office's inspections and complaint investigations conducted that calendar year, including the Office's findings and recommendations and the Department of Corrections' responses and corrective actions;
- (b) A characterization of the conditions of confinement;
- (c) A summary of available educational and rehabilitative programming, drug and mental health treatment, and inmate jobs and vocational training;
- (d) A summary of visitation policies and procedures;
- (e) A summary of medical facilities and medical procedures and policies;
- (f) A summary of the lockdowns reviewed by the Office;

- (g) A summary of the staffing at each facility and in the Department overall;
  - (h) A summary of physical and sexual assaults reviewed by the Office;
  - (i) A summary of any inmate or staff deaths that occurred at a facility;
  - (j) A summary of the Office's investigations, findings, and resolutions of any complaints submitted pursuant to this section or section #####, as added by this act;
  - (k) Recommendations to the legislature and the Department regarding, but not limited to, the following:
    - (i) How the Office and the Department are funded and staffed;
    - (ii) Improving staff retention, training, working conditions, compensation, benefits, morale, and safety;
    - (iii) Improving inmate health, safety, conditions of confinement, and medical care;
    - (iv) Improving visitation and limiting use of lockdowns and administrative segregation or solitary confinement;
    - (v) Improving complaint investigation and resolution;
    - (vi) Improving access to and quality and availability of educational and rehabilitative programming, drug and mental health treatment, and inmate jobs and vocational training;
    - (vii) Improving transparency about conditions in the facilities and the Department overall;
    - (viii) Improving the disciplinary process to hold staff accountable for mistreatment of inmates;
    - (ix) Preventing future violations of inmate rights as protected under state and federal law.
- (2) If the Office so requests, the Department must, within the time specified, inform the Office in writing about any action taken on the recommendations or the reasons for not complying with the recommendations.

**(H) Definition of “family member”** – As used in this section, “family member” includes a grandparent, parent, sibling, spouse or domestic partner, child, aunt, uncle, cousin, niece, nephew, grandchild, or any other person related to an individual by blood, adoption, marriage, or a fostering relationship.

**Section 2:** [State code title and chapter], is amended by adding section #####, to read:

**#####. Inmate and Family Support Services; function of Office of the Department of Corrections Ombudsman.**

**(A) Family Advocacy and Support Services Online Form** – The Office of the Department of Corrections Ombudsman (referred to in this section as the “Office”) shall create a secure online form (referred to in this section as the “Family Form”) to be made available on the Office’s website wherein family members, friends, and advocates can submit complaints and inquiries regarding covered issues on behalf of an individual incarcerated within the Department of Corrections. Upon receipt of a Family Form, the Office shall –

- (1) Confirm receipt of the complaint or inquiry within five (5) business days;
- (2) Make a determination as to whether an investigation is warranted within seven (7) business days of the confirmation of receipt of complaint and notify the complainant;
- (3) If the Office has determined an investigation is unwarranted, the Office must provide a written statement regarding its decision to the complainant.

**(B) Inmate Advocacy and Support Services Online Form** – The Office shall create a secure online form (referred to in this subsection as the “Inmate Form”) to be made available on the Department of Corrections secure intranet wherein inmates may submit complaints and inquiries regarding covered issues on their behalf.

(1) Availability – The Director of the Department of Corrections shall ensure that the Inmate Form is available and operating on at least 12 computers within each facility and accessible to all inmates from 7:00 a.m. to 7:00 p.m. each day. For inmates in administrative segregation or solitary confinement, the Department of Corrections shall ensure that employees and contractors provide inmates with access to the Inmate Form on a computer or computer tablet or by providing a paper copy upon the inmate’s request. The Department shall make paper copies of the Inmate Form available, at no cost to inmates, in each facility’s library, law library, and recreational and medical facilities.

(2) Confidentiality – The Office shall create the Inmate Form in a secure format that excludes any electronic monitoring or reproduction by the Department of Corrections and its employees and contractors. Any inmate submissions of paper copies of the Inmate Form shall be treated as confidential and privileged by Department of Corrections employees and contractors in the same manner as legal correspondence or communication.

(3) Requirements – The Office shall –

- (a) Confirm receipt of the complaint or inquiry within five (5) business days;
- (b) Make a determination as to whether an investigation is warranted within seven (7) business days of the confirmation of receipt of complaint and notify the complainant;
- (c) If the Office has determined an investigation is unwarranted, the Office must provide a written statement regarding its decision to the complainant.

**(C) Family Advocacy and Support Services Hotline** – The Office shall create a telephone hotline through which family members, friends, and advocates of inmates can call to file complaints and inquiries regarding covered issues on behalf of an individual incarcerated within the Department of Corrections.

(1) Requirements – The Office shall –

- (a) Confirm receipt of the complaint or inquiry within five (5) business days;
- (b) Make a determination as to whether an investigation is warranted within seven (7) business days of the confirmation of receipt of complaint and notify the complainant;
- (c) If the Office has determined an investigation is unwarranted, the Office must provide a written statement regarding its decision to the complainant.

**(D) Inmate Advocacy and Support Service Hotline** – The Office shall create a secure telephone hotline to be made available to all Department of Corrections employees and contractors and inmates to file complaints and inquiries regarding covered issues on their behalf.

(1) Prohibition on phone call fees – The Director of the Department shall ensure that the hotline and its use are made available to all inmates free of charge.

(2) Confidentiality – The Office and the Director of the Department shall ensure that calls to the hotline are not monitored or recorded by Department employees or contractors.

(3) Requirements – The Office shall –

- (a) Confirm receipt of the complaint or inquiry within five (5) business days;

- (b) Make a determination as to whether an investigation is warranted within seven (7) business days of the confirmation of receipt of complaint and notify the complainant;
- (c) If the Office has determined an investigation is unwarranted, the Office must provide a written statement regarding their decision to the complainant.

**(E) Ban on Retaliation** – The Department and its employees and contractors shall not discharge, retaliate against, or in any manner discriminate against any person because such person has filed any complaint or instituted or caused to be instituted any proceeding under or related to this section.

(1) Any alleged discharge, retaliation against, or discrimination against a complainant may be considered by the Office as an appropriate subject of an investigation.

(2) Any Department employee or contractor who believes that he or she has been discharged or otherwise discriminated against by any person in violation of this subsection may, within thirty days after such violation occurs, file a complaint [pursuant to the state’s whistleblower and/or wrongful termination laws].

**(F) Federal claims** – Any action or lack of action by the Office on a complaint made pursuant to this section shall not be deemed an administrative procedure required for exhaustion of remedies prior to bringing an action pursuant to the Prison Litigation Reform Act, 42 U.S.C. § 1997e et seq.

**(G) Definitions** - In this section the following definitions apply:

(1) “Covered issues” may include but are not limited to

- (a) Sanitation in prison facilities;
- (b) Access to proper nutrition;
- (c) Livable temperatures in prison facilities;
- (d) Physical or sexual abuse from fellow inmates;
- (e) Physical or sexual abuse from Department staff or contractors;
- (f) Credible threats against self from other inmates, staff, or contractors;
- (g) Neglect of prison staff or contractors that results in physical or sexual trauma;
- (h) Denial of rights afforded to inmates under federal or state law;
- (i) Access to visitation and communication with family;
- (j) Any instance in which the Office determines an action or behavior to be such that it constitutes abuse or neglect against an inmate;
- (k) Access to medical or mental health care or substance abuse treatment;
- (l) Access to educational and rehabilitative programming, drug and mental health treatment, and inmate jobs and vocational training.

(2) “Family member” includes a grandparent, parent, sibling, spouse or domestic partner, child, aunt, uncle, cousin, niece, nephew, grandchild, or any other person related to an individual by blood, adoption, marriage, or a fostering relationship.

**Section 3: Authorization of Appropriations** – There is authorized to be appropriated to carry out this act \$1,500,000 each year for fiscal years [next 5 fiscal years].

*Draft date: February 5, 2020. Please contact Molly Gill at [mgill@famm.org](mailto:mgill@famm.org) for assistance with legislation or with questions about this model legislation.*