

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 5358

By Delegates Kelly, Hott, Phillips, Jeffries, Pinson,

Brooks, Steele, Young and Garcia

[Originating in the Committee on the Judiciary;

Reported on February 22, 2024]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §15A-14-1, §15A-14-2, §15A-14-3, §15A-14-4, §15A-14-5, §15A-14-6, §15A-
3 14-7, §15A-14-8, and §15A-14-9, all relating to the Corrections and Rehabilitation
4 Ombudsman; authorizing an ombudsman position within the Office of the Inspector
5 General; authorizing review of complaints; providing access to complainants, facilities,
6 agencies, and records to assist in review; providing cooperation among government
7 departments and agencies; clarifying confidentiality; providing limitations on liability;
8 requiring an annual report; including penalties for noncompliance and retaliation; and
9 providing funding for the program.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14. CORRECTIONS AND REHABILITATION OMBUDSMAN PROGRAM.

§15A-14-1. The Corrections and Rehabilitation Ombudsman.

1 (a) There is created within the Office of the Inspector General the position of the West
2 Virginia Corrections and Rehabilitation Ombudsman. The Office of the Inspector General shall
3 employ a Corrections and Rehabilitation Ombudsman to effectuate the purposes of this article.

4 (b) For purposes of this article:

5 (1) "Inmate" has the same meaning as that term is defined in §15A-1-5 of this code.

6 (2) "Inspector General" means the Inspector General created by the provisions of §15A-
7 13-1 et seq. of this code.

8 (3) "Ombudsman" means the Corrections and Rehabilitation Ombudsman.

9 (4) "Resident" has the same meaning as that term is defined in §15A-1-6 of this code.

10 (c) The duties of the ombudsman include, but are not limited to, the following:

11 (1) Establishing a statewide procedure to receive complaints filed by any person on behalf
12 of an inmate or resident who is subject to a reported allegation of abuse, who has died or sustained
13 a critical incident, or any other condition affecting the health or welfare of an inmate or resident in
14 the correctional or juvenile system;

15 (2) Reviewing periodically and making appropriate recommendations for the policies and
16 procedures established by any state agency providing services to the inmate and resident
17 populations;

18 (3) Recommending action when appropriate, including, but not limited to, undertaking
19 legislative advocacy and making proposals for systemic reform;

20 (4) Conducting programs of public education when necessary and appropriate;

21 (5) Having input into the creation of policies of the Division of Corrections and
22 Rehabilitation;

23 (6) Taking appropriate steps to advise the public of the services of the ombudsman, the
24 purpose of the ombudsman, and procedures to contact the office;

25 (7) Reviewing grievances filed by inmates and residents upon request;

26 (8) Reviewing notices of claims against the Division of Corrections and Rehabilitation
27 received pursuant to §55-17-3 of this code upon request; and

28 (9) Making inquiries and obtaining assistance and information from other state
29 governmental agencies or persons as the ombudsman requires for the discharge of his or her
30 duties.

31 (d)(1) The ombudsman or his or her staff may not be compelled to testify or produce
32 evidence in any judicial or administrative proceeding with respect to the identity of an individual
33 providing information to the ombudsman as part of a complaint, or the substance of that person's
34 report to the ombudsman. All memoranda, work product, notes, or case files developed and
35 maintained by the Corrections and Rehabilitation Ombudsman Office are confidential and are not
36 subject to discovery, subpoena, or other means of legal compulsion, and are not admissible as
37 evidence in a judicial or administrative proceeding. Records of the ombudsman are not subject to
38 disclosure pursuant to the provisions of §29B-1-1 et seq. of this code. If there is evidence of a
39 crime that could have or may have occurred, the ombudsman must turn over said evidence.

40 (2) The ombudsman may be compelled to provide testimony by a court or administrative
41 body of competent jurisdiction related to any action carried out by the office that is unrelated to the
42 substance of a specific complaint, or reports submitted to the Legislative Oversight Committee
43 created in §31-20-26 of this code. Should the ombudsman be compelled to testify, provide
44 evidence in discovery, respond to a subpoena, or otherwise divulge testimony or evidence in any
45 judicial, administrative, or legislative proceeding, the ombudsman may not be compelled to
46 provide testimony or evidence concerning the identity of any complainant or any individual
47 providing information to the ombudsman, or the substance of any complaint or report unless the
48 ombudsman should decline to exercise that privilege.

49 (3) Any objection by the ombudsman to the disclosure of any documentary, or physical
50 evidence shall be reviewed by the presiding official of such tribunal, in camera, upon the request of
51 the ombudsman, and the presiding official shall prevent the disclosure of the identity of any
52 complainant, witness, or reporter as well as the substance of their complaint, testimony, or report.

§15A-14-2. Review of complaints.

1 (a) Upon receipt of a complaint or by court order within the scope of the Corrections and
2 Rehabilitation Ombudsman Program, the ombudsman shall review, except as provided in
3 subsection (c) of this section, any act, practice, policy, or procedure of any correctional or juvenile
4 facility which affects the health, safety, welfare, or rights of an inmate or resident who is subject to
5 a reported allegation of abuse, who has died or sustained a critical incident, or any other condition
6 affecting the health or welfare of an inmate or resident in the correctional or juvenile system.

7 (b) Review activities of the ombudsman include, but are not limited to: information
8 gathering; informing parties of the status of the review; reporting of suspected violations to a
9 licensing or certifying agency; and the reporting of suspected criminal violations to the appropriate
10 authorities. Nothing in this article shall be construed as requiring the ombudsman to provide legal
11 or other services to a complainant or act as an advocate for a complainant.

12 (c) The ombudsman need not review any complaint upon determining that:

- 13 (1) The complaint is trivial, frivolous, vexatious, or not made in good faith;
14 (2) The complaint has been too long delayed to justify present review;
15 (3) The resources available, considering the established priorities, are insufficient for an
16 adequate review;
17 (4) The matter complained of is not within the authority of the ombudsman; or
18 (5) A real or apparent conflict of interest exists and no other person within the office is
19 available to review the complaint in an impartial manner.
20 (d) The Office of the Inspector General and other appropriate state governmental agencies
21 may establish and implement cooperative agreements for receiving and processing complaints
22 involving state governmental agencies under the provisions of this section.
23 (e) The ombudsman shall submit an annual written report to the Governor containing:
24 (1) The number of complaints;
25 (2) The types of complaints;
26 (3) The location of the complaints;
27 (4) Any actions taken as a result of the complaint; and
28 (5) Any other information the ombudsman feels is appropriate.
29 (f) The ombudsman shall summarize the reports and present that information to the
30 Legislative Oversight Committee created in §31-20-26 of this code. Nothing shall preclude the
31 ombudsman office from submitting data, findings, or reports beyond this annual report.
32 (g) No office, department, agency, or official may prohibit the release of an ombudsman's
33 recommendations to the Governor and the Legislature.
34 (h) Nothing in this article may be construed as limiting or superseding the provisions of
35 §25-1A-1 et seq. of this code.

§15A-14-3. Access to inmates and residents.

1 (a) The ombudsman shall, with proper identification, have access to an inmate, a resident,
2 a state agency, or a correctional or juvenile facility for the purposes of reviewing a complaint. The
3 ombudsman may enter a state agency or correctional or juvenile facility at a time appropriate to
4 the complaint. The visit may be announced in advance or be made unannounced as appropriate to
5 the complaint under review. Upon entry, the ombudsman shall promptly and personally advise the
6 person in charge of his or her presence. Entry shall not be denied except in circumstances where
7 the superintendent or his or her designee determines a present security risk prevents immediate
8 entry.

9 (b) For activities other than those specifically related to the review of a complaint, the
10 ombudsman, upon proper identification, shall have access to an inmate, resident, a state agency,
11 or a correctional facility between the hours of 8:00 a.m. and 8:00 p.m.

12 (c) Access to an inmate, a resident, a state agency, or a correctional or juvenile facility
13 under this section shall be deemed to include the right to private communication with the inmate.

14 (d) The ombudsman who has access to an inmate or resident residing in a correctional or
15 juvenile facility under this section shall identify himself or herself to the inmate or resident. After
16 identifying himself or herself, an ombudsman shall be permitted to meet with the inmate or resident
17 unless that inmate or resident communicates on that particular occasion the inmate's or resident's
18 desire to prevent the ombudsman from meeting or the superintendent or his or her designee
19 determines that a present security risk prevents the meeting. An inmate or resident has the right to
20 terminate, at any time, any visit by the ombudsman.

21 (e) Access to an inmate, resident, state agency, or a correctional or juvenile facility
22 pursuant to this section does not include the right to tour the facility unescorted.

§15A-14-4. Access to records.

1 (a) The ombudsman is allowed access to any inmate's or resident's records, including
2 medical records reasonably necessary to any review, without fee.

3 (b) The ombudsman is allowed access to all records of any inmate, resident, state agency,
4 or correctional or juvenile facility that is reasonably necessary for the review of a complaint,
5 including, but not limited to, incident reports; dietary records; policies and procedures that a state
6 agency or correctional or juvenile facility are required to maintain under federal or state law;
7 admission agreements; staffing schedules; or any document depicting the actual staffing pattern.

§15A-14-5. Cooperation among government departments or agencies.

1 (a) The ombudsman shall have access to the records of any state government agency
2 reasonably necessary to review any complaint. The ombudsman shall be notified of and be
3 allowed to observe any survey conducted by a government agency affecting the health, safety,
4 welfare, or rights of an inmate or resident.

5 (b) The ombudsman shall develop procedures to refer any complaint to any appropriate
6 state government department, agency, or office.

7 (c) When abuse of an inmate or resident is suspected, the ombudsman shall make a
8 referral to the Commissioner of Corrections and Rehabilitation, Secretary of Homeland Security,
9 or both.

10 (d) Any state government department, agency, or office that responds to a complaint
11 referred to it by the Corrections and Rehabilitation Ombudsman Program shall make available to
12 the ombudsman copies of inspection reports and plans of correction, and notices of any citations
13 and sanctions levied against the state agency or correctional or juvenile facility identified in the
14 complaint.

§15A-14-6. Confidentiality of records.

1 (a) Information relating to any review of a complaint that contains the identity of the
2 complainant, an inmate or resident who is subject to a reported allegation of abuse, an inmate or
3 resident who has died or sustained a critical incident, or any conditions affecting the health or
4 welfare of an inmate or resident in the correctional or juvenile system shall remain confidential
5 except:

6 (1) Where imminent risk of serious harm is communicated directly to the ombudsman or his
7 or her staff;

8 (2) Where disclosure is necessary to the Division of Corrections and Rehabilitation in order
9 for such office to determine the appropriateness of initiating an investigation regarding potential
10 abuse or emergency circumstances; or

11 (3) Where disclosure is necessary to the Secretary of Homeland Security in order for such
12 office to determine the appropriateness of initiating an investigation to determine facility
13 compliance with applicable rules and policies.

14 (b) The ombudsman shall maintain confidentiality with respect to all matters including the
15 identities of complainants, witnesses, or others from whom information is acquired, except insofar
16 as disclosures may be necessary to enable the ombudsman to carry out duties of the office or to
17 support recommendations.

18 (c) Notwithstanding any other section within this article, all information, records, and
19 reports received by or developed by the Corrections and Rehabilitation Ombudsman Program
20 which relate to an inmate or resident, including written material identifying an inmate who is
21 subject to a reported allegation of abuse, an inmate who has died or sustained a critical incident,
22 or any other condition affecting the health or welfare of an inmate or resident in the correctional or
23 juvenile system, are confidential, are not subject to the provisions of §29B-1-1 et seq. of this code,
24 and may not be disclosed or released by the Corrections and Rehabilitation Ombudsman
25 Program, except under the circumstances enumerated in this article.

26 (d) Nothing in this section prohibits the preparation and submission by ombudsman of
27 statistical data and reports, as required to implement the provisions of this article or any applicable
28 federal law, exclusive of any material that identifies any inmate, resident, or complainant.

29 (e) The Inspector General shall have access to the records and files of the Corrections and
30 Rehabilitation Ombudsman Program to verify its effectiveness and quality where the identity of
31 any complainant, an inmate or resident who is subject to a reported allegation of abuse, an inmate

32 or resident who has died or sustained a critical incident, or any conditions affecting the health or
33 welfare of an inmate or resident in the correctional or juvenile system.

§15A-14-7. Limitations on liability.

1 (a) The ombudsman participating in a complaint review carried out pursuant to this article
2 who is performing his or her duties is immune from civil liability that otherwise might result by
3 reason of his or her participation in the review, as long as such participation is not violative of any
4 applicable law, rule, or regulation, and done within the scope of his or her employment and in good
5 faith.

6 (b) If an act or omission by the ombudsman or an act in good faith pursuant to a specific
7 inmate or resident complaint causes an inmate's or resident's rights to be violated, no state
8 agency, or correctional or juvenile facility, may be held civilly liable as a result of the act or
9 omission.

§15A-14-8. Willful interference; retaliation; penalties.

1 Any individual who willfully interferes with or impedes the ombudsman in the performance
2 of his or her official duties shall be subject to disciplinary action.

§15A-14-9. Funding for Corrections and Rehabilitations Program.

1 The Corrections and Rehabilitation Ombudsman Program shall receive such funds
2 appropriated by the Legislature for the operation of the program.