



Rep. Rita Mayfield

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LRB100 03296 SLF 38106 a

1 AMENDMENT TO HOUSE BILL 1472

2 AMENDMENT NO. _____. Amend House Bill 1472 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Unified Code of Corrections is amended by
5 adding Article 2.1 of Chapter III as follows:

6 (730 ILCS 5/Art. Ch. III Art. 2.1 heading new)

7 ARTICLE 2.1. OFFICE OF THE CORRECTIONAL OMBUDSMAN LAW

8 (730 ILCS 5/3-2.1-1 new)

9 Sec. 3-2.1-1. Short title. This Article may be cited as the
10 Office of Correctional Ombudsman Law.

11 (730 ILCS 5/3-2.1-5 new)

12 Sec. 3-2.1-5. Definitions. As used in this Article:

13 "Department" means the Department of Corrections.

14 "Director" means the Director of Corrections.

1 "Ombudsman" means the Office of the Correctional Ombudsman
2 established in Section 3-2.1-10 of this Code.

3 "Oversight Board" means the Correctional Oversight Board
4 established in Section 3-2.1-15 of this Code.

5 (730 ILCS 5/3-2.1-10 new)

6 Sec. 3-2.1-10. Ombudsman; appointment; organization.

7 (a) In order to achieve transparency, fairness,
8 impartiality, and accountability in State correctional
9 facilities, there is created an independent Office of the
10 Correctional Ombudsman within the Executive Branch of State
11 government. The Ombudsman shall report to the Correctional
12 Oversight Board established in Section 3-2.1-15 of this
13 Article.

14 (b) Following the initial appointment of the members of the
15 Correctional Oversight Board established under Section
16 3-2.1-15 of this Article, the Oversight Board shall promptly
17 nominate a full-time Ombudsman and notify the Governor of the
18 nomination. Nothing in this subsection (b) shall prohibit the
19 Oversight Board from appointing an interim Ombudsman if there
20 is a vacancy.

21 (c) The Governor, within 30 days after receiving written
22 notice of any nomination of an Ombudsman made under subsection
23 (b) of this Section, may approve or disapprove the nomination.
24 If the Governor approves the nomination, or fails to act on the
25 nomination within the 30-day period, the nominee shall

1 immediately commence his or her term as Ombudsman. If, within
2 that 30-day period, the Governor serves upon the chair of the
3 Oversight Board a written notice disapproving the nomination,
4 the nominee shall not be authorized to serve as Ombudsman,
5 except that the Oversight Board may authorize an interim
6 Ombudsman appointed under subsection (b) of this Section to
7 serve or continue to serve as interim Ombudsman until the time
8 an Ombudsman is approved, or not timely disapproved, by the
9 Governor. Following any disapproval, the Oversight Board shall
10 have 60 days to submit another nominee, although the period may
11 be extended, upon request of the Oversight Board, by the
12 Governor. A person appointed as interim Ombudsman may exercise
13 all of the powers available to the Ombudsman.

14 (d) The Ombudsman must not have worked for the Department
15 within the last 10 years and may not hold any public office or
16 other employment. The Ombudsman shall serve a 6-year term and
17 may only be removed for good cause shown, after notice and an
18 opportunity to be heard, by a vote of two-thirds or more of the
19 12 members of the Oversight Board.

20 (730 ILCS 5/3-2.1-15 new)

21 Sec. 3-2.1-15. Correctional Oversight Board.

22 (a) There is created the Correctional Oversight Board. The
23 purpose of the Oversight Board shall be to monitor, study, and
24 make efforts to improve the transparency, fairness,
25 impartiality, and accountability in State correctional

1 institutions and facilities and to appoint the Ombudsman. No
2 current employee of the Department shall be appointed to or
3 serve on the Oversight Board. The Oversight Board shall consist
4 of 12 members who shall be appointed as follows:

5 (1) one shall be the Executive Inspector General;

6 (2) 4 shall be appointed by the Governor by and with
7 the advice and consent of the Senate;

8 (3) 2 shall be appointed by the Governor from a list of
9 at least 6 nominees submitted by non-profit agencies
10 working in the fields of re-entry or prisoner advocacy;

11 (4) one shall be appointed by the Governor and shall be
12 a former committed person of a Department institution or
13 facility;

14 (5) one shall be appointed by the Governor and shall be
15 a former employee of the Department who is no longer in
16 State service;

17 (6) one shall be an attorney appointed by the Governor
18 from a list of at least 4 nominees submitted by a statewide
19 bar association;

20 (7) one shall be a medical professional appointed by
21 the Governor; and

22 (8) one shall be a mental health professional who works
23 with an organization providing legal representation for
24 persons with special needs appointed by the Governor.

25 (b) All members of the Oversight Board shall be appointed
26 for terms of 3 years with the terms to commence on August 1,

1 and expire July 31, provided that the Executive Inspector
2 General shall serve ex officio. Initial appointments must be
3 made within 60 days after the effective date of this amendatory
4 Act of the 100th General Assembly. Any member chosen to fill a
5 vacancy created otherwise than by expiration of term shall be
6 appointed for the unexpired term of the member whom he or she
7 is to succeed. Vacancies caused by expiration of a term or
8 otherwise shall be filled promptly and in the same manner as
9 original appointments. Any member may be reappointed for
10 additional terms. A member of the Oversight Board shall
11 continue in the position upon the expiration of his or her term
12 until the time as he or she is reappointed or his or her
13 successor is appointed, as the case may be.

14 (c) Membership on the Oversight Board shall not constitute
15 the holding of an office, and members of the Oversight Board
16 shall not be required to take and file oaths of office before
17 servng on the Oversight Board. The Oversight Board shall not
18 have the right to exercise any portion of the sovereign power
19 of the State.

20 (d) The Oversight Board shall meet at least 2 times each
21 year. The first meeting of the Oversight Board shall be held
22 within 30 days of the appointment of the full Oversight Board
23 or within 60 days after the effective date of this amendatory
24 Act of the 100th General Assembly, whichever occurs earlier.
25 Special meetings may be called by the chair and shall be called
26 by the chair upon the request of at least 5 members of the

1 Oversight Board. The Oversight Board may establish its own
2 procedures with respect to the conduct of its meetings and
3 other affairs.

4 (e) The members of the Oversight Board shall receive no
5 compensation for their services but shall be allowed their
6 actual and necessary expenses incurred in the performance of
7 their functions under this Article.

8 (f) A member of the Oversight Board may not be disqualified
9 from holding any public office or employment outside of the
10 Department, nor shall he or she forfeit any office or
11 employment, by reason of his or her appointment under this
12 Section.

13 (g) The Oversight Board shall make recommendations to the
14 Ombudsman for the improvement of the Department's policies and
15 consult with and advise the Office of the Correctional
16 Ombudsman in carrying out the duties and responsibilities of
17 the Office. The Ombudsman shall report to the Oversight Board
18 fully on the activities of the Office and shall seek Oversight
19 Board approval on all major decisions or policy changes,
20 including any standards or protocols adopted by the Ombudsman
21 for the inspection and monitoring of correctional facilities or
22 the resolution of complaints received by the Office.

23 (h) Each member of the Oversight Board shall tour a
24 correctional facility with the Ombudsman at least annually.

1 Sec. 3-2.1-20. Powers of the Ombudsman.

2 (a) The Ombudsman may hire and retain counsel to provide
3 confidential advice or to represent the Ombudsman if the
4 Attorney General has a conflict in representing the Ombudsman
5 in any litigation.

6 (b) The Office of the Ombudsman shall not be located in the
7 same building or buildings as the Department but shall be
8 wholly independent of the Department except that the Department
9 shall provide it with office space, equipment, and furnishings
10 within any Department facility as needed to carry out its
11 functions and duties.

12 (c) The Ombudsman may appoint the assistants, officers,
13 investigators, monitors, employees, and consultants as he or
14 she shall determine necessary, prescribe their duties and
15 powers, provide them with appropriate training, fix their
16 compensation, and provide for reimbursement of their expenses
17 within the amounts appropriated for that purpose, except that
18 the Ombudsman shall not hire any person known to be directly or
19 indirectly involved in an open internal affairs investigation
20 conducted by any federal, State, or local agency or who is a
21 named defendant in a pending federal or State lawsuit or
22 criminal proceeding relating to his or her prior work for a
23 State, local, or federal correctional or law enforcement
24 agency. The Ombudsman may appoint a representative to carry out
25 any of his or her duties under this Article, except that the
26 Ombudsman must attend meetings with the Correctional Oversight

1 Board.

2 (d) The Ombudsman may create, abolish, transfer, and
3 consolidate bureaus and other units within the Office as he or
4 she may determine necessary for the efficient operation of the
5 Office, subject to the approval of the Director of the
6 Governor's Office of Management and Budget.

7 (e) The Ombudsman may request and shall receive from any
8 Department, division, bureau, commission, or any other agency
9 of the State or political subdivision of this State or any
10 public authority the assistance, information, and data as will
11 enable the Office to carry out its functions, powers, and
12 duties.

13 (f) The Ombudsman shall be responsible for the
14 contemporaneous public oversight of internal affairs and the
15 disciplinary process of the Department. The Ombudsman shall
16 have discretion to provide oversight of any Department
17 investigation relating to the well-being, treatment,
18 discipline, safety, or any other matter concerning committed
19 persons or persons under parole or mandatory supervised release
20 as needed, including personnel investigations.

21 (g) The Ombudsman may review specific policies, practices,
22 programs, and procedures of the Department that raise a
23 significant correctional issue relevant to the well-being,
24 treatment, discipline, safety, rehabilitation, or any other
25 matter concerning committed persons or persons under parole or
26 mandatory supervised release. The Ombudsman may inspect,

1 investigate, or examine all aspects of the Department's
2 operations and conditions, including, but not limited to, staff
3 recruitment, training, supervision, use of force, and
4 discipline; committed person deaths, medical care, and mental
5 health care; committed person violence and conditions of
6 confinement; committed person disciplinary process, grievance
7 process, and substance-abuse treatment; and committed person
8 educational, vocational, and other programming and re-entry
9 planning. During the course of a review the Ombudsman shall
10 identify areas of full and partial compliance or noncompliance
11 with Department policies and procedures, specify deficiencies
12 in the completion and documentation of processes, and recommend
13 corrective actions, including, but not limited to, additional
14 training, additional policies, or changes in policies, as well
15 as any other findings or recommendations he or she deems
16 appropriate.

17 (h) The Ombudsman may place the members of his or her staff
18 as he or she deems appropriate as monitors in any correctional
19 facility which, in the judgment of the Ombudsman, presents an
20 imminent danger to the health, safety, or security of committed
21 persons or employees of the correctional facility or the
22 public.

23 (i) The Ombudsman shall accept, with the approval of the
24 Governor, as agent of the State any grant, including federal
25 grants, or any gift for any of the purposes of this Article.
26 Any moneys so received may be expended by the Ombudsman to

1 effectuate any purpose of this Article, subject to the same
2 limitations as to approval of expenditures and audit as are
3 prescribed for State moneys appropriated for the purposes of
4 this Article.

5 (j) The Ombudsman may enter into contracts with any person,
6 firm, corporation, municipality, or governmental agency.

7 (k) The Ombudsman shall adopt, amend, or rescind rules in
8 accordance with the Illinois Administrative Procedure Act, as
9 may be necessary or convenient to the performance of the
10 functions, powers, and duties of the Office.

11 (l) The Ombudsman shall do all other things necessary or
12 convenient to carry out its functions, powers, and duties
13 expressly set forth in this Article.

14 (m) If exigent circumstances of unsafe or life threatening
15 situations arise involving committed persons, staff, persons
16 on parole or mandatory supervised release, or other persons,
17 the Ombudsman shall notify the Governor, President of the
18 Senate, and Speaker of the House of Representatives and
19 commence an immediate review of the circumstances. Upon
20 completion of the review, the Ombudsman shall prepare a
21 complete written report which shall be disclosed with the
22 underlying materials that the Ombudsman deems appropriate to
23 the Director, the requesting entity, and any appropriate law
24 enforcement agency.

25 (n) (1) The Ombudsman shall interview and review all
26 candidates for appointment to serve as the chief administrative

1 officer of any State correctional institution or facility. The
2 Director shall submit the names of the candidates to the
3 Ombudsman who shall review the candidates' qualifications and
4 employ confidential procedures to evaluate the qualifications
5 of each candidate with regard to his or her ability to
6 discharge the duties of the office to which he or she is being
7 appointed. Within 90 days of the submission of a candidate's
8 name, the Ombudsman shall confidentially advise the Director as
9 to whether the candidate is well-qualified, qualified, or not
10 qualified and the reasons for that assessment and may report,
11 in confidence, any other information that the Ombudsman deems
12 pertinent to the qualification of the candidate. The Ombudsman
13 shall establish and adopt rules and procedures regarding the
14 review of candidates for the position of chief administrative
15 officer and for maintaining the confidentiality of any
16 interviews, documents, or other information relied upon in his
17 or her review. All the information shall be privileged and not
18 subject to disclosure.

19 (2) If the Director appoints a chief administrative officer
20 whom the Ombudsman found was not qualified, the Ombudsman shall
21 make public that finding after due notice to the appointee. Any
22 candidate found to be not qualified by the Ombudsman shall have
23 the right to withdraw from consideration before the Ombudsman
24 makes the public finding and in that case the finding shall not
25 be published. The notice and public finding shall not
26 constitute a waiver of privilege or breach of confidentiality

1 concerning the Ombudsman's review of the appointee's
2 qualifications under this Section.

3 (o) Notwithstanding any law to the contrary, the Ombudsman
4 shall periodically, but not less than every 3 years, conduct
5 inspections of each correctional institution or facility and
6 shall periodically review delivery of medical and mental health
7 care at each correctional institution or facility. The
8 Ombudsman shall issue a public report on each correctional
9 institution or facility at least every 3 years. The Ombudsman
10 need not notify the Department before commencing the inspection
11 or review.

12 (p) All records, correspondence, videotapes, audiotapes,
13 photographs, notes, electronic communications, books,
14 memoranda, papers, or other documents or objects used as
15 evidence to support a completed review or investigation must be
16 retained for 3 years after a report is issued unless handed
17 over to a law enforcement agency for criminal investigation. No
18 documents or evidence shall be destroyed pending the completion
19 of an investigation or review. The documents or evidence shall
20 be publicly available unless confidential and not subject to
21 disclosure under the Freedom of Information Act or by court
22 order.

23 (q) Notwithstanding any other provision of law, the
24 Ombudsman shall have complete access and authority to examine
25 and reproduce any and all past and current books, accounts,
26 reports, medical and mental health records, vouchers,

1 correspondence files, computer files, computer data bases,
2 documents, video and audio tape recordings, statistics and
3 performance based outcome measures, and any and all other past
4 and current records and to examine the bank accounts, money, or
5 property of the Department. Any State office or agency or a
6 political subdivision of this State or other public entity, or
7 employee or officer of that entity possessing the records or
8 property, shall permit access to, and examination and
9 reproduction of the records, consistent with the provisions of
10 this Article, upon the request the Ombudsman or his or her
11 designee. Access, examination, and reproduction of the records
12 consistent with this Section shall not result in waiver of any
13 confidentiality or privilege regarding any records or
14 property.

15 (r) The Ombudsman may require any State employee to be
16 interviewed on a confidential basis. The employee must comply
17 with the request to be interviewed and must be given time off
18 from his or her employment for the purposes of attending the
19 interview and may be accompanied by counsel acting on his or
20 her behalf. The Ombudsman may also conduct a confidential
21 interview of any committed person or other person upon consent.

22 (s) The Ombudsman may enter anywhere on the grounds of any
23 Department institution or facility or office for the purposes
24 of observation, inspection, and investigation and shall have
25 unfettered access to all areas of the Department and any
26 institution or facility at any time.

1 (t) The Ombudsman may cause the body of a deceased
2 committed person to undergo the examinations, including an
3 autopsy, as he or she deems necessary to determine the cause of
4 death, irrespective of whether the examination or autopsy shall
5 have been previously performed.

6 (u) (1) In the exercise of his or her functions, powers, and
7 duties, the Ombudsman and any attorney employed by the Office
8 may issue and enforce a subpoena and a subpoena duces tecum,
9 administer oaths, and examine persons under oath. A person
10 examined under oath under this paragraph shall have the right
11 to be accompanied by counsel who shall advise the person of his
12 or her rights subject to reasonable limitations to prevent
13 obstruction of, or interference with, the orderly conduct of
14 the examination. Notwithstanding any other provision of law, a
15 subpoena may be issued and enforced under this paragraph for
16 the medical records of a committed person of a correctional
17 institution or facility, regardless of whether the medical
18 records were made during the course of the committed person's
19 incarceration.

20 (2) In any case in which a person in charge or control of a
21 correctional institution or facility or an officer or employee
22 of the correctional institution or facility shall fail to
23 comply with the provisions of paragraph (1) of this subsection
24 (u), or in any case in which a coroner, coroner's physician, or
25 medical examiner shall fail to comply with Section 3-3013 of
26 the Counties Code, the Ombudsman may apply to the Supreme Court

1 for a judgment of mandamus directed to the person requiring
2 compliance with the provisions of paragraph (1) of this
3 subsection (u) or Section 3-3013 of the Counties Code. Upon
4 application, the Court may issue the judgment as may be just
5 and a failure to comply with the judgment of the Court shall be
6 a contempt of court and punishable as contempt.

7 (v) The Ombudsman shall not be compelled to testify or
8 release records without a court order that are otherwise exempt
9 from public disclosure, including documents pertaining to any
10 investigation that has not been completed or any identifying
11 information, personal papers, or correspondence with any
12 person who has requested assistance from the Office unless that
13 person consents in writing to the release of the information,
14 papers, or correspondence.

15 (w) The Ombudsman may hold public hearings.

16 (730 ILCS 5/3-2.1-25 new)

17 Sec. 3-2.1-25. Additional functions, powers, and duties of
18 the Office of the Ombudsman.

19 (a) The Office may receive communications from any person
20 who believes he or she may have information that may describe
21 improper governmental activities or wrongdoing within the
22 Department. Committed person mail to and from the Ombudsman
23 shall be treated in the same manner as legal mail and may not
24 be restricted by the Department, the Department of Human
25 Services, or any other entity.

1 (b) The Ombudsman shall establish a toll-free telephone
2 number for the purpose of identifying any alleged wrongdoing by
3 an employee of the Department. This telephone number shall be
4 posted by the Department in clear view of employees, committed
5 persons, and the public, and committed persons shall be
6 permitted to call the number during normal hours for telephone
7 usage or within 24 hours of admission to a special housing unit
8 or other unit with restricted telephone access. Telephone calls
9 made to the toll-free number from a correctional institution or
10 facility shall not be recorded by the Department and are
11 protected confidential communications. The Ombudsman shall
12 also maintain a website with a complaint form that may be
13 filled out online and shall also accept complaints by mail or
14 other means alleging wrongdoing by an employee of the
15 Department. When requested, the Ombudsman shall initiate a
16 review of any alleged wrongdoing which may result in an
17 investigation of the alleged wrongdoing at the Ombudsman's
18 discretion.

19 (c) At the conclusion of an investigation of a complaint,
20 the Ombudsman shall report his or her findings to the
21 complainant and any person designated to receive the findings
22 by the complainant. If the Ombudsman does not investigate a
23 complaint, he or she shall notify the complainant and the other
24 person of the decision not to investigate and the reasons for
25 the decision. If the complainant is deceased at the time of the
26 completion of an investigation, the Ombudsman shall report his

1 or her findings to the complainant's next of kin when the
2 person is known to the Ombudsman or to the Department.

3 (d) The Ombudsman may act informally to resolve a
4 complaint, including providing referrals or information to
5 complainants, expediting individual matters, mediating, or
6 providing other assistance.

7 (e) All identifying information and any personal records or
8 correspondence from any person who initiated the review of the
9 alleged wrongdoing shall be confidential unless the person
10 consents to disclosure in writing.

11 (f) If the Ombudsman believes that an allegation of
12 criminal misconduct has been made by a complainant, he or she
13 shall report the allegation to the appropriate law enforcement
14 agency.

15 (g) Upon receiving a complaint of retaliation for
16 complaining to or cooperating with the Ombudsman, the Ombudsman
17 shall commence an inquiry into the complaint and conduct a
18 formal investigation. If the Ombudsman finds that a complaint
19 of retaliation is founded as a result of an investigation, he
20 or she shall so notify the Department and make recommendations
21 for corrective action to be taken by the Department. The
22 Ombudsman shall make the results and supporting evidence of its
23 formal investigation available to the Department of Human
24 Rights should an employee file a retaliation complaint with the
25 agency and consent to the disclosure in writing.

26 (h) To facilitate oversight, the Office shall be

1 immediately notified by the Department of all unusual and
2 significant incidents including, but not limited to, riots or
3 fights involving multiple combatants, staff use of force,
4 committed person deaths, serious physical assaults on
5 employees or committed persons, work stoppages, and escapes and
6 shall be given monthly aggregated reports of unusual incidents
7 and committed person grievances by the Department. Employees of
8 the Office shall be permitted to be present in any Department
9 internal investigation or inquiry. The Office shall be
10 responsible for reporting the unusual and significant
11 incidents and the outcome of its investigations into the
12 incidents to the public no less than quarterly.

13 (i) (1) The Ombudsman shall annually prepare a public report
14 and summary of all investigations and reviews, including a list
15 of significant problems discovered by the Office, whether or
16 not the recommendations made by the Office have been
17 implemented, and a list of the Office's high priorities for the
18 following year. The Ombudsman shall submit the report to the
19 Governor, the President of the Senate, and Speaker of the House
20 of Representatives by December 31 of each year. The report
21 shall be posted in electronic form on the Office's public
22 website. The Ombudsman shall be authorized to redact portions
23 of the report in a manner consistent with the Freedom of
24 Information Act or if disclosure is otherwise prohibited by
25 law.

26 (2) Upon review of the cause of death and circumstances

1 surrounding the death of any committed person in a correctional
2 institution or facility, the Ombudsman shall submit its report
3 on that issue to the Governor, the Speaker of the House of
4 Representatives, the President of the Senate, the chairperson
5 of the House of Representatives Government Transparency
6 Committee, the House of Representatives Judiciary II
7 Committee, the chairperson of the Senate Criminal Law
8 Committee, and the Director, and, if appropriate, make
9 recommendations to prevent the recurrence of the deaths. The
10 reports shall be published on the Office's website and shall
11 otherwise be made available to the public.

12 (3) The Ombudsman shall make an annual report to the
13 Governor, the Speaker of the House of Representatives, the
14 President of the Senate, the chairperson of the House of
15 Representatives Judiciary II Committee, and the chairperson of
16 the Senate Criminal Law Committee on the condition of systems
17 for the delivery of medical care to committed persons of
18 correctional facilities and, if appropriate, recommend changes
19 as it shall deem necessary and proper to improve the quality
20 and availability of the medical care. The report shall be
21 published on the Office's website and shall otherwise be made
22 available to the public.

23 (4) All public reports by the Ombudsman shall not disclose
24 information if prohibited by law.

1 Sec. 3-2.1-30. Additional duties of the Department.

2 (a) State employees operating within a correctional
3 institution or facility must cooperate fully and promptly with
4 the Ombudsman.

5 (b) The Department shall respond in writing to any
6 recommendations made by the Ombudsman or his or her designee
7 within 45 days and shall state with specificity its reasons for
8 failing to act on the recommendation. The writings shall be
9 made public by the Ombudsman, except that information that
10 would reveal confidential material that may not be released
11 under federal or State law shall be redacted by the Ombudsman
12 from any report or recommendation.

13 (c) The Director shall immediately report to the Ombudsman
14 the death of a committed person of any institution or facility
15 in any manner and form as the Ombudsman shall prescribe and
16 shall provide him or her with an autopsy report when available.

17 (730 ILCS 5/3-2.1-35 new)

18 Sec. 3-2.1-35. Obstructing an investigation by the
19 Correctional Ombudsman.

20 (a) A person commits obstructing an investigation by the
21 Correctional Ombudsman when, with intent to obstruct or impede
22 an inquiry or investigation by the Correctional Ombudsman
23 appointed under Section 3-2.1-10 of this Code, he or she
24 knowingly destroys or knowingly fails to permit access to,
25 examination of, or reproduction by the Office of the

1 Correctional Ombudsman, of any book, account, bank account
2 information, report, voucher, correspondence or correspondence
3 file, computer file, computer data base, document, video or
4 audio recording, statistic or performance based outcome
5 measure, money, property, or any other record of the Department
6 lawfully requested by the Correctional Ombudsman.

7 (b) Sentence. Obstructing an investigation by the
8 Correctional Ombudsman is a Class A misdemeanor."