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Legislative Document

No. 1962

S.P. 769

In Senate, May 13, 2025

An Act to Establish the Corrections Ombudsman

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

A handwritten signature in black ink, appearing to read "D M Grant", is positioned above the printed name of the Secretary of the Senate.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator DUSON of Cumberland.

Cosponsored by Senator BEEBE-CENTER of Knox, Representative MILLIKEN of Blue Hill and

Senators: BENNETT of Oxford, TALBOT ROSS of Cumberland, Representative: HASENFUS of Readfield.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 34-A MRSA §1220** is enacted to read:

3 **§1220. Office of the Corrections Ombudsman**

4 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
5 following terms have the following meanings.

6 A. "Covered facility" means a correctional facility operated by the department and
7 does not include a county jail.

8 B. "Incarcerated person" means a person incarcerated in a covered facility.

9 C. "Office" means the Office of the Corrections Ombudsman established in subsection
10 2.

11 D. "Ombudsman" means the Corrections Ombudsman as described in subsection 3.

12 E. "Staff" means employees and contractors of the department.

13 **2. Office established.** The Office of the Corrections Ombudsman is established within
14 the department to support a humane and transparent corrections system for incarcerated
15 persons and staff. The office shall open opportunities for persons affected by incarceration
16 to raise issues and resolve conflicts, recommend positive changes and report individual and
17 systemic concerns. The office is responsible for:

18 A. Receiving, investigating and resolving complaints and suggestions from
19 incarcerated persons and from staff;

20 B. Providing information to the Governor, the department and its staff, the Legislature,
21 incarcerated persons and their families and the public;

22 C. Promoting public awareness and understanding of the problems and challenges of
23 incarceration;

24 D. Identifying systemic issues and responses upon which the department, the Governor
25 and the Legislature may act; and

26 E. Ensuring compliance with relevant statutes, rules, regulations and policies
27 concerning covered facilities, services, staff and treatment of incarcerated persons.

28 **3. Corrections Ombudsman.** The Corrections Ombudsman serves as the head of the
29 office.

30 A. The ombudsman must be appointed by the Governor subject to review by the joint
31 standing committee of the Legislature having jurisdiction over corrections matters and
32 to confirmation by the Legislature in the unclassified service not later than October 1,
33 2026 and may be removed by the Governor only for specified just cause, such as
34 neglect of duty, misconduct or inability to perform the duties as outlined in this section.
35 Any vacancy must be filled by similar appointment.

36 B. The ombudsman must be selected from persons without regard to political
37 affiliation and must be a highly competent professional of integrity and objectivity
38 qualified to analyze questions of law, administration and public policy.

39 C. A person is disqualified from being appointed as ombudsman if the person or an
40 immediate family member of the person:

- 1 (1) Is or has been employed by the department within the last 5 years;
2 (2) Owns or controls, directly or indirectly, any interest in a business entity or
3 other organization receiving funds from the department within the last 5 years;
4 (3) Uses or receives any amount of tangible goods, services or funds from the
5 department; or
6 (4) Is required to register as a lobbyist because of the person's activities for
7 compensation on behalf of a profession related to the operation of the department
8 or the office.

9 D. The ombudsman holds the office for a term of 3 years and continues to hold the
10 office until reappointed or the appointment of a successor.

11 E. The ombudsman is accountable to the Governor and has the authority to investigate
12 decisions, acts and other matters of the department to promote the highest attainable
13 standards of competence, efficiency and justice in the administration of corrections.

14 **4. Ethics and standards of practice.** The ombudsman and employees of the office
15 shall act in accordance with the International Ombuds Association's or a successor
16 organization's published code of ethics and standards of practice.

17 **5. Organization of the office.** The ombudsman may select, appoint and compensate
18 out of available funds assistants and employees as considered necessary to discharge
19 responsibilities. The ombudsman and employees of the office are members of the Maine
20 Public Employees Retirement System.

21 The ombudsman may appoint assistants in the unclassified service.

22 The ombudsman may delegate to employees of the office any of the ombudsman's authority
23 or duties except the duty of formally making recommendations to the department or making
24 reports to the Office of the Governor or to the Legislature.

25 The ombudsman may apply for and receive grants from public and private entities for
26 purposes of carrying out the ombudsman's powers and duties under this section.

27 There is established within the General Fund a Corrections Ombudsman account, which is
28 a separate, nonlapsing account. Expenditures for the purposes of the office to carry out the
29 activities in this section may equal an amount between 0.13% and 0.16% of the
30 department's annual appropriation.

31 The ombudsman may apply for and accept grants, gifts and bequests of funds from other
32 states and federal and interstate agencies for the purpose of carrying out the ombudsman's
33 responsibilities. Any funds received under this subsection must, upon deposit in the
34 General Fund, be credited to the Corrections Ombudsman account and may be used by the
35 ombudsman in the performance of the ombudsman's duties.

36 **6. Powers and duties of ombudsman.** The following are the powers and duties of
37 the ombudsman.

38 A. The ombudsman shall, with the full cooperation of the department, devise and
39 prescribe the methods by which confidential complaints are to be made, reviewed and
40 acted upon, except that the ombudsman may not levy a complaint fee and access to
41 complaint mechanisms must be readily and widely available to staff, incarcerated
42 persons and members of the public.

1 (1) The ombudsman may receive a complaint or a suggestion from staff, an
2 incarcerated person, a volunteer, a friend or family advocate, a representative of an
3 incarcerated person, a representative of staff, a member of the Legislature or a
4 member of the judicial branch or others regarding issues that may adversely affect
5 the health, safety, welfare or rights of incarcerated persons or staff.

6 (2) The ombudsman shall establish procedures for receiving and processing
7 complaints, conducting investigations, holding hearings and reporting the findings
8 resulting from the investigations.

9 (3) The ombudsman may exercise powers without regard to the finality of any
10 action of the department, but the ombudsman may require a complainant to pursue
11 other remedies or channels of complaint open to the complainant before accepting
12 or investigating the complaint.

13 (4) After completing the investigation of a complaint, the ombudsman shall inform
14 the complainant, the department and an affected official or employee of the action
15 taken.

16 (5) A letter to the ombudsman from a person in a covered facility must be
17 forwarded immediately and unopened to the office. A reply from the ombudsman
18 to the person must be promptly delivered unopened to the person after its receipt
19 by the covered facility.

20 (6) A complainant may not be punished nor may the general condition of the
21 complainant's treatment or employment conditions be unfavorably altered as a
22 result of the complainant's having made a complaint to the ombudsman.

23 (7) The ombudsman need not conduct an investigation of a complaint brought
24 before the ombudsman. A person is not entitled, as a right, to be heard by the
25 ombudsman.

26 B. The ombudsman may determine the scope and manner of any investigations to be
27 made.

28 C. Neither the ombudsman nor any office employee may be compelled to testify or to
29 produce evidence in any judicial or administrative proceeding with respect to any
30 matter involving the exercise of the ombudsman's official capacity.

31 D. The ombudsman may investigate, upon a complaint or upon personal initiative, any
32 action of the department. In all events, the ombudsman shall make good faith efforts
33 to provide an opportunity to the department to investigate and to respond to such
34 concerns prior to making such matters public.

35 E. The ombudsman may request and be given access to information in the possession
36 of the department that the ombudsman considers necessary for the discharge of the
37 ombudsman's responsibilities.

38 F. The ombudsman may examine the records and documents of the department.

39 G. Upon request and without notice, the ombudsman or an office employee may enter
40 and inspect, at any time, premises within the control of the department. If the
41 ombudsman or any employee of the office acting at the written request of the
42 ombudsman is denied access to any premises under the control of the department, the

1 commissioner, or the commissioner's designee, within 24 hours after the denial, shall
2 give the ombudsman a written statement of the reason for the denial of access.

3 H. The ombudsman may subpoena any person to appear, give testimony or produce
4 documentary or other evidence that the ombudsman considers relevant to a matter
5 under inquiry and may petition the appropriate state court to seek enforcement with the
6 subpoena. A witness at a hearing or before an investigation possesses the same
7 privileges reserved to a witness in the courts or under the laws of this State.

8 I. The ombudsman may bring an action in an appropriate state court to provide for the
9 operation of the powers provided in this section.

10 J. To follow up on a complaint, the ombudsman may be present at hearings related to
11 parole, supervised release, probation revocation hearings or staff disciplinary hearings.

12 K. The ombudsman may undertake, participate in or cooperate with persons and
13 agencies in such conferences, inquiries, meetings or studies as might lead to
14 improvements in the functioning of the department.

15 L. The ombudsman may take all possible actions, including, but not limited to,
16 conducting programs of public education, undertaking legislative advocacy and
17 making proposals for systemic reform and formal legal action to secure and ensure the
18 rights of incarcerated persons. The ombudsman shall exhaust all other means to reach
19 a resolution before initiating litigation.

20 The provisions of this subsection and subsection 8 may not be construed to compel access
21 to any record protected by the attorney-client privilege or attorney-work product doctrine
22 or any record related to a pending internal investigation, external criminal investigation or
23 emergency procedures. For purposes of this subsection, "emergency procedures" are
24 procedures the department uses to manage control of tools, keys and armories and
25 concerning department emergency plans, emergency response units, facility security levels
26 and standards and radio communications.

27 **7. Limitations on ombudsman authority.** The ombudsman may not investigate:

28 A. Any complaints relating to the underlying criminal conviction of an incarcerated
29 person; or

30 B. A complaint from staff that relates to the employment or contractual relationship of
31 the staff member with the department, unless the complaint is related to health, safety,
32 welfare, working conditions, gross mismanagement of a covered facility or
33 rehabilitation of incarcerated persons.

34 **8. Access to physical and electronic information, records and documents;**
35 **authorization to interview; inspection of premises; informal hearings; appearance;**
36 **evidence.** The following provisions govern the ombudsman's access to information and
37 facilities.

38 A. Upon request and without the requirement of any release, the ombudsman must be
39 given access to and physical or electronic copies of all information, records and
40 documents in the possession of the department that the ombudsman considers
41 necessary in an investigation, including, but not limited to, medical health records of
42 incarcerated persons, mental health records of incarcerated persons and mortality and
43 morbidity records of incarcerated persons. Upon request, the ombudsman may

1 interview any of the following individuals as the ombudsman considers necessary in
2 an investigation:

3 (1) An individual employed by or retained under contract by the department; or

4 (2) An individual employed by or retained under contract by a private contractor
5 that operates in a covered facility.

6 B. The ombudsman must be granted entry into a covered facility or the department's
7 command center during emergency situations including, but not limited to, covered
8 facility disturbances, riots and hostage incidents, and must be provided with updates
9 regarding the status of the emergency situation as well as the department's efforts to
10 address the situation. The office employee granted entry for an emergency situation
11 under this paragraph is present for observation and to report on the emergency
12 situation.

13 C. The ombudsman may hold informal hearings and may request that any person
14 appear before the ombudsman, or at a hearing, and give testimony or produce
15 documentary or other evidence that the ombudsman considers relevant to a matter
16 under investigation.

17 **9. Confidentiality.** The following provisions govern confidentiality.

18 A. All oral and written communications, and records relating to such communications,
19 between an incarcerated person or an employee of the department and the ombudsman,
20 including, but not limited to, the identity of a complainant, the details of the
21 communications and the ombudsman's findings, are confidential and may not be
22 disclosed without the consent of the concerned person, except that the ombudsman may
23 disclose without the consent of the person general findings or policy recommendations
24 based on the communications, as long as no personally identifying information is
25 disclosed. The ombudsman shall disclose sufficient information to the commissioner
26 or the commissioner's designee as is necessary to respond to the ombudsman's inquiries
27 or to carry out recommendations, but such information may not be further disclosed
28 outside of the department.

29 B. The office shall establish confidentiality rules and procedures for all information
30 maintained by the office to ensure that staff or incarcerated persons are not aware of
31 the identity of a complainant before, during and after an investigation to the greatest
32 extent practicable. The office may disclose personally identifying information for the
33 sole purpose of carrying out an investigation. Rules adopted pursuant to this paragraph
34 are routine technical rules as described in Title 5, chapter 375, subchapter 2-A.

35 **10. Ban on retaliation.** The department and its staff may not discharge, retaliate
36 against or in any manner discriminate against any person because the person has filed a
37 complaint or instituted or caused to be instituted a proceeding under or related to this
38 section.

39 A. Any alleged discharge, retaliation against or discrimination against a complainant
40 may be considered by the office as an appropriate subject of an investigation.

41 B. Any staff member who believes the staff member has been retaliated against or
42 otherwise discriminated against by any person in violation of this subsection may,
43 within 30 days after the violation occurs, file a complaint.

11. Actions against ombudsman. A proceeding or civil action except removal from office may not be commenced against the ombudsman for an act or omission taken under this section unless the act or omission is malicious or is grossly negligent.

12. Reporting and public communication. The following provisions govern reporting and public communication.

A. If the ombudsman believes, based on an investigation conducted by the ombudsman, that there has been or continues to be a significant health, safety, welfare, working conditions or rehabilitation issue, the ombudsman shall report the finding to the Governor, Attorney General and the appropriate joint standing committees of the Legislature.

B. The ombudsman may publish conclusions and suggestions from time to time. Before announcing a conclusion or recommendation that expressly or implicitly criticizes the department or any person, the ombudsman shall consult with the department or person. When publishing an opinion adverse to the department or any person, the ombudsman shall include in the publication any statement of reasonable length made to the ombudsman by that agency or person in defense or mitigation of the action at issue.

C. In addition to whatever reports the ombudsman may make on an ad hoc basis, the ombudsman shall publish a public annual report by January 31st of each calendar year. The annual report must include:

- (1) The budget and expenditures of the ombudsman;
- (2) The number of complaints received and resolved by the ombudsman;
- (3) A description of significant systemic or individual investigations or outcomes achieved by the ombudsman during the prior year;
- (4) Any outstanding or unresolved concerns or recommendations of the ombudsman;
- (5) Input and comments from stakeholders regarding the ombudsman's activities during the prior year;
- (6) A characterization of conditions of confinement;
- (7) A summary of any incarcerated person or staff deaths;
- (8) A summary of legal costs incurred by the department to pursue, defend or settle legal actions; and
- (9) A summary of grievances received by the department for each covered facility and their subject matter and resolution.

D. The ombudsman shall publish on a publicly accessible website operated by the office an ongoing report of the office's activities and services, information for the public and the annual reports under paragraph C.

SUMMARY

This bill establishes the Office of the Corrections Ombudsman. The office is responsible for:

- 1 1. Receiving, investigating and resolving complaints and suggestions from certain
2 incarcerated persons and from staff of the Department of Corrections;
- 3 2. Providing information to the Governor, the department and its staff, the Legislature,
4 certain incarcerated persons and their families and the public;
- 5 3. Promoting public awareness and understanding of the problems and challenges of
6 incarceration;
- 7 4. Identifying systemic issues and responses upon which the department, the Governor
8 and the Legislature may act; and
- 9 5. Ensuring compliance with relevant statutes, rules, regulations and policies
10 concerning correctional facilities, services, staff and treatment of certain incarcerated
11 persons.