

House Bill 1504

By: Representatives McLaurin of the 51st, Schofield of the 60th, Beverly of the 143rd, Mitchell of the 106th, Kennard of the 102nd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 50 of the Official Code of Georgia Annotated, relating to state government,
2 so as to provide for definitions; to create the Office of the Department of Corrections
3 Ombudsman; to provide for its powers, duties, and responsibilities; to provide for an
4 ombudsman; to provide for such person's powers, duties, and responsibilities; to provide for
5 a Corrections Oversight Committee; to provide for its composition, powers, duties, and
6 responsibilities; to provide for inspections and reports; to provide for confidentiality; to
7 provide for forms and hotlines for filing of complaints and inquiries; to provide for the
8 investigation of complaints and resolution thereof; to provide for related matters; to repeal
9 conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended
13 by adding a new chapter to read as follows:

"CHAPTER 41

50-41-1.

As used in this chapter, the term:

(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 other incarcerated persons;

(E) Physical or sexual abuse from department employees or contractors;

(F) Credible threats against self from other incarcerated persons, employees, or contractors;

(G) Neglect by prison employees or contractors that results in physical or sexual trauma;

(H) Denial of rights afforded to incarcerated persons 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 of an incarcerated person;

(K) Access to medical or mental health care or substance abuse treatment; and

(L) Access to educational and rehabilitative programming, drug and mental health treatment, and jobs and vocational training for incarcerated persons.

(2) 'Department' means the Department of Corrections.

(3) 'Family form' means the secure online form required by Code Section 50-41-9 for family members, friends, and advocates to submit complaints and inquiries regarding covered issues on behalf of an individual incarcerated within the department.

(4) 'Family member' means a parent, grandparent, 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.

(5) 'Incarcerated person' means an individual who is in the custody of the department by virtue of having been convicted of a crime.

(6) 'Incarcerated person form' means the secure online form required by Code Section 50-41-9 for incarcerated persons to submit complaints and inquiries regarding covered issues on their own behalf.

(7) 'Office' shall mean the Office of the Department of Corrections Ombudsman created by this chapter.

50-41-2.

(a) Within 180 days of the effective date of this chapter, there shall be established a Corrections Oversight Committee that shall consist of the following members:

(1) Two members of the Senate who shall be appointed by the President of the Senate, who are not members of the same political party, and who shall serve during their term as a member of the Senate. The President shall select one of such members to serve as a co-chairperson of the committee;

(2) Two members of the House of Representatives who shall be appointed by the Speaker of the House of Representatives, who are not members of the same political party, and who shall serve during their term as a member of the House of Representatives. The Speaker shall select one of such members to serve as a co-chairperson of the committee; and

(3) The following members who shall be 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 persons;

(C) One male who was formerly incarcerated within the department;

(D) One female who was formerly incarcerated within the department;

(E) One physician who is licensed pursuant to Article 2 of Chapter 34 of Title 43 and who specializes in family medicine or internal medicine;

(F) One mental or behavioral health professional who is licensed pursuant to Title 43 and who has a history of providing mental health services or counseling to adults; and

(G) One person who is a parent, grandparent, child, sibling, or spouse or domestic partner of a person currently incarcerated within a department facility.

(b) The initial terms of committee members who are appointed pursuant to paragraph (3) of subsection (a) of this Code section shall be specified by the Governor when making such appointments such that:

(1) Two terms will end on January 1, 2023;

(2) Two terms will end on January 1, 2024; and

(3) Three terms will end on January 1, 2025.

Thereafter, successors to such initial appointees shall be appointed to serve terms of three years.

(c) Members appointed pursuant to this Code section shall not be current employees or contractors of the department; shall not have parents, children, or spouses or domestic partners who are current employees or contractors of the department; and shall not have been employees or contractors of the department at any time during the ten years prior to their appointment to the committee.

(d) 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 of the committee.

(e) Committee members shall not be eligible to receive compensation but shall be eligible for reimbursement of expenses.

(f) 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.

(g) The governor shall make all subsequent appointments as prescribed by paragraph (3) of subsection (a) of this Code section.

(h) 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 chapter, 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.

50-41-3.

(a) Within 270 days of the effective date of this chapter, there shall be established the Office of the Department of Corrections Ombudsman.

(b) The office shall consist of two sections: the Inspections Section and the Complaints Investigation Section.

(c) The office shall:

(1) Provide information, as appropriate, to incarcerated persons, family members, representatives of incarcerated persons, department employees and contractors, and others regarding the rights of incarcerated persons;

(2) Monitor conditions of confinement and assess the department's compliance with applicable federal, state, and local laws, rules, regulations, policies, and best practices as related to the health, safety, welfare, and rehabilitation of incarcerated persons;

(3) Provide technical assistance to support an incarcerated person's participation in self-advocacy;

116 (4) Provide technical assistance to local governments in the creation of jail oversight
117 bodies, as requested;

118 (5) Establish a state-wide uniform reporting system to collect and analyze data related
119 to complaints received by the department and data related to the following:

120 (A) Deaths, suicides, and suicide attempts while in custody;

121 (B) Physical and sexual assaults while in custody;

122 (C) Number of incarcerated persons placed in administrative segregation or solitary
123 confinement, and duration of stay in such confinement;

124 (D) Racially discriminatory treatment;

125 (E) Number of facility lockdowns lasting longer than 24 hours;

126 (F) Number of staff vacancies at each facility;

127 (G) Incarcerated person to staff ratios at each facility;

128 (H) Staff tenure and turnover; and

129 (I) Number of in-person visits to incarcerated persons that were made and number that
130 were denied at each facility;

131 (6) Establish procedures to gather stakeholder input into the office's activities and
132 priorities, which shall include, at a minimum, an annual 30 day period for receiving and
133 responding to public comment;

134 (7) Inspect each department facility at least once every two years, and at least once each
135 year for each maximum security facility and each facility where the office has found
136 cause for more frequent inspection or monitoring; and

137 (8) Publicly issue periodic facility inspection reports and an annual report with
138 recommendations on the state of department facilities and a summary of data and
139 recommendations arising from any complaints investigated and resolved pursuant to this
140 chapter and any other thematic reports covering any topic the office finds relevant to
141 running a safe, secure, and humane corrections department.

(d) The office shall be directed by an ombudsman, who shall be selected by the Corrections Oversight Committee established in Code Section 50-41-2, and who 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, and the ombudsman's spouse or domestic partner, parents, grandparents, children, or siblings shall not be current employees or contractors of the department.

(e) The ombudsman shall have the authority:

- (1) To hire employees, contractors, and volunteers and to secure office space, equipment, and other services necessary to carry out the duties of the office pursuant to this chapter. Any employee, contractor, or volunteer hired or retained by the office shall have the same authority and powers of the office as described in this chapter; and
- (2) 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.

50-41-4.

(a) The office shall have reasonable access, upon demand in person or in writing and with or without prior notice, to all department facilities, including all areas which are used by incarcerated persons, all areas which are accessible to incarcerated persons, and to programs for incarcerated persons at reasonable times, which at a minimum shall include normal working hours and visiting hours. This authority shall include the opportunity to conduct an interview with any incarcerated person, department employee or contractor, or other person. This access is for the purposes of:

- (1) Providing information about individual rights and the services available from the office, including the name, address, and telephone number of office facilities or staff;
- (2) Conducting official inspections as described in Code Section 50-41-6;

168 (3) Conducting an official investigation as described in Code Section 50-41-7; and

169 (4) Inspecting, viewing, photographing, and video recording all areas of the facility that
170 are used by incarcerated persons or are accessible to incarcerated persons.

171 (b) Access to incarcerated persons shall include the opportunity to meet and communicate
172 privately and confidentially with individuals regularly, with or without prior notice, both
173 formally and informally, by telephone, mail, electronic communication, and in person.
174 Communications with incarcerated persons shall not be monitored by, recorded by, or
175 conducted in the presence of department employees or contractors.

176 (c) The office shall have the right to access, inspect, and copy all relevant information,
177 records, or documents in the possession or control of the department that the office
178 considers necessary in an investigation of a complaint filed under this chapter, and the
179 department shall assist the office in obtaining the necessary releases for those documents
180 which are specifically restricted or privileged for use by the office.

181 (d) Following notification from the office with a written demand for access to department
182 records, the designated department staff shall provide the office with access to the
183 requested documentation not later than 20 days after the office's written request for the
184 records. Where the records requested by the office pertain to an incarcerated person's
185 death; threats of bodily harm, including, but not limited to, sexual or physical assaults; or
186 the denial of necessary medical treatment, the records shall be provided within five days
187 unless the office consents to an extension of that time frame.

188 (e) The office shall work with the department to minimize disruption to the operations of
189 the department due to office activities and shall comply with the department's security
190 clearance processes, provided that these processes do not impede the activities outlined in
191 this chapter.

192 (f) Information in the files of the department regarding incarcerated persons which is
193 deemed to be a confidential state secret under Code Section 42-5-36 shall remain classified

except to the extent that such files are declassified for use in official reporting. The office shall be authorized to declassify any such information it receives from the department.

50-41-5.

(a) Correspondence and communication with the office, including that made pursuant to this chapter, is confidential and shall be protected as privileged correspondence in the same manner as legal correspondence or communications.

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

(1) Department 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; and

(2) Other incarcerated persons 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.

50-41-6.

(a) The office shall conduct periodic inspections of each department facility.

(b) The office shall conduct an initial inspection of each department facility and release a public report within two years of the effective date of this chapter.

(c) Subsequent inspections of each facility shall be conducted on a staggered schedule depending on the facility's safety and compliance classification.

(d) An inspection of a department facility shall include an assessment of all of the following:

(1) All policies and procedures in place by the facility related to the care of incarcerated persons;

219 (2) Conditions of confinement;

220 (3) Availability of educational and rehabilitative programming, drug and mental health
221 treatment, and jobs and vocational training for incarcerated persons;

222 (4) All policies and procedures related to visitation;

223 (5) All medical facilities and medical procedures and policies;

224 (6) Review of lockdowns at the facility in the time since the last inspection. In the
225 instance of an initial assessment, the office shall review lockdowns from the last three
226 years;

227 (7) Review of staffing at the facility, including the number and job assignments of
228 correctional staff, the ratio of staff to incarcerated persons at the facility, and the staff
229 position vacancy rate at the facility;

230 (8) Review of physical and sexual assaults at the facility in the time since the last
231 inspection. In the instance of an initial assessment, the office shall review assaults from
232 the last three years;

233 (9) Review of any incarcerated person or staff deaths that occurred at the facility in the
234 time since the last inspection. In the instance of an initial assessment, the office shall
235 review incarcerated person and staff deaths from the last three years;

236 (10) Review of department staff recruitment, training, supervision, and discipline; and

237 (11) Any other aspect of the operation of the facility that the office deems necessary over
238 the course of an inspection.

239 (e) Upon completion of an inspection, the office shall produce a report to be made
240 available to the public on the internet and to be delivered to the Governor, the Attorney
241 General, the Senate Judiciary Committee, the House Committee on Judiciary, and the
242 commissioner of corrections. The report shall include:

243 (1) A summary of the facility's policies and procedures related to the care of incarcerated
244 persons;

245 (2) A characterization of the conditions of confinement;

(3) A catalog of available educational and rehabilitative programming, drug and mental health treatment, and jobs and vocational training for incarcerated persons;

(4) A summary of visitation policies and procedures;

(5) A summary of medical facilities and medical procedures and policies;

(6) A summary of lockdowns reviewed by the office;

(7) A summary of staffing at the facility, including policies relating to staff recruitment, training, supervision, and discipline;

(8) A summary of physical and sexual assaults reviewed by the office;

(9) A summary of any incarcerated person or staff deaths that occurred at the facility;

(10) Recommendations made to the facility to improve safety and conditions within the facility; and

(11) The facility's safety and compliance classification with a recommended timeline for the next inspection.

(f) Upon completion of an inspection, the office shall assign the facility a safety and compliance classification. This classification system shall be divided into three tiers and shall be determined based on the factors described in subsection (d) of this Code section, as follows:

(1) 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 incarcerated persons, or a severe lack of quality programming for the successful rehabilitation of incarcerated persons;

(2) 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;

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

(g) The department 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.

50-41-7.

(a) The office may initiate and attempt to resolve an investigation upon its own initiative, or upon receipt of a complaint from an incarcerated person, a family member, a representative of an incarcerated person, a department employee or contractor, or any others, regarding any of the following that may adversely affect the health, safety, welfare, and civil rights or other rights of incarcerated persons:

(1) Abuse or neglect;

(2) Conditions of confinement;

(3) Department decisions or administrative actions;

(4) Department inactions or omissions;

(5) Department policies, rules, or procedures; or

(6) Alleged violations of law by department employees or contractors that may adversely affect the health, safety, welfare, and rights of incarcerated persons.

(b) The office may decline to investigate any complaint initiated by an incarcerated person if the incarcerated person has failed to allege that he or she has first utilized the department's policies and procedures regarding resolution of incarcerated person 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.

(c) Any action or lack of action by the office on a complaint made pursuant to this chapter shall not be deemed an administrative procedure required for exhaustion of remedies prior

to bringing an action pursuant to the federal Prison Litigation Reform Act, 42 U.S.C. Section 1997e, et seq.

(d) The office shall not investigate any complaints to the extent that they seek to challenge the validity of an incarcerated person's underlying criminal conviction, unless the complaint seeks redress for conditions of confinement or other violation of the incarcerated person's individual rights.

(e) The office shall not investigate a complaint from a department 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 incarcerated persons.

(f) The office may refer the complainant and others to appropriate resources or state, tribal, or federal agencies.

(g) The office shall not levy any fees for the submission or investigation of complaints.

(h) At the conclusion of an investigation of a complaint, the office shall render a public decision on the merits of each complaint, except that the documents supporting the decision are subject to the confidentiality provisions of this chapter. The office shall communicate the decision to the incarcerated person, if any, and to the department. The office shall state its recommendations and reasoning if, in the office's opinion, the department or any employee or contractor thereof should:

(1) Consider the matter further;

(2) Modify or cancel any action;

(3) Alter a rule, practice, or ruling;

(4) Explain in detail the administrative action in question; or

(5) Rectify an omission;

provided, however, that, in the investigation of a complaint involving the death of an incarcerated person; threats of bodily harm to an incarcerated person, including, but not limited to sexual or physical assaults; or denial of necessary medical treatment to an

incarcerated person, the office shall issue a preliminary public report which shall be provided to the department, and the department shall respond publicly within five days with an acknowledgment of the report and a corrective action plan.

(i) If the office so requests, the department shall, 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.

(j) If the office believes, based on the investigation, that there has been or continues to be a significant health, safety, welfare, or rehabilitation issue related to incarcerated persons, the office shall report the finding to the Governor, the Attorney General, the Senate Judiciary Committee, the House Committee on Judiciary, and the commissioner of corrections.

(k) 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.

(l) 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 chapter.

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

(n) 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 chapter may, within 30 days after such violation occurs, file a complaint pursuant to the whistleblower or wrongful termination laws of this state, including, but not limited to, Code Section 45-1-4.

50-41-8.

(a) Not later than June 30 of each 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 Committee on Judiciary, and the commissioner of corrections. The report shall include:

(1) A summary of the office's inspections and complaint investigations conducted that calendar year, including the office's findings and recommendations and the department's responses and corrective actions;

(2) A characterization of the conditions of confinement;

(3) A catalog of available educational and rehabilitative programming, drug and mental health treatment, and jobs and vocational training for incarcerated persons;

(4) A summary of visitation policies and procedures;

(5) A summary of medical facilities and medical procedures and policies;

(6) A summary of lockdowns reviewed by the office;

(7) A summary of staffing at each facility and in the department overall;

(8) A summary of physical and sexual assaults reviewed by the office;

(9) A summary of any incarcerated person or staff deaths that occurred at each facility;

(10) A summary of the office's investigations, findings, and resolutions of any complaints submitted pursuant to this chapter; and

(11) Recommendations to the legislature and the department regarding, but not limited to, the following:

(A) How the office and the department are funded and staffed;

(B) Improving staff retention, training, working conditions, compensation, benefits, morale, and safety;

(C) Improving health, safety, conditions of confinement, and medical care of incarcerated persons;

(D) Improving visitation and limiting use of lockdowns and administrative segregation or solitary confinement;

(E) Improving complaint investigation and resolution;

(F) Improving access to and the quality and availability of educational and rehabilitative programming, drug and mental health treatment, and jobs and vocational training for incarcerated persons;

(G) Improving transparency about conditions in the facilities and the department overall;

(H) Improving the disciplinary process to hold staff accountable for mistreatment of incarcerated persons; and

(I) Preventing future violations of the rights of incarcerated persons as protected under state and federal law.

(b) If the office so requests, the department shall, 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.

50-41-9.

(a) The office shall create a secure online family form to be made available on the office's website wherein family members, friends, and advocates may submit complaints and inquiries regarding covered issues on behalf of an individual incarcerated within the department. Upon receipt of a family form, the office shall:

(1) Confirm receipt of the complaint or inquiry within five business days;

(2) Make a determination as to whether an investigation is warranted within seven business days of the confirmation of receipt of complaint or inquiry and notify the complainant; and

(3) If the office has determined an investigation is unwarranted, the office shall provide a written statement explaining its decision to the complainant.

(b)(1) The office shall create a secure online incarcerated person form to be made available on the department's secure intranet wherein incarcerated persons may submit complaints and inquiries regarding covered issues on their own behalf. The commissioner of corrections shall ensure that the incarcerated person form is available and operating on at least 12 computers within each facility and accessible to all incarcerated persons from 7:00 A.M. to 7:00 P.M. each day. For incarcerated persons in administrative segregation or solitary confinement, the department shall ensure that employees and contractors provide incarcerated persons with access to the incarcerated person form on a computer or computer tablet or by providing a paper copy upon the incarcerated person's request. The department shall make paper copies of the incarcerated person form available, at no cost to incarcerated persons, in each facility's library, law library, and recreational and medical facilities.

(2) The office shall create the incarcerated person form in a secure format that excludes any electronic monitoring or reproduction by the department and its employees and contractors. Any submissions of paper copies of the incarcerated person form shall be treated as confidential and privileged by department employees and contractors in the same manner as legal correspondence or communication.

(3) Upon receipt of an incarcerated person form, the office shall:

(A) Confirm receipt of the complaint or inquiry within five business days;

(B) Make a determination as to whether an investigation is warranted within seven business days of the confirmation of receipt of complaint or inquiry and notify the complainant; and

(C) If the office has determined an investigation is unwarranted, the office shall provide a written statement regarding its decision to the complainant.

(c)(1) The office shall create a secure telephone hotline to be made available to family members, friends, and advocates of incarcerated persons for filing complaints and

inquiries regarding covered issues on behalf of an individual incarcerated within the department.

(2) Upon receipt of a telephone complaint or inquiry, the office shall:

(A) Confirm receipt of the complaint or inquiry within five business days;

(B) Make a determination as to whether an investigation is warranted within seven business days of the confirmation of receipt of complaint or inquiry and notify the complainant; and

(C) If the office has determined an investigation is unwarranted, the office shall provide a written statement regarding its decision to the complainant.

(d)(1) The office shall create a secure telephone hotline to be made available to all department employees and contractors and incarcerated persons for filing complaints and inquiries regarding covered issues on their behalf.

(2) The commissioner of corrections shall ensure that the hotline and its use are made available to all employees, contractors, and incarcerated persons free of charge.

(3) The office and the commissioner of corrections shall ensure that calls to the hotline are not monitored or recorded by department employees or contractors.

(4) Upon receipt of a telephone complaint or inquiry, the office shall:

(A) Confirm receipt of the complaint or inquiry within five business days;

(B) Make a determination as to whether an investigation is warranted within seven business days of the confirmation of receipt of complaint or inquiry and notify the complainant; and

(C) If the office has determined an investigation is unwarranted, the office shall provide a written statement regarding its decision to the complainant."

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.