



The Protection & Advocacy System for South Carolina

December 13, 2019

VIA Email

Edward R. Tallon Sr., Subcommittee Chair
Legislative Oversight Committee
Post Office Box 11867
Columbia, South Carolina 29211

RE: Independent Ombudsman for Corrections

Dear Representative Tallon,

Thank you for the opportunity to respond to the Oversight Committee. This letter is in response to your questions regarding an Independent Ombudsman for Corrections.

1. In what specific ways does your organization believe an independent ombudsman would improve the operations of SCDC (e.g., collect and report on data, etc.)?

Based on a lawsuit that Protection and Advocacy (P&A) filed in 2005, the court ordered the Department of Corrections to create a plan to provide better care for mentally ill prisoners that would be phased in over several years. To ensure implementation of the plan, the parties agreed to an Implementation Panel, consisting of a team of monitors, to visit SCDC facilities and report on progress.

Despite the Implementation Panel monitoring visits, (there were two visits in 2019), P&A, as well as other firms and organizations, continue to receive calls from family members, and letters from prisoners, reporting serious allegations regarding the treatment of prisoners with mental illness. The testimonies of Dr. Pamela Crawford, Barbara Taylor, and Stuart Andrews confirm what we have been hearing from prisoners and family members.

Although South Carolina has an Office of Ombudsman in the Governor's office, they are responsible for any citizen who has questions or concerns regarding services and resources of state agencies. This office does not monitor or investigate allegations from prisoners or family members, nor do they keep data on allegations, investigations and resolutions of complaints of abuse and neglect of SCDC inmates. Protection and Advocacy monitors and investigates complaints of facilities and day programs that serve people with disabilities, which includes DDSN, DMH, DSS, Corrections, and Juvenile Justice. Because of the massive scope of the need

and limitations of our mission and funding, P&A cannot investigate all complaints of SCDC's violations of law or policy.

P&A receives letters from prisoner, and calls from family members. We investigate allegations from prisoners with mental illness, or other disabilities. Most of our investigations lead to individual change, but does address systemic change.

An Independent Ombudsman could monitor and investigate allegations from all prisoners, and keep data to track if there are particular facilities where there are problems. They could also track data to determine if there are systemic issue that could be resolved. An Independent Ombudsman could report directly to the legislators and have the authority to monitor, investigate and report.

2. Please provide information on other states that have an independent ombudsman involved in state correctional operations including, but not limited to, length of time in existence, budget, and number of employees, primary services provided, and specific impacts made.

Washington:

- Located within the Office of the Governor
- Governor signed the bill in March 2018
- Tasks:
 - o Providing information and assistance to people in prison and their families
 - o Conducting independent monitoring of all 12 state prisons
 - o Working collaboratively with state corrections officials to resolve issues arising in prisons
 - o Issues annual reports updating the Governor and the legislature on its work
- <https://oco.wa.gov/>
- Report from their first year of operation:
<https://oco.wa.gov/sites/default/files/public/Annual%20Report%202019%20Final.pdf>
- Impact in 2019: In first year of operations, opened over 2,000 cases and initiated review, attempted to resolve and/or investigate, and closed, as applicable. OCO impacted positive change for hundreds of incarcerated individuals
- Prompted **systemic reform and policy change**, including but not limited to:
 - o Improving the quality of the internal grievance procedure, to overall reduce complaints and resolve issues at the lowest level;
 - o Identifying systemic barriers to both access to and quality of health services;
 - o Ensuring incarcerated individuals' access to confirmation tests of urinalyses, to reduce unjust sanctions and loss of good time;
 - o Ensuring notification and meaningful opportunity to appeal behavioral observation entries, also potentially impacting loss of good time and release;
 - o Improving conditions of confinement for women and transgender individuals, including access to gender affirming care;
 - o Prompting review of property procedures and policies to reduce the loss property for incarcerated individuals and tort claim; and,

- o Ensuring recording of all Category D disciplinary hearings to better ensure accountability and justice.
- Budget and expenditures

Category	Allotment	Expenditure
Salaries and Wages	565,600	312,404
Employee Benefits	214,608	109,709
Professional Service Contracts	100,000	6,108
Goods and Services	273,652	95,287
Travel	20,640	50,045
Capital Outlays	41,500	0
Total	\$1,216,000	\$573,552

California:

- Office of the Inspector General (Independent Prison Oversight): <https://www.oig.ca.gov/>
 - o Look at many case summaries for discipline monitoring that have occurred over the years <https://www.oig.ca.gov/data-dmu-case-summaries/>
- Impact in 2018 ([Annual Report](#)):
 - o Internal investigations and [employee discipline monitoring](#)
 - o Use-of-force monitoring [report](#)
 - o Cycle 5 Medical Inspection reports
 - o Complaint intake (complaints submitted by inmates, parolees, families, departmental employees, and advocacy groups). Opened 2,405 cases.
 - o Are responsible for evaluating the qualifications of each candidate whom the Governor nominates for appointment as a warden or superintendent.
 - o Monitors the DOC progress in implementing five of [the Blueprint Report's](#) goals
 - o Chairs the California Rehabilitation Oversight Board to examine the DOC mental health, substance abuse, educational, and employment programs for inmates and parolees.
 - o The office makes a recommendation in ALL reports, the DOC creates a proposed action plan, and the office determines if action has been implemented or not implemented.

Florida:

The Florida Correctional Medical Authority (CMA) was created in July 1986 in response to a class-action lawsuit. Brought in 1972, Costello v. Wainwright, challenged conditions in Florida's prison system. The federal district court maintained jurisdiction over the state's prison medical services until 1993, when the state committed to using CMA to oversee healthcare in its prisons.

Over the years, the CMA became a national model for oversight of prison healthcare. Prisoners also reported that the agency was effective in protecting their right to receive adequate medical services.

Here is their web site: <https://www.flgov.com/correctional-medical-authority-cma/>

The legislature decided to slash the CMA's \$796,151 budget after Governor Rick Scott vetoed a bill to close the agency. At the time, Scott said the CMA was a "valuable layer of oversight," and its elimination "could cause public health and safety risks."

Indiana:

- <https://www.in.gov/ombudsman/2351.htm>
- IMPACT in 2018 ([Annual Report](#)):
 - o The Bureau addressed a total of 4,107 complaints and contacts in calendar year 2018
 - o Investigated 871 complaints and substantiated 158.
 - o Outreach and Training
 - o They provide recommendations on the following issues:
 - Restrictive housing reviews and release dates
 - Drug trafficking
 - The use of physical force
 - Investing in staff
 - Review of current search procedures
- Budget and expenditures:
 - o The current budget appropriation for the Bureau is \$146,644
 - o The entire budget is used for employee salaries and benefits, as well as equipment and supplies.
 - o The appropriated budget does not cover necessary travel expenditures to facilities to investigate complaints. The Bureau's budget continues to fall short failing to cover even employees' salaries and benefits or necessary supplies, thus the Indiana Department of Administration which houses the Bureau, has transferred over \$50,000 to the Bureau's budget to cover the shortfall in one fiscal year.

Michigan:

- <http://council.legislature.mi.gov/Ombudsman/Index>
- Situated within the Michigan Legislative Council (MI LC Ombudsman)
- Cannot find any reports or information on systemic work.

Nebraska:

- Office of the Inspector General of the Nebraska Correctional System focuses on the systemic issues, while the ombudsman handles all complaints, including complaints from those who are incarcerated.
- The office is a subdivision of the Office of Public Counsel.
- https://nebraskalegislature.gov/divisions/oig_ndcs.php
- IMPACT in 2019 ([Annual Report](#)):
 - o Focus on the following issues and provides recommendations:
 - Staffing
 - Overcrowding
 - Restrictive housing
 - Assaults and camera coverage

- Facilities
- Contraband
- Deaths
- Vocational/education
- Programs
- Community Corrections
- County Jail Program
- Inmate letters
- Inmates sentenced to the death penalty concerns
- Central office work environment

New Jersey:

- Investigates complaints when an inmate has failed to get satisfactory results through available institutional channels
- Serves as a designated neutral, is an advocate for fairness, acts as a source of information and referral, aids in answering questions and assists in the resolution of concerns during critical situations.
- Independent from and external to correctional facilities, therefore ensuring objectivity and credibility among inmates and staff.
- <https://www.state.nj.us/correctionsombudsman/faqs/>
- **Cannot** find annual reports or information on systemic work.

Texas:

- Prison Rape Elimination Act Ombudsperson <https://www.tdcj.texas.gov/tbcj/prea.html>
- Tasks:
 - Monitor the agency's efforts to eliminate sexual abuse and sexual harassment in TDCJ correctional facilities.
 - Ensure the agency's policies and procedures are in compliance with federal and state laws and standards.
 - Respond to public inquiries regarding allegations of sexual abuse and sexual harassment in TDCJ correctional facilities.
 - [Annual report 2018](#)

3. Please provide a brief summary of what your organization believes are best practices from other states that SCDC and the S.C. General Assembly should consider.

The effectiveness of an independent ombudsman programs depends on their method of enactment, degree of autonomy, staffing, funding, statutory authority, and functions. Correctional ombudsman's duties include addressing complaints from staff and inmates, seeking corrective measures, providing recommendations, and submitting periodic reports to the Governor and legislature. The success of an independent ombudsman program

depends upon the ombudsman's authority to pursue remedies and ability to manage the competing interests of prisoners and officials.

The American Bar Association calls for the use of independent ombudsperson for corrections in 2008

<https://www.prearesourcecenter.org/sites/default/files/library/abacriminaljusticesectionreporttothehouseofdelegates.pdf>

I hope this information is helpful. I am happy to provide additional information and answer additional questions for you and committee members. I wish you and your family a Merry Christmas and Happy New Year!

Sincerely,

A handwritten signature in black ink that reads "Beth Franco". The signature is written in a cursive style with a large initial "B" and "F".

Beth Franco, Executive Director
Protection and Advocacy for People with Disabilities