

# SENATE BILL NO. 471

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR MOSLEY.

2181S.01H

ADRIANE D. CROUSE, Secretary

## AN ACT

To amend chapter 217, RSMo, by adding thereto five new sections relating to the oversight of department of corrections facilities.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 217, RSMo, is amended by adding thereto five new sections, to be known as sections 217.950, 217.955, 217.960, 217.965, and 217.970, to read as follows:

**217.950. As used in sections 217.955 to 217.970, the following terms mean:**

(1) "Department", the department of corrections;

(2) "Family member", includes a grandparent, parent, 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.

(3) "Office", the office of the state ombudsman for inmates in the custody of the department of corrections;

(4) "Ombudsman", the state ombudsman for inmates in the custody of the department of corrections.

**217.955. 1. There is hereby established within the department of corrections the "Office of State Ombudsman for Inmates in the Custody of the Department of Corrections", for the purpose of helping to assure the adequacy of care received by inmates and to improve the quality of life experienced by them.**

7           2. The office shall be administered by the state  
8 ombudsman, who shall devote his or her entire time to the  
9 duties of his or her position.

10           3. The office shall establish and implement procedures  
11 for receiving, processing, responding to, and resolving  
12 complaints made by or on behalf of inmates in the custody of  
13 the department of corrections relating to action, inaction,  
14 or decisions of department staff or contractors which may  
15 adversely affect the health, safety, welfare, or rights of  
16 such inmates.

17           4. The office shall establish and implement procedures  
18 for the resolution of complaints. The ombudsman or  
19 representatives of the office shall have the authority to:

20           (1) Provide information, as appropriate, to inmates,  
21 family members of inmates, representatives of inmates,  
22 department of corrections employees and contractors, and  
23 others regarding the rights of inmates;

24           (2) Monitor conditions of confinement and assess  
25 department of corrections compliance with applicable  
26 federal, state, and department rules and regulations as  
27 related to the health, safety, welfare, and rehabilitation  
28 of inmates;

29           (3) Provide technical assistance to support inmate  
30 participation in self-advocacy;

31           (4) Establish a state-wide uniform reporting system to  
32 collect and analyze data related to complaints received by  
33 the department, and data related to the following:

34           (a) Deaths, suicides, and suicide attempts in custody;

35           (b) Physical and sexual assaults in custody;

36           (c) Number of people placed in administrative  
37 segregation or solitary confinement, and duration of stay in  
38 such confinement;

39           (d) Number of facility lock-downs lasting longer than  
40 twenty-four hours;

41           (e) Number of staff vacancies at each facility;

42           (f) Inmate to staff ratios at each facility;

43           (g) Staff tenure and turnover; and

44           (h) Numbers of in-person visits to inmates that were  
45 made and denied at each facility;

46           (5) Inspect each department facility at least once  
47 each year, and at least two times each year for each maximum  
48 security facility and each facility where the office has  
49 found cause for more frequent inspection or monitoring.

50           (6) Publicly issue annual facility inspection reports  
51 and an annual report with recommendations on the department  
52 facilities and a summary of data and recommendations arising  
53 from any complaints investigated and resolved pursuant to  
54 section 217.965.

55           (7) Monitor all decisions of the parole board.

56           5. The office shall be directed by an ombudsman, who  
57 shall be appointed by the governor, and shall serve a term  
58 of six years. The ombudsman shall not be a current or  
59 former employee or contractor of the department, and the  
60 ombudsman's spouse or domestic partner, parents,  
61 grandparents, children, or siblings shall not be a current  
62 employee or contractor of the department.

63           6. The ombudsman shall have the authority to hire  
64 staff, contractors, and unpaid volunteers.

65           7. (1) The office shall have reasonable access, upon  
66 demand in-person or in-writing and with or without prior  
67 notice, to all department facilities, including all areas  
68 which are used by inmates, all areas which are accessible to  
69 inmates, and to programs for inmates at reasonable times,  
70 which at a minimum shall include normal working hours and

71 visiting hours. This authority includes the opportunity to  
72 conduct an interview with any inmate, department employee or  
73 contractor, or other person.

74 (2) The office shall have the authority to meet and  
75 communicate privately and confidentially with individuals  
76 regularly, both formally and informally, by telephone, mail,  
77 electronic communication, and in-person.

78 (3) The office shall have the authority to access,  
79 inspect, and copy all relevant information, records, or  
80 documents in the possession or control of the department  
81 that the office considers necessary in an investigation of a  
82 complaint filed pursuant to section 217.970, and the  
83 department shall assist the office in obtaining the  
84 necessary releases for those documents which are  
85 specifically restricted or privileged for use by the office  
86 no later than thirty days after the office's written request  
87 for such records. If the records requested by the office  
88 pertain to an inmate death, threat of death or bodily harm,  
89 sexual assault, or the denial of necessary medical  
90 treatment, the records shall be provided by the department  
91 within five days unless the office consents to an extension  
92 of time no longer than thirty days.

93 8. The office shall establish confidentiality rules  
94 and procedures for all information maintained by the office  
95 to ensure that the identity of a complainant is not known to  
96 department employees or contractors or other inmates. The  
97 office may disclose identifying information for the sole  
98 purpose of carrying out an investigation.

217.960. 1. As used in this section, "covered issues"  
2 shall mean:

3 (1) Sanitation in prison facilities;

- 4           (2) Access to proper nutrition and a clean and  
5 adequate water supply;
- 6           (3) Livable temperatures in prison facilities;
- 7           (4) Physical or sexual abuse from fellow inmates;
- 8           (5) Physical or sexual abuse from department of  
9 corrections staff or contractors;
- 10          (6) Credible threats against an inmate from other  
11 inmates, prison staff, or contractors;
- 12          (7) Neglect of prison staff or contractors that  
13 results in physical or sexual trauma;
- 14          (8) Denial of rights afforded to inmates under federal  
15 or state law;
- 16          (9) Access to visitation and communication with family  
17 and legal representation;
- 18          (10) Any instance in which the office determines an  
19 action or behavior to be such that it constitutes abuse or  
20 neglect against an inmate.

21           2. The office shall conduct at least one inspection  
22 each year of each department of corrections facility and at  
23 least two times each year for each maximum security facility  
24 to monitor the status of all covered issues pursuant to this  
25 section. The office shall conduct an inspection of each  
26 department facility and release a public report pursuant to  
27 section 217.965.

28           3. An inspection of a department facility shall  
29 include an assessment of all of the following:

- 30           (1) All policies and procedures in place by the  
31 facility related to the care of inmates;
- 32           (2) Conditions of confinement;
- 33           (3) Availability of educational and rehabilitative  
34 programming, drug and mental health treatment, and inmate  
35 jobs and vocational training;

- 36           (4) Review of hourly wages of inmates;
- 37           (5) All policies and procedures related to visitation;
- 38           (6) All medical facilities and medical procedures and  
39 policies;
- 40           (7) Review of lock-downs at the facility in the time  
41 since the last inspection;
- 42           (8) Review of staffing at the facility, including the  
43 number and job assignments of correctional staff, the ratio  
44 of staff to inmates at the facility, and the staff position  
45 vacancy rate at the facility;
- 46           (9) Review of physical and sexual assaults at the  
47 facility in the time since the last inspection;
- 48           (10) Review of any inmate or staff deaths that  
49 occurred at the facility in the time since the last  
50 inspection;
- 51           (11) Review of the department staff recruitment,  
52 training, supervision, and discipline; and
- 53           (12) Any other aspect of the operation of the facility  
54 that the office deems necessary over the course of an  
55 inspection.

217.965. 1. Upon completion of an inspection, the  
2 office shall produce a report to be made available to the  
3 public on the office's website, and to be delivered to the  
4 governor, the attorney general, the president pro tempore of  
5 the senate, the speaker of the house of representatives, and  
6 the director of the department. The report shall include:

- 7           (1) A summary of the facility's policies and  
8 procedures related to care of the inmates;
- 9           (2) A characterization of the conditions of  
10 confinement;

- 11           (3) A catalogue of available educational and  
12 rehabilitative programming, drug and mental health  
13 treatment, and inmate jobs and vocational training;
- 14           (4) A summary of visitation policies and procedures;
- 15           (5) A summary of medical facilities and medical  
16 procedures and policies;
- 17           (6) A summary of the lock-downs review by the office;
- 18           (7) A summary of the staffing at the facility,  
19 including policies relating to staff recruitment, training,  
20 supervision, and discipline;
- 21           (8) A summary of physical and sexual assaults reviewed  
22 by the office;
- 23           (9) A summary of any inmate or staff deaths that  
24 occurred at the facility; and
- 25           (10) Recommendations made to the facility to improve  
26 safety and conditions within the facility.
- 27           2. The department shall submit a report to the office  
28 within thirty days of the office's inspection report which  
29 shall include a corrective action plan for each  
30 recommendation of the office.

217.970. 1. The office may initiate and attempt to  
2 resolve an investigation upon its own initiative, or upon  
3 receipt of a complaint from an inmate, family member,  
4 representative of an inmate, a department employee or  
5 contractor, or others, regarding any of the following that  
6 may adversely affect the health, safety, welfare, and rights  
7 of inmates:

- 8           (1) Abuse or neglect;
- 9           (2) Conditions of confinement;
- 10           (3) Department decisions or administrative actions;
- 11           (4) Department inactions or omissions;
- 12           (5) Department policies, rules, or procedures;

13           (6) Alleged violations of law by department employees  
14 or contractors that may adversely affect the health, safety,  
15 welfare, and rights of inmates; or

16           (7) Decisions of the parole board.

17           2. The office may decline to investigate any complaint  
18 and shall decline to investigate a complaint if the inmate  
19 has failed to first utilize the department policies and  
20 procedures regarding resolution of inmate grievances. If  
21 the office does not investigate a complaint, the office  
22 shall notify the complainant in writing of the decision not  
23 to investigate and the reasons for the decision.

24           3. Any action or lack of action on a complaint by the  
25 office shall not be deemed an administrative procedure  
26 required for exhaustion of remedies prior to bringing an  
27 action pursuant to the Prison Litigation Reform Act, 42  
28 U.S.C. Section 1997e, et seq.

29           4. The office may not investigate any complaints  
30 relating to an inmate's underlying criminal conviction.

31           5. The office may not investigate a complaint from a  
32 department employee or contractor that relates to the  
33 employee or contractor's employment relationship with the  
34 department unless the complaint is related to the health,  
35 safety, welfare, and rehabilitation of inmates.

36           6. The office may refer the complainant and others to  
37 appropriate resources or state, tribal, or federal agencies.

38           7. The office may not levy any fees for the submission  
39 or investigation of complaints.

40           8. The office may investigate any complaint regarding  
41 a parole decision.

42           9. At the conclusion of an investigation of a  
43 complaint, the office shall render a public decision on the  
44 merits of each complaint within ninety days of the filing of

45 the complaint, except that the documents supporting the  
46 decision are subject to the confidentiality provision of  
47 section 217.955. The office shall give a decision in  
48 writing to the inmate, if any, and to the department. The  
49 office shall state its recommendations and reasoning if, in  
50 the office's opinion, the department or any employee or  
51 contractor thereof should:

- 52 (1) Consider the matter further;
- 53 (2) Modify or cancel any action;
- 54 (3) Alter a rule, practice, or ruling;
- 55 (4) Explain in detail the administrative action in  
56 question; or
- 57 (5) Rectify an omission.

58 10. If the office so requests, the department shall,  
59 within the thirty days, inform the office in writing about  
60 any action taken on the recommendations or the reasons for  
61 not complying with the recommendations.

62 11. If the office finds, based on the investigation,  
63 that there has been or continues to be a significant inmate  
64 health, safety, welfare, or rehabilitation issue, the office  
65 shall report such finding to the governor, the attorney  
66 general, the president pro tempore of the senate, speaker of  
67 the house of representatives, and the director of the  
68 department of corrections.

69 12. In the event that the department conducts an  
70 internal disciplinary investigation and review of one or  
71 more of its staff members as a result of an office  
72 investigation, the department's disciplinary review may be  
73 subject to additional review and investigation by the office  
74 to ensure a fair and objective process.

75 13. The department and its employees and contractors  
76 shall not discharge, retaliate against, or in any manner

77 discriminate against any person because such person has  
78 filed any complaint or instituted or caused to be instituted  
79 any proceeding under sections 217.950 to 217.970.

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

83 (2) Any department employee or contractor who believes  
84 that he or she has been discharged or otherwise retaliated  
85 against by any person in violation of this chapter may,  
86 within thirty days after such violation occurs, file a  
87 complaint with the attorney general.

88 (3) If the complainant has suffered abuse or any other  
89 violation of this chapter after he or she filed a complaint  
90 there shall be a rebuttable presumption of retaliation.

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