

1 **** BILL NO. ****

2 INTRODUCED BY ****

3 BY REQUEST OF THE ****

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE OFFICE OF THE CORRECTIONS
6 OMBUDSMAN; PROVIDING DEFINITIONS; PROVIDING FOR THE APPOINTMENT AND REQUIREMENTS
7 OF THE CORRECTIONS OMBUDSMAN; DESCRIBING THE POWERS AND DUTIES OF THE
8 CORRECTIONS OMBUDSMAN; DESCRIBING THE INVESTIGATIVE AND INSPECTION PROCEDURES OF
9 THE CORRECTIONS OMBUDSMAN; ESTABLISHING REPORTING REQUIREMENTS; PROVIDING
10 CONFIDENTIALITY; PROHIBITING RETALIATION; CREATING THE CORRECTIONS OMBUDSMAN
11 ADVISORY BOARD AND ESTABLISHING ITS PURPOSE AND DUTIES; PROVIDING AN APPROPRIATION;
12 PROVIDING FOR CONTINGENT VOIDNESS; PROVIDING AN EFFECTIVE DATE."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15
16 **NEW SECTION. Section 1. Office of corrections ombudsman established.** (1) There is an office
17 of the corrections ombudsman within the department of administration provided for in 2-15-1001. The office
18 must be directed by the corrections ombudsman.

19 (2) The governor shall appoint a corrections ombudsman from the list of candidates provided by
20 the corrections ombudsman advisory board pursuant to [section 2] who is:

21 (a) a resident of this state; and

22 (b) qualified by training and experience to perform the duties of the corrections ombudsman.

23
24 **NEW SECTION. Section 2. Corrections ombudsman advisory board -- duties -- membership --**
25 **reporting requirement.** (1) There is a corrections ombudsman advisory board. The board is attached to the
26 department of administration for administrative purposes only as provided in 2-15-121.

27 (2) Except as provided in subsection (5), each member must be appointed for a term of [***] years.
28 The board consists of 14 members appointed as follows:

For committee consideration:
How long should board members serve?

- 1 (a) 10 members appointed by the governor to include:
- 2 (i) two persons formerly incarcerated under the jurisdiction of the department of corrections;
- 3 (ii) two family members of inmates currently incarcerated under the jurisdiction of the department
- 4 of corrections;
- 5 (iii) a county attorney
- 6 (iv) a public defender;
- 7 (v) an individual with a background in health care and social work;
- 8 (vi) an individual with a background in mental health care and substance use disorder treatment;
- 9 (vii) one representative of crime victims; and
- 10 (viii) an individual with experience managing a government agency; and
- 11 (b) two members of the house of representatives, one selected by the speaker of the house and
- 12 one selected by the house minority leader; and
- 13 (c) two members of the senate, one selected by the president of the senate and one selected by
- 14 the senate minority leader.
- 15 (3) Members of this board may not be current employees or contractors of the department.
- 16 (4) The board shall elect two co-presiding officers from its members.
- 17 (5) To allow for staggered membership appointments, the initial terms of seven members must be
- 18 appointed to serve a term of [***].
- 19 (6) (a) A vacancy on the board must be filled in the manner of the original appointment. If a
- 20 vacancy on the board remains unfilled by the appropriate appointing authority for more than 60 days, the board
- 21 may vote to appoint a member to serve on the board until the appropriate appointing authority makes an
- 22 appointment.
- 23 (b) A member may only be removed for cause. If a vacancy occurs, a member must be appointed
- 24 to fill the unexpired term by the authority that appointed the vacating member.
- 25 (7) Board members shall serve without compensation but may be reimbursed as provided in 2-18-
- 26 501 through 2-18-503 for expenses incurred in the performance of their duties.
- 27 (8) The board shall meet twice a year to carry out its duties, or:
- 28 (a) whenever there is a vacancy in the corrections ombudsman position;

For committee consideration:
What representation is needed on the board?

- 1 (b) as the co-presiding officers consider necessary; or
- 2 (c) on the call of the majority of the members.
- 3 (9) The board's duties are to:
- 4 (a) submit a list of candidates for the position of corrections ombudsman for the governor's
- 5 consideration, pursuant to [section 1];
- 6 (b) convene public hearings twice a year to present, review, and discuss the corrections
- 7 ombudsman's services, findings, and recommendations;
- 8 (c) upon its own discretion or upon request of the office, issue findings and recommendations that
- 9 must be provided to the department of corrections, the governor, and the legislature and made available to the
- 10 public on the office's website; and
- 11 (d) in accordance with 5-11-210, submit a report to the governor and the legislature summarizing
- 12 its work from the last 2-year period, that provides any relevant information or recommendations.
- 13

14 **NEW SECTION. Section 3. Definitions.** For the purposes of this part, the following definitions apply:

- 15 (1) "Administrative act" means a department action, omission, decision, rule, interpretation,
- 16 recommendation, policy, practice, or procedure relating to corrections services.
- 17 (2) "Board" means the corrections ombudsman advisory board established in [section 2].
- 18 (3) "Complainant" means an inmate, a family member of an inmate, interested citizen, legislator or
- 19 other public official, or government agency who files a request for assistance with the office.
- 20 (4) "Corrections ombudsman" means the person appointed by the governor as provided in [section
- 21 1] to administer the provisions of this part.
- 22 (5) "Corrections services" means services provided by the department under federal and state law.
- 23 (6) "Department" means the department of corrections established in 2-15-2301.
- 24 (7) "Facility" means:
- 25 (a) a state prison as defined in 53-30-101; or
- 26 (b) a correctional facility as defined in 41-5-103.
- 27 (8) "Family member" means a grandparent, parent, sibling, spouse or domestic partner, child,
- 28 aunt, uncle, cousin, niece, nephew, grandchild, or any other person related to an individual by blood, adoption,

For committee consideration:
What facilities should be included?

For committee consideration:
Should this apply to probation and parole?

marriage, or a fostering relationship.

(9) "Inmate" means a person committed to or under the jurisdiction of the department.

(10) "Office" means the office of the corrections ombudsman.

(11) "Request for assistance" means a request by a complainant asking the corrections ombudsman for assistance in protecting the rights or interests of an individual committed to or under the jurisdiction of the department.

NEW SECTION. Section 4. Corrections ombudsman appointment -- vacancy in office -- term.

(1) (a) No later than [***] days after [the effective date of this act], or no later than [***] days after any vacancy in the position of corrections ombudsman, the board shall solicit applications for the position of corrections ombudsman and meet to consider and interview the most qualified candidates. A candidate must be:

- (i) a resident of this state;
- (ii) qualified by training and experience to perform the duties of the corrections ombudsman; and
- (iii) not current or former employees or contractors of the department and whose spouses or domestic partners, parents, grandparents, children, or siblings are not current employees or contractors of the department.

(b) The board shall:

- (i) select no more than [***] candidates;
- (ii) publish the names of the selected candidates on the office's website; and
- (iii) hold a public hearing allowing testimony from members of the public concerning the selected candidates.

For committee consideration:
How many candidates should the board submit for consideration?

(c) The board shall submit to the governor a list of selected candidates. The list must rank the candidates in the order of board preference.

(2) (a) No later than 30 days after receiving the list submitted by the board under subsection (1), the governor shall appoint a person to the position of corrections ombudsman.

(b) If at any time a candidate withdraws from consideration prior to appointment, the appointment must be made from the remaining candidates on the list submitted by the board to the governor.

(3) If the governor fails to appoint a candidate within 30 days after receiving the list, the candidate

For committee consideration:
How long should the corrections ombuds term be?

1 ranked first shall receive the appointment.

2 (4) The person appointed as corrections ombudsmen holds the office for a term of [***] years and
3 continue to hold the office until reappointed or until a successor is appointed. The governor may only remove
4 the corrections ombudsman for neglect of duty, misconduct, or the inability to perform regular duties. A vacancy
5 must be filled using the process as described in this section for the remainder of the term.

6

7 **NEW SECTION. Section 5. Powers and duties -- reporting requirement.** (2) The corrections
8 ombudsman shall:

9 (a) establish priorities for use of the resources available to the corrections ombudsman;

10 (b) maintain a statewide telephone number, a website, and a mailing address for the receipt of
11 requests for assistance and inquiries;

12 (c) provide information, as appropriate, to inmates, family members of inmates, department
13 employees, and others regarding the rights of inmates;

14 (d) establish procedures to receive, investigate, and resolve requests for assistance;

15 (e) respond to requests for assistance regarding administrative acts or regarding unresolved
16 grievances and to investigate the circumstances surrounding and related to requests;

17 (f) periodically review department administrative acts and promote best practices and effective
18 programs by working in consultation with the department to improve procedures, practices, and programs;

19 (g) undertake, participate in, and consult with the department in activities;

20 (h) inspect department facilities and monitor compliance with applicable federal and state laws
21 related to the health, safety, welfare, and rehabilitation of inmates;

22 (i) monitor and participate in policy developments affecting correctional facilities;

23 (j) establish a statewide uniform reporting system to collect and analyze data related to requests
24 for assistance received by the corrections ombudsman; and

25 (k) establish procedures to gather stakeholder input into the office's activities and priorities, that
26 must include a 30-day period for receipt of and response to public comment.

27 (2) For the purposes of carrying out the duties of the corrections ombudsman, the corrections
28 ombudsman may:

(a) hire staff, contractors, and unpaid volunteers and secure office space, equipment, and other services necessary to carry out the duties of the corrections ombudsman. Any employee, contractor, or unpaid volunteer hired or retained by the office has the same authority and powers of the corrections ombudsman.

(b) 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 requests for assistance; and

(c) with or without prior notice, access all department facilities, upon demand in person or in writing and with or without prior notice, including all areas that are used by inmates, all areas that are accessible to inmates, and to programs for inmates at reasonable times, which at a minimum must include normal working hours and visiting hours, for purposes necessary to carry out the duties of the corrections ombudsman. This access includes:

(i) viewing, photographing, and video recording all areas of the facility that are used by inmates or are accessible to inmates;

(ii) inspecting and copying all relevant information, records, or documents in the possession or control of the department that the corrections ombudsman considers necessary in an investigation of a request for assistance; and

(iii) meeting, interviewing, and communicating privately and confidentially with facility staff and inmates, both formally and informally, by telephone, mail, electronic communication, and in person for the purposes of an investigation. These communications may not be monitored by, recorded, or conducted in the presence of department employees or contractors.

(3) Facility and other department employees are required to cooperate fully and promptly with the corrections ombudsman.

(4) In accordance with 5-11-210, the corrections ombudsman shall report annually to the governor, the legislature, the corrections ombudsman advisory board, and the law and justice interim committee. The report must be public and must contain:

(a) a summary of the corrections ombudsman's inspections and request for assistance investigations conducted in that calendar year, including the corrections ombudsman's findings and recommendations and the department's responses and any actions taken by the department to resolve or correct any problems identified as a result of the findings, conclusions, and recommendations of the corrections

1 ombudsman;

2 (b) any instance in which the department rejects a recommendation or conclusion of the
3 corrections ombudsman or any problems that have not been resolved or corrected by the department, as well
4 as the department's reasons for not addressing the corrections ombudsman's findings, conclusions, and
5 recommendations; and

6 (c) recommendations regarding, but not limited to, the following:

7 (i) how the office and the department are funded and staffed;

8 (ii) improving staff retention, training, working conditions, compensation, benefits, morale, and
9 safety;

10 (iii) improving inmate health, safety, conditions of confinement, and medical care;

11 (iv) improving visitation and administrative segregation or solitary confinement;

12 (v) improving request for assistance investigation and resolution;

13 (vi) improving access to and quality and availability of educational and rehabilitative programming,
14 drug and mental health treatment, and inmate vocational training;

15 (vii) improving transparency about conditions in the facilities and the department overall; and

16 (viii) preventing future violations of incarcerated people's rights as protected under state and federal
17 law.

18

19 **NEW SECTION. Section 6. Investigations -- procedure -- access to facilities and records.** (1) A

20 complainant may submit a request for assistance to the corrections ombudsman only after exhausting the
21 department's grievance process.

22 (2) The corrections ombudsman may not investigate a request for assistance if:

23 (a) the request for assistance is trivial, frivolous, vexatious, or not made in good faith;

24 (b) the request for assistance is too delayed to justify an investigation;

25 (c) the person requesting assistance is not personally aggrieved by the subject matter of the
26 request; or

27 (d) the request for assistance has been previously investigated by the corrections ombudsman.

28 (3) The corrections ombudsman may not investigate a request for assistance related to an

1 inmate's underlying criminal conviction.

2 (4) The corrections ombudsman may refer the complainant and others to appropriate resources or
3 state, tribal, or federal agencies.

4 (5) The corrections ombudsman may investigate a request for assistance in a matter that is being
5 or may reasonably be addressed by another remedy or channel, including a matter that is before a court.

6 (6) If the corrections ombudsman does not investigate a request for assistance, the corrections
7 ombudsman shall notify the complainant of the decision not to investigate and the reasons for the decision.

8 (7) The corrections ombudsman shall attempt to resolve any request for assistance at the lowest
9 possible level.

10 (8) The corrections ombudsman may not impose any fee for the submission or investigation of
11 requests for assistance.

12 (9) The corrections ombudsman shall remain neutral and impartial and may not act as an advocate
13 for the complainant or for the department.

14 (10) (a) After an investigation is completed, the corrections ombudsman shall provide the
15 department any findings, conclusions, and recommendations.

16 (b) The department shall inform the corrections ombudsman no later than 60 days after receipt of
17 the report on the actions the department is taking to resolve or correct any problems identified by the
18 corrections ombudsman. If the department has not resolved or corrected a problem, the department shall
19 inform the corrections ombudsman of any reasons for not addressing the corrections ombudsman's findings,
20 conclusions, and recommendations.

21 (11) (a) Following notification from the corrections ombudsman with a written demand for access to
22 department records, the designated department staff shall provide the corrections ombudsman with access to
23 the requested documentation not later than 20 days after the corrections ombudsman's written request for the
24 records.

25 (b) Where the records requested by the corrections ombudsman pertain to an inmate's death,
26 threats of bodily harm, including but not limited to sexual or physical assaults, or the denial of necessary
27 medical treatment, the records must be provided within 5 days unless the corrections ombudsman consents to
28 an extension of that timeframe.

(12) The corrections ombudsman shall work with the department to minimize disruption to the operations of the department due to corrections ombudsman activities and shall comply with the department's security clearance processes, provided these processes do not impede the activities outlined in this part.

NEW SECTION. Section 7. Retaliation prohibited. (1) It is an unlawful discriminatory practice for a state or local governmental agency to discharge, expel, blacklist, or otherwise discriminate against an individual because the individual has filed a request for assistance, testified, assisted, or participated in any manner in an investigation or proceeding under this part.

(2) Any discharge, expulsion, blacklisting, or other discrimination against a complainant may be considered by the corrections ombudsman as an appropriate subject of an investigation.

(3) An individual who believes they were discharged or otherwise discriminated against by any person in violation of this section may, within 30 days after the violation occurs, file a complaint as provided in 30-10-1105.

(2) This section is not intended to infringe on the rights of an employer to supervise, discipline, or terminate an employee for other reasons.

NEW SECTION. Section 8. Federal claims. A request for assistance or lack of request for assistance to the office or any action or lack of action by the office on a request for assistance made pursuant to this part may not be considered an administrative procedure required for exhaustion of remedies prior to bringing an action pursuant to the Prison Litigation Reform Act of 1995, 42 U.S.C. 1997e, et seq.

NEW SECTION. Section 9. Legislator access to corrections ombudsman records. (1) Records of corrections ombudsman investigations, including case notes, correspondence, and interviews, must be disclosed to a member of the legislature if:

(a) the legislator receives a written request from a person who has requested assistance from the corrections ombudsman about whether laws protecting the rights of inmates are being complied with or whether the laws need to be changed to enhance protections for the rights of inmates;

(b) the legislator submits a written request to the corrections ombudsman asking to review the

records relating to the written inquiry. The legislator's request must include a copy of the written inquiry, the name of the inmate whose records are to be reviewed, and any other information that will assist the corrections ombudsman in locating the records.

(c) before reviewing the records, the legislator:

(i) signs a form that outlines the state and federal laws regarding confidentiality and the penalties for unauthorized release of the information; and

(ii) receives from the corrections ombudsman an orientation of the content and structure of the records.

(2) (a) Except as provided in subsection (2)(b), records disclosed pursuant to this section are confidential. Records must be made available for the legislator to view but may not be copied, photographed, or otherwise replicated by the legislator, and must remain solely in the corrections ombudsman's possession. The records may be viewed at any office maintained by the corrections ombudsman.

(b) A legislator may take notes in order to discuss the records with the party who submitted the written inquiry to the legislator.

For committee consideration:
Should inspections be discretionary or required?
If required, how often?

NEW SECTION. Section 10. Inspections -- reporting requirement. (1) As authorized by [section 5], the corrections ombudsman **may** conduct inspections of each department facility that covers all matters pertinent to the welfare of staff and inmates within the facility, including but not limited to an assessment of the following:

- (a) policies and procedures in place by the facility related to the care of inmates;
- (b) conditions of confinement;
- (c) availability of educational and rehabilitative programming, drug and mental health treatment, and jobs and vocational training available to inmates;
- (d) policies and procedures related to visitation;
- (e) medical facilities and medical procedures and policies;
- (f) review of staffing at the facility, including the number and job assignments of correctional staff, the ratio of staff to incarcerated people at the facility, and the staff position vacancy rate at the facility;
- (g) review of physical and sexual assaults at the facility in the time since the last inspection;

(h) review of any staff or inmate deaths that occurred at the facility in the time since the last inspection;

(i) review of department staff recruitment, training, supervision, and discipline;

(j) review of all programming within the facility, including the type of programming available, program eligibility, and the length of the waiting list, if applicable; and

(k) any other aspect of the operation of the facility that the corrections ombudsman considers necessary over the course of an inspection.

(2) Upon completion of an inspection, the corrections ombudsman shall provide a report on the office's website, to the department, the governor, and the legislature. The report must include:

(a) a summary of the facility's policies and procedures related to the care of inmates;

(b) a characterization of the conditions of confinement;

(c) a catalogue of available educational and rehabilitative programming, drug and mental health treatment, and inmate jobs and vocational training;

(d) a summary of visitation policies and procedures;

(e) a summary of medical facilities and medical procedures and policies;

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

(g) a summary of any physical and sexual assaults reviewed by the corrections ombudsman;

(h) a summary of any staff or inmate deaths that occurred at the facility;

(i) any recommendations made to the facility to improve safety and conditions within the facility;

and

(j) recommended timeline for the next inspection.

(3) The department shall respond in writing to each inspection report issued by the corrections ombudsman within 60 days of the issuance of the report, and its response must include a corrective action plan if applicable. The corrections ombudsman shall monitor the department's compliance with the corrective action plan and may conduct further inspections or investigations as necessary to ensure the compliance.

NEW SECTION. Section 11. Confidentiality -- disclosure exceptions. (1) The office of the

corrections ombudsman shall treat all matters under investigation as confidential. Information received, collected, and maintained by the office may not be disclosed or disseminated except as provided by this part.

(2) (a) Records of the office may be disclosed to a court for in camera inspection if relevant to an issue before the court. Except as provided in subsection (2)(b), the court may permit disclosure in a proceeding if the court finds disclosure to be necessary for the fair resolution of an issue.

(b) Except as provided in [section 9], the identity of a person that contacts or files a request for assistance from the corrections ombudsman is confidential.

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

(a) department employees or contractors are not aware of the identity of a complainant before, during, or after an investigation to the greatest extent practicable. The office may disclose identifying information for the sole purpose of carrying out an investigation.

(b) other individuals in department custody are not aware of the identity of a complainant before, during, or after an investigation to the greatest extent practicable. The office may disclose identifying information for the sole purpose of carrying out an investigation.

NEW SECTION. Section 12. Privilege. The corrections ombudsman may not be compelled to testify or produce evidence in any judicial or administrative proceeding with respect to any matter involving the exercise of the corrections ombudsman's official duties, except as necessary to enforce the provisions of this part.

For committee consideration:
Appropriation to fund the implementation of this act, or
HB2 appropriation [Section 16]?

NEW SECTION. Section 13. Appropriations. (1) There is appropriated [***] from the general fund to the department of administration for the biennium beginning July 1, 2027, for the purposes of paying for the costs to carry out the provisions of [this act].

(2) The legislature intends that the appropriation in this section be considered part of the ongoing base for the next legislative session.

(3) Money from the appropriation that is not spent during the biennium must revert to the general fund.

1

2 **NEW SECTION. Section 14. Codification instruction.** (1) [Sections 1 and 2] are intended to be
3 codified as an integral part of Title 2, chapter 15, part 10, and the provisions of Title 2, chapter 15, part 10,
4 apply to [sections 1 and 2].

5 (2) [Sections 3 through 12] are intended to be codified as a new part in Title 53, chapter 1, and the
6 provisions of Title 53, chapter 1, apply to [sections 3 through 12].

7

8 **NEW SECTION. Section 15. Severability.** If a part of [this act] is invalid, all valid parts that are
9 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
10 the part remains in effect in all valid applications that are severable from the invalid applications.

11

See committee consideration on previous page

12 **NEW SECTION. Section 16. Contingent voidness.** If House Bill No. 2 does not appropriate money
13 to the department of administration for the purposes of [sections 1 through 11], then [this act] is void.

14

15 **NEW SECTION. Section 17. Effective date.** [This act] is effective July 1, 2027.

16

- END -