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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 407

Session of  
1981

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INTRODUCED BY HANKINS, REIBMAN, SMITH, LYNCH AND MESSINGER,  
FEBRUARY 24, 1981

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REFERRED TO JUDICIARY, FEBRUARY 24, 1981

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AN ACT

1 Establishing the Office of Ombudsman for Corrections and making  
2 an appropriation.

3 The General Assembly of the Commonwealth of Pennsylvania  
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the "Corrections  
7 Ombudsman Act."

8 Section 2. Legislative purpose.

9 It is the intent of the General Assembly to establish, in  
10 addition to other remedies or rights of appeal of any inmate or  
11 person affected by the actions of the Bureau of Corrections, an  
12 independent impartial office, readily available to such  
13 individuals, responsible to the General Assembly, empowered to  
14 investigate the acts of the Bureau of Corrections, the  
15 Pennsylvania Board of Probation and Parole and the Board of  
16 Pardons and to recommend appropriate changes toward the goals of  
17 safeguarding the rights of persons and of promoting higher

1 standards of competency, efficiency and justice in the  
2 administration of the laws of the Commonwealth.

3 Section 3. Definitions.

4 The following words and phrases when used in this act shall  
5 have, unless the context clearly indicates otherwise, the  
6 meanings given to them in this section:

7 "Act of an agency." Any action, decision, failure to act,  
8 omission, rule or regulation, interpretation, recommendation,  
9 policy, practice or procedure of any agency.

10 "Administrative agency" or "agency." Any division, official,  
11 or employee of the Bureau of Corrections, the Pennsylvania Board  
12 of Probation and Parole and the Board of Pardons, but does not  
13 include:

14 (1) Any court or judge.

15 (2) Any member of the Senate or House of Representatives  
16 of the Commonwealth of Pennsylvania.

17 (3) The Governor or his personal staff.

18 (4) Any instrumentality of the Federal Government of the  
19 United States.

20 (5) Any other agency of or political subdivision of the  
21 Commonwealth of Pennsylvania.

22 (6) Any official or agency established under an  
23 interstate compact.

24 Section 4. Creation of office.

25 The office of Ombudsman for Corrections is hereby  
26 established.

27 Section 5. Nomination and appointment.

28 The General Assembly shall elect the Corrections Ombudsman by  
29 a majority vote of the members of each house. A candidate or  
30 list of candidates shall be unanimously submitted by the

1 President pro tempore of the Senate, the Speaker of the House  
2 and the minority leaders of the Senate and House of  
3 Representatives.

4 Section 6. Qualifications.

5 (a) The Corrections Ombudsman shall be a person of  
6 recognized judgment, objectivity and integrity who are well  
7 equipped to analyze problems of law, administration and public  
8 policy.

9 (b) No person while serving as Corrections Ombudsman or on  
10 the staff of the Corrections Ombudsman:

11 (1) Shall be actively involved in political party  
12 activities.

13 (2) Shall be a candidate for or hold other public  
14 office, whether elective or appointive.

15 (3) Shall be engaged in any other occupation, business  
16 or profession.

17 (4) Shall remain in office after the last day of  
18 December in the year in which he reaches the age of 70 years.

19 Section 7. Term of office.

20 The Corrections Ombudsman shall serve for a term of four  
21 years and until his successor is appointed and qualified. He may  
22 be reappointed for additional terms of office.

23 Section 8. Removal and vacancy.

24 (a) The General Assembly by a vote of two-thirds of the  
25 members of each house may remove the Corrections Ombudsman from  
26 office, but only for mental or physical incapacity to perform  
27 the duties of his office for at least three months, or other  
28 grounds sufficient for removal of a judge.

29 (b) If the position of Corrections Ombudsman becomes vacant  
30 for any reason, the Deputy Corrections Ombudsman shall serve as

1 Acting Corrections Ombudsman until a Corrections Ombudsman has  
2 been appointed for a full term.

3 Section 9. Compensation.

4 The Corrections Ombudsman shall receive the same salary as  
5 the Commissioner of the Bureau of Corrections.

6 Section 10. Organization of office.

7 (a) The Corrections Ombudsman shall select, appoint and fix  
8 the compensation of a person as Deputy Corrections Ombudsman and  
9 may select, appoint and fix the compensation of such other  
10 officers and employees as he may deem necessary to discharge his  
11 responsibilities under this act. All officers and employees of  
12 his office shall serve at the Corrections Ombudsman's pleasure.

13 (b) The Corrections Ombudsman may delegate to members of his  
14 staff any of his authority, powers, or duties except this power  
15 of delegation and his duty to make any report under this act.  
16 However, the Corrections Ombudsman may authorize the Deputy  
17 Corrections Ombudsman to act in his stead during illness,  
18 absence, leave or disability.

19 (c) The Corrections Ombudsman and his staff shall be  
20 entitled to participate in any employee benefit or retirement  
21 plan available to State employees.

22 Section 11. Powers.

23 The Corrections Ombudsman shall have the following powers:

24 (1) To investigate, on complaint or on his own motion,  
25 any act of an agency without regard to its finality.

26 (2) To adopt, promulgate, amend and rescind rules and  
27 regulations required for the discharge of his duties,  
28 including procedures for receiving and processing complaints,  
29 conducting investigations, and reporting his findings, not  
30 inconsistent with this act. He may not levy any fees for the

1 submission or investigation of complaints.

2 (3) To examine the records and documents of any agency.

3 (4) To enter and inspect without notice the premises of  
4 any agency.

5 (5) To subpoena any person to appear, to give sworn  
6 testimony or to produce documentary or other evidence that is  
7 reasonably material to his inquiry.

8 (6) To undertake, participate in or cooperate with  
9 persons and agencies in such conferences, inquiries,  
10 meetings, or studies as might lead to improvements in the  
11 functioning of agencies.

12 (7) To obtain such information and make such inquiries  
13 from any agency or person as he shall require for the  
14 discharge of his duties.

15 (8) To maintain secrecy in respect to all matters and  
16 the identities of the complainants or witnesses coming before  
17 him.

18 (9) To bring suit in Commonwealth Court to enforce the  
19 provisions of this act.

20 (10) To establish and administer a budget for his  
21 office.

22 (11) To concern himself with strengthening procedures  
23 and practices which lessen the risk that objectionable  
24 administrative acts will occur.

25 Section 12. Investigation of complaints.

26 (a) The Corrections Ombudsman shall investigate any  
27 complaint alleging that an act of an agency is:

28 (1) contrary to or inconsistent with law, regulation or  
29 agency practice;

30 (2) based on mistaken facts or irrelevant

1 considerations;

2 (3) inadequately explained when reasons should have been  
3 revealed;

4 (4) inefficiently performed; or

5 (5) unreasonable, unfair, or otherwise objectionable,  
6 even though in accordance with law.

7 (b) The Corrections Ombudsman may decide not to investigate  
8 because:

9 (1) The complainant could reasonably be expected to use  
10 another remedy or channel, and then the Corrections Ombudsman  
11 shall furnish the complainant with written instructions on  
12 the procedural steps to be taken in connection with such  
13 other remedy or channel.

14 (2) The complaint is trivial, frivolous, vexatious or  
15 not made in good faith.

16 (3) The complaint has been too long delayed to justify  
17 present examination.

18 (4) His resources are insufficient for adequate  
19 investigation in which case the Corrections Ombudsman shall  
20 refer the complaint to the proper legislative committee and  
21 the Governor.

22 (c) The Corrections Ombudsman in his discretion may  
23 investigate any act of an agency not enumerated in subsection  
24 (a).

25 (d) The Corrections Ombudsman's declining to investigate a  
26 complaint shall not bar him from reviewing on his own motion  
27 acts of an agency whether or not included in the complaint.

28 Section 13. Rights of complainant; communications with  
29 complainant.

30 (a) After the Corrections Ombudsman has decided whether or

1 not to investigate a complaint, he shall suitably inform the  
2 complainant.

3 (b) The Corrections Ombudsman shall, if requested by the  
4 complainant, report the status of his investigation to the  
5 complainant.

6 (c) After investigation of a complaint, he shall suitably  
7 inform the complainant of his conclusion or recommendation and,  
8 if appropriate, any action taken or to be taken by the agency  
9 involved.

10 (d) A letter to the Corrections Ombudsman from a person held  
11 in custody, including by detention, incarceration and  
12 hospitalization, by an agency shall be forwarded immediately,  
13 unopened to the Corrections Ombudsman. A letter from the  
14 Corrections Ombudsman to such person shall be immediately  
15 delivered, unopened to the person.

16 (e) No person who files a complaint pursuant to this act  
17 shall be subject to any penalties, sanctions or restrictions in  
18 connection with his employment because of such complaint.

19 Section 14. Rights of agency.

20 (a) If the Corrections Ombudsman decides to investigate a  
21 complaint, he may, if he deems it appropriate, suitably inform  
22 the agency involved.

23 (b) Before announcing or reporting a conclusion or  
24 recommendation that criticizes or is adverse to an agency, the  
25 Corrections Ombudsman shall consult with that agency and permit  
26 the agency reasonable opportunity to reply.

27 (c) If any report that he issues criticizes or is adverse to  
28 an agency, the Corrections Ombudsman shall include any brief  
29 statement the agency may provide.

30 Section 15. Recommendations.

1 (a) If, after investigation, the Corrections Ombudsman is of  
2 the opinion that an agency should:

3 (1) consider the matter further;

4 (2) modify or cancel an act;

5 (3) alter a regulation, practice, or ruling;

6 (4) explain more fully the act in question;

7 (5) rectify an omission; or

8 (6) take any other action.

9 He shall state his recommendations and reasons therefor to the  
10 agency. If the Corrections Ombudsman so requests, the agency  
11 shall, within the time he has specified, inform him about the  
12 action taken on his recommendations or the reasons for not  
13 complying with them. After a reasonable period of time has  
14 elapsed, the Corrections Ombudsman may issue a report.

15 (b) If the Corrections Ombudsman believes that an action has  
16 been dictated by laws whose results are unfair or otherwise  
17 objectionable, and could be revised by legislative action, he  
18 shall bring to the General Assembly's and agency's notice his  
19 views concerning desirable statutory change.

20 (c) If the Corrections Ombudsman believes that any person  
21 has acted in a manner warranting criminal or disciplinary  
22 proceedings, he shall refer the matter to the appropriate  
23 authorities without notice to that person.

24 Section 16. Reports.

25 The Corrections Ombudsman may from time to time and shall  
26 annually report on his activities to the General Assembly, or  
27 any of its committees, to the public and, in his discretion, to  
28 agencies.

29 Section 17. Corrections Ombudsman's immunities.

30 (a) No proceeding, conclusion, recommendation, or report of



1 the Corrections Ombudsman or member of his staff shall be  
2 reviewable in any court.

3 (b) The Corrections Ombudsman and his staff shall have the  
4 same immunities from civil and criminal liabilities as a judge  
5 of this Commonwealth.

6 (c) The Corrections Ombudsman and his staff shall not be  
7 compelled to testify or produce evidence in any judicial or  
8 administrative proceeding with respect to any matter involving  
9 the exercise of their official duties except as may be necessary  
10 to enforce this act.

11 Section 18. Witnesses' privileges.

12 Any person required to provide information under this act  
13 shall be paid the same fees and travel allowances and accorded  
14 the same privileges and immunities, including right of  
15 assistance of counsel, as witnesses whose attendance has been  
16 required in Commonwealth Court, however, a representative of an  
17 agency during business hours shall not be entitled to such fees  
18 and allowances.

19 Section 19. Obstruction.

20 Any person who willfully obstructs or hinders the proper and  
21 lawful exercise of the Corrections Ombudsman's powers, or  
22 willfully misleads or attempts to mislead the Corrections  
23 Ombudsman in his inquiries, shall be subject to a fine of not  
24 more than \$2,500.

25 Section 20. Relation to other laws.

26 The provisions of this act are in addition to and do not in  
27 any manner limit or affect the provisions of any other enactment  
28 under which any remedy or right of appeal is provided for any  
29 person, or any procedure is provided for the inquiry into or  
30 investigation of any matter. The powers conferred on the

1 Corrections Ombudsman may be exercised notwithstanding any  
2 provision in any enactment to the effect that any administrative  
3 action shall be final or unappealable.

4 Section 21. Appropriation.

5 The sum of \$150,000, or so much thereof as may be necessary,  
6 is hereby appropriated to the Office of Ombudsman for  
7 Corrections for the fiscal year beginning July 1, 1981 for the  
8 purpose of carrying out this act.

9 Section 22. Effective date.

10 This act shall take effect July 1, 1981.