



February 8, 2023

**Testimony In SUPPORT of SB 0087 – Office of the Attorney General – Correctional Ombudsman**

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My name is Sarah Farrell, and I am a student at the American University Washington College of Law, testifying as a student-attorney on behalf of the Re-Entry Clinic in support of Senate Bill 0087. Our clinic represents men and women who have served decades in Maryland’s prisons, and we advocate for their release in circuit courts and at parole hearings. I would like to emphasize that the most important testimonies that you will read and hear today are from the people who have been directly impacted by this system. It is these realities that can best emphasize the necessity of the appointment of a Correctional Ombudsman.

Accountability is defined by Merriam-Webster’s dictionary as “the quality or state of being accountable... especially: an obligation or willingness to accept responsibility or to account for one's actions,” and the example the online page provides is “public officials lacking accountability.”<sup>1</sup> As public officials, the employees of the Department of Public Safety and Correctional Services (“DPSCS”) have an obligation to the people of Maryland to act in their best interests every day. However, as we all know, when accountability is lacking or there is no way to independently verify that the highest standards of service and treatment are being enacted, it is easier for people to fail to act or act in a way that is not only detrimental to the citizens of Maryland who are behind the bars, but also to all Maryland residents whose tax dollars are funding these institutions and paying salaries.

To correct this problem, the Correctional Ombudsman bill proposes a completely independent accountability office to make sure that Maryland residents are being treated with the humanity and dignity they deserve, and that those who are mistreating incarcerated citizens are held accountable for their dereliction of duty. The Ombudsman bill grants incarcerated citizens an avenue wholly independent of the DPSCS to bring their complaints due to ill treatment or other problematic behaviors by staff of the DPSCS to an independent office.<sup>2</sup> It will grant them the peace of mind to know their complaints are not being tossed away by a friend of the person they are complaining about; that the managing official is not, consciously or unconsciously, acting with bias in their assessment of such complaint; and that an avenue of redress is available that would lead to a timely resolution.

The DPSCS indeed has a formal process for inmate complaints currently. The Code of Maryland Regulations (“COMAR”), Title 12.02.28.05, Inmate Complaint Resolution - Overview sets out the process.<sup>3</sup> There is an informal process that can be used if an inmate wishes to resolve the issue

<sup>1</sup> “accountability,” Merriam-Webster, <https://www.merriam-webster.com/dictionary/accountability> (last updated Feb. 3, 2023).

<sup>2</sup> Proposed Senate Bill 0087.

<sup>3</sup> MD. CODE REGS. 12.02.28.05 (2023).

informally.<sup>4</sup> The formal process can be used if the informal process fails or the informal complaint is not addressed.<sup>5</sup> Furthermore, an inmate can directly proceed to the formal process to file their complaint.<sup>6</sup> This formal process includes first bringing the complaint to the managing official, appealing to the Commissioner; and if that process is not resolute, filing a complaint with the Inmate Grievance Office under COMAR 12.07.01.<sup>7</sup> The regulations grant the Commissioner the power to “limit the number of inmate complaints for which an inmate may request formal resolution under the ARP.”<sup>8</sup>

According to COMAR, an inmate has 30 days from the incident to file a formal complaint.<sup>9</sup> A staff member is then in charge of forwarding the complaint to the managing official.<sup>10</sup> The regulations do note that the managing official or facility Administrative Remedy Coordinator (“ARC”) has five days from receipt of the complaint to address the request, whether by dismissing it for being frivolous, requesting more information, or proceeding with an investigation – under what is called “preliminary review.”<sup>11</sup> If the managing official decides to take action, a response is to be provided within 30 calendar days of the filed formal complaint, “unless an extension is authorized.”<sup>12</sup> The managing official is permitted “one extension of 15 days” if they deem conditions beyond their control do not allow them to complete the request in 30 days.<sup>13</sup> If a complaint is successful, staff has 30 days to comply with the remedy ordered.<sup>14</sup> The inmate then has 30 days to file an appeal with the Commissioner after receiving a decision (or not receiving a decision within the allotted time) from the managing official.<sup>15</sup> Within five days the appeal must be preliminarily reviewed to be accepted or dismissed.<sup>16</sup> Within 30 days of the filing of the appeal, the Commissioner must respond in writing to the inmate.<sup>17</sup>

If the inmate is not satisfied with the Commissioner’s response, or the Commissioner fails to file a response within 30 days, the inmate may request a review by the Inmate Grievance Office within 30 days.<sup>18</sup> The Executive Director of the Grievance Office must perform a preliminary review of the grievance.<sup>19</sup> There is no timeline provided in COMAR for how long this can take. If the Director determines a hearing is necessary, they must notify the necessary individuals of the details of the hearing.<sup>20</sup> COMAR again does not specify a timeline here. Once the merits are decided after a hearing, if found meritorious, the judge must forward the decision to the Secretary of Public Safety and Correctional Services, who has the ability to review the judge’s decision to determine if the factual and

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> MD. CODE REGS. 12.02.28.06 (2023).

<sup>9</sup> MD. CODE REGS. 12.02.28.09 (2023).

<sup>10</sup> *Id.*

<sup>11</sup> MD. CODE REGS. 12.02.28.10 (2023).

<sup>12</sup> MD. CODE REGS. 12.02.28.12 (2023).

<sup>13</sup> *Id.*

<sup>14</sup> MD. CODE REGS. 12.02.28.13 (2023).

<sup>15</sup> MD. CODE REGS. 12.02.28.14 (2023).

<sup>16</sup> *Id.*

<sup>17</sup> MD. CODE REGS. 12.02.28.17 (2023).

<sup>18</sup> MD. CODE REGS. 12.02.28.18 (2023); MD. CODE REGS. 12.07.01.05 (2023).

<sup>19</sup> MD. CODE REGS. 12.07.01.02 (2023).

<sup>20</sup> MD. CODE REGS. 12.07.01.07 (2023).

legal findings are supported and if “the proposed remedy is appropriate.”<sup>21</sup> The Secretary has 15 days to either affirm, reverse, modify, or remand the judge’s decision, and this is considered the final decision.<sup>22</sup> This step ensures that even after an administrative judge independently reviews the complaint after a hearing, DPSCS still has the final say about grievances filed about them through the Secretary’s review and determination. Thereafter, COMAR provides the grievant further entitlement to judicial review of the final decision.<sup>23</sup>

Even if a person decides to challenge a matter outside the confines of the DPSCS after exhausting their administrative remedies, the issue that lies with further judicial review is that “[u]nder the Eleventh Amendment to the United State Constitution, a state, its agencies and departments are immune from citizen suits in federal court absent state consent or Congressional action.”<sup>24</sup> Unless a state waives immunity, correctional officers “are immune from suit for actions taken in their official capacities.”<sup>25</sup> This often leaves individuals harmed by the system very little avenue for redress.

For these reasons the presence of an Ombudsman is so critical – accountability means nothing if it is not completely independent from the very institution and people it is holding accountable. The Correctional Ombudsman bill aims to upright the many problems arising from the current ineffective process. By being totally independent from the DPSCS, acting under the Attorney General (but also independently from that office), the Ombudsman allows for an avenue of redressability for inmates that is independent of the staff members about whom they are filing grievances.<sup>26</sup> Inmates with grievances will be able to directly file them with the Ombudsman’s office, and the Ombudsman will investigate and conduct independent reviews as a response to such complaints.<sup>27</sup> Furthermore, the Division of Corrections would be restricted from interfering in any way with a complaint and will be penalized if they attempt to do so.<sup>28</sup>

The state currently has an extremely exhaustive and time-consuming process in place, that lacks complete independence until it reaches the court system; and once it does, employees of the state are protected from liability if acting in their official capacity. Furthermore, even if a resolution is enacted, the process can be so time-consuming that by the time a resolution is met after the many rounds of appeals, a situation (especially if medical) can become more severe or dire. Many of our clinic clients have expressed such frustration. As long as the DPSCS is in direct control of the grievance process available to citizens behind bars and calls the last shot, “accountability” will not be as defined – or as deserved – by the citizens of Maryland on either side of the prison walls. The Re-Entry Clinic at American University Washington College of Law supports Senate Bill 0087 to provide much needed accountability.

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<sup>21</sup> MD. CODE REGS. 12.07.01.10 (2023).

<sup>22</sup> *Id.*

<sup>23</sup> MD. CODE REGS. 12.07.01.11 (2023).

<sup>24</sup> Memorandum Opinion, *Wise v. Friday*, No. JKB-21-473, 6 (D. Md. Dec. 23, 2021), citing *Pennhurst State Sch. and Hosp. v. Halderman*, 465 U.S. 89, 100 (1984).

<sup>25</sup> Memorandum Opinion, *Wise v. Friday*, No. JKB-21-473, 6 (D. Md. Dec. 23, 2021).

<sup>26</sup> Proposed Senate Bill 0087.

<sup>27</sup> Proposed Senate Bill 0087, 6-704(A)-(B).

<sup>28</sup> Proposed Senate Bill 0087, 6-704(D), 6-708.

# ATTACHMENT 1

## Timeline of Formal Process for Inmate Complaint Resolution - COMAR Sec. 12.02.28.05

