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Re: Support for SB 134 (Office of the Department of Corrections Ombudsman)

To: Senator William Smith, Chair
Members, Maryland Senate Judicial Proceedings Committee

My name is Michele Deitch, and I direct the Prison and Jail Innovation Lab at the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin, where I also am a Distinguished Senior Lecturer. The [Prison and Jail Innovation Lab](#) (PJIL) is a national policy resource center seeking to ensure the safe and humane treatment of people in custody. PJIL also operates the [National Resource Center for Correctional Oversight \(NRCCO\)](#), which works with policymakers and advocates to improve oversight of prisons and jails. **I write in strong support of SB 134, which would establish a new corrections ombudsman's office as an essential form of independent prison oversight in Maryland.**

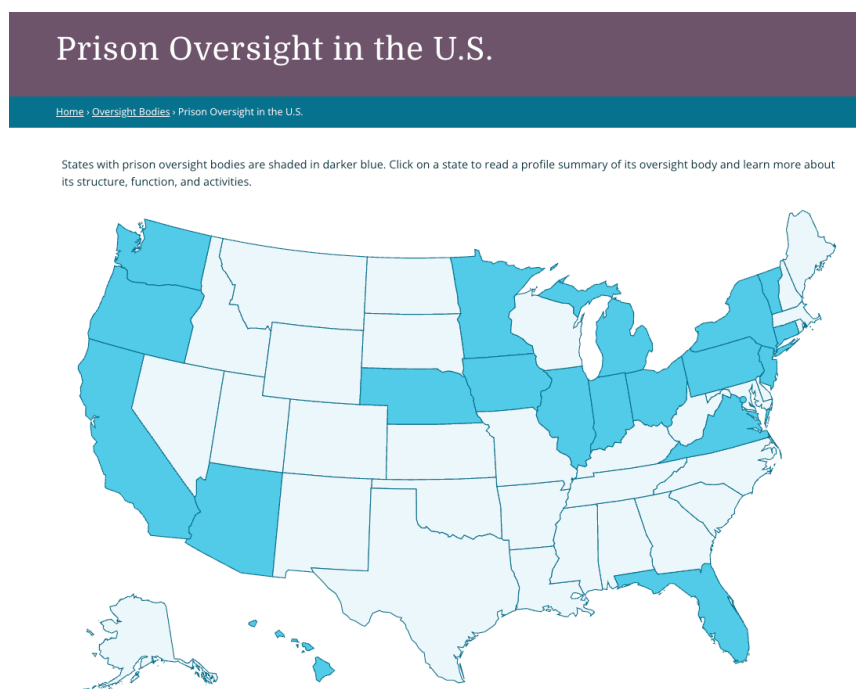
By way of background, my research and expertise are in the field of prison oversight. I have written numerous articles on this subject, including "[But Who Oversees the Overseers?: The Status of Prison and Jail Oversight in the United States](#)," and I co-chair the American Bar Association's Subcommittee on Correctional Oversight. I have also served as a federal court-appointed monitor of conditions in the Texas prison system, and I have served as General Counsel to the Texas Senate Criminal Justice Committee.

More than 35 years of working in this field have persuaded me that independent oversight is absolutely critical for the safe and humane operation of prisons. Prisons are among the most opaque institutions in our society, and the public and policymakers have very little idea what actually happens behind the razor wire fences. Insular environments like these put people in custody at risk of abuse, neglect, unsafe or inadequate conditions, poor health measures, and ineffective programming. But independent oversight of the type envisioned by this bill shines a light on what is happening behind bars, and that transparency is necessary for ensuring the safety, well-being, and rehabilitation of people who are incarcerated.

Not only does oversight like this benefit incarcerated people, it also benefits corrections officials by helping them to improve their agency, offering them objective feedback, and sharing best practices. It helps policymakers better understand how public monies are spent and gives them the information they need to exercise effective legislative oversight. It helps families of incarcerated loved ones to have a safe place to go with their concerns. And preventive inspections of facilities allow for the early identification of problems so they can be addressed before they turn into scandals or expensive lawsuits.

For this reason, the [American Bar Association has called on every jurisdiction](#) to establish an independent oversight body such as the one in SB 134 to routinely monitor conditions of confinement in prisons and to report publicly on its findings.

The United States lags far behind the rest of the Western world when it comes to correctional oversight. Every European country and most other Western nations have well-resourced prison oversight bodies that conduct routine inspections of conditions of confinement. But over the last decade or two, many states in this country have also recognized the importance of independent oversight and have established Ombudsman offices much like the one proposed in SB 134. The map below, taken from the website of the [National Resource Center for Correctional Oversight](#), shows those states that have correctional oversight offices, including Ombuds offices.



Correctional Ombuds offices were recently established in Connecticut (2022), Minnesota (2019), New Jersey (2019), and Washington State (2018), and bills to create similar offices have been filed and are progressing in numerous other state legislatures. There is tremendous momentum to create these entities as a way to better protect incarcerated people and staff, and to ensure that policymakers and the public are kept well-informed about conditions behind bars.

As someone who has studied legislation establishing these Ombudsman offices, I can state with confidence that SB 134 is a strong and thoughtful bill. It ensures that the Ombudsman has the range of powers and responsibilities needed to fulfill the objective of this office. Passage of this bill—and dedication of the appropriate level of resources for the Ombudsman’s office—will put Maryland at the forefront of states that take their responsibility seriously to operate safe and humane prisons.

There are, however, a few ways that SB 134 can be strengthened in order to better ensure the Ombudsman’s effectiveness as an oversight mechanism. Specifically, I encourage consideration of the following changes and additions:

- Include a provision that the Ombudsman cannot be removed except for good cause. Also, allow the Ombudsman to be re-appointed for a second term, to avoid a lame duck situation.
- Section 6-903 (B) should include a provision about any qualifications to be appointed as Ombudsman, and should, at a minimum, include a conflict of interest provision saying that neither the person appointed nor a family member can have worked for the corrections agency for a period of, say, at least 10 years.
- Include a provision that the Ombudsman can conduct confidential interviews with incarcerated people and staff, and that communications between the Ombudsman and incarcerated people are confidential and privileged. (Section 6-904 (E) only references “complaints” as being confidential, and the requirement of confidentiality only applies to the Ombudsman’s inability to reveal information.)
- Include a provision saying that the agency can’t retaliate against incarcerated people for making complaints or cooperating with the Ombudsman.
- Section 6-904 (A)(2) should make clear that the Ombudsman can and should be assessing systemic issues affecting the treatment and safety of incarcerated people (including, for example, issues such as use of force and violence). Indicate that the list of systemic issues in that section is not meant to be an exclusive list of what the Ombudsman can review.

- Include a provision indicating that the Ombudsman should be responsible for maintaining a public-facing database of key metrics about safety issues (e.g., use of force; assaults; sexual assaults; deaths; etc.) and that the agency is responsible for providing the Ombudsman with that data.
- Change Section 6-904 (B)(1) so that the presumption is that the Ombudsman does NOT have to investigate all complaints and can set up a system for prioritizing which complaints to handle. As written, there is a default requirement that the Ombudsman will investigate all complaints unless certain conditions are met. Individual complaints can overwhelm an office and limit the Ombudsman's ability to conduct systemic reviews.
- Include a provision clarifying that an incarcerated person need not seek nor receive review of a complaint by the Ombudsman's office in order to be considered to have exhausted administrative review of the complaint for purposes of filing a civil rights lawsuit.
- Section 6-905 (A) should broaden the requirement of reporting by the Ombudsman beyond reports of investigations to also include reports of inspections and assessments.

I appreciate the hard work that Senator Hettleman has put into this bill, and I offer my strongest possible support for its passage. Thank you for your consideration.



Michele Deitch
Director, Prison and Jail Innovation Lab