

MARYLAND ALLIANCE FOR JUSTICE REFORM

Working to end unnecessary incarceration and build strong, safe communities



Testimony In SUPPORT of SB 0134 – Correctional Ombudsman Before the Senate Judicial Proceedings February 7, 2024

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Transparency and accountability are hallmark to the efficient operation of many forms of government systems. The daily administration and operation of our corrections facilities should be no different and the walls built to keep detainees confined should not also be used to keep constituents and government officials out. There are several reasons why The Maryland Alliance for Justice Reform has proposed and SUPPORTS this bill establishing of the Correctional Ombudsman Office.

As a volunteer, I chair the Behind the Walls Workgroup for MAJR and we receive numerous correspondences from individuals detained in Maryland's prisons sharing personal experiences and complaints about critical problems such as the lack of proper medical care; limited or no access to mental health services; the abrupt disruption of rehabilitation programs and educational services; and the overuse of solitary confinement. All of these issues should be addressed urgently before they balloon and become systemic issues. Having been involved in prison litigation for years, I am keenly aware that class action lawsuits and even individual prison litigation can be costly and time consuming. The Prison Litigation Reform Act (PLRA) has made litigation even more challenging for prisoners to pursue.¹ Even before an individual considers filing litigation they must first exhaust their administrative remedies. The Administrative Remedy Procedures are spelled out in COMAR 12.02.28.1 However, many individuals behind bars repeatedly experience that the ARP process is ineffective and their written grievances are discarded and rarely resolve issues. If the APR coordinator is out on leave their complaints go unresolved, or they get dismissed at the first stage for procedural reasons. Many of the men and women fear retribution because the staff member being complained about is often the person who the written grievance must go through to reach the grievance office. Regular monitoring and reporting by a correctional ombudsman allows for early detection of problems and addressing them in lieu of waiting for months to complete the ARP process.²

¹ The Prison Litigation Reform Act (PLRA), 42 U.S.C. Section 1997e, was passed in Congress in 1996, makes it harder for prisoners to file lawsuits in federal courts. The Act requires courts to dismiss civil right cases for minor technical reasons before reaching the merits of the case, requires the payment of filing fees, caps attorneys fees and requires exhaustion and that individuals prove unlawfully inflicted physical injury. See *Slamming the Courthouse Door: 25 years of evidence for repealing the Prison Litigation Reform Act*, Prison Policy Initiative, April 26, 2021 by Fenster & Schlanger.

² Code of Maryland Regulations, Title 12. Department of Public Safety and Correctional Services, Administrative Remedy Procedures to Resolve Inmate Complaints

The entire community is impacted when oversight fails and avenues for redress are limited. It is clear that maintaining family connections during incarceration fosters healthy relationships and helps to maintain the family unit, it enhances the well-being of the individual who is incarcerated and it facilitates their post-release success. It also serves to maintain peaceful operations within the institutions. However, self-help programs designed to engage family members like Family Day often get discontinued randomly, without advance notice or explanation and family members get banned, turned away and are treated like criminal suspects during social visits. Volunteers and family members should be treated with respect and have an avenue to complain without fear of reprisal, which is one essential element in this bill. Volunteers have kept many of the limited programs afloat even during the pandemic. They should not be made to feel unwelcome and the value that they bring to institutional operations must be recognized.

The Correctional Ombudsman would also provide an opportunity for staff to confidentially share their concerns about past incidents and about emerging problems, and to highlight those aspects of prison operations that are working well. Having an external, independent oversight can be effective and positively impact the overall facility operations for both staff and the incarcerated population alike. Per State regulation³ the Maryland Commission on Correctional Standards sets the minimum mandatory standards applicable to security and inmate control, safety, food services, housing and sanitation, classification and administrative record keeping. They are required to publish annual reports. The last report published and made available to the public is dated 2022⁴. In the summary of this report it is noted that the Commission implemented the remote audit process where the facility provided compliance documentation and preaudit packet for remote review by auditors.

The bill outlines the authority of the Correctional Ombudsman to Investigate administrative acts; conduct independent reviews and assessments; inspect facilities unannounced; seek to resolve complaints through mediation or conflict resolution; and maintain a website and provide reports.

Many states have enacted legislative authority creating a correctional ombuds office throughout the country. They enhance transparency and help resolve issues at early stages. Most importantly, the American Bar Association policy on oversight calls on every state to create similar oversight.⁵ This Correctional Ombudsman office would be enhanced by the support of the community-based advisory committee made up of a broad range of individuals, to include returning citizens.

The Correctional Ombudsman bill is designed to meet what the ABA calls for. Without a system of external oversight there are few ways to determine if Department of Public Safety and Correctional Services priorities and mission are consistent with actual practice. We urge a favorable report.

³ See Correctional Services Article, Section 8-114, Annotated Code of Maryland (2017 Replacement Volume and 2022 Supplement).

⁴ See Maryland Department of Public Safety and Correctional Services, Maryland Commission on Correctional Standards, 2022 Annual Report.

⁵ See ABA Report to the House of Delegates, Monitoring Correctional and Detention Facilities, January 2018.