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HOUSE BILL NO. 2325

Offered January 22, 2021

A *BILL to amend the Code of Virginia by adding in Chapter 1 of Title 53.1 an article numbered 4, consisting of sections numbered 53.1-17.2 through 53.1-17.10, relating to the creation of the Office of the Department of Corrections Ombudsman.*

Patrons—Hope, Kory, Levine, Adams, D.M., Aird, Bagby, Carr, Cole, J.G., Helmer, Jones, Keam, McQuinn, Plum, Price, Rasoul, Reid, Simon, Simonds and Tyler; Senators: Ebbin and McClellan

Referred to Committee on Public Safety

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 1 of Title 53.1 an article numbered 4, consisting of sections numbered 53.1-17.2 through 53.1-17.10 as follows:

*Article 4.**Office of the Department of Corrections Ombudsman.***§ 53.1-17.2. Office of the Department of Corrections Ombudsman; powers and duties.**

A. *There is created an Office of the Department of Corrections Ombudsman (the Office). The Office shall have the following duties and powers:*

1. *To provide information, as appropriate, to inmates, family members, representatives of inmates, Department employees and contractors, and others regarding the rights of inmates;*

2. *To monitor conditions of confinement and assess compliance with applicable federal, state, and local rules, regulations, policies, and best practices as related to the health, safety, welfare, and rehabilitation of inmates;*

3. *To provide technical assistance to support inmate participation in self-advocacy;*

4. *To provide technical assistance to local governments in the creation of correctional facility oversight bodies, as requested;*

5. *To establish a statewide uniform reporting system to collect and analyze data related to complaints received by the Department, and data related to (i) deaths, suicides, and suicide attempts in custody; (ii) physical and sexual assaults in custody; (iii) the number of inmates placed in solitary confinement; (iv) the number of facility lockdowns lasting longer than 24 hours; (v) the number of staff vacancies at each facility; (vi) the inmate-to-staff ratios at each facility; (vii) staff tenure, turnover, and compensation; (viii) numbers of in-person visits to inmates that were made and denied at each facility; (ix) the number of inmate complaints or grievances submitted to the Department, the resolution of such complaints or grievances, and how long it took to resolve each complaint or grievance; and (x) any covered issue as defined in § 53.1-17.9.*

6. *To establish procedures to gather stakeholder input into the Office's activities and priorities, which shall include, at a minimum, an annual 30-day period for receipt of and Office response to public comment;*

7. *To inspect each state correctional facility at least once every two years and at least once every year for any maximum security facility and any facility where the Office has found cause for more frequent inspection or monitoring;*

8. *To issue publicly periodic facility inspection reports and an annual report with recommendations on the state correctional facilities and a summary of data and recommendations arising from any complaints investigated and resolved pursuant to this article, and any other thematic reports covering any topic the Office finds relevant to maintaining a safe, secure, and humane Department;*

9. *To monitor, document, review, and report any capital improvements needed for Department facilities, including the budget and expenditures needed for such improvements; and*

10. *To review, monitor, and report on the administrative remedy process of the Department, including the availability of any complaint and grievance forms at Department facilities, the accessibility of the remedy process to inmates and their representatives at each facility, and the timely, unbiased resolution of complaints or grievances by the Department.*

B. *The Office shall be directed by a Department of Corrections Ombudsman who shall be selected by the Corrections Oversight Committee (the Committee), established pursuant to § 53.1-17.3. The Ombudsman shall serve a term of six years and during such term the Ombudsman shall be removed only by the Governor or by a majority vote of all members of the Committee for good cause. Such Ombudsman shall not serve more than two consecutive terms. Any partial term less than six years long shall be considered a full term. Neither the Ombudsman nor the Ombudsman's spouse or domestic partner, parents, grandparents, children, or siblings shall be a current or former employee or contractor*

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58 of the Department. The Ombudsman shall have the authority to (i) hire staff, contractors, and unpaid
59 volunteers; (ii) secure office space, equipment, and other services necessary to carry out the duties of
60 the Office pursuant to this section; and (iii) contract with experts as necessary to assist in the
61 monitoring and inspection of facilities, the assessment of data, and the review, investigation, or
62 resolution of complaints.

63 C. For the purposes of this section, "good cause" means the violation of a state or federal law,
64 public corruption, fraud, dereliction of duty, or abuse of office.

65 D. The Department of Corrections shall, subject to the provisions of § 53.1-17.5, (i) attend each
66 hearing conducted by the Committee and provide any testimony, documents, data, or information
67 requested by Committee members; (ii) meet once each quarter with the members of the Committee, the
68 Governor, and the Director to report on the work and findings of the Office; and (iii) provide testimony
69 before the relevant committees of the General Assembly upon request from any committee chairman or
70 vice-chairman.

71 **§ 53.1-17.3. Corrections Oversight Committee; membership; authority.**

72 A. There is created a Corrections Oversight Committee (the Committee) that shall consist of the
73 following 11 members: (i) two members of the Senate who are not members of the same political party,
74 one of whom shall be appointed by the President of the Senate and the other of whom shall be
75 appointed by the Senate Minority Leader; (ii) two members of the House of Delegates who are not
76 members of the same political party, one of whom shall be appointed by the Speaker and the other of
77 whom shall be appointed by the House Minority Leader; and (iii) the following members to be
78 appointed by the Governor: (a) one representative of a prisoner advocacy group, (b) one representative
79 of an organization that provides training or rehabilitation programs for incarcerated inmates, (c) two
80 citizens who were formerly incarcerated within the Commonwealth, (d) one licensed physician, (e) one
81 licensed mental health or behavioral health professional with experience providing mental health or
82 counseling services to adults, and (f) one person who is a grandparent, parent, child, sibling, or spouse
83 or domestic partner of a person currently incarcerated within the Commonwealth.

84 B. Members appointed pursuant to this section shall serve a term of three years. Neither a member
85 nor a member's spouse or domestic partner, parents, grandparents, children, or siblings shall be a
86 current or former employee or contractor of the Department at any time during the 10 years prior to
87 his appointment to the Committee. Members of the Committee shall not serve more than three
88 consecutive terms. The Committee shall be co-chaired by two members appointed pursuant to subsection
89 A who are not members of the same chamber of the legislature or of the same political party. A
90 co-chairman shall serve a term of three years and shall not serve more than two consecutive terms. The
91 Committee co-chairmen shall be selected by the leaders of their respective political parties in the House
92 of Delegates and the Senate. All members of the Committee shall have the power to vote on matters and
93 actions before the Committee. Matters and actions of the Committee shall be decided pursuant to a
94 majority vote of the voting members present. To vote on actions or matters before the Committee, a
95 quorum must exist, which shall include the Committee co-chairmen and seven of the other voting
96 members.

97 C. The Committee shall meet whenever there is a vacancy in the ombudsman position, or as the
98 co-chairmen deem necessary, or on the call of a majority of the members.

99 D. Pursuant to §§ 2.2-2813 and 2.2-2825, committee members are not eligible to receive
100 compensation but are eligible for reimbursement of expenses.

101 E. The Committee shall announce the ombudsman nominee publicly and shall vote to appoint the
102 nominee after holding a public hearing, during which the Committee shall hear and consider oral or
103 written testimony from the ombudsman nominee, any witnesses the ombudsman nominee presents on his
104 behalf, and any members of the public. The ombudsman shall take office upon a majority vote of the
105 Committee in his favor. To vote on the appointment of the ombudsman, a quorum must exist. A quorum
106 shall include all legislative members and at least five of the Committee's nonlegislative members.

107 F. The Committee shall hold at least one public hearing each year to present, review, and discuss
108 the Office's inspections, findings, reports, and recommendations set forth in the Office's annual report,
109 and shall hold quarterly public hearings to present, review, and discuss any other data, reports, or
110 findings of the Office that the Committee feels are relevant.

111 G. The Committee co-chairmen shall meet at least twice each year with the Governor and the
112 Director to report on the work and findings of the Committee and to provide testimony before the
113 relevant committees of the House of Delegates and Senate, upon request from the committee chairman
114 or vice-chairman or ranking member.

115 H. The Committee shall have the power to issue a subpoena to the Department for records,
116 documents, or data in the possession of the Department, and for Department employees, contractors, or
117 representatives to appear and testify before the Committee. Subpoenas so issued shall be served and,
118 upon application to the court by the Committee, enforced in the manner provided by law for the service
119 and enforcement of subpoenas in a civil action.

§ 53.1-17.4. Access to facilities and records.

A. The Office shall have reasonable access, upon demand in person or in writing and with or without prior notice, to all Department facilities, 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 shall include normal working and visiting hours. This authority includes the opportunity to conduct an interview with any inmate, Department employee or contractor, or other person. This access is to (i) provide information about individual rights and the services available from the Office, including the name, address, and telephone number of the Office facilities or staff; (ii) conduct official inspections as defined in § 53.1-17.6; (iii) conduct an official investigation as provided in § 53.1-17.7; and (iv) inspect, view, photograph, and record by video all areas of the facility that are used by inmates or are accessible to inmates.

B. Access to inmates includes the opportunity to meet and communicate privately and confidentially with individuals regularly, with or without prior notice, both formally and informally, by telephone, mail, and electronic communication, and in person. In the case of communications with inmates, these communications shall not be monitored by, recorded, or conducted in the presence of employees or contractors of the Department. Meetings with inmates may be recorded by members of the Office at their discretion and with the inmate's consent. Any such recordings are subject to the provisions of § 53.1-17.5.

C. The Office shall have the right to access, inspect, and copy all relevant information, records, or documents in the possession or control of the Department that the Office considers necessary in an investigation of a complaint filed under this article, and the Department shall assist the Office in obtaining the necessary releases for those documents that are specifically restricted or privileged for use by the Office.

D. Access to Department employees or contractors includes the opportunity to meet and communicate privately and confidentially with individuals during inspections or normal working hours, with or without prior notice, both formally and informally, by telephone, mail, and electronic communication, and in person. Meetings with Department employees or contractors may be recorded by members of the Office at their discretion and with the individual's consent.

E. The Office shall have the power to issue a subpoena to the Department for records, documents, or data in the Department's possession, and for Department staff, contractors, or representatives to appear and provide information to the Office. Subpoenas so issued shall be served, and, upon application to the court by the Office, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

F. Following notification from the Office of a written demand for access to Department records, the designated Department staff shall provide the Office with access to the requested documentation not later than 20 days after receipt of the written request. If the records requested pertain to (i) an inmate death; (ii) threats of bodily harm, including sexual or physical assaults; or (iii) the denial of necessary medical treatment, the records shall be provided within five days unless the Office consents to an extension.

G. The Office shall work with the Department to minimize disruption to operations of the Department due to an investigation by the Office. The Office shall comply with the Department security processes, provided these processes do not impede the investigation or resulting activities of the Office.

§ 53.1-17.5. Communications; confidentiality.

A. Any correspondence or communication with the Office as provided by this article shall be confidential.

B. The Office shall establish rules and procedures to guarantee the confidentiality of such information gathered and maintained by the Office. The Office shall not reveal to (i) Department employees or contractors or (ii) other inmates, the identity of a complainant before, during, or after an investigation to the greatest extent practicable, except as is necessary to effectively carry out an investigation.

§ 53.1-17.6. Inspection authority; inspection and assessment; report; safety and compliance classification.

A. The Office shall conduct periodic inspections of each facility maintained by the Department. The initial inspection of each individual facility shall be conducted by June 30, 2023, and a public report detailing the Office's findings shall be released. Subsequent inspections of each facility shall be conducted on a staggered schedule depending upon the safety and compliance classification of the facility.

B. An inspection of any facility shall include an assessment of the following:

1. Any policies and procedures related to the care of inmates;
2. Conditions of confinement;
3. Availability of educational and rehabilitative programming, drug and mental health treatment, and

181 inmate jobs and vocational training;

182 4. Any policies and procedures related to visitation;

183 5. Any medical facilities and medical policies and procedures;

184 6. Any lockdowns at the facility in the time since the last audit or, in the instance of the initial
185 inspection, any lockdowns at the facility within the previous three years;

186 7. Staffing at the facility, including the number of staff, job assignments, the ratio of staff to inmates,
187 and the number of staff vacancies;

188 8. Physical or sexual assaults at the facility in the time since the last inspection or, in the instance of
189 the initial inspection, any physical and sexual assaults within the previous three years;

190 9. Inmate or staff deaths at the facility in the time since the last inspection or, in the instance of the
191 initial inspection, any inmate or staff deaths within the previous three years;

192 10. Any policies and procedures related to Department staff recruitment, training, supervision, and
193 discipline;

194 11. Availability of complaint and grievance forms at a facility, and the accessibility of the
195 administrative remedies process to inmates and their representatives; and

196 12. Any other aspect of the operation of the facility that the Office determines is necessary to assess
197 or that relates to covered issues.

198 C. Upon completion of an inspection, the Office shall produce a report to be made available to the
199 public online and to be delivered to the Governor, the Attorney General, the Senate Committee on the
200 Judiciary, the House Committee for Courts of Justice, and the Director. The report shall include a
201 summary of all the factors listed in subsection B, as well as any recommendations and a safety and
202 compliance classification with a recommended timeline for the next inspection.

203 D. The levels of classification shall be as follows:

204 1. A Tier I classification means that the facility presents clear violations of rights, risks to the safety
205 of inmates, or severe lack of quality programming necessary for the successful rehabilitation of
206 individuals. Such classification shall require a subsequent inspection within 12 months.

207 2. A Tier II classification means that the facility may have violations of rights, substandard
208 conditions of confinement, or substandard programming options. Such classification shall require a
209 subsequent inspection within 18 to 36 months.

210 3. A Tier III classification means that the facility has adequate conditions of confinement and
211 programming options. Such classification shall require a subsequent inspection within 36 months.

212 E. The Department shall respond in writing to each inspection report issued by the Office within 20
213 days of the issuance of the report and in its response shall include a corrective action plan. The Office
214 shall monitor the Department's compliance with the corrective action plan and may conduct further
215 inspections or investigations as necessary to ensure such compliance.

216 **§ 53.1-17.7. Authority to investigate complaints.**

217 A. The Office may initiate and attempt to resolve an investigation upon its own initiative, or upon
218 receipt of a complaint from an inmate, family member, a representative of an inmate, a Department
219 employee or contractor, or others, regarding (i) abuse or neglect; (ii) conditions of confinement; (iii)
220 decisions or administrative actions by the Department; (iv) inactions or omissions of the Department;
221 (v) Department policies, rules, or procedures; or (vi) alleged violations of law by Department employees
222 or contractors that may adversely affect the health, safety, welfare, and rights of inmates.

223 B. The Office may decline to investigate any complaint. The Office shall inform an inmate that the
224 inmate is entitled to use the Department's policies regarding resolution of inmate grievances and shall
225 provide information and a complete set of forms to the inmate to complete the resolution of inmate
226 grievances. The Department shall toll any procedural deadlines for filing a grievance, and the
227 administrative remedy process timeframe shall not begin until five business days after the inmate
228 received the information and forms from the Office by inmate legal mail process. The Office shall
229 decline to investigate a complaint if the inmate has failed to first use the Department's policies
230 regarding resolution of inmate grievances, unless the inmate provides evidence that the complaint is
231 legitimate and the inmate made a good faith attempt to exhaust the administrative remedy process and
232 was impeded or procedurally defaulted by no fault of his own. If the Office finds that inmates repeatedly
233 assert their inability to utilize the administrative remedy process despite their good faith efforts, the
234 Office may conduct an unannounced inspection of the facility in question to determine whether the
235 facility is making the administrative process and grievance forms accessible to inmates.

236 C. The Office shall not investigate any complaints relating to an inmate's underlying criminal
237 conviction. The Office may refer the complainant and others to the appropriate resources or state or
238 federal agencies.

239 D. The Office may not levy any fees for the submission or investigation of complaints.

240 E. Notwithstanding the provisions of § 53.1-17.5, at the conclusion of an investigation, the Office
241 shall render a public decision on the merits of each complaint. The Office shall communicate the
242 decision to the complainant and to the Department. The Office shall state its recommendations and

reasoning if the Office determines that the Department, or any employee or contractor thereof, should (i) consider the matter further; (ii) modify or cancel any action; (iii) alter a rule, practice, or ruling; (iv) explain in detail the administrative action in question; or (v) rectify an omission. Upon request of the Office, the Department shall inform the Office in writing about any action taken on the recommendations or the reasons for not complying with such recommendations.

F. If the Office believes that there has been or continues to be a significant issue with inmate health, safety, welfare, or rehabilitation, the Office shall report the finding to the Governor, the Attorney General, the Senate Committee on the Judiciary, the House Committee for Courts of Justice, the Committee, and the Director.

G. In the event that the Department conducts its own internal disciplinary investigation and review of one or more staff members as a result of the investigation of the Office, such disciplinary investigation and review may be subject to additional investigation and review by the Office to ensure a fair and objective process.

H. Prior to announcing a conclusion or recommendation, the Office shall consult with the Department or any person individually named in the conclusion or recommendation. The Office may request to be notified, within a specified time, by the Department of any action taken on any recommendation presented.

I. The Department and any employees or contractors thereof shall not discharge, retaliate against, or in any manner discriminate against any person because such person has filed any complaint or instituted or caused to be instituted any proceeding pursuant to this article. Any alleged discharge, retaliation against, or discrimination against a complainant may be considered by the Office as an appropriate subject for investigation.

§ 53.1-17.8. Annual report.

A. The Office shall produce an annual report to be made available to the public online and to be delivered to the Governor, the Attorney General, the Senate Committee on the Judiciary, the House Committee for Courts of Justice, the Committee, and the Director by December 31 of each year. The report shall include:

1. A summary of the Office's inspections and complaint investigations conducted that calendar year, including the Office's findings and recommendations and the Department responses and corrective actions;

2. A characterization of the conditions of confinement at each facility;

3. A summary of available educational and rehabilitative programming, drug and mental health treatment, and inmate jobs and vocational training at each facility;

4. A summary of visitation policies and procedures at each facility;

5. A summary of medical facilities and medical policies and procedures at each facility;

6. A summary of the lockdowns reviewed by the Office;

7. A summary of staffing at each facility;

8. A summary of physical or sexual assaults reviewed by the Office;

9. A summary of any inmate or staff deaths that occurred at each facility;

10. A summary of the Office's investigations, findings, and resolutions of any complaints submitted pursuant to § 53.1-17.7; and

11. Any recommendations to the General Assembly and the Department.

B. If the Office so requests, the Department shall, within the time specified, inform the Office in writing about any action taken on the recommendations included in the annual report or the reasons for not complying with such recommendations.

§ 53.1-17.9. Inmate and family support services.

A. For the purposes of this section, "family member" means a grandparent, parent, sibling, spouse or domestic partner, child, aunt, uncle, cousin, niece, nephew, grandchild, or any other person related by blood, adoption, marriage, or a fostering relationship.

B. For the purposes of this section, "covered issues" include (i) sanitation in correctional facilities; (ii) access to proper nutrition and clean and adequate water supplies; (iii) habitable temperatures in correctional facilities; (iv) physical or sexual abuse from fellow inmates; (v) physical or sexual abuse from staff; (vi) credible threats against self from other inmates, staff, or contractors; (vii) neglect of staff or contractors that results in physical or sexual trauma; (viii) denial or violation of rights; (ix) access to visitation and communication with family and legal representation; (x) access to medical or mental health care or substance abuse treatment; (xi) access to educational and rehabilitative programming, drug and mental health treatment, and inmate jobs and vocational training; (xii) access to the Department's administrative remedies process for inmates and their representatives, including the availability of complaint and grievance forms and the timely, unbiased resolution of grievances; (xiii) adequate and qualified staffing in each Department facility; and (xiv) capital improvements or repairs needed to Department facilities.

304 C. The Office shall create a secure online Family Advocacy and Support Services Online Form (the
305 Family Form) to be made available on the Office's website wherein family members, friends, and
306 advocates can submit complaints and inquiries regarding covered issues on behalf of an inmate
307 incarcerated in a Department facility. Upon receipt of the Family Form, the Office shall (i) confirm
308 receipt of such Family Form within five business days and (ii) make a determination and notify the
309 complainant as to whether an investigation is warranted within seven business days of such confirmation
310 of receipt. If the Office determines that an investigation is unwarranted, the Office shall provide to the
311 complainant a written statement regarding its decision.

312 D. The Office shall create a telephone hotline (the Family Hotline) through which family members,
313 friends, and advocates can call to file complaints and inquiries regarding covered issues on behalf of an
314 inmate incarcerated in a Department facility. Upon receipt of a complaint or inquiry through the Family
315 Hotline, the Office shall (i) confirm receipt of such complaint or inquiry within five business days and
316 (ii) make a determination and notify the complainant as to whether an investigation is warranted within
317 seven business days of such confirmation of receipt. If the Office determines that an investigation is
318 unwarranted, the Office shall provide to the complainant a written statement regarding its decision.

319 E. The Office shall create a secure online "Inmate Advocacy Online Form" (the Inmate Form) for
320 use by inmates to report concerns or complaints to the Office. The electronic Inmate Form shall be
321 made available and accessible to inmates from 7:00 a.m. to 7:00 p.m. each day, on at least 10
322 computers in each Department facility. The Office shall create the Inmate Form in a secure format that
323 excludes any electronic monitoring or reproduction by the Department and Department employees or
324 contractors. Paper copies of the Inmate Form shall also be made available, in adequate numbers and at
325 no cost to inmates, in every Department facility's library, law library, and recreational and medical
326 facilities. Paper copies of the Inmate Form shall be provided to inmates upon request to a Department
327 employee or contractor, including when the inmate is in administrative segregation or solitary
328 confinement. Department employees and contractors must treat paper copies of the Inmate Form as
329 confidential and privileged in the same manner as legal correspondence or communication. Paper
330 copies of the Inmate Form will have a pre-addressed envelope for the inmate to seal the contents of the
331 Inmate Form and once sealed by the inmate shall not be opened or otherwise damaged by a Department
332 employee or contractor. The Department shall accept the paper form and envelope sealed by the inmate
333 and shall not require inspection of the contents prior to forwarding the paper form and envelope to the
334 Office.

335 F. The Office shall create a secure telephone hotline (the Inmate Hotline) to be made available to all
336 Department inmates, employees, and contractors to file complaints and inquiries regarding covered
337 issues. The Director shall ensure that the Inmate Hotline and its use are made available to all inmates
338 free of charge. The Office and Director shall guarantee that calls to the Inmate Hotline are confidential
339 and are not monitored or recorded. Upon receipt of a complaint or inquiry through the Inmate Hotline,
340 the Office shall (i) confirm receipt of such complaint or inquiry within five business days and (ii) make
341 a determination and notify the complainant as to whether an investigation is warranted within seven
342 business days of such confirmation of receipt. If the Office determines that an investigation is
343 unwarranted, the Office shall provide to the complainant a written statement regarding its decision. The
344 Office shall ensure that the Inmate Hotline is properly working and maintained by conducting random
345 monthly calls to the hotline.

346 G. The provisions of subsection I of § 53.1-17.7 shall apply to complaints or inquiries made pursuant
347 to this section.

348 **§ 53.1-17.10. Exhaustion of remedies.**

349 Any action or lack of action by the Office on a complaint made pursuant to this article shall not be
350 deemed an administrative procedure required for exhaustion of remedies before bringing an action
351 pursuant to 42 U.S.C. § 1997(e).