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SENATE BILL NO. 994

Senate Amendments in [] - February 6, 2023

Prefiled January 6, 2023

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 Office of the Department of Corrections Ombudsman; created.*

Patrons Prior to Engrossment—Senators Marsden and Boysko; Delegates: Hope and Kory

Referred to Committee on Rehabilitation and Social Services

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; 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 (the Ombudsman) who shall be selected by the Corrections Oversight Committee (the Committee), established pursuant to § 53.1-17.3. The Committee shall select an Ombudsman who has training or experience in criminal law, including any experience with local or state correctional law, and shall consider his history of judgment, independence, objectivity, and integrity. 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 voting members of the Committee for good cause. Such Ombudsman shall not serve more than two*

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59 consecutive terms. Any partial term of fewer than six years shall be considered a full term. Neither the
60 Ombudsman nor the Ombudsman's spouse or domestic partner, parents, grandparents, children, or
61 siblings shall be a current or former employee or contractor of the Department. The Ombudsman shall
62 have the authority to (i) hire staff, contractors, and unpaid volunteers; (ii) secure office space,
63 equipment, and other services necessary to carry out the duties of the Office pursuant to this article;
64 and (iii) contract with experts as necessary to assist in the monitoring and inspection of facilities, the
65 assessment of data, and the review, investigation, or resolution of complaints. A staff member or
66 volunteer hired by the Ombudsman shall have the same authority and duties of the Office as described
67 in this article. A staff member or volunteer hired by the Ombudsman shall not be (a) a person with a
68 family member who is a current inmate of the Department, (b) a person with a family member who is a
69 current employee or contractor of the Department, (c) a current employee or contractor of the
70 Department, or (d) a victim or a family member of a victim of a crime committed by an inmate
71 currently in the custody of the Department.

72 C. The Office shall be allotted the following support staff: up to 11 total assistant ombudsmen to
73 assist with grievances, investigations, communications, inspections, and reports; two technical support
74 staff members; and three staff members within the Department of Corrections to assist with matters
75 related to human resources and data collection.

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

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

83 **§ 53.1-17.3. Corrections Oversight Committee; membership; authority.**

84 A. There is created a Corrections Oversight Committee (the Committee) that shall consist of 13
85 voting members and two nonvoting members. Such voting members shall be appointed as follows: (i)
86 two members of the Senate who are not members of the same political party, one of whom shall be
87 appointed by the President of the Senate and one of whom shall be appointed by the Senate Minority
88 Leader; (ii) two members of the House of Delegates who are not members of the same political party,
89 one of whom shall be appointed by the Speaker of the House of Delegates and one of whom shall be
90 appointed by the House Minority Leader; and (iii) the following nonlegislative citizen members to be
91 appointed by the Governor: (a) one representative of a nonprofit prisoner advocacy group, (b) one
92 representative of a nonprofit organization that provides training or rehabilitation programs for
93 incarcerated inmates, (c) one male citizen and one female citizen who were formerly incarcerated within
94 the Commonwealth for a term of imprisonment of three years or more within the 10 years immediately
95 preceding his appointment provided that such citizens have had their civil rights restored by the
96 Governor, (d) one licensed physician, (e) one licensed mental health or behavioral health professional
97 with experience providing mental health or counseling services to adults, (f) one person who is a
98 grandparent, parent, child, sibling, or spouse or domestic partner of a person currently incarcerated
99 within the Commonwealth and who is serving a term of incarceration of three years or more, (g) one
100 current or former Department correctional officer in a supervisory role [selected from an association of
101 correctional officers and employees or a nonprofit organization in which he is a member], and (h) one
102 current or former Department line correctional officer [selected from an association of correctional
103 officers and employees or a nonprofit organization in which he is a member]. The two nonvoting
104 members shall serve in an advisory role and shall consist of two current or former employees of the
105 Department, a state correctional facility outside of the Commonwealth, or a federal correctional facility
106 who served in such role within the 10 years immediately prior to appointment. Upon the request of an
107 inmate, an inmate's family member or representative, or a Department staff member, employee, or
108 contractor who believes he may be the subject of retaliation for providing testimony or other
109 information to the Office or the Committee, such nonvoting members shall be excluded from any
110 investigations, inspections, interviews, receipt of testimony, or review of documents by the Office or the
111 Committee with regard to the requester.

112 B. Members appointed pursuant to this section shall serve a term of three years. Except as provided
113 in subsection A, a member nor a member's spouse or domestic partner, parents, grandparents, children,
114 or siblings shall be a current or former employee or contractor of the Department at any time during
115 the 10 years prior to his appointment to the Committee. Members of the Committee shall not serve more
116 than three consecutive terms. The Committee shall be co-chaired by two legislative members appointed
117 pursuant to subsection A who are not members of the same chamber of the legislature or of the same
118 political party. A co-chairman shall serve a term of three years and shall not serve more than two
119 consecutive terms. The Committee co-chairmen shall be selected by the leaders of their respective
120 political parties in the House of Delegates and the Senate. Except as provided in subsection A, all

members of the Committee shall have the power to vote on matters and actions before the Committee. Matters and actions of the Committee shall be decided pursuant to a majority vote of the voting members present. To vote on actions or matters before the Committee, a quorum must exist, which shall include the Committee co-chairmen and five of the other voting members.

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

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

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

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

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

H. Upon a majority vote of its voting members, the Committee shall have the power to issue a subpoena to the Department for records, documents, or data in the possession of the Department, with the exception of confidential employee files and active internal affairs investigations, and for Department employees, contractors, or representatives to appear and testify before the Committee. Department employees may have counsel present during testimony. Subpoenas so issued shall be served and, upon application to the court by the Committee, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

I. The Committee shall conduct, at a minimum, two random inspections of a facility each year and shall visit a different facility upon each inspection. All members of the Committee may be present during each inspection and shall not announce an inspection to any individual or entity outside of the Committee before such inspection occurs. During the course of an inspection, members of the Committee shall have the same access to the facility, inmates, staff, documents, and records in accordance with § 53.1-17.4 and shall have the same powers as granted to the Office for an inspection pursuant to § 53.1-17.6.

§ 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, with the exception of confidential employee files and active internal affairs investigations, 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.

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

187 *E. The Office shall have the power to issue a subpoena to the Department for records, documents, or*
188 *data in the Department's possession, and for Department staff, contractors, or representatives to appear*
189 *and provide information to the Office. Subpoenas so issued shall be served, and, upon application to the*
190 *court by the Office, enforced in the manner provided by law for the service and enforcement of*
191 *subpoenas in a civil action. Department employees may have counsel [or a representative from their*
192 *employee organization] present during testimony.*

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

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

202 **§ 53.1-17.5. Communications; confidentiality.**

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

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

210 **§ 53.1-17.6. Inspection authority; inspection and assessment; report; safety and compliance**
211 **classification.**

212 *A. The Office shall conduct periodic inspections of each facility maintained by the Department. The*
213 *initial inspection of each individual facility shall be conducted by July 1, 2024, and a public report*
214 *detailing the Office's findings shall be released. Subsequent inspections of each facility shall be*
215 *conducted on a staggered schedule depending upon the safety and compliance classification of the*
216 *facility.*

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

218 *1. Any policies and procedures related to the care of inmates;*

219 *2. Conditions of confinement;*

220 *3. Availability of educational and rehabilitative programming, drug and mental health treatment, and*
221 *inmate jobs and vocational training;*

222 *4. Any policies and procedures related to visitation;*

223 *5. Any medical facilities and medical policies and procedures;*

224 *6. Any lockdowns at the facility in the time since the last inspection or, in the instance of the initial*
225 *inspection, any lockdowns at the facility within the previous three years;*

226 *7. Staffing at the facility, including the number of staff, job assignments, the ratio of staff to inmates,*
227 *and the number of staff vacancies;*

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

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

232 *10. Any policies and procedures related to Department staff recruitment, training, supervision, and*
233 *discipline;*

234 *11. Availability of complaint and grievance forms at a facility and the accessibility of the*
235 *administrative remedies process to inmates and their representatives; and*

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

238 *C. Upon completion of an inspection, the Office shall produce a report to be made available to the*
239 *public online and to be delivered to the Governor, the Attorney General, the Senate Committee on the*
240 *Judiciary, the House Committee on Public Safety, and the Director. The report shall include a summary*
241 *of all the factors listed in subsection B, as well as any recommendations and a safety and compliance*
242 *classification with a recommended timeline for the next inspection.*

243 *D. The levels of classification shall be as follows:*

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

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

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

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

F. Nothing in this section shall be construed to limit the ability of the Office or members of the Committee to enter and inspect a Department facility at any time, with or without advance notice, as described in §§ 53.1-17.3 and 53.1-17.4.

§ 53.1-17.7. Authority to investigate complaints.

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

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

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

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

E. Notwithstanding the provisions of § 53.1-17.5, at the conclusion of an investigation, the Office shall render a public decision on the merits of each complaint. The Office shall communicate the 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 on Public Safety, 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.

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

310 **§ 53.1-17.8. Annual report.**

311 *A. The Office shall produce an annual report to be made available to the public online and to be*
312 *delivered to the Governor, the Attorney General, the Senate Committee on the Judiciary, the House*
313 *Committee on Public Safety, the Committee, and the Director by December 31 of each year. The report*
314 *shall include:*

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

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

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

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

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

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

324 *7. A summary of staffing at each facility;*

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

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

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

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

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

333 **§ 53.1-17.9. Inmate and family support services.**

334 *A. For the purposes of this section, "family member" means a grandparent, parent, sibling, spouse or*
335 *domestic partner, child, parent's sibling, cousin, sibling's child, grandchild, or any other person related*
336 *by blood, adoption, marriage, or a fostering relationship.*

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

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

357 *D. The Office shall create a family telephone hotline through which family members, friends, and*
358 *advocates can call to file complaints and inquiries regarding covered issues on behalf of an inmate*
359 *incarcerated in a Department facility. Upon receipt of a complaint or inquiry through the family*
360 *telephone hotline, the Office shall (i) confirm receipt of such complaint or inquiry within five business*
361 *days and (ii) make a determination and notify the complainant as to whether an investigation is*
362 *warranted within seven business days of such confirmation of receipt. If the Office determines that an*
363 *investigation is unwarranted, the Office shall provide to the complainant a written statement regarding*
364 *its decision.*

365 *E. The Office shall create a secure online Inmate Advocacy Online Form (the Inmate Form) for use*
366 *by inmates to report concerns or complaints to the Office. The electronic Inmate Form shall be made*

available and accessible to inmates from 7:00 a.m. to 7:00 p.m. each day, on at least 10 computers in each Department facility, and on any electronic tablets or other electronic computing devices that inmates are permitted to possess, use, or access. The Office shall create the Inmate Form in a secure format that excludes any electronic monitoring or reproduction by the Department and Department employees or contractors. Paper copies of the Inmate Form shall also be made available, in adequate numbers and at no cost to inmates, in every Department facility's library, law library, and recreational and medical facilities. Paper copies of the Inmate Form shall be provided to inmates upon request to a Department employee or contractor, including when the inmate is in administrative segregation or solitary confinement. Department employees and contractors must treat paper copies of the Inmate Form as confidential and privileged in the same manner as legal correspondence or communication. Paper copies of the Inmate Form will have a pre-addressed envelope for the inmate to seal the contents of the Inmate Form and once sealed by the inmate shall not be opened or otherwise damaged by a Department employee or contractor. The Department shall accept the paper form and envelope sealed by the inmate and shall not require inspection of the contents prior to forwarding the paper form and envelope to the Office.

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

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

§ 53.1-17.10. Exhaustion of remedies.

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

[2. That the provisions of this act shall not become effective unless an appropriation effectuating the purposes of this act is included in a general appropriation act passed in 2023 by the General Assembly that becomes law.]