

ASSEMBLY, No. 5755

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MAY 12, 2021

Sponsored by:

Assemblywoman YVONNE LOPEZ

District 19 (Middlesex)

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District 7 (Burlington)

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District 7 (Burlington)

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Assemblywomen Vainieri Huttle and Lampitt

SYNOPSIS

Requires Corrections Ombudsperson review criminal investigations under certain circumstances.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/21/2021)

A5755 LOPEZ, CONAWAY

2

1 AN ACT concerning the Corrections Ombudsperson and amending
2 P.L.2005, c.155 and P.L.2019, c.288.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 28 of P.L.2005, c.155 (C.52:27EE-28) is amended to
8 read as follows:

9 28. Corrections Ombudsperson; duties.

10 a. The Corrections Ombudsperson shall establish and
11 implement procedures for eliciting, receiving, processing,
12 responding, and resolving complaints from inmates, their families,
13 other interested citizens, public officials, and government agencies
14 concerning conditions in the correctional facilities noted in section
15 27 of P.L.2005, c.155 (C.52:27EE-27).

16 b. To implement the provisions of P.L.2019, c.288, the
17 ombudsperson shall:

18 (1) establish priorities for use of the resources available to the
19 ombudsperson;

20 (2) maintain a Statewide toll-free telephone number, a collect
21 telephone number, a website, and a mailing address for the receipt
22 of complaints and inquiries;

23 (3) provide information, as appropriate, to inmates, family
24 members and representatives of inmates, department employees,
25 and others regarding the rights of inmates;

26 (4) provide technical assistance to support inmate participation
27 in self-advocacy;

28 (5) monitor compliance with applicable federal, State, county,
29 and municipal laws, rules, regulations, and policies related to the
30 health, safety, welfare, and rehabilitation of inmates;

31 (6) monitor and participate in legislative and policy
32 developments affecting correctional facilities;

33 (7) establish a Statewide uniform reporting system to collect and
34 analyze data related to complaints received by the ombudsperson
35 regarding the department;

36 (8) establish procedures to receive, investigate, and resolve
37 complaints;

38 (9) establish procedures to gather stakeholder input into the
39 ombudsperson's activities and priorities, which shall include
40 holding public meetings at least quarterly;

41 (10) by November 1st of each year, annually submit to the
42 Governor's office and the Legislature, and make publicly available,
43 a report that is both aggregated and disaggregated by each facility
44 and includes, at a minimum, the following information:

45 (a) the budget and expenditures of the ombudsperson;

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

- 1 (b) the number of complaints received and resolved by the
2 ombudsperson;
- 3 (c) a description of significant systemic or individual
4 investigations or outcomes achieved by the ombudsperson in the
5 preceding year;
- 6 (d) any outstanding or unresolved concerns or recommendations
7 of the ombudsperson; and
- 8 (e) input and comments from stakeholders regarding the
9 ombudsperson's activities during the preceding year.
- 10 (11) promote awareness among department employees, inmates,
11 and family members and other members of the public regarding:
- 12 (a) how the Office of Corrections Ombudsperson may be
13 contacted;
- 14 (b) the purpose of the office; and
- 15 (c) the services provided by the office.
- 16 (12) provide assistance to an inmate or family member whom the
17 ombudsperson determines is in need of assistance, including
18 advocating with an agency, provider, or other person in the best
19 interests of the inmate;
- 20 (13) make appropriate referrals under any of the powers and
21 duties of the office, including to appropriate law enforcement
22 authorities when criminal complaints by inmates are received by the
23 office;
- 24 (14) attend any relevant training provided to correctional
25 officers and participate in other appropriate professional training;
- 26 (15) notwithstanding any other provision of law to the contrary,
27 review criminal investigations to ensure the investigations were
28 accurate, unbiased, and thorough **【without investigating alleged**
29 **criminal behavior】**; and
- 30 (16) adopt and comply with rules, policies, and procedures
31 necessary to implement the provisions of P.L.2019, c.288.
32 (cf: P.L.2019, c.288, s.7)

33
34 2. Section 8 of P.L.2019, c.288 (C.52:27EE-28.1) is amended
35 to read as follows:

36 8. The corrections ombudsperson shall conduct investigations
37 of inmate complaints in accordance with the provisions of this
38 section.

39 a. The ombudsperson may initiate and attempt to resolve an
40 investigation upon the ombudsperson's own initiative, or upon
41 receipt of a complaint from an inmate, a family member, a
42 representative of an inmate, a department employee, or any other
43 person, including but not limited to any of the following that may
44 adversely affect the health, safety, welfare, or rights of inmates:

- 45 (1) abuse or neglect;
- 46 (2) department decisions or administrative actions;
- 47 (3) inactions or omissions;
- 48 (4) policies, rules, or procedures; **【or】**

1 (5) alleged violations of law by the department that may
2 adversely affect the health, safety, welfare, or rights of inmates; or

3 (6) whether a criminal investigation was accurate, unbiased, and
4 thorough.

5 b. If the ombudsperson does not investigate a complaint, the
6 ombudsperson shall notify the complainant of the decision not to
7 investigate and the reasons for the decision.

8 c. The ombudsperson shall not investigate any complaints
9 relating to an inmate's underlying criminal conviction.

10 d. The ombudsperson shall not investigate a complaint from a
11 department employee that relates to the employee's employment
12 relationship with the department or the administration of the
13 department, unless the complaint is related to the health, safety,
14 welfare, and rehabilitation of inmates.

15 e. The ombudsperson shall attempt to resolve any complaint at
16 the lowest possible level.

17 f. The ombudsperson may refer complainants and others to
18 appropriate resources, agencies, or departments.

19 g. The ombudsperson shall not impose any fee for the
20 submission or investigation of complaints.

21 h. The ombudsperson shall remain neutral and impartial and
22 shall not act as an advocate for the complainant or for the
23 department.

24 i. At the conclusion of an investigation of a complaint, the
25 ombudsperson shall render a public decision on the merits of each
26 complaint, except that the documents supporting the decision are
27 subject to relevant confidentiality provisions. The ombudsperson
28 shall communicate the decision to the inmate, if appropriate, and to
29 the department. The ombudsperson shall state its recommendations
30 and reasoning if, in the ombudsperson's opinion, the department or
31 any employee should:

32 (1) further consider the matter;

33 (2) modify or cancel any action;

34 (3) alter a rule, practice, or ruling;

35 (4) explain in detail the administrative action in question; or

36 (5) rectify an omission.

37 j. At the ombudsperson's request, the department shall, within
38 the time specified, inform the ombudsperson about any action taken
39 on the recommendations or the reasons for not complying with the
40 recommendations.

41 k. If the ombudsperson concludes, based on the investigation,
42 that there has been, or continues to be, a significant issue regarding
43 an inmate's health, safety, welfare, or rehabilitation, the
44 ombudsperson shall report the finding to the Governor and the
45 Legislature.

46 l. Before announcing a conclusion or recommendation that
47 expressly, or by implication, criticizes a person or the department,
48 the ombudsperson shall consult with that person or the department.

1 The ombudsperson may request to be notified by the department,
2 within a specified time, of any action taken on any recommendation
3 presented. The ombudsperson shall notify the inmate, if appropriate,
4 of the actions taken by the department in response to the
5 ombudsperson's recommendations.

6 m. The ombudsperson shall make available to inmates
7 confidential means by which to report concerns or otherwise submit
8 complaints to the ombudsperson, which may include electronic
9 means or a locked box, accessible only by the ombudsperson and
10 the employees of the ombudsperson. All measures shall be taken to
11 ensure there is no risk or credible fear of retaliation against inmates
12 for submitting complaints to the ombudsperson.

13 n. Submission of complaints to the ombudsperson shall not be
14 part of the department administrative grievance or appeal process,
15 and the ombudsperson's decisions shall not constitute agency
16 action. Nothing in this section shall be deemed to constitute part of
17 the administrative exhaustion process. The ombudsperson shall not
18 require inmates to file grievances or other inquiries as part of the
19 department's system to be considered ripe for review by the
20 ombudsperson.

21 o. Regarding the inspection, examination, or assessment of a
22 criminal investigation by the ombudsperson, the ombudsperson
23 shall provide information to the inmate who submitted the
24 complaint regarding the status of the inspection, examination, or
25 assessment and the estimated timeframe for completing the
26 inspection, examination, or assessment.

27 (cf: P.L.2019, c.288, s.8)

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29 3. Section 9 of P.L.2019, c.288 (C.52:27EE-28.2) is amended
30 to read as follows:

31 9. The corrections ombudsperson shall conduct inspections of
32 State correctional facilities in accordance with the provisions of this
33 section.

34 a. The ombudsperson shall conduct regular inspections of all
35 department facilities and issue public reports of all inspections.

36 b. Except for ongoing criminal investigations, [Prison Rape
37 Elimination Act (PREA) investigations, or other information,
38 records, or investigations deemed confidential by the Special
39 Investigations Division of the department, and with the exception of
40 Special Investigations Division evidence rooms,] the ombudsperson
41 may inspect, examine, or assess all aspects of a facility's operations
42 and conditions including, but not limited to:

43 (1) staff recruitment, training, supervision, and discipline;

44 (2) inmate deaths or serious injuries;

45 (3) incidences of physical and sexual assault;

46 (4) medical and mental-health care;

47 (5) use of force;

48 (6) inmate violence;

- 1 (7) conditions of confinement;
- 2 (8) inmate disciplinary processes;
- 3 (9) inmate grievance processes;
- 4 (10) substance-abuse treatment;
- 5 (11) educational, vocational, and other programming;
- 6 (12) family visitation and communication practices; **[and]**
- 7 (13) rehabilitation, reentry, and integration practices; and
- 8 (14) criminal investigations.

9 c. Except as provided in subsection b. of this section, the
10 ombudsperson shall utilize a range of methods to gather and
11 substantiate facts, including observations, interviews with inmates,
12 inmate surveys, document and record reviews, reports, statistics,
13 and performance-based outcome measures.

14 d. Facility and other governmental officials are authorized and
15 shall be required to cooperate fully and promptly with inspections.

16 e. Except as provided in subsection b. of this section, the
17 ombudsperson shall be vested with the authority to conduct both
18 scheduled and unannounced inspections of any part or all of the
19 facility at any time. The ombudsperson shall adopt procedures to
20 ensure that unannounced inspections are conducted in a reasonable
21 manner.

22 f. Facility administrators shall be provided an opportunity to
23 review reports and provide feedback about them to the
24 ombudsperson before their dissemination to the public, but the
25 release of the reports is not subject to approval from any entity or
26 person outside the office.

27 g. Reports shall apply legal requirements, best correctional
28 practices, and other criteria to objectively and accurately review and
29 assess a facility's policies, procedures, programs, and practices;
30 identify systemic problems and the reasons for them; and proffer
31 possible solutions to those problems.

32 h. Subject to reasonable privacy and security requirements, or
33 as may be necessary to protect the safety or privacy of persons or
34 the safe, secure, and orderly operation of State correctional
35 facilities, as determined by the department or the Special
36 Investigations Division, the ombudsperson's reports shall be public,
37 accessible through the Internet, and distributed to the media,
38 Legislature, Attorney General, and Governor.

39 i. Facility administrators shall publicly respond to monitoring
40 reports; develop and implement in a timely fashion action plans to
41 rectify problems identified in those reports; and to semi-annually
42 inform the public of their progress in implementing these action
43 plans.

44 j. The ombudsperson shall continue to assess and report on
45 previously identified problems and the progress made in resolving
46 them until the problems are resolved.

47 k. Except as provided in subsection b. of this section, in order
48 to determine whether a criminal investigation conducted by the

1 department or the Special Investigations Division was accurate,
2 unbiased, and thorough, the ombudsperson shall inspect, examine,
3 and analyze all aspects of the criminal investigation including, but
4 not limited to:

5 (1) the manner in which the investigation was conducted and
6 whether the investigation adhered to best practices and appropriate
7 standards;

8 (2) evidence contained in the investigatory file; and

9 (3) any other information contained in the investigatory file
10 deemed appropriate by the ombudsperson.

11 (cf: P.L.2019, c.288, s.9)

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13 4. This act shall take effect on the first day of the seventh
14 month next following enactment.

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STATEMENT

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19 This bill requires the Corrections Ombudsperson to review
20 criminal investigations under certain circumstances to ensure the
21 investigation was accurate, unbiased, and thorough.

22 Under the bill, in order to determine whether a criminal
23 investigation conducted by the Department of Corrections or the
24 Special Investigations Division was accurate, unbiased, and
25 thorough, the ombudsperson is required to inspect, examine, and
26 analyze all aspects of the criminal investigation including, but not
27 limited to:

28 • the manner in which the investigation was conducted and
29 whether the investigation adhered to best practices and
30 appropriate standards;

31 • evidence contained in the investigatory file; and

32 • any other information contained in the investigatory file
33 deemed appropriate by the ombudsperson.

34 The bill provides an exception for ongoing investigations.

35 Under current law, the ombudsperson is prohibited from
36 inspecting, examining, or assessing Prison Rape Elimination Act
37 investigations; other information, records, or investigations deemed
38 confidential by the Special Investigations Division of the
39 department; and the Special Investigations evidence room. This bill
40 eliminates these prohibitions.

41 Finally, under the bill, the ombudsperson is required to provide
42 information to the inmate who submitted the complaint regarding
43 the status of the inspection, examination, or assessment of the
44 criminal investigation and an estimate for when the inspection,
45 examination, or assessment will be complete.