

SENATE BILL NO. 378

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR MOSLEY.

0049S.01I

KRISTINA MARTIN, Secretary

AN ACT

To amend chapter 217, RSMo, by adding thereto five new sections relating to the oversight of department of corrections facilities.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 217, RSMo, is amended by adding thereto five new sections, to be known as sections 217.950, 217.955, 217.960, 217.965, and 217.970, to read as follows:

217.950. As used in sections 217.955 to 217.970, the following terms mean:

(1) "Department", the department of corrections;

(2) "Family member", includes a grandparent, parent, sibling, spouse or domestic partner, child, aunt, uncle, cousin, niece, nephew, grandchild, or any other person related to an individual by blood, adoption, marriage, or a fostering relationship;

(3) "Office", the office of the state ombudsman for inmates in the custody of the department of corrections;

(4) "Ombudsman", the state ombudsman for inmates in the custody of the department of corrections.

217.955. 1. There is hereby established within the department of corrections the "Office of State Ombudsman for Inmates in the Custody of the Department of Corrections", for the purpose of helping to assure the adequacy of care received by inmates and to improve the quality of life experienced by them.

7 2. The office shall be administered by the state
8 ombudsman, who shall devote his or her entire time to the
9 duties of his or her position.

10 3. The office shall establish and implement procedures
11 for receiving, processing, responding to, and resolving
12 complaints made by or on behalf of inmates in the custody of
13 the department of corrections relating to action, inaction,
14 or decisions of department staff or contractors which may
15 adversely affect the health, safety, welfare, or rights of
16 such inmates.

17 4. The office shall establish and implement procedures
18 for the resolution of complaints. The ombudsman or
19 representatives of the office shall have the authority to:

20 (1) Provide information, as appropriate, to inmates,
21 family members of inmates, representatives of inmates,
22 department of corrections employees and contractors, and
23 others regarding the rights of inmates;

24 (2) Monitor conditions of confinement and assess
25 department of corrections compliance with applicable
26 federal, state, and department rules and regulations as
27 related to the health, safety, welfare, and rehabilitation
28 of inmates;

29 (3) Provide technical assistance to support inmate
30 participation in self-advocacy;

31 (4) Establish a statewide uniform reporting system to
32 collect and analyze data related to complaints received by
33 the department, and data related to the following:

34 (a) Deaths, suicides, and suicide attempts in custody;

35 (b) Physical and sexual assaults in custody;

36 (c) Number of people placed in administrative
37 segregation or solitary confinement, and duration of stay in
38 such confinement;

39 (d) Number of facility lockdowns lasting longer than
40 twenty-four hours;

41 (e) Number of staff vacancies at each facility;

42 (f) Inmate to staff ratios at each facility;

43 (g) Staff tenure and turnover; and

44 (h) Numbers of in-person visits to inmates that were
45 made and denied at each facility;

46 (5) Inspect each department facility at least once
47 each year and at least two times each year for each maximum
48 security facility and each facility where the office has
49 found cause for more frequent inspection or monitoring;

50 (6) Publicly issue annual facility inspection reports
51 and an annual report with recommendations on the department
52 facilities and a summary of data and recommendations arising
53 from any complaints investigated and resolved pursuant to
54 section 217.965;

55 (7) Monitor all decisions of the parole board.

56 5. The office shall be directed by an ombudsman, who
57 shall be appointed by the governor, and shall serve a term
58 of six years. The ombudsman shall not be a current or
59 former employee or contractor of the department, and the
60 ombudsman's spouse or domestic partner, parents,
61 grandparents, children, or siblings shall not be a current
62 employee or contractor of the department.

63 6. The ombudsman shall have the authority to hire
64 staff, contractors, and unpaid volunteers.

65 7. (1) The office shall have reasonable access, upon
66 demand in-person or in-writing and with or without prior
67 notice, to all department facilities, including all areas
68 which are used by inmates, all areas which are accessible to
69 inmates, and to programs for inmates at reasonable times,
70 which at a minimum shall include normal working hours and

71 visiting hours. This authority includes the opportunity to
72 conduct an interview with any inmate, department employee or
73 contractor, or other person.

74 (2) The office shall have the authority to meet and
75 communicate privately and confidentially with individuals
76 regularly, both formally and informally, by telephone, mail,
77 electronic communication, and in-person.

78 (3) The office shall have the authority to access,
79 inspect, and copy all relevant information, records, or
80 documents in the possession or control of the department
81 that the office considers necessary in an investigation of a
82 complaint filed pursuant to section 217.970, and the
83 department shall assist the office in obtaining the
84 necessary releases for those documents which are
85 specifically restricted or privileged for use by the office
86 no later than thirty days after the office's written request
87 for such records. If the records requested by the office
88 pertain to an inmate death, threat of death or bodily harm,
89 sexual assault, or the denial of necessary medical
90 treatment, the records shall be provided by the department
91 within five days unless the office consents to an extension
92 of time no longer than thirty days.

93 8. The office shall establish confidentiality rules
94 and procedures for all information maintained by the office
95 to ensure that the identity of a complainant is not known to
96 department employees or contractors or other inmates. The
97 office may disclose identifying information for the sole
98 purpose of carrying out an investigation.

217.960. 1. As used in this section, "covered issues"
2 shall mean:

3 (1) Sanitation in prison facilities;

4 (2) Access to proper nutrition and a clean and
5 adequate water supply;

6 (3) Livable temperatures in prison facilities;

7 (4) Physical or sexual abuse from fellow inmates;

8 (5) Physical or sexual abuse from department of
9 corrections staff or contractors;

10 (6) Credible threats against an inmate from other
11 inmates, prison staff, or contractors;

12 (7) Neglect of prison staff or contractors that
13 results in physical or sexual trauma;

14 (8) Denial of rights afforded to inmates under federal
15 or state law;

16 (9) Access to visitation and communication with family
17 and legal representation;

18 (10) Any instance in which the office determines an
19 action or behavior to be such that it constitutes abuse or
20 neglect against an inmate.

21 2. The office shall conduct at least one inspection
22 each year of each department of corrections facility and at
23 least two times each year for each maximum security facility
24 to monitor the status of all covered issues pursuant to this
25 section. The office shall conduct an inspection of each
26 department facility and release a public report pursuant to
27 section 217.965.

28 3. An inspection of a department facility shall
29 include an assessment of all of the following:

30 (1) All policies and procedures in place by the
31 facility related to the care of inmates;

32 (2) Conditions of confinement;

33 (3) Availability of educational and rehabilitative
34 programming, drug and mental health treatment, and inmate
35 jobs and vocational training;

- 36 (4) Review of hourly wages of inmates;
- 37 (5) All policies and procedures related to visitation;
- 38 (6) All medical facilities and medical procedures and
39 policies;
- 40 (7) Review of lockdowns at the facility in the time
41 since the last inspection;
- 42 (8) Review of staffing at the facility, including the
43 number and job assignments of correctional staff, the ratio
44 of staff to inmates at the facility, and the staff position
45 vacancy rate at the facility;
- 46 (9) Review of physical and sexual assaults at the
47 facility in the time since the last inspection;
- 48 (10) Review of any inmate or staff deaths that
49 occurred at the facility in the time since the last
50 inspection;
- 51 (11) Review of the department staff recruitment,
52 training, supervision, and discipline; and
- 53 (12) Any other aspect of the operation of the facility
54 that the office deems necessary over the course of an
55 inspection.

217.965. 1. Upon completion of an inspection, the
2 office shall produce a report to be made available to the
3 public on the office's website, and to be delivered to the
4 governor, the attorney general, the president pro tempore of
5 the senate, the speaker of the house of representatives, and
6 the director of the department. The report shall include:

- 7 (1) A summary of the facility's policies and
8 procedures related to care of the inmates;
- 9 (2) A characterization of the conditions of
10 confinement;

- 11 (3) A catalogue of available educational and
12 rehabilitative programming, drug and mental health
13 treatment, and inmate jobs and vocational training;
- 14 (4) A summary of visitation policies and procedures;
- 15 (5) A summary of medical facilities and medical
16 procedures and policies;
- 17 (6) A summary of the lockdowns review by the office;
- 18 (7) A summary of the staffing at the facility,
19 including policies relating to staff recruitment, training,
20 supervision, and discipline;
- 21 (8) A summary of physical and sexual assaults reviewed
22 by the office;
- 23 (9) A summary of any inmate or staff deaths that
24 occurred at the facility; and
- 25 (10) Recommendations made to the facility to improve
26 safety and conditions within the facility.
- 27 2. The department shall submit a report to the office
28 within thirty days of the office's inspection report which
29 shall include a corrective action plan for each
30 recommendation of the office.
- 217.970. 1. The office may initiate and attempt to
2 resolve an investigation upon its own initiative, or upon
3 receipt of a complaint from an inmate, family member,
4 representative of an inmate, a department employee or
5 contractor, or others, regarding any of the following that
6 may adversely affect the health, safety, welfare, and rights
7 of inmates:
- 8 (1) Abuse or neglect;
- 9 (2) Conditions of confinement;
- 10 (3) Department decisions or administrative actions;
- 11 (4) Department inactions or omissions;
- 12 (5) Department policies, rules, or procedures;

13 (6) Alleged violations of law by department employees
14 or contractors that may adversely affect the health, safety,
15 welfare, and rights of inmates; or

16 (7) Decisions of the parole board.

17 2. The office shall decline to investigate a complaint
18 if the inmate has failed to first utilize the department
19 policies and procedures regarding resolution of inmate
20 grievances. If the office does not investigate a complaint,
21 the office shall notify the complainant in writing of the
22 decision not to investigate and the reasons for the decision.

23 3. Any action or lack of action on a complaint by the
24 office shall not be deemed an administrative procedure
25 required for exhaustion of remedies prior to bringing an
26 action pursuant to the Prison Litigation Reform Act, 42
27 U.S.C. Section 1997e, et seq.

28 4. The office may not investigate any complaints
29 relating to an inmate's underlying criminal conviction.

30 5. The office may not investigate a complaint from a
31 department employee or contractor that relates to the
32 employee or contractor's employment relationship with the
33 department unless the complaint is related to the health,
34 safety, welfare, and rehabilitation of inmates.

35 6. The office may refer the complainant and others to
36 appropriate resources or state, tribal, or federal agencies.

37 7. The office may not levy any fees for the submission
38 or investigation of complaints.

39 8. The office may investigate any complaint regarding
40 a parole decision.

41 9. At the conclusion of an investigation of a
42 complaint, the office shall render a public decision on the
43 merits of each complaint within ninety days of the filing of
44 the complaint, except that the documents supporting the

45 decision are subject to the confidentiality provision of
46 section 217.955. The office shall give a decision in
47 writing to the inmate, if any, and to the department. The
48 office shall state its recommendations and reasoning if, in
49 the office's opinion, the department or any employee or
50 contractor thereof should:

- 51 (1) Consider the matter further;
- 52 (2) Modify or cancel any action;
- 53 (3) Alter a rule, practice, or ruling;
- 54 (4) Explain in detail the administrative action in
55 question; or
- 56 (5) Rectify an omission.

57 10. If the office so requests, the department shall,
58 within thirty days, inform the office in writing about any
59 action taken on the recommendations or the reasons for not
60 complying with the recommendations.

61 11. If the office finds, based on the investigation,
62 that there has been or continues to be a significant inmate
63 health, safety, welfare, or rehabilitation issue, the office
64 shall report such finding to the governor, the attorney
65 general, the president pro tempore of the senate, speaker of
66 the house of representatives, and the director of the
67 department of corrections.

68 12. In the event that the department conducts an
69 internal disciplinary investigation and review of one or
70 more of its staff members as a result of an office
71 investigation, the department's disciplinary review may be
72 subject to additional review and investigation by the office
73 to ensure a fair and objective process.

74 13. The department and its employees and contractors
75 shall not discharge, retaliate against, or in any manner
76 discriminate against any person because such person has

77 filed any complaint or instituted or caused to be instituted
78 any investigation under section 217.970.

79 (1) Any alleged discharge of, retaliation against, or
80 discrimination against a complainant may be considered by
81 the office as an appropriate subject of an investigation.

82 (2) Any department employee or contractor who believes
83 that he or she has been discharged or otherwise retaliated
84 against by any person in violation of this chapter may,
85 within thirty days after such violation occurs, file a
86 complaint with the attorney general.

87 (3) If the complainant has suffered abuse or any other
88 violation of this chapter after he or she filed a complaint,
89 there shall be a rebuttable presumption of retaliation.

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