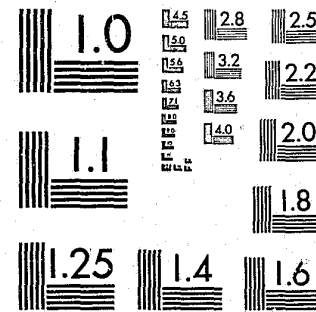


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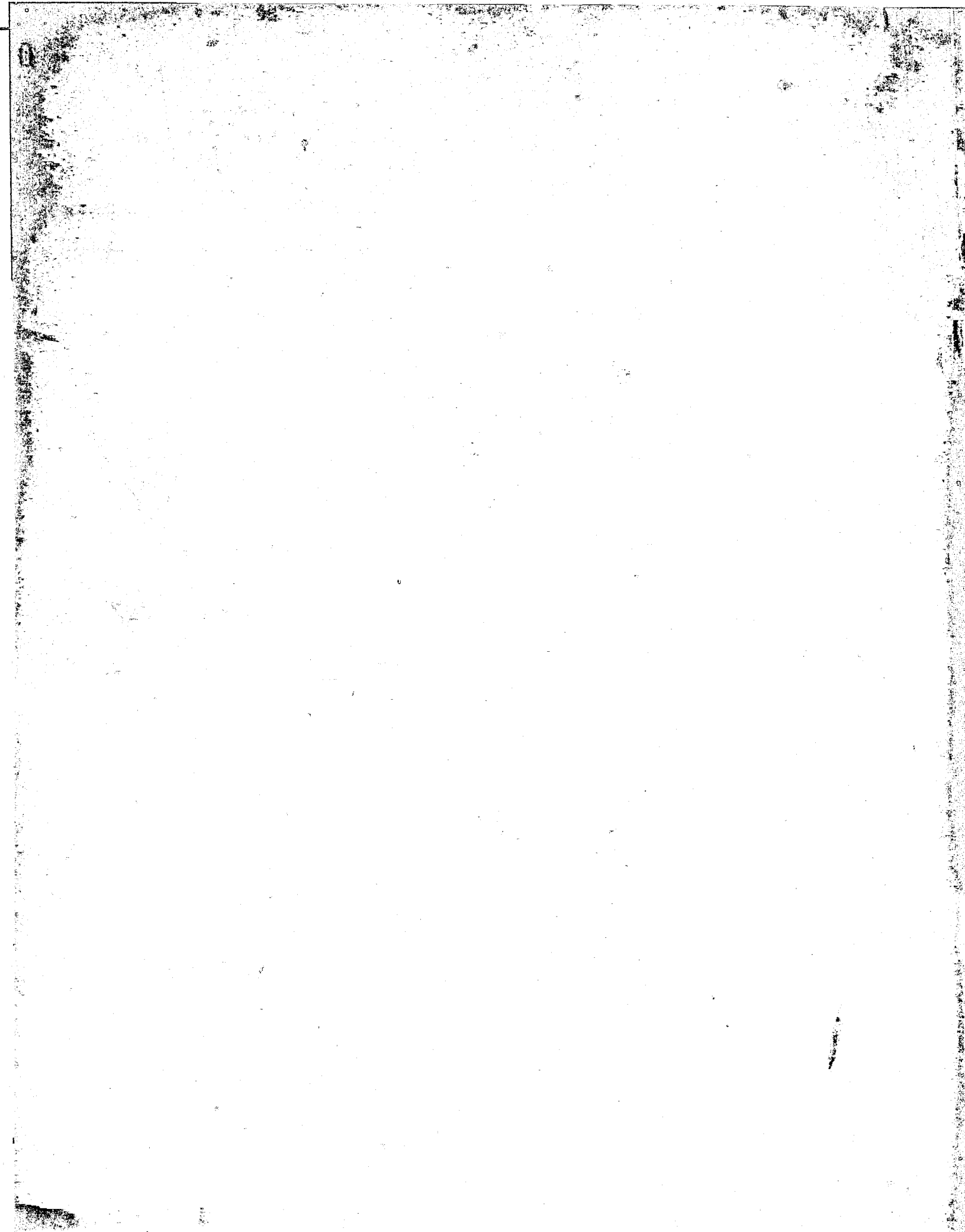
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State of Kansas  
Ombudsman for Corrections  
SEVENTH ANNUAL REPORT  
to the  
Corrections Ombudsman Board

as required by  
K.S.A. 74-7403  
For the Period

July 1, 1981 through June 30, 1982

Office of the Ombudsman for Corrections  
503 Kansas Avenue, Suite 539  
Topeka, Kansas 66603

Phone: (913) 296-5295 KANS-A-N 561-5295

## About The Cover

Calligraphy is defined as, "beautiful or elegant handwriting." The calligraphy on the cover of this Seventh Annual Report, as well as the title page and headings throughout, were done by Mr. David Paxton, an inmate at the Kansas State Penitentiary in Lansing, Kansas. We appreciate the amount of time and effort that Mr. Paxton spent on this project and we feel that he has added a touch of elegance to our Report.

## Foreward

This Annual Report provides another example of the effectiveness of the Ombudsman concept in the correctional setting within Kansas. Fundamental to the operation of that concept is the solution of problem situations at the lowest level possible administratively, with a minimum of visibility and a maximum of cooperation.

The success of that mode of operation is demonstrated particularly in the section of this Report entitled "Examples of Complaints," where staff and inmate issues have been resolved for numerous individuals with little fanfare or public attention. In many instances, the personnel in the Ombudsman Office have been able to document and resolve unfounded complaints.

The Office provides another valuable service to the State in investigations relative to property claims before the Legislative Claims Committee, some of which are enumerated in the "Examples of Investigations." Such investigations tend to corroborate the claims of those unjustly wronged, while determining other claims to be unfounded.

When an issue effects many individuals, more extensive investigative reports have been conducted in an effort to bring recommendations to bear that will improve problem situations or make sure that inmates and correctional personnel follow agreed-upon rules and procedures or have those procedures changed. At times, such studies attract more public attention, which can in turn make the issue more difficult to resolve simply and gracefully. They continue to be proposed in an effort to work cooperatively within the correctional setting for the good of all involved.

This program continues to receive wide acceptance. As noted in the "Statistical Presentation," past presence at an institution on a regular basis has caused a much greater knowledge and use of the concept than in those settings where funding has caused only a more occasional presence within the institution. The increased level of complaint-handling capability in recent fiscal years (1012 in FY 1982 vs. 618 in FY 1980) has come from that growing recognition of the program and the addition of another Ombudsman Associate on the staff. Both have provided another step to the goal of providing and utilizing ombudsmanry services in all of the correctional settings within Kansas.

Dr. Alan Steinbach, Chairperson  
Corrections Ombudsman Board

September 1, 1982

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## *Selected Reports Issued by the Ombudsman*

1. Six Annual Reports since opening of Office on September 15, 1975.
2. "Report on the Adjustment and Treatment Building at the Kansas State Penitentiary," March, 1977, pp. 20.
3. "Presentation to the Legislative Interim Study Committee on Corrections," October 14, 1977, pp. 7.
4. "Report on the Kansas Department of Corrections' Inmate Grievance Procedure," December 15, 1977, pp. 25.
5. "Presentation to the Board of Directors of Creative Enterprises, Inc.," April 15, 1978, pp. 5.
6. "Inquiry into Inmate Self-mutilation in the Adjustment and Treatment Building," April, 1978, pp. 14.
7. "Prison Gates: Personal Reflections of the Ombudsman Field Staff," July, 1978, pp. 6.
8. "Property Loss Study," August 29, 1978, pp. 28.
9. "The August 18, 1978 Mass Search and Shakedown of the Kansas State Penitentiary," October 23, 1978, pp. 3.
10. "A Study: The Documentation of Decision Making Processes for Inmate Management at the Kansas Correctional Institution for Women," December 7, 1979, pp. 39.
11. "Report on the KSP Inmate Work Stoppage/Lockdown from March 16, through March 20, 1981," May 12, 1981, pp. 5.
12. "Self-mutilations in the Segregation Units at the Kansas State Penitentiary; March - April 1981," June 30, 1981, pp. 10.
13. "Follow-up Study to Recommendations for Changes in the Adjustment and Treatment Building at the Kansas State Penitentiary," June 30, 1981, pp. 31.



# Introduction

## A. Program Description

The Office of the Ombudsman for Corrections is responsible for receiving and resolving complaints concerning inmates and their families, correctional staff members and correctional volunteers. It is a statutorily established state agency, separate from the Kansas Department of Corrections. Thus, it can provide an external, third party complaint resolution mechanism within the system. Through its conflict resolution efforts, the Office works to reduce the tensions in correctional facilities, and the tendency for violence towards persons and state property. By making suggestions for policy changes or by validating the Department's position, the Ombudsman works towards reducing litigation in the courts.

When a person's freedom is restricted, complaints are to be expected. Unresolved, these complaints become a hindrance to the security and rehabilitation missions of a correctional institution. Among inmates these unresolved complaints can be expressed through a variety of means including depression, psychotic episodes, hostility and violence. Among correctional staff members, such unsettled issues can induce frustration and low morale leading to the exercise of poor judgement and to a high rate of resignations, absenteeism and illness.

In an effort to deal with administrative discrepancies, the Ombudsman Office serves in the following six capacities: An external discoverer of problems and complaints; a third party mediator of conflicts and crisis situations; an impartial observer of facilities, routine activities and disturbances; a preventer of unfair and harmful practices; a recommender of corrective actions and new policies; and a reporter of discrepancies in practices and policies through special and annual reports.

The Ombudsman is appointed by and accountable to the Corrections Ombudsman Board (COB). The Board was appointed and organized in the summer of 1974, and a year later appointed an Ombudsman, who assumed his duties on September 15, 1975. The ten member Corrections Ombudsman Board is composed of two appointees selected by each of the following five state officials: The Governor, the Attorney General, the Chief Justice of the Supreme Court, the President of the Senate and the Speaker of the House. Board members are appointed for four-year terms.

## B. The Year's Events

The Ombudsman Office provided extensive on-site complaint handling services at the Kansas State Penitentiary, and limited services at the Kansas State Industrial Reformatory and the Kansas Correctional Institution for Women during Fiscal Year 1982 (July 1, 1981 - June 30, 1982). The Office completed work on 937 complaints which required a total of 6,145 contacts through interviews, telephone calls, and letters.

Of those complaints in which the Ombudsman Office sought change, 86.5% were fully or partially rectified. Eighty-five percent of the total complaints were resolved below the middle management level within the Department of Corrections. These figures reflect the effective working relationship between the Ombudsman Office and the Department of Corrections in rectifying valid complaints.

The top five areas of complaining were "Accuracy of Records," "Internal Grievance/Property Loss Claim Procedures," "Property Loss/Physical Disability," "Disciplinary Procedures," and "Parole". These five complaint categories represent 404 of the 937 complaints or 43.1% of all complaints closed during this reporting period. In addition to these inmate complaints, there were 59 staff complaints, which represents a 37% increase in the number of staff complaints handled last year.

As in past years, the Office has provided classroom orientations to all new correctional officers in the state. This year for the first time, the Office was also able to provide classroom presentations to all officers, seasoned and new, at the Kansas State Penitentiary. This has greatly enhanced communications and working relations between the Office and the correctional officer force at the Penitentiary.

As a result of complaint handling and special inquiries, the Ombudsman issued 10 formal recommendations to the Secretary of Corrections during this reporting period. This compares to the issuing of 9 formal recommendations last year. The Secretary provided written responses to none of the recommendations issued this year, and to one issued last year.

Sixteen special investigations were conducted during the year at the request of the Joint Legislative Committee on Special Claims Against the State. These investigations regarded claims by inmates and staff concerning the loss or damage of personal property. Also involved were inmate claims regarding permanent physical disability.

Additionally, a major study of the Department of Corrections' internal Inmate Grievance Procedure was begun. The vast majority of inmate complaints can be handled meaningfully and rapidly through an internal grievance procedure. Without the effective implementation of such a procedure, the Ombudsman Office, as an external complaint handling mechanism, becomes bogged down in large numbers of complaints which could be more effectively resolved through the internal resources of the institutions and the Department of Corrections. This study will be completed and a report issued during the first half of the 1983 Fiscal Year.

After two years of deliberations the Kansas Legislature passed legislation, in a compromise version, which would have granted the Ombudsman power to subpoena records, to have guaranteed access to institutions, and to give the oath and take sworn testimony. This legislation would also have provided specific guarantees for confidentiality between complainants and Ombudsman Office staff. In its final

form, House Bill 2814 (which is reproduced on page ) passed the Senate with 36 votes for it and 4 votes against it. It, also, passed the House with a vote of 115 for it and none opposed. The bill, however, was vetoed by the Governor; and an attempt to override the veto failed. (The Governor's Veto Message may be found on page .)

The Legislature also responded favorably to a request to upgrade the two Ombudsman Associate positions in the Office of the Ombudsman for Corrections. Based on extensive documentation provided by the Ombudsman Office and a recommendation made by the state Division of Personnel Services, the Kansas Legislature passed a measure to provide \$10,373 for the purpose of upgrading these two positions. This provision was also vetoed by the Governor. In his veto message, however, the Governor encouraged the Corrections Ombudsman Board to re-submit its request to upgrade these positions during the FY 1984 budget process.

#### C. The Fiscal Picture

As described in this report, the Ombudsman Office provided more complaint handling services during Fiscal Year 1982 than it has any other time in its seven year history. The reality remains, however, that the Office's enabling legislation has not been fully implemented. Full implementation falls short to the extent that the Office's level of staffing has made it possible to provide on-site complaint handling services to only three of the nine existing state adult correctional facilities.

Limiting the number of institutions the Ombudsman Office is capable of covering, defies the reality that Kansas has recently established an integrated corrections system and no longer operates a grouping of separate institutional units. In order for the Ombudsman Office to competently respond to any particular complaint, the Office must have the ability to understand that complaint within the context of the total state-wide corrections system. This understanding can come only from extensive experience in handling complaints at all nine facilities. To accomplish the purposes of the enabling legislation, the Corrections Ombudsman Board determined several years ago that it would be necessary to have two additional professional positions in order to make it possible to provide on-site complaint handling services to all existing facilities. This estimate of staff resource needs remains intact today.

The Office's expenditures during the past five fiscal years are depicted below:

	FY 1978	FY 1979	FY 1980	FY 1981	FY 1982
Salaries	\$52,164	\$58,329	\$75,479	\$83,836	\$99,884
Operations	17,684	20,255	23,583	24,449	24,847
Total	69,848	78,584	99,062	108,285	124,731
State Funds	56,289	66,134	79,385	97,630	124,731
Federal Funds	13,559	12,450	19,677	10,655	- 0 -



Below is the staffing pattern for Fiscal Year 1982, and the COB's estimated need for staffing in order to fully implement a corrections ombudsman program in Kansas:

Positions in FY 1982

Field Staff

1. Ombudsman
2. Ombudsman Associate
3. Ombudsman Associate

Support Staff

4. Administrative Secretary
5. Typist

Requested Positions  
for full implementation

Field Staff

1. Ombudsman
2. Deputy Ombudsman
3. Ombudsman Associate
4. Ombudsman Associate
5. Ombudsman Associate

Support Staff

6. Administrative Secretary
7. Typist

## Examples of Complaints

### Introduction

In each of the following complaint examples an attempt has been made to avoid identifying the individuals and institutions involved. In addition to omitting names, all complainants and correctional staff members are to be referred to in the masculine gender or are given fictitious names. Additionally, all representatives of the Ombudsman Office are to be referred to as the Ombudsman. With these exceptions, the information provided in each example is factual. Definitions for the terms used for complaint and disposition categories can be found in "Definitions of Complaint Handling Terms", pages

### Complaint 1 - Property Loss

Staff's unresponsiveness to inmates sometimes creates serious problems for other Department of Corrections' staff members. In this case example, an institutional staff member, Mr. Smith, was being confronted by an inmate who was extremely upset because a work release facility, where he previously had been confined, would not send his personal property. Mr. Smith had called the work release facility on several occasions and was told that the property would be sent. A month and a half went by and the property was not received. Mr. Smith was caught in the middle, having to deal on a daily basis with an inmate and with an unresponsive work release staff member.

Mr. Smith finally decided that he had done all he could do. He had the inmate go to the Ombudsman. The Ombudsman immediately contacted the work release facility which claimed it had never been notified that the inmate's property should be sent. The Ombudsman, however, knew that the work release facility had been aware of the situation but chose not to make that an issue; and instead stuck with the issue of retrieving the property.

The Ombudsman was promised that the property would be sent at the earliest possible time. The property in fact was sent the following week.

*Disposition: Fully Rectified*

3455

### Complaint 2 - From Staff

While visiting an institution, the Ombudsman was approached by a correctional officer who complained that a kitchen stool was being used as a chair in a guard tower. The officer's efforts to have this corrected were many and in vain.

When the Ombudsman took this up with administrators at the institution, he was also met with a negative response. He was assured that the chair was indeed adequate and not at all the way it was described by the complainant. When the Ombudsman indicated that he would be visiting the tower for a first-hand observation, however, the administrators indicated an interest in his findings.

What the Ombudsman discovered was worse than what the officer had described. The stool seat was on a slant which made it difficult not to slide off it. Subsequent to this inspection, the Ombudsman assessed the matter with another administrator only to discover that a proper tower chair was being built to replace this stool which had been in use for about a year. The complaining officer and the administrators to whom he had complained were unaware that this was being done and were so informed.

*Disposition: Solved Prior*

3742

#### Complaint 3 - Inter-Institutional Transfer

Not all complaints concerning inmates are initiated by inmates. This is an example of a case which was referred to the Ombudsman by an institutional staff member who had tried to do his job but had become frustrated by the bureaucracy.

A staff member approached the Ombudsman and asked if the Ombudsman would assist an inmate in obtaining information concerning a pending inter-state institutional transfer. The transfer had been approved for three months but the staff member had been unable to determine the reason for the delay in the actual move. The Ombudsman agreed to make some inquiries.

Prior to pursuing the issue, the Ombudsman met with the inmate involved. The referral from the staff member was discussed and the Ombudsman determined that the inmate had no objections to the Ombudsman pursuing the matter.

The Ombudsman checked the inmate's file at the Department of Corrections and verified that the transfer had been approved. The Ombudsman then inquired about the matter with a staff member in the Department of Corrections. The staff member telephoned the institution where the inmate was currently incarcerated and asked about the delay. He was told that the problem was with another department -- the very one that had referred the case to the Ombudsman in the first place.

On his next trip to the institution, the Ombudsman had planned to try to unravel the confusing information. However, when he arrived at the institution the next week he found that the inmate had been transferred. The staff member who had referred the case, told the Ombudsman that after the Ombudsman made inquiries, the paperwork clog had suddenly dissolved.

*Disposition: Fully Rectified*

3722

#### Complaint 4 - From Staff

One recurring problem for institutional staff members is that policies and decisions affecting their work are not clearly communicated. Staff members often have to rely on word-of-mouth information; and consequently, the information is sometimes distorted. Such a situation occurred in the following example.

The Ombudsman was approached by a correctional officer at one of the institutions who asked the Ombudsman for help in sorting out an institutional policy. The officer had been telling persons visiting inmates at the institution that packages, containing special items for the Christmas season, had to be mailed by a certain date. As a result, the visitors had been sending the "Christmas packages" to the institution. The correctional officer was upset because he had just heard that the packages were being returned to the senders.

The Ombudsman found that the correctional officer had been communicating inaccurate information. The policy stated that packages would only be accepted after the date the officer had been giving as the deadline for receipt. The correctional officer had been sincerely relaying what he thought was accurate information. He, however, had not been given a copy of the written policy.

At the Ombudsman's request, a copy of the policy was posted in the area in which the officer worked. The policy was then available to correctional officers who interacted with visitors and to the visitors themselves. Unfortunately, some visitors had to pay double postage because the policy was not clearly communicated to the staff members who had a role in implementing it.

*Disposition: Fully Rectified*

3751

#### Complaint 5 - Record Keeping

While on a routine visit to the institution, the Ombudsman was approached by an inmate who stated that he had reason to believe that a memorandum had been placed in his institutional record which contained unsubstantiated information of a damaging nature. Since decisions directly affecting inmates are based on information found in their institutional records, this inmate was concerned that his record be free from undocumented accusations. The Ombudsman agreed to review the institutional record to determine if such a memorandum was present.

The Ombudsman found a memorandum which included references to criminal behavior for which the inmate was never charged and alleged institutional rule violations which had never been documented. Prejudicial information of this nature, when it is lacking documentation, is not allowed in a person's file.

The Ombudsman next visited the staff member who had written the memorandum and pointed out the problematic sections of the memorandum. The staff member was asked if he would be willing to rewrite the memorandum in such a way as to delete the allegations. The staff member became very defensive and refused to cooperate with the Ombudsman in any way. He stated that he would not remove the original memorandum from the file without a direct order from the director of the institution.

The issue was then brought to the attention of that employee's supervisor. When the Ombudsman asked this staff member to remove the damaging memorandum, the staff member indicated that he felt it should remain in the record.

Moving on up the chain of command, the Ombudsman next visited a member of the administrative staff of the institution. This staff member agreed that some of the information in the memorandum was unsubstantiated and, therefore, should be removed. He initiated corrective action.

*Disposition: Fully Rectified*

3430

#### Complaint 6 - Basic Needs

An inmate complained to the Ombudsman that he had been at the institution a month and had been unable to obtain a pillow. A cellhouse counselor, a cellhouse sergeant, and a captain had all promised to provide him with a pillow. However, none of them had followed through.

The Ombudsman was promised by staff that the inmate would be given a pillow the same day. Two days later the inmate had still not received a pillow. Staff again promised the Ombudsman that the inmate would receive a pillow. Three days later the inmate informed the Ombudsman he was still without a pillow. Finally, five days after the inmate had brought the matter to the Ombudsman, the Ombudsman went to staff and obtained a pillow which he personally delivered to the inmate.

*Disposition: Fully Rectified*

3568

#### Complaint 7 - Basic Needs

The Ombudsman was stopped by an inmate who complained that for at least the last three months all sheets in the cellhouse were picked up for laundering on a Monday morning but the laundered sheets were not returned until the following day. Consequently, the inmates in the cellhouse had no sheets on which to sleep Monday nights. The inmate reportedly had complained to staff and gotten no where.

When the Ombudsman questioned a staff member in the cellhouse about the complaint, the staff member confirmed the practice. He added that he had brought the issue to his supervisor's attention but nothing

had happened. The Ombudsman went to the supervisor who indicated the practice would be changed immediately. Starting the next week, the sheets were picked up and returned the same day.

*Disposition: Fully Rectified*

3560

#### Complaint 8 - Medical

Sometimes, a case does not turn out as expected. This particular case fits that description. The Ombudsman's investigation was proceeding in a satisfactory manner, and full resolution of the complaint seemed imminent until something occurred that was totally outside the Ombudsman's control.

An inmate came to us complaining of back pain caused by a bullet lodged next to his spine. He reported that he had been shot in 1978 and the bullet had never been removed. He said that he had discussed the matter with infirmary personnel and had been told that they had no funds with which to pay for the surgery. It was agreed that we would review his medical record to determine if there were any plans for future treatment.

In checking the inmate's medical record, it was learned that he had not actually seen the doctor for slightly over a year and that the last evaluation of his back problem had occurred shortly after the injury in 1978. It was further learned that there were no plans for his future treatment. After discussion of the case with infirmary personnel, it was recommended that the inmate take the initiative by going to sick call and setting up an appointment with the doctor to discuss his back complaint. He agreed to do this.

After enough time had elapsed for action to have been taken, a check was made again of the inmate's medical record. He had, indeed, been seen at the infirmary and had been scheduled to see an Orthopedist. However, the appointment with the specialist had not been met. Infirmary personnel said that the inmate had refused to come to his appointment. Knowing, however, that occasionally inmates are not notified of appointments, we decided to verify this with the inmate. After talking with the inmate, we learned that he had been given the opportunity to see the Orthopedist but did not wish to go as the pain was not as bad and he did not believe anything would be done about it anyway.

*Disposition: Withdrawn*

3386

#### Complaint 9 - Visiting

After arriving at an institution, the Ombudsman was stopped in the parking lot by the fiancée of an inmate who was extremely concerned because she had been told to pick him up at 8:30 a.m. since he was being released on parole. It was 9:30 a.m. and he had not gotten out. She did not know where to go or what to do. She approached the Ombudsman not knowing his function, but simply reaching out to anyone to find out if something had gone wrong. (The Ombudsman learned later in the day that she had approached other people with the same concern as they had

walked into the institution to report to work; but, she had gotten no help.)

The Ombudsman took the woman to the officer in charge of the visiting area. The officer only told her that she would have to wait until the inmate came out. Out of his concern that something may have gone wrong, the Ombudsman inquired and found that the inmate's release had been delayed because the institutional operation had been shut down for a period of time that morning. The Ombudsman also found that the inmate was being processed for release. He so informed the very relieved fiancée.

*Disposition: Fully Rectified*

3446

#### Complaint 10 - Against Staff

An inmate repeatedly complained to the Ombudsman that institutional staff were harassing him because he was homosexual. He had previously been removed from a training program and placed in a cell where staff constantly watched him. The Ombudsman's investigation had determined that both of these actions were based upon the inmate's poor disciplinary record. Consequently, the Ombudsman did not challenge them. During a visit to the institution, however, the Ombudsman found that the inmate was inappropriately being held in segregation.

The inmate had pled guilty to a disciplinary charge five days earlier and had been sentenced to restrictions. Instead of releasing him back to his cellhouse to serve his restriction time, he had been returned to segregation.

When the Ombudsman asked cellhouse staff members the reason the inmate was being held in segregation, the staff members indicated that they did not know but they would check. They also commented that the inmate had been warned before about his behavior and that he should have learned by now. Later the same day the Ombudsman was informed that the inmate had been released back to his cellhouse.

*Disposition: Fully Resolved*

3801

#### Complaint 11 - Against Staff

Parents all know that, if they are not careful, their children will play one parent against the other. This is not because of the children's immaturity, necessarily, but because they have limited control over their own lives. The Ombudsman knows that he may be used in an effort to get a different and more acceptable answer to an issue that has already been handled correctly by institutional staff. The next example is indicative of this "game."

While in a cellhouse, the Ombudsman was approached by an inmate who said that he had seen the Kansas Adult Authority (KAA) earlier in the month and had been placed on "continued status". Simply put, this means the KAA is postponing its decision on whether or not to grant parole, until it receives additional information. An example of additional information would be written verification of employment. The inmate said that he had not been given the reason for the "continuance" by the board, nor had the institutional staff given him any information when asked. The Ombudsman agreed to look into the matter in an attempt to determine the reason for the "continuance."

The Ombudsman first visited the institutional staff member who had talked with the inmate. The staff member related that the inmate had been "continued" by the KAA until such time as a psychiatric evaluation could be prepared for its consideration. After the results of the evaluation were received by the KAA, it would then make its decision on whether or not to grant parole. The staff member further related that this information had been given to the inmate and explained thoroughly. However, the inmate continued to ask the staff for a projected release date so he could inform his family when he would be released.

At the Ombudsman's suggestion, a three-way interview was held with the staff member, the inmate, and the Ombudsman participating. The inmate's parole status was outlined and he was confronted with the fact that he had purposely mislead the Ombudsman by providing erroneous information. He admitted that he did, in fact, know that he had been continued for an evaluation. It was explained, again, that the decision of the KAA had not yet been made and the possibility existed that he would not be paroled at this time.

*Disposition: Unfounded*

3378

#### Complaint 12 - Visiting

One function of the Ombudsman Office is to reduce tensions and frustrations on the part of staff and prisoners by resolving valid complaints. This case is an example of a situation in which the complainant followed the institutional procedures exactly as he was told, but the desired outcome was not accomplished. Consequently, when the Ombudsman became involved, he found the level of frustration was high.

An angry inmate complained to the Ombudsman that one of his visitors had been told that further visits would not be permitted. The visitor had previously been involved as a volunteer with one of the institutional programs and had made regular visits to the institution in that capacity. Institutional policy prohibits volunteers from being on an individual prisoner visiting list. Consequently, when the complainant desired to have the volunteer placed on his personal visiting list, he asked staff what procedure he should follow. He was told that the volunteer would have to be removed from the list of volunteers in order to be placed on the personal visiting list. Paperwork was submitted by institutional staff to do this and a telephone call was made to verify that the change had been made. However, after three visits, the visitor was told that

he could no longer visit because he had violated institutional policy by simultaneously placing his name on both the volunteer list and a personal visiting list. The prisoner was very anxious to get the matter straightened out because the visitor was planning to bring the prisoner's children for a visit in three days. The Ombudsman agreed to look into the matter.

After the Ombudsman brought the matter to the attention of the Director's office, it was discovered that the paperwork to have the person placed on the personal visiting list was processed before the paperwork to have the name removed from the volunteer list. The error was acknowledged and the individual was reinstated on the prisoner's visiting list,

*Disposition: Fully Rectified*

3590

#### Complaint 13 - Against Staff

An inmate wrote the Ombudsman complaining that he had been at the prison for three months but had not yet had an initial hearing with the Kansas Adult Authority (the paroling authority) to establish the date he would be considered for parole. The KAA's practice is to have this initial hearing within a few weeks after an individual enters prison. The inmate reported that he had contacted staff in his cellhouse several times to find out why he had not had this initial hearing. His last effort prior to contacting the Ombudsman was to send a written message on the appropriate institutional form asking when his initial hearing would be. Instead of responding to his request, a cellhouse staff member provided the following response, "Form 9's (the institutional form) go in the box on 3 walk if you want action. Not responsible for loose correspondence."

When the Ombudsman asked this staff member about the inmate's complaint, the staff member simply looked at a record on the wall in front of him and confirmed that the inmate had not had his initial hearing. Responding as though he was hearing the issue for the first time, the staff member indicated that something was obviously wrong. He inquired and found that the inmate was supposed to have seen the KAA his first week at the prison. Consequently, the inmate's initial hearing was re-scheduled.

The scheduling of the hearing was not the staff member's responsibility. However, he was responsible for listening and responding to the inmate's request for information.

*Disposition: Fully Rectified*

3317

#### Complaint 14 - Physical Threat

An inmate complained to the Ombudsman that his life was endangered and he wished to be transferred to another state. He explained that he had testified against an individual incarcerated at the institution and he had been told that he would be held in protective custody until he

could be transferred to another institution. He had put in a request for a transfer to another state but had received no information regarding the status of his request. The Ombudsman agreed to inquire about the inter-state transfer.

While the Ombudsman was pursuing information regarding the inter-state transfer, the inmate was moved to a different cellhouse within the institution which also housed protective custody inmates but, more importantly, housed the individual against whom he had testified. The complainant wrote the Ombudsman stating that he had been threatened several times since the move and was fearful for his life.

When the Ombudsman went to the institutional staff members who had promised protection to the inmate, it was learned that these staff members had not been made aware of the move, and were opposed to it. Within a matter of hours, the inmate was returned to his original cellhouse. Additionally, he was transferred to another state after two weeks.

*Disposition: Fully Rectified*

3926



## Examples of Investigations

### Introduction

The first three investigation reports were directed to Secretary of Corrections Patrick D. McManus. All three investigations were conducted upon the initiative of the Ombudsman Office. The remaining six reports were written for Senator Jane Eldredge, Chairperson of the Joint Legislative Committee on Special Claims Against the State. These reports are examples of investigations into claims regarding damaged or lost personal property, or regarding injuries resulting in permanent disability.

As presented here, the reports have been edited in varying degrees to disguise inmate and staff names and the identity of institutions. The first three reports, however, do identify institutions.

### Investigation 1 - Failure to Evaluate an Inmate as Required by Statute

July 14, 1981

Dear Mr. McManus:

This letter is a follow-up to the July 1, 1981 letter from the Department of Corrections concerning the decision as to whether or not to transfer a particular inmate to the Kansas Reception and Diagnostic Center (KRDC) for an evaluation. The letter indicates that an attempt is being made to transfer this inmate to a prison in another state. If this effort is successful, he would not be sent to KRDC. However, if the inmate should remain in Kansas, he would then go to KRDC for evaluation.

The inmate should be transferred to KRDC for evaluation at the earliest possible time. This transfer would be in accordance with Kansas law and existing practice within the Kansas Department of Corrections.

The inmate originally came into the Kansas prison system in January, 1977, having been transferred from another state. As an out-of-state prisoner doing time in a Kansas prison, he was not sent to KRDC. On June 2, 1980, however, this inmate committed an offense in Kansas for which he was subsequently convicted. On September 4, 1980, he was sentenced to the custody of the Kansas Department of Corrections.

According to KSA 75-5262, "all felony offenders of the male sex sentenced by the courts of this state to the custody of the Secretary of Corrections" are to be sent to KRDC for evaluation. As of this date, the inmate has not been sent to KRDC.

Had the inmate not been confined in a Kansas prison at the time his offense was committed, he would have automatically been sent to either the Kansas State Penitentiary or the Kansas State Industrial Reformatory, after he was sentenced on September 4, 1980. There, he would have been segregated by law from the rest of the population in "holdover status". Currently the average stay at either of these facilities in "holdover status" is from four to six weeks. He, then, would have been transferred to KRDC for an evaluation.



For this inmate, however, it has been over ten months since he was sentenced for a Kansas offense by a Kansas Court to the custody of the Secretary of Corrections and yet, he has not been transferred to KRDC for an evaluation.

As stated earlier, there has been an effort made to find an institution in another state in which to confine him. The Department has indicated that if the inmate is transferred out of the state of Kansas, he would not be sent for a KRDC evaluation. There, however, is no provision in the statute for exempting inmates from having KRDC evaluations if they are transferred out of Kansas.

It, therefore, is recommended that this inmate be transferred to KRDC for evaluation, regardless of the status of a possible transfer out of state. This recommendation is consistent with Kansas law and with current practice within the Kansas Department of Corrections. Please let me know the final action taken on this recommendation.

Sincerely,

Preston N. Barton  
Ombudsman

*Disposition: Fully Rectified - the inmate was transferred to KRDC on August 13, 1981, eleven months after being sentenced by a Kansas court.* 3107

#### Investigation 2 - Protective Custody/Holdover Noon Meal at KSP

April 7, 1982

In January of this year, this Office began receiving complaints that the inmates in C Cellhouse on protective custody status and holdover status were not being allowed to leave their cellhouse for the noon meal, during weekdays but, instead, were being served cold sack lunches in their cells. The complaints dealt not only with the fact that the meals were being served in the cellhouse instead of the dining room, but also dealt with the poor quality of the meals served and the fact that they were different from the meals received by the protective custody inmates working in the laundry and the furniture refinishing plant. Those inmates working outside the cellhouse are provided hot meals at their work site.

An Ombudsman Office staff member interviewed several protective custody inmates and cellhouse staff members and inspected the sack lunches on three separate occasions--twice in February and once in March. In February, the sack lunches were brought to the cellhouse in cardboard boxes with sacks stacked three deep and packed so tightly that all of the sandwiches were mashed. On one day, the sacks contained one meat sandwich without any sandwich spread, such as mayonaise or mustard,

and one sandwich containing something that appeared to be peanut butter but without jelly. The sandwiches were unwrapped and placed on end in the sack and an apple was placed on top of the sandwiches in the sack. The sacks were then crammed into the cardboard boxes. One carton of milk was provided for each man and was brought to the cellhouse in a separate container. On another occasion, the two sandwiches consisted of a piece of luncheon meat between two pieces of dry bread and a piece of cheese between two pieces of dry bread.

By March, special containers had been built at the direction of institutional personnel to transport the lunches from the dining room to the cellhouse. These containers successfully allowed the sacks to be packed in single layers which helped to alleviate the problem of mashed sandwiches. The March lunch which was inspected consisted of a sack containing two hamburger patties on a bun and one package of catsup; one orange per man, transported in a separate box; and one carton of milk per man, transported in separate containers. On this same day, general population inmates were served hamburgers with condiments, potatoes, a vegetable and a dessert.

It is our understanding, from discussions with staff, that the reason for serving lunch in the cellhouse was because of the elimination of the noon count and the resulting lockdown of all general population inmates. In practice, however, although the noon count is no longer done, the general population continues to be locked down between 10:30 a.m. and approximately 11:15 a.m. The only change is that those workers in the shop areas do not return to the cellhouses but remain in their work areas.

The practice of providing a certain segment of the inmate population with different food is problematic. Even if the lunches provided were appetizing, which they are not, the fact remains that they are different, and less than the meals provided to the general population inmates, A&T inmates, and those protective custody inmates from C Cellhouse working in the laundry and the furniture refinishing plant. According to the current ACA Standards for Adult Correctional Institutions dealing with special management inmates, all inmates in segregation should "receive the same meals served to the general inmate population." (ACA Standard 2-4223). This standard is classified by the ACA as mandatory.

In interviews with C Cellhouse staff, concern has been expressed regarding the internal tensions that have been created in the cellhouse as a result of this practice. Resentment has been expressed toward laundry and furniture refinishing workers by those inmates who work in the cellhouse because they are not being treated the same. While these tensions have, thus far, been released verbally, violence could result.

If it is necessary for C Cellhouse inmates to remain in their cells for the noon meal, steps should be taken immediately to allow the serving of a hot meal. This is accomplished in the A&T Building, in the laundry and in the furniture refinishing plant.

*Disposition: Not Rectified - no written response was received from the Secretary of Corrections* 4321

Investigation 3 - Privileges For Protective Custody Inmates At The  
Kansas State Penitentiary

April 20, 1982

In September, 1981, a new program of management was devised by the Mental Health Unit in conjunction with the unit team for use with protective custody inmates in C Cellhouse. The stated objectives of the program are to teach social skills and responsible work habits through group counseling and a "privilege and reward system" so that individuals can be successfully reintegrated into a larger population-- either within the institution or outside.

There are approximately 150 protective custody inmates housed in C Cellhouse along with a varying number of inmates on "holdover" status. The cellhouse is five stories tall, with single man cells on the first three floors and multiman cells on the top two floors. The first floor cells are used for those inmates on "holdover" status; the second-floor cells for protective custody inmates serving disciplinary time or pending a disciplinary hearing; the third-floor cells are used for those protective custody inmates requiring special security; and the multiman cells on the top floors are used for protective custody inmates who work.

After receiving complaints from protective custody inmates in C Cellhouse concerning the new program, this Office reviewed the program. Most complaints received related to the "privilege and reward system." This system allocated privileges on the basis of the inmate's employment status. The privileges effected by the new system are: yard, phone, showers, visiting, and store. Our review of the reward system revealed that it is in violation of at least three General Orders, specifically: G.O. #8 (visiting), G.O. #66, Change 2 (work/pay), and G.O. #97 (store). Furthermore, the system is contrary to K.A.R. 44-14-306 which indicates that protective custody inmates should be treated "as nearly as possible like general population inmates."

Contrary to G.O. #8, visiting is allowed on the basis of employment status, not custody status. Workers are to be allowed seven hours per month and nonworkers are to be allowed only five hours per month. According to G.O. #8, close custody inmates are authorized five hours per month; medium custody, seven hours per month; and minimum custody, four hours every two weeks. As of 2-23-82, the C Cellhouse protective custody inmate population included approximately 25% with minimum custody, 40% with medium custody, 30% with close custody and 5% with maximum custody.

Institutional policy in current practice has authorized a purchase limitation of \$25.00 per week at the Chouteau Store for inmates in the general population. However, protective custody inmates who are unemployed are only allowed to spend \$15.00 bi-monthly. This is clearly against policy as outlined in a March 11, 1981 memorandum from Deputy Director J.S. Bradley.

Change #2 to G.O. #66 dated 9-11-81, deals specifically with work program management policies for inmates in protective custody. It states, in part, that protective custody inmates who wish to work will be placed on a waiting list if jobs are not immediately available. It further states that incentive pay will be paid to those who have been on the list for 28 days without placement. The current practice in C Cellhouse conflicts with the above institutional policy in that it does not allow a man to work for 90 days if he were fired for cause, and does not allow a man to work for 45 days if he refuses a job for other than medical reasons. Further, regardless of the time spent in an unemployed status or the reasons for it, the men are categorized as non-workers and receive reduced privileges and no incentive pay.

According to the new system, working protective custody inmates are to receive seven hours per week of exercise while non-workers receive 3 hours per week; workers may make two telephone calls per week, while non-workers may only make two call per month; and workers are to be allowed seven showers per week and non-workers, 5 per week. While the yard, phone, and shower privileges do not violate General Orders, they are discriminatory. There is no such dual-privilege system for the general population.

Department of Corrections Regulation 44-14-306 states, in part, that "Inmates in administrative segregation shall be treated as nearly as possible like any other inmate in the general population of the institution ..." Although it is necessary to restrict access to certain programs, activities or facilities due to the increased security required for protective custody inmates, the basis for the restrictions is not their employment status. The restrictions and the reasons for them are stated on the "Protective Custody Memorandum or Understanding" which is signed by each person on protective custody status.

Interviews were conducted with staff who work in C Cellhouse as a part of this Office's review of the program. Generally speaking, the staff are very supportive of the program. They feel that it is based on the realistic premise that those persons who do not work, do not have the same benefits as those persons who do work. However, they also admit that the "privilege and reward system" has not had the expected result since not all of the protective custody inmates wanted the privileges and rewards.

The greatest success, in the eyes of the staff, is in the improvement of skills for socialization. Staff report that some individuals are living in multiman cells and relating with other people for the first time since their incarceration. Another measure of successful reintegration that is mentioned by staff is that only 20% of those who have left C Cellhouse (either on parole, to the outside dormitories, or the general population) have returned. They attribute this to the group counseling part of the program.

This Office did not do an in-depth study of the counseling aspects of the protective custody program; therefore, no recommendations for changes in this part of the program are being made. However, some

observations have been made regarding the effects of the policies on cell assignments for workers. There has been considerable turnover in the 25 laundry positions and the 50 positions in the furniture refinishing plant - approximately 80 job changes during the months of December, January and February. Since the workers and non-workers are housed in different areas of the cellhouse, these job changes have necessitated changes in cell assignments. During those three months, there were no less than 138 cell assignment changes in C Cellhouse. These were changes within the cellhouse and do not include moves to other cellhouses or to A&T. When compared with the 181 cell assignment changes for the same period in A Cellhouse, a cellhouse which houses approximately 400 general population inmates, the movement in C Cellhouse seems excessive given the fact that the protective custody population numbers approximately 150.

Another point worth noting, is that there are only 75 job positions available in the laundry and the furniture refinishing plant for protective custody inmates. A few orderly positions are available in the cellhouse and some inmates have been placed on painting details temporarily within the cellhouse. At the very most, there are 100 jobs available for a population of approximately 150. Even though not all of the men living in C Cellhouse wish to work, it is not reasonable or fair to deny privileges and rewards to those who do not work, when there are not sufficient job opportunities available. If a person is willing to work but laundry and/or furniture refinishing plant supervisors will not hire him, he has no other options.

This Office recommends that the "privilege and reward system" be discontinued and the current level of privileges for workers be applied to all protective custody inmates in C Cellhouse. It has been demonstrated in the past six months that it has been possible to provide a higher level of privileges to over half of the protective custody inmate population. It would follow, therefore, that it would also be possible to provide at least this same level of privileges to the remaining population of protective custody inmates.

*Disposition: Not Rectified - No written response was received  
from the Secretary of Corrections.*

4313

	<u>Protective Custody Workers</u>	<u>Protective Custody Non-Workers</u>	<u>General Population</u>
Yard	7 hr/wk.	3 hr/wk.	unlimited within scheduled times
Phone	2 calls/wk.	2 calls/mo.	2 calls/wk. or more
Showers	7 per wk.	5 per wk.	unlimited within scheduled times
Store	\$25.00/wk.	\$15.00 bi-monthly	\$25.00/wk.
Visiting	7 hr/mo.	5 hr/mo.	5 hr/mo. (close custody) 7 hr/mo. (medium custody) 4 hr. bi-weekly (minimum custody)

#### Investigation 4 - Property Missing from Cell

December 7, 1981

Dear Senator Eldredge:

This is a report of our investigation of the \$380.00 property loss claim submitted on April 9, 1981 to the Claims Committee by an inmate at a state institution. At the September 24, 1981 meeting of the Claims Committee, the Committee requested that our Office investigate this claim further and make a recommendation to the Committee.

#### Claim

The inmate claims that property was removed from his cell on two separate occasions. His cell was located on the ground level and was the first cell on the south side of the cellhouse. The inmate reports that on October 2, 1981, a Marantz stereo receiver and one pair of Pioneer SE-500 stereo headphones disappeared from his cell while he was out. He states that he reported the loss to an officer on that date. However, the unit team was unavailable at the time, according to the inmate, and he did not notify them of his loss until four days later--October 6, 1980.

The inmate also claims that on November 3, 1980, a Realistic stereo cassette tape player was removed from his cell and the cell appeared to have been ransacked. This loss was discovered when he returned to his cell from his work assignment and a report was made to an officer and the unit team on that date.

The inmate is claiming that his losses occurred due to the negligence of the institutional staff. He states that the items could not have been removed from his cell without the door being opened by a staff member. Further, he points out that his cell was located in close proximity to the locking mechanism which operated the cell doors; thus, an officer opening the door would have had a clear view of the person being admitted.

#### Institutional Findings

The institution provided a report with a copy of the inmate's registered property inventory. The inmate had previously submitted a property claim to the Department of Corrections in the amount of \$250.00 for the aforementioned property loss. The amount of his claim was based on the statutory limit for inmate claims to be reimbursed directly by the Department of Corrections. The Director of the institution recommended denial of the claim on the basis that no evidence had been found to indicate the loss resulted from intentional or gross negligence on the part of the institutional staff. The institution's position has not changed since that time. An institutional report states that the inmate did not report the items stolen until four days after the alleged theft. The point is also made that the inmate has been the victim of several thefts and may be "either paying for protection or is marked as easy prey."

#### Ombudsman Office's Findings

The investigation conducted by this Office did not uncover any new evidence in the inmate's claims case. The three items of personal property claimed by the inmate were registered to him and disappeared from his cell on or about the dates claimed. The circumstances surrounding the disappearance of the property, however, are unverified.

Interviews were conducted with the inmate on at least three occasions. At one point, he indicated that the officer on duty when his property disappeared was a new, inexperienced officer. He was unwilling, or unable, to identify the officer involved. He did provide the names of two inmates who had lived in the cellhouse at the time and could verify that he had had the property in his cell.

This Office interviewed a staff member who worked on the unit team at the time of the claimed loss. Unfortunately, because a year has elapsed since the time of the loss, he was unable to recall specific details of the incident. However, he did recall that the inmate reported the losses to him.

Interviews were also conducted with two inmates who lived in the cellhouse at the time of the incidents. Although both of the men confirmed that the inmate had had the property in his possession, neither witnessed the property being removed from the cell.

In the inmate's Department of Corrections claim mentioned above, it was noted that the claim was received in the Director's office on November 10, 1980 and the report of the institution's investigation was dated February 27, 1981. The Director's response and recommendation was dated March 6, 1981. Also noted was the absence of a response from the Secretary of Corrections.

In checking with local retailers, the following price information was obtained. A Marantz stereo receiver, Model 2216-B sold for \$240.00 in 1978; Pioneer headphones, model SE-500 sold for \$50.00 in 1977; and Realistic Stereo cassette tape players have sold for \$49.94 for the past ten years. Given the fact that the inmate's property had been registered to him prior to January of 1979, the above price quotes could be considered appropriate. The inmate has furnished a copy of a Special Purpose Order dated March 1, 1976, authorizing the institution to pay Radio Shack Company \$67.00. He has presented this as a receipt for the Realistic stereo cassette tape player.

#### Recommendation

This Office cannot recommend in favor of this claim. The loss could have occurred exactly as the inmate claims or in a number



of other ways. There is no evidence to substantiate the State's responsibility in the inmate's loss.

Sincerely,

Preston N. Barton  
Ombudsman

*Disposition: Unfounded (Claim denied by Claims Committee.)*

3246

*P.S. At a later date the stereo was found and returned to the inmate.*

Investigation 5 - Shoes Discarded Without Owner's Permission

November 25, 1981

Dear Senator Eldredge:

The purpose of this letter is to provide the Claims Committee with crucial information which was not available on September 24, 1981 when it denied the inmate's \$54.00 property loss claim against a Kansas prison. It is recommended that the Committee reconsider the inmate's claim based on the availability of this information which documents that the loss did occur. The Ombudsman Office obtained this information after having sat in on the inmate's Claims Hearing. We believed, based on previous conversations with the inmate, that he was not lying about what had happened.

The inmate provided this Office with his copy of the Inmate Personal Property Record, dated April 4, 1980, on which a correctional officer wrote, "1. pair of bad shoes thrown away 4-4-80." The inmate explained that while being processed into the institution, the officer took the inmate's personal shoes which he was wearing and struck them on a countertop checking for contraband. Consequently, part of the sole of one shoe came loose. The inmate stated that the officer threw the shoes away and then wrote this on the inmate's copy of the Inmate Personal Property Record.

When the officer was shown what was written on the inmate's copy of the Inmate Personal Property Record, he confirmed that it was his statement. Since it was written on the inmate's copy, the institution had no record of the incident. The officer reported that the practice of striking the inmate's shoe to check for contraband has been stopped.

The inmate's claim is for \$54.00 which is the amount he paid a few years ago for a pair of high-top shoes (he refers to them as boot-type in his claim). He was unsure as to the exact date of the purchase and has no record verifying the amount. The Ombudsman Office visited several local Topeka shoe retailers and found only one that sold a similar model. It retails for \$49.95, approximately the same amount the inmate is claiming.

It is recommended that the Claims Committee reconsider the inmate's claim and that it be approved because his personal shoes were damaged by a Department of Corrections' staff member during a routine procedure and were then discarded. The amount of reimbursement is a matter of policy on which the Committee will need to decide.

I trust this information will help the Committee reach a determination in this matter. If further information is needed, please let me know.

Sincerely,

Preston N. Barton  
Ombudsman

*Disposition: Fully Rectified (the Claims Committee recommended that the Legislature reimburse \$27.00.)* 3456

Investigation 6 - Permanent Disability Injury Claim

July 27, 1981

Dear Senator Eldredge:

This is a report of our investigation of an inmate's personal injury claim dated July 7, 1980 against a state institution. He is confined there. In conducting our investigation we made a total of 51 telephone, personal, and letter contacts.

Claim

The inmate is asking an unspecified amount for injuries he claims to have sustained on March 5, 1978, while working in a vocational training shop at the institution. The inmate indicated he was using a table saw to cut out a picture frame when the saw hit a knot which resulted in his left hand being pulled into the moving saw blade. The end of his left thumb was cut off and his left index finger was cut. The inmate maintains that he had been given permission to use the saw by the instructor.

Although the inmate did not request a specific amount of money, he reported that the injury caused him to lose \$400 in leather orders in February of 1978 while the injury was healing. He claims to have lost another \$150 in orders following an operation on a bone spur that developed on the same thumb after the injury.

Institutional Findings

The institution provided an investigation report, dated May 27, 1981, and an incident report, dated March 5, 1979, written by the instructor. The instructor's report verified that the inmate cut off part of his left thumb on March 5, 1979 while using a 10 inch table



saw to cut a 1 inch by 4 inch board. However, the inmate was employed as the vocational custodian. His job was to keep all of the vocational shops clean. The instructor had not authorized the inmate to use the table saw.

The institution provided a medical report, dated June 27, 1981 from an orthopedic specialist. He determined that the inmate has a 50% permanent loss of physical function of the thumb.

#### Workers' Compensation Findings

The Division of Workers' Compensation determined that if this were a claim under the Workmen's Compensation Law, it would not be considered compensable. The accident did not occur during the course of employment.

For the Committee's information, the Division of Workers' Compensation calculated the amount of compensation that would be paid if this were a valid Workers' Compensation claim. The compensation would be \$3,871.80.

#### Ombudsman Office's Findings

This Office interviewed the inmate and instructor concerning the inmate's allegation that he had been given permission to use the saw. The inmate explained that he had worked as custodian in the vocational area for approximately two years prior to the accident. During this time, he claims to have used the saw on several occasions. The inmate maintained that the instructor refused to let him use the saw on some occasions, but had sometimes, including the day of the accident, given him permission. The instructor denied having ever given the inmate permission to use the saw. He went on to point out that using the saw was not within the inmate's responsibilities and duties as the vocational custodian. The saw is for the use of students in that training program.

#### Recommendation

In accordance with the Claims Committee's rules, it is recommended that this claim be denied because it would not be compensable under the Workmen's Compensation Law. Although the inmate incurred a permanent disability, the injury did not occur during the course of employment.

I trust this information will help the Committee reach a determination in this matter. If further information is needed, please let me know.

Sincerely,

Preston N. Barton  
Ombudsman

Disposition: Unfounded (Claim denied by Claims Committee.)

3190

#### Investigation 7 - Loss of Part of Index Finger

January 13, 1982

Dear Senator Eldredge:

The purpose of this letter is to provide the Claims Committee with information which was not available on June 26, 1981, when the Committee denied an inmate's personal injury claim against a state prison. It is recommended that the Committee reconsider the inmate's claim based on a new medical report which determined that he incurred a permanent physical disability as a result of the tip of his left index finger having been accidentally cut off in a meat grinder at the institution.

#### Claim

The inmate asked the Ombudsman Office to investigate his personal injury claim after it had been denied by the Claims Committee because he believes that he has a permanent disability. He based this on his inability to use the injured hand and upon several years of medical experience.

#### Department of Corrections' Findings

Secretary of Corrections, Patrick D. McManus, had informed the Claims Committee that he would recommend payment of some compensation if the inmate would have incurred a permanent disability. However, the treating physician determined that the inmate did not have a rateable loss of function. In addition, the Division of Workers' Compensation, reported that no compensation would be paid if it were a Workers' Compensation claim because there was no loss of function. Based on this information the Claims Committee denied the claim.

#### Ombudsman Office's Findings

This Office obtained, with the cooperation of the medical staff at the institution, a disability determination from an orthopedic surgeon. He found that the inmate does have a permanent physical disability. He determined that the inmate, "... has 25% loss of physical function to the involved finger." The orthopedic surgeon's statement contradicts the findings of the treating physician, who is a general practice surgeon.

If the Committee chooses to reimburse the inmate, the amount of compensation was calculated by the Division of Workers' Compensation. Using the state average weekly wage, it was determined that the amount of compensation for the permanent disability would be \$1,395.08.

#### Recommendations

It is recommended that the Claims Committee reconsider the inmate's claim because of the new information which has been obtained. It is

also recommended that his claim be approved since an orthopedic specialist determined that the inmate did incur a permanent disability of 25% loss of function of his left index finger. The tip of his finger had accidentally been cut off while the inmate was operating a meat grinder. If the claim is approved, it is recommended that the inmate be reimbursed \$1,395.08, which is the amount of compensation he would be awarded under Workmen's Compensation law.

I trust this information will help the Committee reach a determination in this matter. If further information is needed, please let me know.

Sincerely,

Preston N. Barton  
Ombudsman

*Disposition: Partially Rectified (The Claims Committee recommended that the Legislature reimburse \$1000.)* 2646

#### Investigation 8 - Brothers Lose Christmas Presents

December 4, 1981

Dear Senator Eldredge:

This letter is in response to the Claim's Committee request, during its September 25, 1981 meeting, that this Office investigate an inmate's \$122.68 property loss claim. The Department of Corrections had provided the Claims Committee with an investigation report, dated September 8, 1981, in addition to its verbal presentation at the hearing.

#### Claim

Although the claim form was signed only by the claimant, it is intended to serve as a claim for property stolen from the claimant and his brother. They were both incarcerated at a state prison, celling next to each other on January 1, 1980 when \$122.68 of cigarettes and food items were allegedly stolen from their cells while they were attending a movie. After discovering the loss when they returned to their cells, they immediately reported it to staff. This is confirmed by a staff report, dated July 17, 1980. According to this statement, the brothers prepared an itemized list of the stolen property and the approximate value which was submitted to staff. This list was somehow lost which is why a staff member submitted a second report, dated December 1, 1980, in which he lists items he personally knew the brothers had received in Christmas packages immediately prior to the alleged loss. The staff member told us that the values he assigned are estimations of what he considered to be reasonable values.

The brothers mistakenly believed that their reporting the loss initiated a claim. After several months passed, they inquired of staff and learned that a claim was not being processed and that there was no record of their having reported the loss. On their own, the brothers sought out and obtained documentation of their claim. They also were under the impression that a claim had been submitted through a student intern. They again became concerned and through the Ombudsman Office learned that there had been a miscommunication and their claim had not been submitted to the Claims Committee. Finally, the present claim was submitted on April 3, 1981. When this Office was talking with one brother about the lack of evidence to support the claim, he responded by asking why they would have gone through all they had gone through if they did not have a legitimate claim.

#### Department of Corrections' Findings

In its letter of September 8, 1981 to the Committee, the Department of Corrections recommended the claim be denied because there is no substantial evidence to indicate intentional or gross negligence on the part of a correctional employee. The Department also stated, "It is extremely difficult to verify the facts in an alleged incident such as this."

#### Ombudsman Office's Findings

While additional information has been obtained by the Ombudsman Office, this information does not even prove or disprove that the items claimed were stolen. We concur with the Department of Corrections' statement that facts are difficult to verify in such an incident.

After having spent considerable time with both brothers and with staff, this Office believes the claimed items were stolen. However, there are no facts to support this, nor are there any facts to prove or disprove institutional responsibility.

Neither brother knows how the property was stolen. One brother reported that another inmate had told him he had witnessed the property being stolen through the cell doors by inmates using a pole with a hook on it. This witness was supposedly threatened and thus did not tell the brother about it until several months later. When this Office contacted the witness, who is now on parole, he remembered having observed inmates entering the brothers' cells and specifically remembered a television having been taken and then broken. It appears this witness must be confused since both brothers confirmed that a television was not taken. However, there is reason to believe a similar incident occurred in the cellhouse.

#### Recommendation

It is recommended that the claim be denied because there is no evidence to show the items claimed were stolen from the brothers. Even though this Office believes the loss did occur, there is also no evidence to show that the institution was or was not responsible.

I trust this information will help the Claims Committee reach a determination in this matter. If further information is needed, please let me know.

Sincerely,

Preston N. Barton  
Ombudsman

*Disposition: Unfounded (Claim denied by Claims Committee.) 3114*

Investigation 9 - Inmate violates rules but retains property rights

August 31, 1981

Dear Senator Eldredge:

This is a report of our investigation of an inmate's \$112 property loss claim. He is confined at a state prison. This loss occurred prior to the implementation of the statute allowing the Department of Corrections to reimburse inmates for lost property.

Claim

The inmate's \$112 claim is for the loss of a Montgomery Wards Airline black and white portable television. The claimant had loaned the television to another inmate because he was living in a multiman cell and could watch his cellmate's television. After the claimant was moved to a single man cell in a segregation unit, he got word to the inmate using his television that he needed it. As will be substantiated, this inmate turned the television over to a staff member on December 10, 1979. The staff member stored the television in a property room in the cellhouse. On December 13, 1979, the property room was broken into and several items including the claimant's television were stolen.

Institutional Findings

The institutional response to the inmate grievance the claimant submitted on February 21, 1980, confirms that the television was turned over to staff by another inmate on December 10, 1979. The response also verifies that the television was then stolen out of a cellhouse property room where it had been stored. However, the institution concluded that it is not responsible for the loss because the television was not with the claimant's property when he was moved to the segregation unit. The institution stated that the claimant was in violation of the rules for having loaned his property.

Ombudsman Office's Findings

Since the institution verified that the claimant's television was lost while in the institution's control, the issue to be decided is

whether or not he forfeited any claim to his television because he violated inmate rules by loaning his television to another inmate. According to Department of Corrections' regulation and institutional General Order, he would have retained ownership of the television.

The relevant Department of Corrections' Regulation in effect at the time of the loss is Regulation #44-5-115 "Disposition of Contraband", effective January 1, 1979. This regulation states, in part, "On admission to the Department of Corrections, an inmate's property is restricted." It goes on to state that an inmate shall forfeit all rights of ownership to property which is defined as contraband under two of three categories. An inmate retains his right of ownership to property under the third category when his property is misused. "Misuse" of property is defined in an institutional General Order, which states, in part, "Registered Personal Property is authorized for the sole use of the registered owner ... Trading, bartering, selling, giving or loaning personal property between inmates is prohibited."

The claimant "misused" his television by loaning it to another inmate, a violation of inmate rules. However, he was not charged with this violation and, thus, did not have a due process hearing. He would have retained ownership of the television if it had not been lost while in the institution's control. He would have either been given back the television or allowed to send it home.

The claimant could produce no documentation to support the value assigned to the television. The \$112 claimed is what he believes a new television similar to the model lost would cost. Institutional records verified that it was a Ward's model. On inquiring at a local Montgomery Wards retail store, we were informed that the least expensive 12 inch black and white portable television now sells for \$88.

Recommendation

It is recommended that the claim be approved in the amount of \$88 because the television was lost while in the institution's control. Although the claimant violated inmate rules by loaning his television to another inmate, he retained his right of ownership according to Departmental regulation and institutional policy. The television would have either have been returned to him or he would have been allowed to send it home had it not been lost.

I trust this information will help the Committee reach a determination in this matter. If further information is needed, please let me know.

Sincerely,

Preston N. Barton  
Ombudsman

*Disposition: Not Rectified (Claim approved for \$88.00 by Claims Committee, but it was later denied by the Legislature.)*

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# Recommendations to the Secretary of Corrections

## Introduction

Ten recommendations were formally presented to the Secretary of Corrections during the reporting period. Two kinds of formal recommendations have been made: those relating to individual situations and those regarding policy issues.

Recommendations concerning individual situations are generated out of a person's complaint which could not be resolved informally. Recommendations of this type have been infrequent. As presented here, they are edited so as to avoid identification of staff members and inmates.

Recommendations concerning policy issues are generated out of inquiry into general program issues, as well as individual complaint handling. These recommendations are presented here in their unedited versions. The reports containing recommendations about general administrative issues are available upon request. Indeed, some of the reports are presented as "Examples of Investigations" in this annual report.

## Failure to Evaluate an Inmate - issued July 14, 1981

### 1. *Recommendation:*

That the identified inmate be transferred to KRDC for evaluation, regardless of the status of a possible transfer out of state.  
(See Investigation 1, page .)

### *Secretary of Corrections' Response:*

No formal response was issued but the inmate was transferred for psychiatric evaluation on August 13, 1981.

## Rules and Regulations Regarding Property Loss Claims - issued March 17, 1982

### 2. *Recommendation:*

That reasonable time limits be established within which the director and the Secretary have to respond to claims.

### *Secretary of Corrections' Response:*

None.

3. Recommendation:

That a procedure be established to notify inmates when property loss claims have been received and registered by the director's office and again by the Office of the Secretary of Corrections.

Secretary of Corrections' Response:

None.

4. Recommendation:

That a system of receipts (similar to that used for the grievance procedure) be established for the property loss claims procedure.

Secretary of Corrections' Response:

None.

5. Recommendation:

That Departmental regulations be established to provide guidance to institutional staff members and to inmates as to how to process claims when the inmate is currently confined in one institution and wishes to file a claim regarding another institution.

Secretary of Corrections' Response:

None.

6. Recommendation:

That the internal claim form contain printed information concerning an inmate's ability to file a claim with the Legislative Claims Committee when an internal claim has been denied or when the claim is above the \$250 limit established by statute.

Secretary of Corrections' Response:

None.

Unnecessary Use of Force (Mace) at the Kansas Industrial Reformatory -  
issued February 9, 1982

7. Recommendation:

A. That no staff member carry mace.

B. (If A is not accepted) that a Department of Corrections regulation be established delineating in specific terms when mace can and cannot be used and by whom.

Secretary of Corrections' Response:

None.

(However, the Director of the Reformatory did issue a General Order on February 17, 1982 regarding the way in which mace is to be used at that institution.)

Unnecessary Use of Force at the Kansas State Industrial Reformatory -  
issued February 9, 1982

8. Recommendation:

That disciplinary action be taken against the identified correctional supervisor.

Secretary of Corrections' Response:

None.

"C" Cellhouse at the Kansas State Penitentiary - issued June 28, 1982

9. Recommendation:

If it is necessary for C Cellhouse inmates to remain in their cells for the noon meal, steps should be taken immediately to allow the serving of a hot meal. (This recommendation is in accordance with an American Correctional Association's Standard.) (See Investigation 2, pages .)

Secretary of Corrections' Response:

None.



10. Recommendation:

That the "privilege and reward system" be discontinued and the current level of privileges for workers be applied to all protective custody inmates in C Cellhouse. (See Investigation 3, pages .)

Secretary of Corrections' Response:

None.

## Statistical Presentation

Twelve months of complaint handling by the Ombudsman Office is condensed in the following statistical section. The charts which are included will allow the reader to get an overview of the process of complaint handling--from how they were received and where, to how they were resolved. Definitions for the complaint handling terms can be found on pages ; and will assist in understanding the sometimes subtle differences in categories.

The Ombudsman Office received 1,012 complaints in FY 1982. This represents the number of cases that were opened between July 1, 1981 and June 30, 1982. As can be seen in Figure 1, there was very little variation between quarters in the total caseload. One explanation for this is that complaints are generated by day-to-day encounters with bureaucracy and not necessarily by crisis situations.

Figure 1

COMPLAINTS RECEIVED BY QUARTER  
FY 1982

	KSP	KSIR	KCIW	Other	Total
1st Qtr. FY 1982	156 ( 22%)	39 ( 25%)	11 (27.5%)	30 ( 30%)	236 ( 23%)
2nd Qtr. FY 1982	188 ( 26%)	52 ( 34%)	6 ( 15 %)	28 ( 28%)	274 ( 27%)
3rd Qtr. FY 1982	175 ( 24%)	26 ( 17%)	12 ( 30 %)	26 ( 26%)	239 ( 24%)
4th Qtr. FY 1982	199 ( 28%)	37 ( 24%)	11 (27.5%)	16 ( 16%)	263 ( 26%)
Totals	718 (100%)	154 (100%)	40 (100%)	100 (100%)	1012 (100%)

The fluctuations that do exist, however, are often outside the control of the Ombudsman Office. For instance, even if Ombudsman staff decreased the number of visits to KSP in a given month, the number of complaints would remain high because the existence of the office is well known at that institution and complainants would contact the office by mail.



Another measure of the Office's work load is the number of cases that were closed during the reporting period. In FY 1982, the Ombudsman Office brought closure to 937 cases. This would include not only the majority of those complaints received during this fiscal year, but also those left unresolved at the end of FY 1981. The breakdown of closed cases by institution is found in Figure 2. Figures 4-12 which follow, are based on information from these closed complaints.

Figure 2

THE 937 CLOSED COMPLAINTS: FISCAL YEAR 1982

Kansas State Penitentiary (KSP)	665 ( 71%)
Kansas State Industrial Reformatory (KSIR)	145 ( 15%)
Kansas Correctional Institution for Women (KCIW)	36 ( 4%)
Other	91 ( 10%)
Total	937 (100%)

The volume of complaint work has increased steadily since the establishment of the Ombudsman Office in September of 1975. Figure 3 provides a comparison of complaints received, complaints closed and contacts made over the past seven years.

Figure 3

COMPLAINT VOLUME COMPARISONS  
September 15, 1975--June 30, 1982

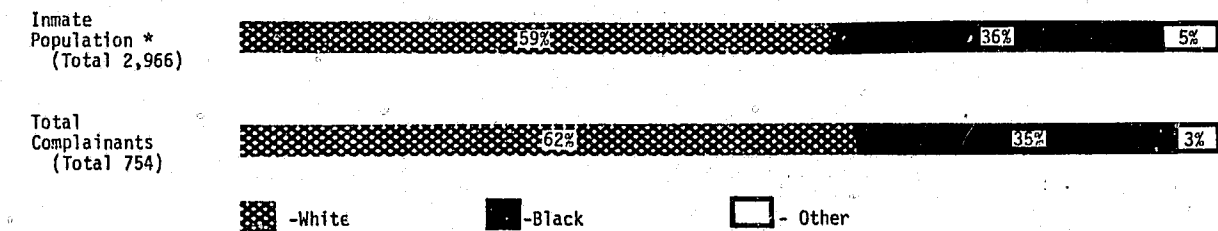
	1976*	FY 1977	% Incr over 1976	FY 1978	% Incr. over 1977	FY 1979	% Incr. over 1978	FY 1980	% Incr. over 1979	FY 1981	% Incr. over 1980	FY 1982	% Incr. over 1981	% Incr. over 1976
Complaints Received	310	372	20%	554	49%	584	5%	618	6%	886	43%	1012	14%	224%
Complaints Closed	258	370	43%	566	53%	558	-1%	624	12%	869	39%	937	8%	263%
Contacts Made **	***	2031	***	3635	79%	3744	3%	4518	21%	5529	22%	6145	11%	****

\* Complaints received during first 9½ months of operation.  
\*\* Data from closed cases only.  
\*\*\* This data was not recorded in 1976.  
\*\*\*\* Increase over 1977.

To evaluate the Office's distribution of services among racial groups, the race of inmate complainants was compared to the racial breakdown of the Department of Corrections inmate population. As Figure 4 shows, the proportions are very nearly identical. This has been true for as long as the Office has collected this data.

Figure 4

RACE OF INMATE COMPLAINANTS  
COMPARED TO INMATE POPULATION ON JUNE 30, 1982

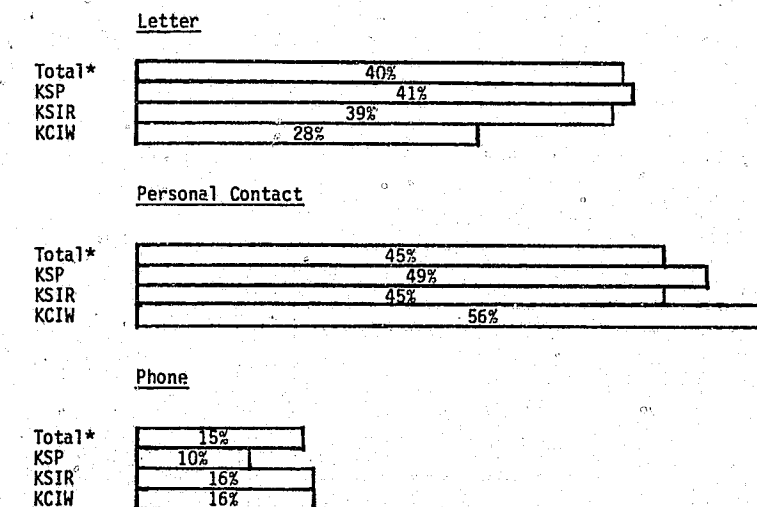


\* Data provided by Department of Corrections

The method used in initiating a complaint--letter, personal contact, or telephone call--is shown in Figure 5. One would tend to believe that since more Ombudsman staff time is spent at KSP than at the other institutions, the vast majority of complaints would be initiated by personal contact. However, in actuality, only 49% were initiated in person. The striking fact is that 41% of KSP complaints were initiated by letters from the complainants--the largest percentage of the three institutions measured. This is a reflection of the degree of knowledge the population has about the Office, either by personal experience, word-of-mouth, or direct referral from institutional staff.

Figure 5

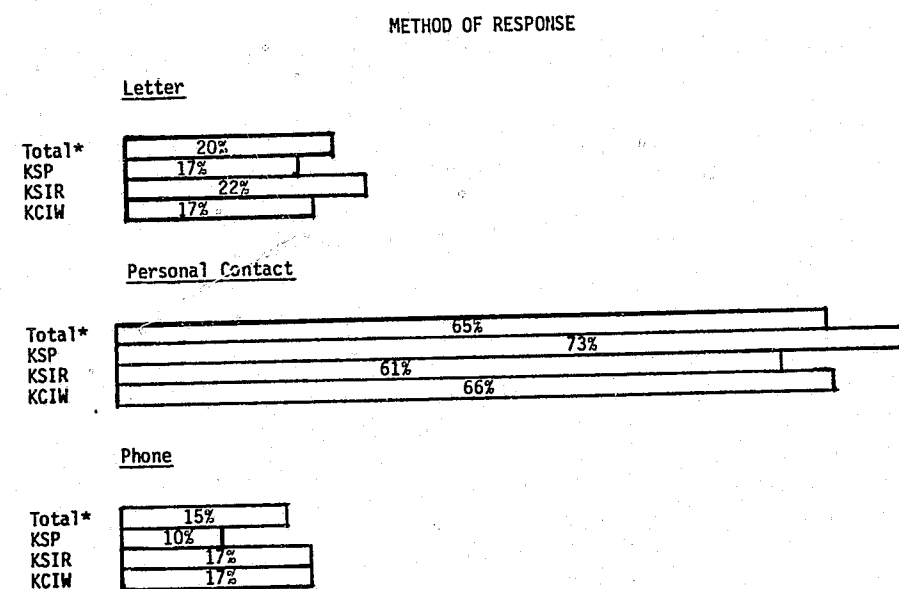
HOW COMPLAINTS INITIATED



\* Total incorporates complaints from all sources as well as KSP, KSIR, and KCIW.

The Ombudsman Office's method of first response is shown in Figure 6. The most significant change over last year's findings was with KSIR. There was an increase of approximately 30% in the personal responses with a corresponding drop in written responses. This is explained by the addition of an Ombudsman Associate position which made it possible for the Office to be present at KSIR more frequently in FY 1982 than the previous fiscal year.

Figure 6



\* Total incorporates complaints from all sources as well as KSP, KSIR, and KCIW.

Figure 7 shows how promptly the Ombudsman Office responded to a complaint. This continues to be a point of pride with the Office. Even with the increased caseload, the first response was made within one week in 91% of all cases.

Figure 7

RESPONSE TIME				
Calendar Days To First Response:	All* Complaints	KSP Complaints	KSIR Complaints	KCIW Complaints
0 - 7 days	850 ( 91%)	604 ( 91%)	124 ( 86%)	34 ( 94%)
8 - 14 days	52 ( 5%)	35 ( 5%)	12 ( 8%)	2 ( 6%)
15+ days	35 ( 4%)	26 ( 4%)	9 ( 6%)	0 (---)
Total:	937 (100%)	665 (100%)	145 (100%)	36 (100%)

\* This column incorporates complaints from all sources as well as KSP, KSIR, and KCIW.

There was very little change in the overall percentages relating to contacts made in resolving complaints. The major difference was a 28% increase in the number of contacts made at KSIR. Last fiscal year, 754 contacts were made at KSIR and this year, as can be seen in Figure 8, there were 1,044 contacts made at that institution. As stated earlier, the amount of time spent at KSIR by Ombudsman staff increased this year.

Figure 8

Contacts Made in Resolving Complaints

(a) Comparison of Number of Complaints with Contacts				
Institutions	Total Contacts per Institution	Number of Complaints per Institution	Average Number of Contacts per Complaint	Percentage of Contacts per Institution
KSP	4252	÷ 665	= 6.4	69%
KSIR	1044	÷ 145	= 7.2	17%
KCIW	244	÷ 36	= 6.7	4%
Other	605	÷ 91	= 6.6	10%
Total:	6145	÷ 937	= 6.6	100%

(b) Individual Contacted				
	Complainant	DOC Staff*	Outside DOC	Total
KSP	2148	+ 1636	+ 468	= 4252
KSIR	428	+ 481	+ 135	= 1044
KCIW	119	+ 75	+ 50	= 244
Other	298	+ 219	+ 88	= 605
Total:	2993	+ 2411	+ 741	= 6145
Percent:	49%	+ 39%	+ 12%	= 100%

(c) Form of Contact				
	Letter	Personal	Phone	Total
KSP	1094	+ 2503	+ 655	= 4252
KSIR	280	+ 553	+ 211	= 1044
KCIW	89	+ 126	+ 29	= 244
Other	219	+ 110	+ 276	= 605
Total:	1682	+ 3292	+ 1171	= 6145
Percent:	27%	+ 54%	+ 19%	= 100%

\* Other than complainant

In resolving complaints, the staff of the Ombudsman Office work within the institutional chain-of-command whenever possible. The intent of the Office is to resolve the issue, informally, at the lowest possible management level. Figure 9 shows that 37% of all cases were resolved without involving Department of Corrections' staff time. There was an increase, however, in the utilization of line staff members in the resolution of complaints. Last year, only 6.6% of all complaints were resolved at the line level. This year, the percentage increased to 19%. The difference cannot be attributed to the increased number of visits to KSIR, because the change is seen across the board. A change in the Ombudsman staff's style of complaint handling may have occurred as a result of their conducting training classes for correctional officers. This activity made it possible for line officers and Ombudsman staff to meet and become more familiar with each other's function.

Figure 9

HIGHEST DEPARTMENT OF CORRECTIONS' MANAGEMENT LEVEL INVOLVED IN RESOLUTION				
Management Levels	All* Complaints	KSP Complaints	KSIR Complaints	KCIW Complaints
None	349 ( 37%)	217 ( 33%)	64 ( 44%)	17 ( 47%)
Line	176 ( 19%)	139 ( 21%)	23 ( 16%)	5 ( 14%)
Line Supervisors	201 ( 21%)	176 ( 26%)	20 ( 14%)	2 ( 5%)
Professional Staff	71 ( 8%)	53 ( 8%)	11 ( 8%)	1 ( 3%)
Sub-Total:	797 ( 85%)	585 ( 88%)	118 ( 82%)	25 ( 69%)
Middle Management	48 ( 5%)	29 ( 4%)	12 ( 8%)	1 ( 3%)
Directors	64 ( 7%)	30 ( 5%)	12 ( 8%)	9 ( 25%)
Secretary of Corrections	28 ( 3%)	21 ( 3%)	3 ( 2%)	1 ( 3%)
Sub-Total:	140 ( 15%)	80 ( 12%)	27 ( 18%)	11 ( 31%)
Total:	937 (100%)	665 (100%)	145 (100%)	36 (100%)

\* This column incorporates complaints from all sources as well as KSP, KSIR, and KCIW.

A question that is frequently asked by persons unfamiliar with the operation of the Ombudsman Office is: "What kinds of complaints do you handle?" Figure 10 provides not only a list of the categories of complaints handled, but shows how many were closed in each category. "Records" complaints have been the most frequently received for the past three years. The top three complaint categories at KSP correspond with the top three rankings for all complaints. However, complaints concerning the "Disciplinary Procedure" were more frequent at KSIR and complaints regarding "Parole Eligibility and/or Custody Status" ranked first at KCIW.

Figure 10  
COMPLAINTS BY CATEGORY

Categories:	Rank Order Of* All Complaints	KSP Complaints	KSIR Complaints	KCIW Complaints
Records	98 (10.5%)	77 (11.6%)	9 ( 6.2%)	4 (11.1%)
Grievance/Property Loss Procedures	93 ( 9.9%)	72 (10.8%)	11 ( 7.6%)	4 (11.1%)
Property Loss	77 ( 8.2%)	65 ( 9.8%)	7 ( 4.8%)	1 ( 2.8%)
Disciplinary Procedure	68 ( 7.2%)	43 ( 6.5%)	20 (13.8%)	2 ( 5.5%)
Parole	68 ( 7.2%)	45 ( 6.8%)	12 ( 8.3%)	1 ( 2.8%)
Daily Routine	64 ( 6.8%)	55 ( 8.3%)	4 ( 2.8%)	1 ( 2.8%)
Medical	63 ( 6.7%)	53 ( 8.0%)	5 ( 3.4%)	2 ( 5.5%)
Complaint From Staff	56 ( 6.0%)	30 ( 4.5%)	8 ( 5.5%)	2 ( 5.5%)
Parole Eligibility/ Custody Status	53 ( 5.7%)	27 ( 4.1%)	18 (12.4%)	6 (16.7%)
Legal	43 ( 4.6%)	23 ( 3.4%)	7 ( 4.8%)	5 (14.0%)
Complaint Against Staff	41 ( 4.4%)	26 ( 3.9%)	12 ( 8.3%)	2 ( 5.5%)
Inter-Institutional Transfer	38 ( 4.1%)	28 ( 4.2%)	5 ( 3.4%)	0 ( --- )
Other	37 ( 3.9%)	25 ( 3.8%)	4 ( 2.8%)	0 ( --- )
Physical Threat/ Abuse	27 ( 2.9%)	14 ( 2.1%)	8 ( 5.5%)	1 ( 2.8%)
Visit	26 ( 2.8%)	22 ( 3.3%)	4 ( 2.8%)	0 ( --- )
Education/Work/ Training	23 ( 2.5%)	15 ( 2.3%)	3 ( 2.1%)	3 ( 8.3%)
Food	17 ( 1.8%)	13 ( 1.9%)	3 ( 2.1%)	0 ( --- )
Mail	15 ( 1.6%)	15 ( 2.3%)	0 ( --- )	0 ( --- )
Temporary Release/ Sentence Modification	13 ( 1.4%)	7 ( 1.0%)	1 ( .7%)	1 ( 2.8%)
Counseling/Mental Health	9 ( 1.0%)	7 ( 1.0%)	2 ( 1.3%)	0 ( --- )
Unknown	5 ( .5%)	2 ( .3%)	1 ( .7%)	0 ( --- )
Safety Procedures	3 ( .3%)	1 ( .1%)	1 ( .7%)	1 ( 2.8%)
Total:	937 ( 100%)	665 ( 100%)	145 ( 100%)	36 ( 100%)

\* This column incorporates complaints from all sources, as well as KSP, KSIR, and KCIW.

Over the past few years, there has been a steady increase in the number of complaints received from staff. This year, 59 staff complaints were closed compared with 43 last year. While the number of complaints remains relatively small when compared to total complaints, it represents a 37% increase over last year's figure.

Figure 11 charts the disposition of the complaints closed in FY 82. Last year, 18.3% of all complaints were fully rectified. This year, the percentage increased to 21%. However, those complaints which proved to be unfounded after investigation, increased from 9.7% to 13%. Across the board, there was an increase in the percentage of cases in which the Ombudsman Office had direct intervention. This increase is consistent with the increased involvement of line staff in complaint resolutions noted earlier.

Figure 11

DISPOSITION OF COMPLAINTS

Dispositions:	All* Dispositions	KSP Dispositions	KSIR Dispositions	KCIW Dispositions
<u>Direct Intervention:</u>				
Fully Rectified	201 ( 21%)	152 ( 23%)	27 ( 19%)	8 ( 22%)
Partially Rectified	10 ( 1%)	5 ( 1%)	3 ( 2%)	0 ( --- )
Not Rectified	33 ( 4%)	24 ( 4%)	7 ( 5%)	1 ( 3%)
Unfounded	126 ( 13%)	98 ( 15%)	18 ( 12%)	6 ( 16%)
Sub-Total:	370 ( 39%)	279 ( 43%)	55 ( 38%)	15 ( 41%)
<u>Indirect Intervention:</u>				
Observed and Monitored	55 ( 6%)	37 ( 5%)	6 ( 4%)	5 ( 14%)
Information	164 ( 18%)	109 ( 16%)	22 ( 15%)	5 ( 14%)
Referral	13 ( 1%)	8 ( 1%)	1 ( 1%)	2 ( 6%)
Sub-Total:	232 ( 25%)	154 ( 22%)	29 ( 20%)	12 ( 34%)
<u>Incompleted Intervention:</u>				
Declined	130 ( 14%)	78 ( 12%)	26 ( 18%)	2 ( 6%)
Withdrawn	100 ( 11%)	69 ( 10%)	23 ( 16%)	4 ( 11%)
Solved Prior	105 ( 11%)	85 ( 13%)	12 ( 8%)	3 ( 8%)
Sub-Total:	335 ( 36%)	232 ( 35%)	61 ( 42%)	9 ( 25%)
Totals	937 (100%)	665 (100%)	145 (100%)	36 (100%)

\* This column incorporates complaints from all sources, as well as KSP, KSIR, and KCIW.

## Staff Biographies

### Preston N. Barton II -- Ombudsman

Preston Barton is a member of the Board of Directors of the United States Association of Ombudsmen, the Ombudsman Advisory Committee of the International Bar Association and the Academy of Certified Social Workers (ACSW). He is a Licensed Specialist Clinical Social Worker (LSCSW). He attended Wilmington College in Wilmington, Ohio and holds a Bachelor's Degree (1965) with a concentration in Social Welfare from the School of Education at Temple University in Philadelphia, Pennsylvania. He completed the two year Master's Degree program (1967) in Social Work at the University of Pennsylvania School of Social Work, in Philadelphia. During his senior year in college and two years in graduate training, he did his field training at the Pennsylvania Prison Society, also in Philadelphia.



After graduation, he remained at the Prison Society as a case worker for nearly a year before entering the U.S. Army with a direct commission as a captain. Following two months of Medical Service Corps training, he was assigned as a Social Work Officer to the U.S. Army Correctional Training Facility at Fort Riley, Kansas, in May, 1968. Two months later, this innovative facility began operation, with a capacity of accomodating 2,000 prisoners at one time and involving over 10,000 men in its program in a 12-month period.

Upon completion of his military obligation in March, 1971, Preston and his wife, Jean, moved to Topeka where he became the Administrator and Social Work Consultant to the ex-offender staff of the Topeka 7th Step program. Additionally, he was a part-time instructor in the Sociology Department at Washburn University. In September, 1972, he received an appointment as Assistant Professor at the University of Kansas School of Social Welfare. After teaching for two years, he left to accept a Social Work Fellowship in the 12-month Post Master's Social Work Training Program in the Menninger School of Psychiatry. While participating in this program during 1974 and 1975, he did his practicum in clinical work at the C.F. Menninger Memorial Adult Hospital.

In addition to his formal work and training experience, Preston has been active in continuing education. He has studied and trained in group dynamics, including such experimental seminars as "Human Relations," "Factors in Planned Change," "Theory and Practice of Training," and "Executive Seminars," sponsored by Temple University, the National Training Laboratory Institute, and the Menninger Foundation. Other continuing educational involvement has included such areas as "Instructional Techniques," "Social Research," "Psychopharmacology," "Administrative Planning," and a variety of programs relating to corrections including volunteers in corrections,

hostage negotiations, inmate grievance procedures, and negotiations and collective bargaining. Preston was a delegate to the First International Ombudsman Conference, in Edmonton, Alberta, Canada (1976) and to the Second International Ombudsman Conference in Jerusalem, Israel (1980). He attended the first five conferences of the U.S. Association of Ombudsmen, at which he participated as a panel reactor, workshop facilitator and presenter.

Preston has been active in the community. Currently, he serves as Chairperson of the Ambulance Advisory Board to the Shawnee County Commissioners. He has previously been involved as a volunteer, consultant and Board member of various other community organizations, including the Shawnee County Community Resources Council, the Kansas Council on Crime and Delinquency, the 7th Step Foundation of Topeka, Inc., the Citizens' Jail Survey Project for Kansas, the Shawnee County Youth Center, and the Topeka Chapter of the Kansas Council on Crime and Delinquency for which he served as Chairman. Currently, he is a member of the National Association of Social Workers, the National Council on Crime and Delinquency and the American Correctional Association.

It was with this background of having functioned in correctional, educational and psychiatric settings from the perspectives of institutional staff members, offenders, ex-offenders, and community volunteers that he was appointed Corrections Ombudsman on September 15, 1975, by the Corrections Ombudsman Board. In this capacity he also functions as Executive Secretary to the Board.

#### David Jensen -- Ombudsman Associate



David Jensen was appointed Ombudsman Associate in August, 1978. During the past year he has handled complaints at the Kansas State Penitentiary, the Kansas State Industrial Reformatory, and at the Kansas Correctional Institution for Women (co-correctional).

David obtained a Bachelor of Arts degree in August, 1974 from Washburn University of Topeka with a double major in Psychology and Corrections. He obtained a Masters Degree in Social Work from the University of Kansas in May, 1978. As part of his graduate training, he spent two to three days a week field training with the Ombudsman Office. David has also participated in numerous continuing education seminars in Ombudsmanry, correctional management, and human behavior.

Prior to joining the Ombudsman staff, David worked for three and a half years as an Adult Probation Officer for Shawnee County Court Services. For four months he also worked as a part-time Juvenile Intake Officer with Court Services. After resigning to attend graduate school, he again worked for Court Services part-time for a year and a half supervising the GED program. After obtaining his master's degree, David returned to Washburn University's Criminal Justice Department as the summer Correctional Intern Coordinator and taught an introductory corrections course.

Highlights for David during the past year included the development of his two children, his increased involvement in community activities, and the completion of his second marathon (3 hours, 47 minutes). His low points included the deaths of four correctional staff members, whom he respected and considered friends, and the deaths of three family members.

#### Carol Keith -- Ombudsman Associate



Carol Keith was appointed as Ombudsman Associate in July, 1981. Prior to that, she worked with the Ombudsman Office for 6 months in the part-time position of Staff Assistant. During her tenure as Ombudsman Associate, Carol has handled most of the complaints from the Kansas State Penitentiary and has done some on-site complaint handling at the Kansas State Industrial Reformatory and the Kansas Correctional Institution for Women.

Carol holds a bachelors degree in Sociology from Kansas State University with a specialization in correctional administration and a Masters Degree in the Administration of Justice from Wichita State University. Although proud of her academic accomplishments, Carol considers herself a late bloomer because she finished her Masters Degree at the same time her high school graduating class was holding its twentieth reunion.

Prior to joining the Ombudsman Office staff, Carol's criminal justice related experience included membership on the Criminal Law Committee of the Kansas Judicial Council which studied the issues of "Use of Deadly Force by Law Enforcement" and "Strip Searches". She also served as Chairperson of the Riley County Community Corrections Advisory Board from February, 1980, until June, 1981. She is currently a member of the Kansas Correctional Association and a member of the State Board of Directors of the League of Women Voters.



In her spare time, Carol enjoys reading, music, movies, camping, fishing, photography, and travel. She has traveled extensively in the past -- including approximately 45 of the United States and 10 European countries -- and hopes to find the time to do more in the future.

#### Marais Johnson -- Administrative Secretary

Marais has served the Office of the Ombudsman since June of 1979. In January, 1981, she was promoted to Administrative Secretary. Marais' major responsibilities include secretarial support, keeping the filing and library systems up-to-date, office management, supervising the Typist and assisting the Ombudsman in various projects, such as the budget and work with the Corrections Ombudsman Board.

Marais has attended various workshops since being with the Ombudsman Office that she feels has helped broaden her knowledge of the job. She has attended workshops on office personnel, evaluation of employees, budget process, human relations, micro counseling, written communication skills for managers, newsletter format and the design of records and filing systems.

Because Marais enjoys working with people and trying to understand their needs, she has found the challenge of working with the Ombudsman Office an enjoyable experience. Marais participates in sport activities all year round. In the summer she plays on a softball team, spring and fall on a volleyball team and in the winter she and her husband, Jerry, bowl in a couples bowling league.

#### Suzette Badura -- Typist

Suzette has been with the Ombudsman Office since April, 1982, as its Typist. Her major responsibilities consist of: typing correspondence and reports, carrying out receptionist duties, handling in-coming and out-going mail, and registering and closing out of complaints received by this Office.

Even though Suzette has been here only a few months, she feels that she has broadened her knowledge and understanding of the criminal justice system and looks forward to learning more.

## Definition Of Complaint Handling Terms

### I. Categories of Complaints:

#### A. Care and Maintenance:

1. Basic Needs - Provisions for essential body functions, such as the availability and quality of food, clothing, shelter, showers, exercise, and toilet facilities.
2. Medical - (Physical) - Availability and delivery of medical treatment and it's documentation. (Includes only somatic and not psychiatric ailments.)
3. Records - Handling of all records, other than medical and mental health records.
4. Visiting - Management of inmate visiting lists, visits, and visitors.
5. Mail - Sending and receiving correspondence and packages.

#### B. Safety and Security:

6. Physical Threats and Abuse - Threats or incidents of bodily harm.
7. Safety Procedures - Condition and design of physical facilities and equipment, and their supervision.
8. Property Loss/Physical Disability - Loss, destruction or theft of personal property; and permanent disability injuries.
9. Temporary Releases and Sentence Modifications - Process of reporting decisions, and providing reasons for decisions regarding home furloughs, funeral visits, and sentence modifications initiated by the Department of Corrections.
10. Inter-Institutional Transfers - Process of reporting decisions, and providing reasons for decisions regarding institutional transfers.

#### C. Maintenance of Institutional Order:

11. Disciplinary Procedures - Management of the disciplinary process.



12. Daily Routine - Informal and formal routinized practices and procedures which govern institutional life.
  13. Complaints Against Staff - Prejudicial and arbitrary behavior.
  14. Internal Grievance/Property Loss Claim Procedures - Processing of inmate grievances and property loss claims within the Department of Corrections.
- D. Rehabilitation:
15. Parole - Complaints relating to the Kansas Adult Authority.
  16. Counseling and Mental Health - Availability of professional counseling and services. Utilization of psychopharmacological medications and psychiatric evaluations.
  17. Programs - Assignment and termination of work or education/vocational training programs. Development and carrying out of rehabilitation programs. Availability of recreation, library and religious programs, and of self-help programs.
  18. Custody Status and Parole Eligibility - Accountability and documentation of decision making concerning custody level (classification) and related cellhouse moves, certification to see the Kansas Adult Authority, and Departmental processing of interstate parole compact requests.
- E. Miscellaneous:
19. Complaints From Staff - Complaints from Department of Corrections staff members.
  20. Complaints From Volunteers - Training, orientation, supervision, and treatment of volunteers.
  21. Legal - Access to relevant legal documents, to legal professionals and inmate advocates, and to the courts.
  22. Other - Complaints which do not fit within any of the above categories.
  23. Unknown - Withdrawn or solved prior to the collection of sufficient information to categorize.

## II. Assessments of Complaints:

- A. Within Jurisdiction - Within statutory power to investigate,

- B. Outside Jurisdiction - Beyond statutory power to investigate.
- C. Unknown - Withdrawn or solved prior to the collection of sufficient information to assess.

## III. Disposition of Complaints:

- A. Fully Rectified - In response to the Ombudsman's intervention, a problematic situation, practice, or policy is resolved in the opinion of the Ombudsman.
- B. Partially Rectified - In response to the Ombudsman's intervention a problematic situation, practice, or policy is in part resolved in the opinion of the Ombudsman.
- C. Not Rectified - In response to the Ombudsman's intervention, a problematic situation, practice, or policy is not corrected in the opinion of the Ombudsman.
- D. Unfounded - Subsequent to the Ombudsman's investigation, no factual basis is found for the complaint.
- E. Observed and Monitored - Ombudsman presence in a situation for the purpose of preventing deviations from policy or preventing susceptibility of false allegations of such.
- F. Information - Complainant provided with information on how to go about solving a problem. Also, information provided about operation of Ombudsman Office, Department of Corrections, and other agencies.
- G. Referral - Complainant directed to other resources within and outside Department of Corrections, and resources are contacted by the Ombudsman.
- H. Declined - Investigation is either not started or is stopped because issue is outside jurisdiction and assistance cannot be provided, issue is beyond current capacity to handle, issue has not been appropriately pursued by complainant, or issue is frivolous.
- I. Withdrawn/Discontinued - Complainant requests Ombudsman take no further action, or fails to follow through with requests or recommendations made by Ombudsman. Ombudsman decides to stop investigation prior to completion and report of findings.
- J. Solved Prior - Rectified before completion of Ombudsman's investigation and report of findings.

IV. Highest Management Level Involved in Resolution:

A. Levels Within the Department of Corrections:

1. Line Staff - Clerical staff; Correctional Officers I and II; detail officers and maintenance staff.
2. Line Supervisors - Correctional Supervisors I and II (Lieutenants and Captains), all unit team members, and supervisors of work release facilities.
3. Professional Staff - Staff members operating in a professional or para-professional capacity in the medical, legal, mental health, religious, educational, and training fields.
4. Middle Management - Supervises two or more line supervisors, and/or has major programmatic responsibilities.
5. Directors - Institutional Directors and Deputy Directors.
6. Secretary - The Secretary of Corrections and Deputy Secretaries.
7. None - None of the above levels were involved.

B. Levels External to the Department of Corrections:

1. Governmental Agencies and Resources - Office of the Governor, the Legislature, the Kansas Adult Authority, etc.
2. Non-Governmental Agencies and Resources - Legal Services for Prisoners, Inc., 7th Step Foundation, the press, etc.
3. None - None of the above levels were involved.

## Proposed Legislation

### HOUSE BILL No. 2814

AN ACT concerning the corrections ombudsman board and the ombudsman of corrections; relating to access to correctional institutions, subpoena and other powers and confidentiality of certain information.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. (a) The ombudsman of corrections shall have the power to enter and inspect at any reasonable time any premises under the control of the secretary of corrections and may delegate that power in writing to any ombudsman associate.

(b) If the ombudsman of corrections is denied access to any premises under the control of the secretary of corrections, the secretary, within 24 hours after the denial, shall give the ombudsman a written statement of the reason for the denial of access.

Sec. 2. (a) No documents relating to complaints, investigations or studies in the possession of the ombudsman of corrections or any employee of the ombudsman shall be read or confiscated by any officer or employee of the department of corrections.

(b) Correspondence between a person who is in the custody of the secretary of corrections and the ombudsman of corrections or the corrections ombudsman board shall be forwarded at once, unopened, to the addressee.

Sec. 3. (a) The corrections ombudsman board, and the ombudsman of corrections under such conditions as specified by rules and regulations of the board, may issue subpoenas to compel the production of records which are in the custody of the secretary of corrections and which are deemed by the ombudsman to be relevant to any matter under inquiry by the ombudsman.

(b) Testimony and records subpoenaed pursuant to this section shall be subject to the same privileges as provided in civil actions in courts of this state.

(c) If a person fails to obey a subpoena issued under this section, the corrections ombudsman board or the ombudsman may make application to the district court of Shawnee county for an order compelling the person to comply with the subpoena. Upon such application, the court may issue an order therefor and failure to comply with such order shall be punishable in the manner provided for contempt of court.

(d) The corrections ombudsman board shall adopt rules and regulations specifying those conditions under which the ombudsman of corrections may issue subpoenas.

Sec. 4. Subject to rules and regulations adopted by the board, the ombudsman of corrections shall have the power to administer oaths and take testimony and may delegate such power in writing to any ombudsman associate.

Sec. 5. Information which is confidential under state or federal law shall not be disclosed publicly by the corrections ombudsman board, the ombudsman of corrections or the ombudsman's staff.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

STATE OF KANSAS



OFFICE OF THE GOVERNOR

State Capitol  
Topeka 66612

John Carlin Governor

Message to the House of Representatives of the State of Kansas:

Pursuant to Article 2, Section 14 of the Constitution of the State of Kansas, I hereby return House Bill No. 2814 to you unsigned.

HB 2814 is a bill that would greatly expand the authority of the Ombudsman of Corrections in gaining access to the premises and records under the control of the Secretary of Corrections. Any such expansion of authority must be carefully balanced against the need for orderly and secure operation of our correctional institutions and programs. Recent events at the Penitentiary have underscored this need.

As originally introduced, the bill granted the Ombudsman the power to enter and inspect, at any reasonable time, any premises under the control of the Secretary of Corrections. The bill also provided that complaint or investigation documents in the possession of the Ombudsman or employees of the Ombudsman shall not be read or confiscated by the Department of Corrections.

As introduced, this bill would have guaranteed the Ombudsman of Corrections with the necessary power and authority to carry out the mandates of the office which are to:

1. Dispense with unfounded complaints;
2. Substantiate valid complaints; and
3. Improve administrative procedures.

I support the full opportunity for the Ombudsman and his staff to perform these functions and duties.

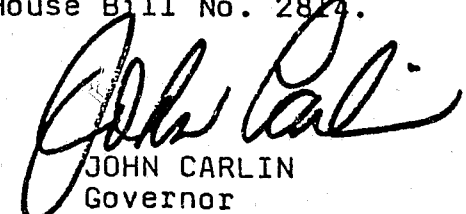
However, the bill as amended by the Senate, now authorizes the Corrections Ombudsman Board and the Ombudsman of Corrections to issue subpoenas to compel the production of any records which are in the custody of the Secretary of Corrections and which are deemed by the Ombudsman to be relevant to any inquiry he is conducting. This

provision is far too broad; and could severely impede the need of the Department to protect the security and confidentiality of information contained in its records.

In addition, the bill grants to the Ombudsman and his staff the power to administer oaths and take testimony. Again, it is unclear as to the need for this broad grant of authority, or as to the extent and nature of its use. Conceivably, in any inquiry conducted by the Ombudsman and associates, any correctional officers, member of the staff, inmate, or civilian could be asked or directed to testify under oath.

Without greater showing for the need for these powers, I am compelled to conclude that this bill is not in the best interest of maintaining the most orderly and secure operations of this state's correctional facilities.

For these reasons, I veto House Bill No. 2814.

  
JOHN CARLIN  
Governor

Dated: April 23, 1982

## Statutory Citations

### Article 74.—CORRECTIONS OMBUDSMAN BOARD

**74-7401.** Corrections ombudsman board; composition; appointment; terms; vacancies; officers; compensation and expenses; powers and duties; access to corrections records and facilities. (a) There is hereby established and created as an independent agency within the executive branch of state government, the corrections ombudsman board. Prior to September 1, 1980, such board shall consist of 15 members, three of whom shall be appointed by the governor; three of whom shall be appointed by the attorney general; three of whom shall be appointed by the chief justice of the supreme court; three of whom shall be appointed by the speaker of the house of representatives; and, three of whom shall be appointed by the president of the senate. On and after September 1, 1980, such board shall consist of 10 members, two of whom shall be appointed by the governor; two of whom shall be appointed by the attorney general; two of whom shall be appointed by the chief justice of the supreme court; two of whom shall be appointed by the speaker of the house of representatives; and, two of whom shall be appointed by the president of the senate.

The members of said board shall hold their respective offices for a term of four years and until their successors are appointed and qualified. On September 1, 1978, and on September 1 of each fourth year thereafter, the governor, attorney general, chief justice of the supreme court, speaker of the house of representatives and the president of the senate shall each appoint one member to such board. On September 1, 1980, and on September 1 of each fourth year thereafter, the governor, attorney general, chief justice of the supreme court, speaker of the house of representatives and the president of the senate shall each appoint one member to such board. Members serving on such board on the effective date of this act shall serve as members of the corrections ombudsman board for the remainders of the respective terms for which appointed. In case of a vacancy on such board, the person appointing the member creating the vacancy shall appoint a successor who shall serve for the remainder of the term of the member creating such vacancy. The members of such board shall be selected as far as practicable so that they will be residents of different parts of the state.

(b) The board shall select a chairperson from among its members. The board shall meet upon the call of the chairperson, or upon the call of the majority of the members of such board. A majority of the members of such board shall constitute a quorum to do business.

(c) Members of the board attending meetings of such board, or attending a subcommittee meeting thereof, or visiting any correctional institution for the purpose of acquiring information concerning policies, procedures and administrative actions of the department of corrections, when authorized by such board, shall be paid compensation as provided in subsection (a) of K.S.A. 75-3223, and amendments thereto, and in addition thereto the amounts provided in subsection (c) of K.S.A. 75-3223 and amendments thereto. Payments made to board members for visiting correctional institutions prior to the effective date of this act are hereby authorized and validated.

(d) The board shall have the following powers and duties:

(1) Appoint and supervise the activities of the ombudsman of corrections and establish the amount of compensation to be paid to such ombudsman as provided by K.S.A. 74-7403 or any amendments thereto.

(2) Adopt and file with the division of budget its budget estimates for the operation of the board and the office of ombudsman of corrections.

(3) Make recommendations to the secretary of corrections concerning policies, procedures and administrative actions of the department of corrections, which recommendations shall not be binding upon the secretary.

(e) The secretary of corrections shall provide members of the board with access to records not otherwise privileged by law and with reasonable access to facilities and persons under the jurisdiction of the secretary subject to conditions and time limitations the secretary may establish in order to insure the orderly operation of the correctional institutions.

**History:** L. 1973, ch. 339, § 51; L. 1974, ch. 348, § 97; L. 1974, ch. 403, § 11; L. 1974, ch. 404, § 1; L. 1975, ch. 416, § 23; L. 1978, ch. 370, § 1; L. 1981, ch. 316, § 1; May 14.

**74-7402. Same; approval of expenditures; personnel and accounting services provided by the secretary of corrections.** All vouchers for expenditures from appropriations to the corrections ombudsman board shall be approved by the chairperson or by the ombudsman when the same is authorized by the board. The secretary of corrections shall provide the board and the office of the ombudsman with necessary personnel and accounting services.

**History:** L. 1978, ch. 370 § 2; July 1.

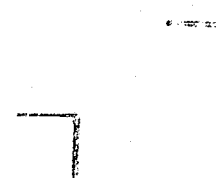
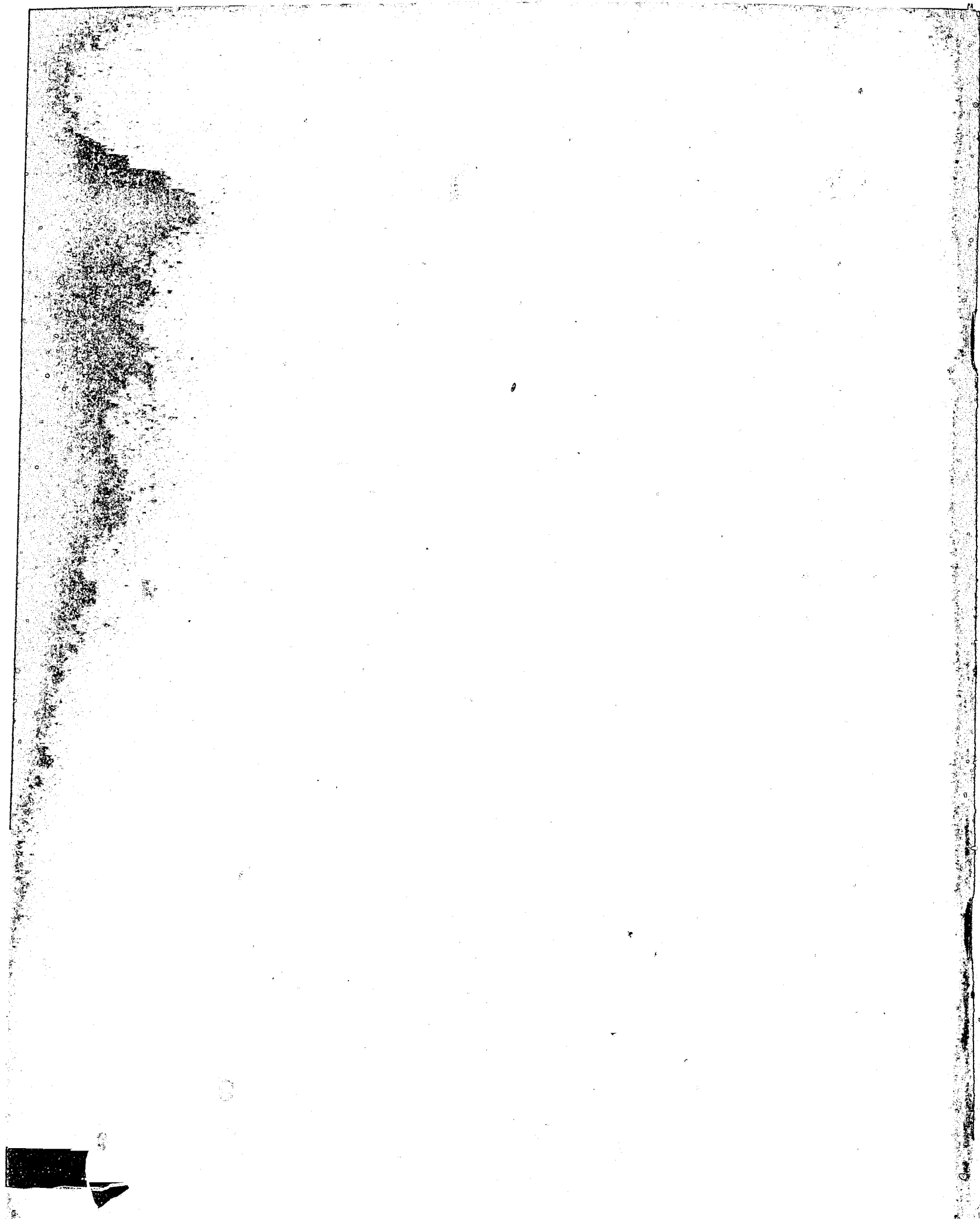
**74-7403. Ombudsman of corrections; appointment; duties; compensation; office space; employees; complaints forwarded to secretary of corrections.** The board shall appoint an ombudsman of corrections who shall serve at the pleasure of such board. Such ombudsman shall act as secretary of such board and shall perform such other duties and functions as may be required by the board. The compensation paid to such ombudsman shall be fixed by the board subject to approval by the governor. The secretary of administration shall provide the ombudsman with office space at Topeka. The ombudsman may appoint such employees as may be necessary to carry out the duties of the office of ombudsman of corrections and as are within available appropriations, and such employees shall be in the unclassified service under the Kansas civil service act. Any misfeasance or discrepancy in administration or any unreasonable treatment of inmates in the custody of the secretary of corrections which such ombudsman discovers or the inmates bring to his or her attention shall be brought to the attention of the secretary of corrections and shall be made known in periodic reports and in an annual report issued by the ombudsman to the board. The ombudsman shall forward complaints and grievances directly to the secretary of corrections for consideration by the secretary.

**History:** K.S.A. 75-5231; L. 1978, ch. 370, § 3; L. 1978, ch. 330, § 41; July 1.

**Revisor's Note:**

Section transferred from 75-5231.





**END**