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Office of the Ombuds for Corrections

# Annual Report Appendices 2020

January 2021

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# Appendix A: Official complaint form

## OFFICIAL COMPLAINT FORM

MINNESOTA OFFICE OF THE OMBUDS FOR CORRECTIONS

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**INSTRUCTIONS:** *The incarcerated individual must complete the DOC grievance process first. The Office of the Ombuds for Corrections (OBFC) will NOT investigate the complaint if the DOC grievance process has not been completed (unless there is some overwhelming reason they cannot complete the DOC process or they believe the DOC is not properly following the process). This form must accompany any complaint to the OBFC. **Only one issue per form.** Fill out the form completely, sign, and mail or email the form and up to one additional sheet of paper, if needed, to the address listed.*

### INCARCERATED PERSON'S

**FIRST NAME** \_\_\_\_\_ **LAST NAME** \_\_\_\_\_

**PREFERRED NAME** (if different from above) \_\_\_\_\_

**DOC OID #** \_\_\_\_\_ **FACILITY** \_\_\_\_\_

**Has the DOC grievance process been completed?**  **Yes**  **No** *If no, is there an overwhelming reason the DOC process cannot be completed or is there reason to believe that the DOC is not properly following the process? If yes, what was the outcome of the DOC process? Please attach final grievance form:* \_\_\_\_\_

**Name of person completing this form:** \_\_\_\_\_ **Relationship:** \_\_\_\_\_

*(if someone other than the incarcerated individual listed above)*

**PHONE** \_\_\_\_\_

**EMAIL** \_\_\_\_\_

*Please note that the OBFC will not conduct investigations on behalf of another person without their consent unless the person is unable to consent.*

**Date of Incident:** \_\_\_\_\_ **Description of complaint:** *(If you need more room, include no more than one additional piece of paper. Do not include supporting documents at this time EXCEPT for final grievance form. Additional documents will be collected if needed for an investigation)*

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**What would you like to happen next?** \_\_\_\_\_

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*If the OBFC investigates this complaint, the Office cannot compel the DOC to act, but can make recommendations. We cannot provide information to you regarding the status of an incarcerated person's complaint as Minnesota law protects information regarding their case as private data, however we may contact you to gather more information for the investigation.*

**MN Office of the Ombuds for Corrections (OBFC)  
Complaint Data Practices Notice**

By signing my name below, I consent to and acknowledge that the information I am providing may be used and/or disseminated by the Office of the Ombuds for Corrections: (a) to investigate and help to resolve the complaint/issue about which I am contacting the Office, including by contacting any agency complained against; (b) to communicate with me; (c) to the Office of the Governor if requested under Minn. Stat. ch. 241.93, subd. 1(3); and (d) to law enforcement agencies if a crime may have been committed. Except for my name, and as otherwise authorized by this consent, I understand that the information I am providing will be treated as "private data on individuals" under the Minnesota Government Data Practices Act, Minn. Stat. ch. 13, and shall not be used or disseminated except as authorized under the Act or other applicable state or federal law. I understand that I am not legally required to provide the information I have submitted in this form, but that my failure to do so may make it more difficult to investigate or resolve my complaint. The Ombuds may access medical data maintained by the DOC under Minn. Stat. ch. 241.94.

**Acknowledgement of Notice and Consent to Release of Information**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Print, complete the form front and back, sign, and mail it and up to one additional sheet of paper, and final DOC grievance form, if applicable, to:**

Office of the Ombuds for Corrections  
540 Fairview Ave N, Suite 202  
St. Paul, MN, 55104

**Or fill out and sign the form digitally and email it as an attachment to:**

OBFCComplaints@state.mn.us

# Appendix B: Complaint Information for Local Correctional Facilities

From <https://mn.gov/obfc/localfacilities/>.

## What to do if you have a complaint about a local adult or juvenile correctional facility in Minnesota:

*Local adult and juvenile correctional facilities include city and county jails and detention centers; and juvenile secure detention and residential facilities.*

1. **Grievance Process:** Follow the facility grievance process; all facilities are required to have one.
2. **Local Authorities:** If you believe facility staff have engaged in misconduct, contact the appropriate local authorities such as the sheriff or county corrections department responsible for the facility.
3. **Inspection & Enforcement Unit:** If you are not satisfied with the local response, and believe the facility is violating state law or policy, contact the Minnesota Department of Corrections Inspection & Enforcement Unit. Information can be found [here](#).
4. **Complaint to Ombuds:** The Minnesota Office of the Ombuds for Corrections (OBFC) may choose to investigate local facility complaints that are not being investigated by the DOC. The OBFC can investigate systemic issues as well - they can look at the effectiveness and impact of actions and policies, not just if policy was followed. Information about filing a complaint with the OBFC can be found [here](#).

## More Information

**Who is the Ombuds?** The Office of the Ombuds for Corrections (OBFC) is a neutral and independent investigator of complaints regarding state and local correctional agencies. The OBFC is a separate agency that acts independently from the Department of Corrections and reports directly to the Governor.

**What is the DOC Inspection and Enforcement Unit?** The DOC Inspection & Enforcement Unit (I & E Unit) conducts regular inspections of correctional facilities and has enforcement authority to order corrective action for violations of mandatory state standards under which facilities must operate. The I & E Unit also licenses juvenile facilities, police municipalities and adult halfway houses.

**Ombuds and I & E Cannot Duplicate Services.** Minnesota statute 241.91 gives OBFC jurisdiction to investigate local adult and juvenile correctional facilities. However, the statute also requires that the similar services provided by the I&E Unit of the DOC are not duplicated. The OBFC and the DOC have entered into an agreement, as required by statute, that maintains that the DOC has jurisdiction for local facility policy compliance complaints.

## Complaints

- **Grievance:** The first place to file a grievance/complaint is with the local facility or local authorities. All facilities are required to have a grievance process and inmates/residents need to use the facility grievance process first. It's important that the facility maintain an effective process for resolving grievances, for health and welfare, and to comply with applicable rules.
- **Local Authorities:** Complaints potentially involving staff misconduct should be reported to the appropriate local authority such as the sheriff or county corrections department responsible for the facility.
- **Inspection & Enforcement and Licensing:** If the local facility or authorities do not resolve a complaint to someone's satisfaction, they can file a complaint with the [I & E Unit of the DOC](#). The I & E Unit has jurisdiction over rules under which local facilities are approved to operate.
- **Complaint with the OBFC:** The Minnesota Office of the Ombuds for Corrections (OBFC) will refer appropriate local correctional facility complaints to the I & E Unit of the DOC, and may choose to investigate local facility complaints that are not being investigated by the DOC. The OBFC can investigate the effectiveness and impact of actions and policies, not just if policy was followed or not. Information about filing a complaint can be found [here](#).

## What Else You Should Know

**Correspondence between an inmate/resident and the Inspection & Enforcement Unit or the OBFC is protected and must be handled as such by staff of the facility.**

**What the Ombuds Does:** The Ombuds cannot force a corrections agency to take or change any action, or in any way discipline staff or inmates. We can work to resolve issues, investigate, make recommendations, and publish reports. The OBFC is concerned with systemic/policy issues and may choose to investigate these types of complaints.

**What the I & E Unit Does:** The I & E Unit assures rule compliance for the jails (Rule 2911), police municipalities (Rule 2945), halfway houses (Rule 2920) and juvenile facilities (Children's Residential Facility Rule 2960). They inspect, monitor corrective actions and incidents, review complaints to assure rule compliance and report to the Commissioner of Corrections.

**What They Both Do:** Both agencies share mutual goals of safety, security, fairness and justice for incarcerated persons. The Ombuds and I & E Unit staff may refer complaints that are outside their respective jurisdictions to other regulatory agencies as appropriate and/or provide information for self-advocacy.

# Appendix C: Complaint and Investigations Information for Corrections Staff

The Office of the Ombuds for Corrections (OBFC) is a separate and independent entity from the Department of Corrections (DOC) and has the authority to investigate actions of Minnesota corrections agencies. The OBFC statutory mission is to “promote the highest attainable standards of competence, efficiency, and justice in the administration of corrections.” The OBFC can receive complaints, work to resolve them, conduct investigations, make recommendations to agency leadership and/or the legislature, and publish reports. The OBFC cannot force a correctional agency to take any action or discipline anyone.

The governing statutes for the OBFC can be found at [Minn. Stat. sections 241.90-95](#); and [13.856](#) for data practices. Additional information can be found at <https://mn.gov/obfc/>. DOC staff can find additional office contact information and forms under the “Business Units/Offices” section of the iShare site. The office telephone number is 651-539-4520.

## Complaints

- Anyone (incarcerated individuals, DOC or local facility staff, family, public, etc.) may file a complaint with the OBFC.
- Information received from a complainant is private data under M.S. 13.856, except for name, location, and inmate identification number (if applicable). Complainants will be asked to complete a data practices acknowledgement (Tennessee warning).
- Just as inmates are generally asked to exhaust the grievance process before filing a complaint, staff will also be asked to follow any administrative process available to them. The OBFC will generally avoid getting involved in issues related to the employer/employee relationship and will refer allegations of staff misconduct to the appropriate agency staff.
- The OBFC role is to help ensure that MN correctional agencies have fair and effective policies and procedures in place and that those policies and procedures are being followed. The OBFC is not meant to be a replacement or appeal authority for management decisions.
- The OBFC will not accept a complaint on behalf of another individual without their consent, absent compelling reasons for doing so.

## Investigations, Data Practices, and Reporting

- Once a complaint has been accepted, it will move to an “investigation” phase. Although this is often an informal process, information collected during OBFC investigative interviews and correspondence is classified as private data under [M.S. 13.856](#), and interviewees will be provided with the data practices notice included later in this document (Tennessee warning).
- Interviews with the OBFC are voluntary and a represented employee may have a union representative at an interview if they choose to do so. The OBFC can subpoena any person to appear, give testimony, or produce documents or other evidence; however, the OBFC prioritizes building cooperative relationships and will only compel testimony under significant need.
- Investigative findings and recommendations will be provided to agency leadership who can choose how to act on them.
- The OBFC will notify agency leadership when allegations or complaints pertaining to agency staff necessitate appointing authority action (i.e. reports of sexual harassment, workplace misconduct, etc.).
- The OBFC will notify agency leadership when information leads to the reasonable belief that immediate

danger of death, substantial bodily harm, or serious risk of harm exists for an incarcerated individual or staff person.

### **Non-Complainant Data Practices Notice**

Once an Ombuds for Corrections complaint has been accepted, it will move to an “investigation” phase. Information collected is classified as private data under M.S. 13.856. Providing any information is voluntary.

The information provided may be used to communicate with agency staff to resolve the complaint, report findings, make recommendations, and report staff misconduct; and to law enforcement agencies if a crime may have been committed. Summary reports may become publicly available.

### **Possible Questions**

#### **COMPLAINTS**

##### **When is it appropriate for staff to make a complaint with OBFC?**

Generally only after any other available administrative process has been exhausted. OBFC staff will answer any questions about this and assist people with finding the right process.

##### **Can I make an anonymous or confidential complaint about something?**

Yes, but it may make it difficult to investigate and some things like staff misconduct or someone potentially harmed will need to be reported. If you would like to discuss this call the OBFC at 651-539-4520.

#### **INVESTIGATIONS**

##### **How does the OBFC decide what to investigate?**

Many things are considered, including statutory guidance, the results of any agency response, the urgency and impact of the issue, and resources available. Many complaints will go through a preliminary investigation phase that may or may not result in a more formal in-depth investigation. The OBFC can investigate systemic/policy issues with or without a complaint.

##### **Why is the investigative data classified as private?**

The OBFC can be more effective if people feel comfortable sharing information, and this is a common feature of ombudsperson offices. For the same reason it is important that people understand how things may be shared.

##### **Will details of what I say be shared with agency staff or others?**

This depends, some things like staff misconduct or someone potentially harmed will need to be reported, but your name and identifying details don't always need to be shared. If you have concerns about this, please let OBFC staff know.

##### **How does the information get reported and to whom?**

Sometimes the information is used in making an informal recommendation to agency leadership such as the Commissioner or a warden or other agency head. More formal reports can also be shared, and some will be “published” by sending them to the Governor after the Commissioner or other agency head has been given a chance to respond.

##### **Can someone be disciplined as a result of an OBFC investigation?**

The OBFC does not have authority to require any action, including discipline. However, the OBFC could potentially recommend discipline (although this would be unusual because the OBFC defers to the agency for misconduct investigation), or discipline by the agency could occur as a result of an OBFC finding.

##### **How does the OBFC complaint and investigation process impact collective bargaining agreements?**

It does not negate rights or responsibilities within existing collective bargaining agreements.



# Appendix D: OBFC start-up tasks

This initial list of start-up tasks includes some still in progress as of late 2020.

<b>Staffing</b>
Investigator Posting
Interviewing
Onboarding
Employee Training
New Hire DOC Training Academy
Online Training
<b>Office Space</b>
Office Construction
Office Furniture Made and Installed
Move In
Temporary Space
<b>IT</b>
CM Purchase Agreement
CM Install/Training
Website Development
Phones Installed

<b>Policy and Procedures</b>
Training Ops Guide
MOU/interagency agreement
Office Information
Phone Procedures
Data Practices Guide
Inmate Guide to Complaints
<b>Complaints and Investigations</b>
Written Complaints
Phone & Electronic Complaints
Policy Investigation Plan
<b>Other</b>
Mission & Vision Development
Communications & Engagement Plan
Advisory Panel Developed
Program & Resource Development
<b>Budget</b>
Travel (leased vehicles vs. mileage reimbursement)
Schedule Meetings
<b>Reports</b>
MMB Certification Tool & Checklist
MN Leg Report

# Appendix E: Position description for Assistant Ombuds for Operations

## **POSITION PURPOSE:**

The Office of the Ombuds for Corrections (OBFC) is an independent agency created by statute in 2019 that investigates the decisions, acts, and other matters of the Department of Corrections (DOC) in order to promote the competent, efficient, and just administration of corrections in Minnesota.

This position exists to provide agency-wide leadership in advancing its mission, vision, and values and ensure its effective and efficient operation, working closely with the Ombudsperson for Corrections (Ombuds) to achieve strategic agency goals. As a member of the agency leadership team, the position develops and implements agency-wide policies; develops and directs the agency's statewide stakeholder engagement plan, including agency communications and legislative strategy; directs the agency's program and resource development initiatives; and coordinates agency-wide operations and administrative functions.

## **REPORTABILITY**

**Reports to:** Ombudsperson for Corrections (Ombuds)

**Supervises:** Overall agency operations and administration, contractors, interns, volunteers.

## **DIMENSIONS**

**Budget:** Assists Ombuds in developing \$650,000/year budget and ensures agency operations and administration are carried out within the established budget.

**Clientele:** Office of the Ombuds for Corrections and other State of Minnesota staff; corrections employees, incarcerated and formerly incarcerated persons and their families; corrections administrators, wardens, and superintendents; legislators; Governor's office; community groups; and other special interest groups and associations.

**Licensure:** None required.

## **POSITION RESPONSIBILITIES:**

### **Responsibility No 1:**

**Priority:** A

**% of Time:** 30

**Discretion:** A

**OPERATIONS AND ADMINISTRATION:** Plan, direct, and/or coordinate OBFC operational and administrative activities in order to efficiently and effectively advance OBFC mission, vision, and values.

### **Tasks:**

- A. Develop, coordinate, and communicate OBFC calendar and scheduling.
- B. Working with other Assistant Ombuds, plan and coordinate complaint intake and screening process.

- C. Direct OBFC purchasing and contracting within budget guidelines and coordinate purchasing and contracting processes with supporting staff at supporting State of Minnesota (MN) agencies.
- D. Manage agency technology systems in coordination with MNIT staff.
- E. Direct office space use and coordinate with landlord and Department of Admin as needed.
- F. Assist OBFC staff with accessing appropriate human resources and labor relations information and support from staff at supporting State of MN agencies.
- G. Coordinate agency staff hiring process.

**Responsibility No. 2:**

**Priority:** A

**% of Time:** 25

**Discretion:** A

STAKEHOLDER ENGAGEMENT AND COMMUNICATIONS: Plan, direct, and/or effect activities that educate OBFC stakeholders, including the legislature, about OBFC mission, vision, values, and policies; and engage them in the work of OBFC in a way that advances OBFC mission, vision, and values.

**Tasks:**

- A. Working with the Ombuds, create and develop an agency statewide stakeholder engagement and communications plan.
- B. Plan and direct stakeholder meetings including meetings at the office, in the community, in corrections facilities, and with any advisory groups that may be developed.
- C. Develop and manage OBFC advisory group/s as needed.
- D. Working with MNIT staff, create an OBFC website and maintain/update content.
- E. Develop and direct the use of OBFC social media platforms.
- F. Write press releases for Ombuds review and approval.
- G. Receive and direct media inquiries.
- H. Working closely with the Ombuds, develop and direct OBFC legislative strategy and activities.
- I. Receive, direct, or respond to legislative inquiries.
- J. Draft bills, develop, write, and implement departmental legislation session procedures.
- K. Research, develop and analyze background material on specific bills.
- L. Monitor legislative hearings.
- M. Review, analyze and document department related and active legislation by reviewing internal legislative proposals, writing reports and correspondence, finalizing and submitting bills to the Governor's office, presenting legislative session procedures to management, and informing the Ombuds of hearings and other relevant legislative matters.

**Responsibility No 3:**

**Priority:** A

**% of Time:** 20

**Discretion:** A

POLICY: Develop, communicate, monitor, and at times direct compliance with, OBFC policies and procedures to ensure that they support agency mission, vision, and values; and comply with all applicable state and federal laws and policies.

**Tasks:**

- A. Working closely with the Ombuds, develop and document OBFC policies and procedures and update them as needed.
- B. Develop and maintain familiarity with current state and federal laws and policies applicable to OBFC and advise the Ombuds on compliance.
- C. Advise OBFC staff on compliance with OBFC policies and procedures.
- D. Develop, supervise, and effect as needed, communications and training activities that ensure OBFC staff and stakeholders understand OBFC policies and procedures as needed.
- E. Develop systems and processes to monitor and evaluate the impact of OBFC policies and procedures on the OBFC mission, vision and values; and make recommendations to the Ombuds for changes as appropriate.

**Responsibility No 4:**

**Priority:** B

**% of Time:** 20

**Discretion:** B

PROGRAM AND RESOURCE DEVELOPMENT: Develop and coordinate programs and resources to advance OBFC mission, vision, and values.

**Tasks:**

- A. Research private funding sources, coordinate grant-seeking activities, and write funding proposals.
- B. Develop and maintain positive relationships with potential funders, academic institutions, and other entities that might assist with research and providing OBFC interns.
- C. Coordinate OBFC use of contracted and volunteer research resources.
- D. Develop, coordinate, and in some cases supervise, OBFC use of interns and volunteers.

**Responsibility No. 5:**

**Priority:** A

**% of Time:** 5

**Discretion:** A

INTAKE, INVESTIGATION, AND REPORTING/RESEARCHING: All OBFC staff may at times be directed to take, screen, investigate, and/or report on correctional complaints; and research correctional policies.

**Tasks:**

- A. Take and record oral or written correctional complaints in accordance with OBFC policies.
- B. Explain the complaint process and policies to complainants in a clear and respectful manner.
- C. Route complaints in accordance with OBFC policies.
- D. Investigate correctional complaints by taking statements from involved parties, visiting and inspecting correctional facilities, and/or reviewing correctional policies.
- E. Report on investigations in accordance with OBFC policies.
- F. Conduct correctional policy research and assist with documenting and reporting on it as directed.

**The following responsibility does not lend itself to any percent of time breakdown. It pertains to behavioral responsibilities that all staff are expected to exhibit 100% of the time and are not added to the total percent of time for other responsibilities.**

**Responsibility No. 6:**

**Priority: A**

**% Of Time: 100**

**Discretion: A**

Office of the Ombuds for Corrections employees are responsible for demonstrating behavior that reflects the OBFC mission, vision, and values. The mission of the Office is to promote the competent, efficient, and just administration of corrections in Minnesota. The vision and values are yet to be developed.

All employees are expected to be aware of and comply with all current laws, state statutes, statewide policies, and DOC and Office of Ombuds for Corrections procedures related to their position.

# Appendix F: Position description for Assistant Ombuds

## POSITION PURPOSE:

The Office of the Ombuds for Corrections (OBFC) is an independent agency created by statute in 2019 that investigates the decisions, acts, and other matters of the Department of Corrections (DOC) in order to promote the competent, efficient, and just administration of corrections in Minnesota.

This position exists to represent and perform the duties of the OBFC in an assigned jurisdiction, at 2-3 DOC facilities and/or for specific subject matter/s, under limited supervision. The Assistant Ombuds receives, processes, investigates, resolves, and reports on individual complaints. The position will also investigate systemic issues and conduct corrections policy analysis, research, reporting, and recommendations. The incumbent will have access to corrections facilities and sensitive data under the delegated statutory authority of the Ombuds. The position exercises discretion in applying the policies, mission, vision, and values of the OBFC to cases within their jurisdiction and in building and maintaining positive relationships with OBFC stakeholders.

## REPORTABILITY

**Reports to:** Ombudsperson for Corrections

**Supervises:** N/A

## DIMENSIONS

**Budget:** N/A

**Clientele:** Office of the Ombuds for Corrections and other State of Minnesota staff; corrections employees; incarcerated and formerly incarcerated persons and their families; corrections administrators, wardens, superintendents, community groups; and other special interest groups and associations.

**Licensure:** None required

## POSITION RESPONSIBILITIES:

### Responsibility No 1:

**Priority:** A

**% of Time:** 30

**Discretion:** A

Receive and investigate complaints from within the DOC, both from inmates and staff; and from family and friends of inmates and from community groups in order to gather and record clear, complete, and unbiased information

**Tasks:**

- A. Receive and route complaints in accordance with OBFC policies.
- B. Explain the complaint process and policies to complainants in a clear and respectful manner.
- C. Exercise appropriate judgment in determining when to pursue or decline a case.
- D. Assist complainant in obtaining outside representation and assistance when requested by the client and appropriate.
- E. Appropriately determine what action to take to complete an investigation and formulate case plan.
- F. Take appropriate action to investigate complaints, including taking statements from involved parties, visiting and inspecting correctional facilities, and/or reviewing correctional policies and documents.
- G. Enter timely, accurate, and detailed notes into the office's electronic case management system.
- H. Organize case files and other assigned tasks to meet deadlines.
- I. Write final communications and report at conclusion of investigation.
- J. Investigate critical incidents and issues as directed by the Ombuds.
- K. May investigate complaints of the DOC not adequately following its own human resources grievance, investigation, and resolution process, if directed by the Ombuds.
- L. Advise local, state, and federal investigative agencies while they conduct investigations within the DOC and provide assistance as necessary and as allowed within the confines of data privacy laws and OBFC policies, if directed by the Ombuds.
- M. Testify as a witness to defend the evidence in any resulting legal or Ombuds proceedings by responding to subpoenas; adhering to criminal and civil court procedures and by accurately and truthfully answering questions during legal proceedings, as allowed within the confines of data privacy laws and OBFC policies, and as directed by the Ombuds.

**Responsibility No. 2:**

**Priority:** A

**% of Time:** 30

**Discretion:** A

Resolve complaints through effective presentation of facts, negotiation/mediation and problem solving.

**Tasks:**

- A. Develop and maintain a thorough understanding of OBFC complaint policies, DOC policies, and relevant laws.
- B. Communicate appropriately with complainant, agency personnel, and others; maintain positive interpersonal relationships in interactions with people in difficult situations, other staff, clientele, and agencies.
- C. Counsel complainants on OBFC and other agency policies and process, their options, and confidentiality and data classification considerations.
- D. Make recommendations to appropriate DOC staff and/or mediate an outcome agreeable to parties in dispute in order to effectively and efficiently resolve complaints.
- E. Properly determine when complaints cannot be resolved within a facility and raise them to the next level of DOC's leadership in accordance with OBFC policies.

**Responsibility No 3:**

**Priority:** B

**% of Time:** 20

**Discretion:** C

Research and report on correctional policies and practices and make recommendations for correctional policy and practice changes that will promote the competent, efficient, and just administration of corrections.

**Tasks:**

- A. Develop and maintain a knowledge of evidence-based best practices and policies in corrections and relevant research.
- B. Conduct and report on research into correctional practices and policies as directed by the Ombuds or as needed to accomplish task C.
- C. Determine when complaints or other factors indicate policy or practice changes are needed and make recommendations to DOC and other stakeholders in consultation with Ombuds.
- D. Review current and proposed DOC policies and procedures to determine need for changes by reading proposed policies and existing law and best practices research and make recommendations.
- E. Collaborate with other researchers both within and outside of the agency as needed.
- F. Attend and report on correctional hearings as assigned.

**Responsibility No 4:**

**Priority:** B

**% of Time:** 20

**Discretion:** A

Represent the OBFC with various stakeholder groups in order to develop the credibility and effectiveness of the agency.

**Tasks:**

- A. Develop and maintain positive relationships with OBFC stakeholders/clientele generally and focused on assigned jurisdiction.
- B. May be assigned to represent or lead the OBFC on a specific committee, task force, or other group created by the OBFC, legislature, another agency, or other organization.
- C. May be directed to attend and present at workshops, seminars, or conferences to increase knowledge and expand expertise about governmental law, policy, and administration and Ombuds function.
- D. May be assigned to be a specialist on a subject matter; take initiatives in that role to gain knowledge and expertise on a subject matter, provide information and consultative advice to other staff, represent the office in presentations or trainings, and performs other assignments related to the specialty.
- E. Provide trainings to DOC and other corrections staff and inmates on OBFC/DOC policies related to the role and duties of the OBFC.
- F. Train staff and clients to increase their awareness of client rights and available assistance by developing and presenting orientation sessions, consulting with individual clients, or families and employees and/or by providing for training by expert instructors.

**The following responsibility does not lend itself to any percent of time breakdown. It pertains to behavioral responsibilities that all staff are expected to exhibit 100% of the time and are not added to the total percent of time for other responsibilities.**

**Responsibility No. 5:**

**Priority:** A

**% Of Time:** 100

**Discretion:** A

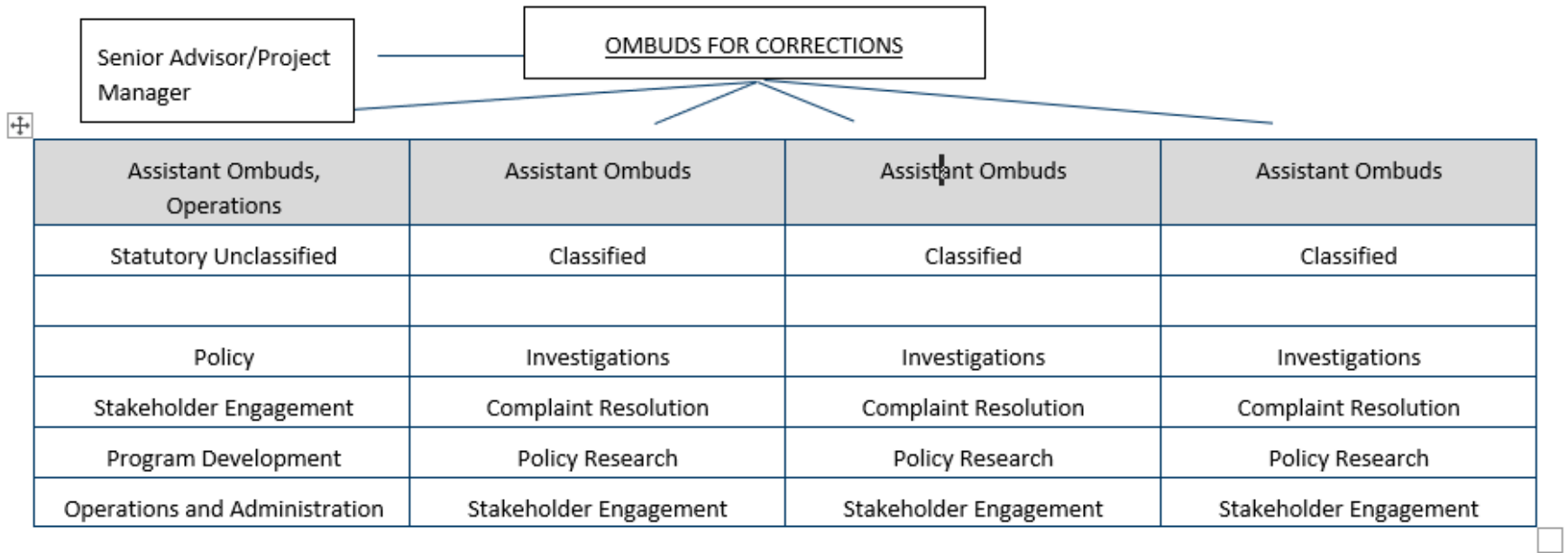


Office of the Ombuds for Corrections employees are responsible for demonstrating behavior that reflects the OBFC mission, vision, and values. The mission of the Office is to promote the competent, efficient, and just administration of corrections in Minnesota. The vision and values are yet to be developed.

All employees are expected to be aware of and comply with all current laws, state statutes, statewide policies, and DOC and Office of Ombuds for Corrections procedures related to their position.

# Appendix G: Initial organizational chart

OFFICE OF THE OMBUDS FOR CORRECTIONS ORGANIZATIONAL CHART



# Appendix H: OBFC staff manual

## Background

### History

In February of 1972 Governor Wendell Anderson established an Ombudsman Commission by Executive Order. At the time, corrections systems around the country were facing increased scrutiny due to prison unrest such as what occurred in Attica, NY in 1971. As a result of the work of this commission the Office of the Corrections Ombudsman, the first of its kind in the nation, was created in 1973. It operated up until 2003 when it was eliminated by the Minnesota Legislature in a special session due to mounting pressure to reduce regulation and oversight and budget challenges the state was facing.

In 2019, amid concerns over safety in Minnesota Prisons and a resurgence of interest in the role of an ombudsperson in general, the State Legislature held hearings on prison safety and received testimony from the public and corrections practitioners with recommendations for the re-establishment of the Office of Corrections Ombudsman. Bills were introduced in both the House and Senate and received bi-partisan support and the Minnesota “Office of the Ombuds for Corrections” was authorized under Minnesota Statutes Chapter 241.90 – 241.95.

### Role of the Ombuds

Today, Minnesota’s state prisons and local correctional facilities confine almost 17,000 adults and juveniles. However, the number of persons impacted by incarceration is much greater than these numbers imply. Over 8000 persons are admitted and released from state prisons and almost 200,000 are admitted and released from local jails each year. Access to these facilities by the public is highly regulated and conditions of confinement are typically left to internal oversight by the system itself. Incarcerated persons and their families are left without a voice in the process to have their concerns heard, much less addressed, in a transparent and impartial manner. The majority of persons experiencing incarceration are released back into our communities so it is in all our interests to ensure that their rights are protected and that programs and services are effective at reducing recidivism, improving lives and keeping our communities safe. Effective correctional programs, policies, and practices also create a safer and healthier work environment for

staff, who are expected to perform very difficult and at times high-risk work with little positive recognition from the public.

The concept of an “ombudsman” originated in Sweden in the early 1800s to address public complaints against government agencies – “ombudsman” means “protector or defender of citizens’ rights.” The traditional “classical” Ombuds role is that of an independent investigator who can both respond to public complaints and provide recommendations for improvement via public reporting. This is the type the MN Ombuds for Corrections falls under. Other types of Ombuds are called “organizational”, where they are internal to an organization and help resolve organizational conflict; and “advocate” where they advocate for a particular population, such as children in foster care or people being treated for mental illness.

As stated in the enabling legislation creating the Office of the Ombudsperson (M S 241.90) “The ombudsperson for corrections shall be accountable to the governor and shall have the authority to investigate decisions, acts, and other matters of the Department of Corrections so as to promote the highest attainable standards of competence, efficiency, and justice in the administration of corrections.”

Thus, the goal of the Office of the Ombuds for Corrections (OBFC) is not only to receive, investigate and resolve individual complaints, but with an eye toward making recommendations for systemic improvement. OBFC is not bound by existing policies, and procedures. Indeed, one of the many benefits of the office is that it provides for an “external eye” that can look beyond these boundaries to a higher standard of fairness and justice.

The expansive authority of OBFC comes with a high level of public trust and public responsibility. OFBC staff should not only work with diligence and professionalism but should also protect the impartiality and neutrality of the office. Perception is often more important than reality within the corrections realm, and the recommendations of the office may become weakened if its staff are believed to be biased.

## **OBFC Functions and Duties**

As stated in the enabling legislation creating the OBFC, its primary function -includes “promoting the highest attainable standards of competence, efficiency, and justice in the administration of corrections.” The law also states, “The Ombudsperson may also be concerned with strengthening procedures and practices that lessen the risk that objectionable actions of the administrative agency will occur.” These functions and powers of the OBFC allow the Ombuds to publish reports, conclusions, and recommendations for change to improve the delivery of correctional programs and services. Such reports may be transmitted to the Office of the Governor and the Legislature for the purpose of promoting efficiency, justice and fairness and identifying any desirable changes to statute.

The Ombuds may receive, investigate, and resolve any complaints within statutory jurisdiction. OBFC may initiate an investigation upon its own initiative, or upon receipt of a complaint from

any person. OBFC also has the authority to decline to investigate any complaint. If it declines an investigation, it will notify the complainant of the decision and the reasons.

In receiving complaints, staff may recommend or take action to resolve the issue, rather than initiate an investigation. -In some cases, the Ombuds may require a complainant to pursue other remedies or channels of complaint open to the complainant before accepting or investigating the complaint.

The OBFC statute prioritizes any actions by an administrative agency that may be:

- Contrary to law or rule;
- Unreasonable, unfair, oppressive, or inconsistent with any policy or judgement of an administrative agency;
- Mistaken in law or arbitrary in the ascertainment of facts;
- Unclear or inadequately explained when reasons should have been revealed; or
- Inefficiently performed.

The ombudsperson may also be concerned with strengthening procedures and practices that lessen the risk that objectionable actions of the administrative agency will occur.

Prior to filing a complaint with OBFC a person should have reasonably pursued resolution of the complaint through the internal grievance or, administrative procedures with the administrative agency. However, this is not a requirement and the Ombuds may initiate an investigation on personal motion or at the request of another.

Further, OBFC will not investigate complaints pertaining to an incarcerated person's underlying criminal conviction or to a DOC or employee of an administrative agency regarding his/her/their employment relationship.

## **OBFC Jurisdiction**

The statute gives OBFC jurisdiction over any "Administrative Agency", which is defined as any division, official, or employee of the Department of Corrections, including the commissioner of corrections, charged with care and custody of inmates of any regional or local correctional facility licensed or inspected by the commissioner of corrections, whether public or private, established and operated for the detention and confinement of adult or juveniles, including but not limited to programs operating under chapter 401 (Community Corrections Act, which allows counties or groups of counties to provide correctional services at the local level), secure juvenile detention facilities, municipal holding facilities, juvenile temporary holdover facilities, regional or local jails, lockups, work houses, work farms, and detention facilities but does not include:

- Any court or judge;
- Any member of the senate or house of representatives;
- The governor or the governor's personal staff;

- Any instrumentality of federal government;
- Any interstate compact; or
- Any person responsible for the supervision of offenders placed on supervised release, parole, or probation.

The Ombuds or the jail inspection unit of the DOC may investigate complaints involving local jails and detention facilities and have entered into an agreement, as required by statute, to ensure that complaints are responded to appropriately and services are not duplicated.

## Confidentiality

Trust and confidentiality are critical to the effectiveness of the OBFC, to preserve the trust of those making complaints and providing information for investigations. Therefore, information provided to the office will be protected to the full extent of the law, and we will strive to ensure those we interact with are fully aware of how the information they provide will be treated. All OBFC staff are expected to strictly observe Minnesota data practices laws and take adequate measures to safeguard confidential information and follow data practices laws; failure to do so may result in disciplinary action.

OBFC staff cannot be compelled to testify or to produce evidence in any judicial or administrative proceeding with respect to any matter involving official duties. Correspondence and communication with the office by those seeking the assistance of the Ombuds and from investigatory interviews will be treated as confidential and are classified by law as private data. OBFC correspondence to and from inmates at state and local correctional facilities must not be opened. However, OBFC staff must also be aware that some data, such as client name, may need to be released in a request for public records and must understand how to best and fully explain this to people filing complaints.

Disclosure of the identity of a complainant will often be necessary to enable facility staff to resolve the complaint. However, OBFC staff, in keeping with the strict confidentiality provisions of the statute, should review complaints to ensure such disclosure is in fact necessary for the resolution of the complaint and may choose not to disclose if it is not absolutely necessary. Complainants will be notified that disclosure may be necessary to resolve the complaint and asked to provide consent for its release; and also notified that client name, client location and if applicable, their inmate identification number (OID) assigned by the DOC is public data under MS 13.856 subd.3. Disclosure of protected data to the DOC or other agency without the person's consent can only be done in certain circumstances and must **not** be done without the permission of the Ombuds.

Further, upon receipt of any information from other agencies or individuals that by law is confidential, privileged, or protected by data practices laws, OBFC staff must maintain the

confidentiality of such information and must not further disclose or disseminate the information except as provided by law.

All records exchanged and communications between the OBFC and correctional agencies will be treated as confidential unless the agency providing the information expressly gives permission to release the information, the information is already publicly available, or the Ombuds gives permission to have the information released. Exceptions to the strict confidentiality rules are that if OBFC staff receives information that pertains to reasonably certain death or substantial harm, staff may reveal it to the extent reasonably necessary. OBFC staff may also report allegations of maltreatment to minors as listed under MS 626.556. OBFC staff may also reveal information to prevent the commission of a crime. OBFC staff must consult with the Ombuds or the Assistant Ombuds, Operations prior to revealing information in any of these circumstances.

All OBFC staff, volunteers, and contractors will be required to read and certify understanding of the OBFC confidentiality and data practices guidelines.

## Requests for OBFC Records

All OBFC staff are required to undergo public records training, in person and via the DOC on-line Electronic Learning Management (ELM) system.

Minnesota places a high value on transparency, particularly regarding public records requests. Staff should be aware that all activities and communications may (and very likely will) become subject to a public records request and might need to be disclosed, and therefore a high level of professionalism is required for all communications.

To that end, staff should avoid in email:

- Divulging personal information about self or others
- Making disparaging remarks about any DOC or local facility staff, inmates, or complainants
- Indicating in any way that OBFC staff would be biased in the consideration of a complaint (such as comments that a complainant is a frequent flyer, has a mental health or other issue, is a known “problem,” etc.)
- Jokes or sarcasm, as both could easily be misinterpreted
- Anything else that would potentially reflect negatively on the office.

It is the duty of the office to respond to public records requests timely. **Public record requests must be responded to within a reasonable time.** Therefore, all mail or other communication should be opened and inspected regularly. Any requests for OBFC information should be immediately forwarded to the Ombuds or designee for handling; if in the form of an email, a flag should be made in the subject line of the email to ensure it is quickly viewed.

In response to a records request, the Ombuds or designee may send out communication requesting records from individual staff. Each person is responsible for checking his/her/their

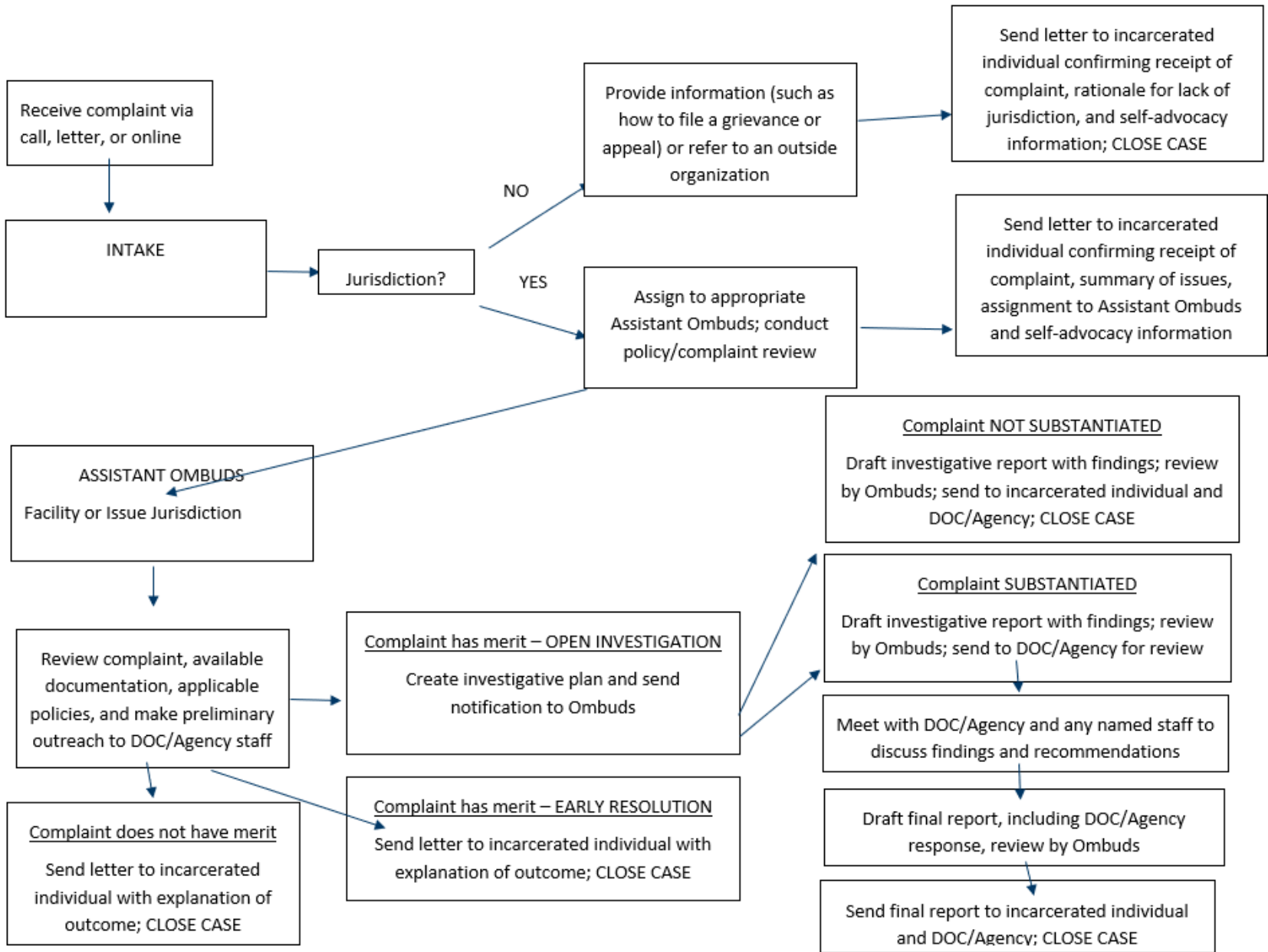
records and reporting what records they have that are responsive to the request. Records may be housed in email, paper files, shared drives, laptops, or in personal notes, or any other medium.

All media inquiries must be directed to the Ombuds or Assistant Ombuds, Operations. See media inquiries below.

## **OBFC Complaint Intake and Evaluation Process**

The following diagram, on the next page, illustrates the general process to be followed by OBFC staff:





# OBFC Staff Roles and Expectations

Maintaining the independence of OBFC is critical to the acceptance by all concerned with its findings and recommendations. Since OBFC does not have enforcement authority, we must rely on the quality and integrity of our investigations to promote and influence the DOC or Administrative Agency's acceptance of its recommendations.

The thoroughness of inquiries and investigations, the integrity of processes and the persuasiveness of reports are critical to maintaining OBFC's credibility and effectiveness.

As an OBFC employee, you have been delegated your authority to conduct investigations by the Ombuds and are acting as a representative of the Ombuds and the office itself in the performance of your duties.

OBFC therefore expects the highest standards of professionalism, accountability, and quality of work from its employees. Employees are expected not to prejudge any situation and to maintain impartiality, integrity, objectivity, and fairness to both the complainant and DOC/Agency in the performance of all duties. It is NOT the role of OBFC to act as an advocate for the complainant. OBFC advocacy centers on ensuring that the correctional system itself is fair, just, and equitable and is concerned with strengthening procedures and practices that lessen the risk that objectionable actions of the administrative agency will occur.

OBFC staff are expected to:

- Be courteous to incarcerated individuals, staff, concerned citizens, and all persons;
- Conduct inquiries and investigations in a way that minimizes the inconvenience to the persons involved and the institutional routine;
- Comply with institutional security and supervision procedures and other institutional rules;
- Be informed on relevant law, policy, procedures prior to requesting the information from DOC/Agency staff when practical; and
- Be always holding oneself to the highest professional standards.

The following are staff roles within OBFC:

## Assistant Ombuds, Investigations

- The Assistant Ombuds review complaints to determine whether there has been a violation of law, policy, and/or principles of administrative fairness. Assistant Ombuds initiate investigations and are assigned responsibility for specific areas. Assistant Ombuds make recommendations to DOC/Agency with the intent of bringing early resolution to incarcerated individual complaints. They may be involved in more complex investigations and are often required to conduct research into systemic issues.
- The Assistant Ombuds position calls for excellent judgment and interpersonal skills, as a large part of the work involves serving as the interface between incarcerated individuals, whose issues are often complex and challenging, and DOC/Agency staff at all levels. OBFC strives for a "no surprises" approach with the DOC/Agency. This approach requires that all OBFC employees carry out their duties with a high level of transparency and a collaborative spirit.

## Assistant Ombuds – Operations

- This position serves as the Executive Assistant to the Ombuds and provides agency-wide leadership in advancing its mission, vision, and values and ensures its effective and efficient operation, working closely with the Ombuds to achieve strategic agency goals.
- As a member of the agency leadership team, the position develops and implements agency-wide policies; develops and directs the agency's statewide stakeholder engagement plan, including agency communications and legislative strategy; directs the agency's program and resource development initiatives; and coordinates agency-wide operations and administrative functions.

## Ombuds

- The Ombuds is the administrative head of OBFC and is accountable for providing leadership, strategic direction, and oversight over the resources, operations, management, and administrative infrastructure. The Ombuds serves at the pleasure of, and directly accountable to the governor in promoting the highest attainable standards of competence, efficiency, and justice in the administration of corrections.
- The Ombuds is also the public face of OBFC and is responsible for engaging in publicly facing activities, including liaising with legislators, DOC/Agency executive administration, and other top-level stakeholders. The Ombuds is also responsible for staff management, including hiring/firing authority and providing regular evaluations of staff work performance.

# **OBFC Investigations**

## **Preliminary Investigation Phase**

Upon receipt of a complaint, OBFC staff evaluate it to first ensure that it falls within OBFC jurisdiction (see above section). Assuming that it does, the first step is to provide a timely response to the complainant, which could include providing information or advice about applicable policies; information about the internal grievance or, administrative procedure; or referrals to other personnel or agencies, as appropriate. OBFC staff may require a complainant to pursue other remedies or channels of complaint open to the complainant before accepting or investigating the complaint.

For referrals, OBFC staff can always recommend other DOC/Agency or other relevant staff that a complainant should contact for assistance, and can also recommend governmental and non-governmental organizations that have an established advocacy role for certain incarcerated populations (for example, complaints regarding disability or mental health related issues may be referred to Minnesota Council on Disabilities or the Ombuds for Mental Health).

In some cases, complaints or concerns may be resolved through informal means such as contacting facility staff to make them aware of the concern and requesting corrective action. For example, DOC/Agency staff did not appropriately apply the policy in question, did not answer all aspects of the incarcerated person's complaint, did not review all appropriate witnesses or documents in the

investigation of the complaint, etc. – then OBFC staff will make a contact to staff to mediate the issue. If this contact results in a re-consideration and satisfactory conclusion by DOC/Agency staff, the case can then be closed with a letter to the inmate informing him/her/them of the action and result.

If the complaint does not fall within OBFC jurisdiction, or the contact was able to be fully answered through a referral or information, the case can be closed.

However, if the above actions do not result in a satisfactory conclusion as determined by the Assistant Ombuds in consultation with the Ombuds, or if the policy itself is being considered for investigation, it can be referred to an Assistant Ombuds for consideration for investigation.

Due to limited resources, staff must prioritize which complaints result in investigations. OBFC priorities include:

- Health, particularly emergent issues, and denial of necessary medical care;
- Safety, including safety from physical or sexual assault;
- Rights of vulnerable or marginalized populations, including but not limited to women, LGBTIQ individuals, and non-native speakers;
- Systemic issues that impact a large number of incarcerated persons.

Complaints related to persons responsible for supervised release, parole or probation are not within the powers of the Ombuds however, the Ombuds does have the authority to be present at parole and revocation hearings and may make recommendations related to these processes. The assignment of conditions of release and levels of supervision are areas that fall under “systemic issues” and may be considered more broadly for recommended change(s) as opposed to individual cases. If resources permit, additional complaints that do not fall into one of the above categories may also result in an investigation. The Assistant Ombuds will confer with the Ombuds to determine which complaints are appropriate for investigation.

## **Full Investigative Phase**

Once an Assistant Ombuds believes that an investigation needs to be initiated, she/he/they should draft an investigation plan and send that to the Ombuds for review and consultation. The plan should include the full allegation, what priority the concern falls into, and a list of all persons and documents needed to complete the investigation, including a potential timeline and estimated length of time needed to complete the investigation.

Following the consultation, notification may be made to DOC/Agency and, if possible, to the incarcerated person in question. Notification includes the names of any persons to be interviewed, additional documents required that are not already available to OBFC, and if a site visit is needed. The purpose of the notification to DOC/Agency is to ensure that the necessary persons are available for interviews, that documents can be retrieved/preserved, and to allow the DOC/Agency the continued opportunity to address/resolve.

As stated in statute, OBFC staff may enter and inspect, at any time, premises within the control of the administrative agency and examine the records and documents of the agency. This authority includes the opportunity to interview any inmate, department employee, or other person, who might

be reasonably believed to have knowledge of the incident under investigation. DOC and local correctional facilities have rules for visitors including but not limited to; proper attire, cell phone possession and use, taking of photos/filming within the facility, wearing of personal protective equipment (PPE) in certain areas, etc. Staff should be aware of these requirements in advance of meetings/monitoring visits, so they are prepared as necessary or to make appropriate arrangements with facility administration, if needed. Unannounced visits are not to be made without permission of the Ombuds.

In general, OBFC staff has access to DOC/Agency facilities, including all areas used by inmates or accessible to inmates, during normal working and visiting hours, for the purpose of:

- Providing information about individual rights and the services available from OBFC;
- Monitoring compliance with respect to the rights and safety of inmates; and
- Inspecting and viewing all areas of the facility which are used by inmates or accessible to inmates.

Further, OBFC has the right to access and copy all relevant information, records, or documents in possession of DOC/Agency that are considered necessary in the investigation of a complaint. From the time of notification that records are needed, DOC/Agency staff must provide records for review within a reasonable time.

OBFC staff will work with DOC/Agency staff to minimize disruption to facility operations and must comply with DOC/Agency security clearance processes.

If a DOC/Agency staff person declines to be interviewed or refuses to provide requested documents, the information should be forwarded up to the Ombuds who can handle it appropriately.

Once OBFC staff has acquired information in electronic or hard copy, the safe storage and transportation and confidentiality of the information becomes paramount and the responsibility of the OBFC staff member. Staff are expected to comply with OBFC confidentiality rules and policies and must be vigilant to not disclose information to persons outside the office unless required by law.

Investigative staff should avoid discussing security related information with incarcerated individuals unless this is essential to the outcome of an investigation. Staff must carefully consider whether anything they tell an incarcerated individual would present a security issue or information that someone could use for wrong intentions.

Investigations will usually include any or all the following elements:

- Identify issues
- Identify information sources
- Gather information
- Analyze information
- Apply analysis to identified issue(s)
- Recommendations/conclusions
- Substantiated/Not Substantiated

Conclusions regarding an investigation should be provided to the incarcerated individual involved in the complaint within forty-five days of the original contact, barring exigent circumstances.

## OBFC Interviews

As discussed above, OBFC investigations will generally involve interviews of staff, inmates, or both. Interviews should be conducted in an appropriate area of the institution to ensure both confidentiality of communication, balanced with the safety and security of OBFC staff.

OBFC staff should consult with DOC/Agency staff regarding the best place to hold the interview and can consider an incarcerated individual's history of violence. Staff should request to inspect any area they will be using for interviews/meetings with complainants or witnesses in advance of meetings and should be familiar with procedures for summoning assistance from facility staff. Rooms used for confidential meetings must not be equipped for audio monitoring but may contain "call buttons or alarms" used to summon assistance. Staff should consider safety and security needs for each individual they are meeting with and review any concerns with facility staff as appropriate. In some instances, staff may want to be in an area that allows for visual observation and it is appropriate to request such accommodations from facility administration. DOC/Agency staff should never be present during an interview of an incarcerated individual, but they can ensure that an incarcerated individual is appropriately secured prior to the interview in a safe manner and stand outside the door. Interviews should always be held in rooms with windows that can be easily monitored by DOC/Agency staff. Staff should be seated closest to the door and should freely advise DOC/Agency staff if they do not feel safe in a particular environment. An incarcerated individual's request for a more private conversation or to not be secured should be acknowledged, but politely declined. All physical contact with incarcerated individuals is strictly prohibited and if any does occur, should be immediately reported to both DOC/Agency staff and the Ombuds, even if seemingly minimal.

At the beginning of interviews, OBFC staff should identify themselves as employees of the Office of the Ombuds for Corrections. Staff should confirm the reason for the interview and explain the mandate and functions of OBFC, including:

- The OBFC can investigate and make recommendations for changing the actions and policies of Minnesota corrections agencies (the MN Department of Corrections and local corrections agencies).
- Investigations are generally only made after the corrections agency has made a final decision through their own grievance or personnel policies.
- That the OBFC is neutral, independent, and separate from the Department of Corrections.
- That contacts, correspondence and verbal communication are private, but that information may be released by OBFC staff in order to perform the duties of the office (i.e. in order to resolve the complaint);
- The limits to confidentiality, including safety and security, and particularly with regard to data practices law and any PREA-related issues;

- That the client name, location, and inmate identification number (OID) assigned by DOC, are public information and may be the subject of a request for information under the Minnesota Data Practices Act.
- No complainant is allowed to be punished, nor the general condition of the complainant's confinement or treatment be unfavorably altered because of having made a complaint to the Ombuds.
- Staff will review the "Interview Acknowledgement Form" (attached) with interviewee and have them sign it to document the sharing of this information. Investigators should take the original and leave the interviewee an unsigned copy for their information.

If the incarcerated individual does not speak English or is hearing impaired, every effort will be made to find an appropriate interpreter or utilize alternate means of communication such as language line, TTY or other services as may be available.

At the conclusion of an interview with an incarcerated individual, OBFC staff should ensure that he/she/they:

- Are aware of next steps, including any contact that will be made to DOC/Agency regarding divulged information, actions that will be taken by OBFC staff, and timeframes;
- Knows how to further contact the office with any additional information;
- Are assured that they will be informed when the investigation is completed.

OBFC staff should take detailed notes and enter them into the OBFC Database immediately if possible or as soon as possible following the interview to ensure adequate recollection; afterwards, any notes should be destroyed.

## OBFC Staff Safety

Recognizing the environment of a correctional facility always brings some risk, OBFC staff should take adequate steps to ensure their own safety. These steps include:

- Always following the sign-in/out process when entering institutional buildings;
- Alerting appropriate DOC/Agency staff when they are on-site and where they will be working within the institution and how long;
- Utilizing staff escort as needed to access areas of the facility;
- Following any directives by DOC/Agency staff with regard to necessary movement;
- Dressing professionally always and avoiding neck ties, scarves, hanging jewelry, etc.;
- Utilizing verbal conflict de-escalation techniques if an incarcerated individual appears to become agitated or emotional and/or ending an interview early if needed.

When in a segregation unit or locked down part of the facility,

- Always balance the need for confidentiality with personal safety.
- We should never assume that inmates will be assaultive or give that impression. At the same time, we need to have a healthy appreciation for the fact that we do not know what a person is dealing with at the moment that we approach them.



- Do not take anything from an inmate or give anything to an inmate without prior authorization by facility staff (such as a survey or informational materials that have been cleared under facility policy)
- If an inmate begins inappropriate actions, including verbal harassment or masturbation with the clear intent to discomfort you, you can and should directly confront the person and tell them to stop the behavior. You should then walk away. Staff should record and report instances of this nature to the Ombuds and discuss the need for possible disciplinary reports/infractions at the facility.
- Please check to make sure that there are no open areas (such as a cuff port) and if there are, please maintain an appropriate distance.
- In facilities with multiple tiers/levels staff should remember that staying under the covered walkways provides some protection from objects/materials thrown from above.
- If an inmate is conducting janitorial duties out on the unit, please try to keep that person in your line of vision and/or be aware of where that person is.
- If an inmate who otherwise should be locked down becomes free (i.e. they blocked the lock), immediately end whatever you are doing and proceed back to the entrance of the unit, signaling to staff what has occurred.

## OBFC Office/Travel Safety Considerations

Safety is everyone's responsibility. Staff must be aware of their surroundings while at the office and while in travel status. It is important that staff keep their schedule/calendar up to date, so others are informed of their location during working hours. Schedule changes should be clearly communicated with the Ombuds and Assistant Ombuds, Operations and with as much advance notice as possible.

Access to the office is controlled by staff and limited to official functions only. Staff are responsible to escort visitors to and from the office for meetings and interviews and to ensure the safety of all persons while in the office. There must be a minimum of two staff present in the office when meeting with complainants or conducting interviews of witnesses for the purposes of an investigation. Evacuation routes are posted in the office and a copy of the Office Emergency Plan is available to all staff for review and updated annually.

While in the field staff should only meet with complainants and/or witnesses in locations that allow for their safety while protecting the need for privacy for the complainant. Staff should have a cell phone on their person while in the field and on travel status. Staff may not use state vehicles or state issued equipment for personal use.

## Relationships with Incarcerated Individuals

Contact or communication of a sexual nature between OBFC staff and incarcerated individuals is strictly prohibited under the Prison Rape Elimination Act. Further, due to any number of ethical and security issues that could arise, OBFC staff are prohibited from forming relationships with incarcerated individuals, whether within their work capacity or on their own time. The only exception to this is if the relationship existed prior to the person's incarceration and/or OBFC



employment. However, all such relationships need to be disclosed to the Ombuds on or before the first day of employment, or upon the OBFC staff's knowledge that a person with a pre-existing relationship has become incarcerated in Minnesota with the Department of Corrections or a local corrections agency.

Sharing personal information (home address, hobbies, telephone number, marital status, etc.) with incarcerated individuals is strictly prohibited, as is becoming an approved visitor of an incarcerated individual. Again, the only exception is a pre-existing relationship and it must be disclosed to the Ombuds.

Creating an unauthorized relationship with an incarcerated individual is at a minimum cause for discipline and potentially a cause for termination.

While relationships between OBFC staff and DOC/Agency staff are not prohibited, OBFC staff should always keep in mind the neutrality of the office and the perception of bias that could arise. Staff need to disclose any personal relationships with DOC/Agency staff to the Ombuds so that it may be considered when assigning investigations. Friendly communication with DOC/Agency staff can be a part of relationship/rapport building necessary for the work of the office, but OBFC staff should be aware of the line that crosses from professional to personal communication.

## Effective Strategies for Resolution of Complaints

Below is a list of key features that have proven to be effective at producing resolution of incarcerated individual complaints:

- **Accessibility and responsiveness:** Any Ombuds office must be accessible and responsive to the needs of its clientele. This is even more important with corrections Ombuds offices which can deal with serious violations of human rights. Accessibility and responsiveness are a vital component of an effective Ombuds function.
- **Staff training:** Ongoing professional development in investigations and dispute resolution is highly encouraged and supported.
- **Good working relationships:** Establishing good working relationships between the oversight agency and the organization subject to oversight is very important, especially when the oversight agency's mandate is limited to one specific discipline. Clearly, some tensions are inevitable and to some degree even desirable as no tension would probably mean that the oversight agency is not performing an adequate challenge function. Nonetheless, a good professional, courteous relationship is key to the successful resolution of complaints. One of the building blocks of successful Ombuds offices is the staff. Every complaint must be grounded in sound evidence and analysis. Bringing well-documented, balanced recommendations to the attention of correctional authorities ensures a positive, long-term professional working relationship.
- **Good communication:** To be effective, oversight by Ombuds offices requires that both the Ombuds office and the organization they oversee understand and mutually respect each other's roles and responsibilities and adopt a constructive and positive approach.

Effective communications can be challenging. Some degree of formality is required, but at the same time candid discussions are often required to perform effective investigative work. Establishing mutual trust is at the center of good communication, and such communication must be embedded in a “no surprises” approach – i.e. based on timely, responsive, and transparent information sharing.

- **Utilizing multiple strategies for persuasion:** The power of the Ombuds is limited to making recommendations. The challenge of the Ombuds is to find ways to have their recommendations implemented. To that end, Ombuds can rely on a variety of strategies to provide influence and persuasion, including utilizing high level DOC/Agency staff who are known to collaborate on issues of OBFC concern; leveraging key relationships with stakeholders, legislators, and other influencers; invoking shared values of fairness, justice, and humanity; and using the power of the media in bringing issues to light. All these strategies should be considered in consultation with the Ombuds.
- **Fairness and good decision-making:** An important part of an Ombuds’ role is to bring to light that although a decision may be correct, it may not necessarily be right. There are times when decisions are made in compliance with policy or law, but they result in unfairness and inequity. It is the Ombuds’ role to “right these wrongs” and ensure good decision making. The powers of the Ombuds include making recommendations for change in statute and policies that produce results or effects that are unfair or otherwise objectionable. In addition, the processes that lead to good or bad decision making need to be accessible, transparent, and inclusive, in order that affected parties feel that they are being treated with respect.

## Emergencies

All contacts involving emergency, urgent, or time-sensitive matters received by intake should be immediately brought to the attention of the Ombuds.

An emergency is a problem which would result in serious harm to someone or a violation of their rights if it is not addressed immediately.

If speaking directly to an incarcerated individual, they should be advised that information regarding immediate harm, whether to themselves or others, will need to be brought to the attention of DOC /Agency staff.

## OBFC Database

All information regarding a contact to the OBFC office – from the point of initial contact to the closing of the case – should be logged within the OBFC database. All work conducted in the case should be appropriately logged within the database record. Outside files (except for correspondence to the incarcerated individual) should be destroyed once the appropriate information has been logged.

## **Abuse, Threats, and Harassment**

No OBFC staff member is expected to tolerate offensive communications from incarcerated individuals, DOC/Agency staff, or any other individual. Staff are expected to act professionally and to respond to any inappropriate communications in a polite but direct manner. The mental health and emotional state of the other person should always be considered, as well.

When receiving abusive, threatening, or harassing communication, the staff member receiving the communication should indicate its inappropriateness and warn that further unacceptable behavior will not be tolerated. Staff should take all threats of physical harm seriously and should make the Ombuds immediately aware, if available, so they can address it. If the Ombuds is not immediately available, the conversation can be ended, and the incident should be documented both in the OBFC Database as well as through notification to the Ombuds.

## **Monitoring Site Visits**

By law, OBFC can make monitoring site visits to DOC/Agency facilities without the necessity of an underlying complaint and this is encouraged to ensure accessibility of the office. As stated above, the reasons for such visit can include providing information about individual rights and services available from the OBFC office, monitoring compliance with respect to the rights and safety of inmates, and inspecting all areas of the facility that are used by inmates.

If OBFC staff desire to make a site visit that is not prompted by a complaint, he/she/they should consult with the Ombuds.

## **Communications: Special Circumstances**

All communications from the media must be immediately referred to the Ombuds or Assistant Ombuds, Operations unless previous arrangements have been made and communicated to staff. The Ombuds is the only official spokesperson for OBFC. This function can only be delegated to a subordinate pending the Ombuds approval. Upon the release of an investigative report, the Assistant Ombuds responsible for writing the report may be involved in responding to media requests, including interviews; however, the Ombuds should always be notified and in most cases will attend the interview in a support role.

Communications from lawyers can be treated the same as communications from the general-public. Regardless of what authority the incarcerated individual has delegated to the attorney, staff must remember that communications between DOC/Agency and OBFC are also confidential and neither the incarcerated individual nor any person with power of attorney is entitled to the information gained through an inquiry or investigation. The public decision that is rendered at the conclusion of an investigation will be the documentation use to reveal all information necessary.

## **Staff Performance Evaluations**

The Ombuds or Assistant Ombuds Operations will meet regularly with each Assistant Ombuds to review open cases and assist in caseload management. Full office staff meetings will also be held bi-weekly at a minimum for resource and information sharing purposes.

Every six months, staff will be requested to conduct a self-evaluation of their performance, including evaluating caseload levels, timeliness, and any training/professional development needs.

New staff will serve a probationary period as specified in applicable bargaining unit agreements. On-going training and feedback will occur in meetings with the Ombuds and the Assistant Ombuds. Staff will receive a minimum of one mid-point evaluation during the probationary period and a formal performance review at the completion of their probation. All staff will receive annual performance reviews as required by applicable bargaining agreements.

## **Staff Accountability**

As stated above, OBFC staff are always held to a high standard of professionalism and the public's trust has been placed in them to quickly and efficiently respond to complaints. Further, as the duties often require travel and remote operation, staff also hold the Ombuds trust. With that trust comes responsibility.

Staff are expected to communicate any issues or concerns regarding ability to manage their caseload to the Ombuds as soon as reasonably possible if an issue arises that would impede their ability to close cases within key timeframes.

## Staff Acknowledgment

I, \_\_\_\_\_ acknowledge that I have received a copy of the OBFC Staff Manual and attachments. I have read it in its entirety and have raised any questions regarding its contents with the Ombuds.

By signing below, I assert that I understand:

- That I must undergo public records training within one month of starting employment at OBFC;
- That all communication with OBFC, including with both complainants as well as communication with DOC/Agency in pursuit of resolution of complaints, is confidential and that such confidentiality must be strictly protected;
- That OBFC staff are always held to a high standard of professionalism and are responsible for ensuring that their actions do not adversely impact the office's credibility, such as through perceived bias;
- That I have received a copy of the Ethics Policy for State Employees HR/LR Policy #1417 and have been given the opportunity to review it and raise any questions that I may have regarding its contents.

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Signature

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Date

Attachments: (A) MS 241.90 – 241.95 and MS 13.856

(B) Interagency Agreement

(C) Ombuds Office Emergency Plan

References:

<https://mn.gov/mmb/employee-relations/laws-policies-and-rules/statewide-hr-policies/>

<https://mn.gov/mmb/employee-relations/labor-relations/labor/>

<https://www.revisor.mn.gov/statutes/cite/43a.38>

<https://www.revisor.mn.gov/statutes/cite/241.90>

<https://www.revisor.mn.gov/statutes/cite/13.856>

*[Staff manual also includes relevant Minnesota Statutes, omitted for this appendix version.]*

# Appendix I: OBFC and DOC interagency agreement

## ATTACHMENT B- STATE OF MINNESOTA

### INTERAGENCY AGREEMENT

This INTER-AGENCY AGREEMENT (Agreement) is hereby made and entered into by and between the Office of the Ombudsperson (Ombuds) for Corrections (OBFC) and the Department of Corrections (DOC), collectively the Parties.

#### A. PURPOSE AND AUTHORITY

1. To provide a framework and clarity for the working relationship of the Parties.
2. This Agreement, developed jointly by the Parties, does not take the place of existing law. Should a conflict arise between this Agreement and existing law, the Parties agree that existing law governs.
3. Minn. Stat. § 241.90-95 and § 13.856 govern the responsibilities and authority of the OBFC.
4. The Ombuds may delegate to Ombuds staff members any of their authority or duties except the duty of formally making recommendations to an administrative agency or reports to the Office of the Governor or to the legislature. (Minn. Stat. § 241.92 subd. 3)

#### B. PERIOD OF PERFORMANCE

The Period of Performance of this Agreement shall begin upon execution by the final Party, and will terminate on June 30, 2021 unless terminated sooner as provided herein.

#### C. FACILITY ACCESS

The Ombuds and designated OBFC staff may enter and inspect, at any time, premises within the control of the DOC. (Minn. Stat. § 241.93 subd. 1)

1. DOC will provide the Ombuds with the results of a DOC criminal history, offender association, and fingerprint-based Employee Background Check, which includes a criminal history disclosure and records check, prior to the individual being given access to DOC facilities. Ombuds employee criminal record and offender association information will not

be submitted to a DOC appointing authority review panel.

2. The DOC Commissioner will be given the opportunity to review the criminal history of applicants with any felony conviction who will access DOC facilities. If the Commissioner disagrees with the Ombuds' intent to have facility access granted, the Governor will make the final determination.
3. Upon approval for hire by the Ombuds, the DOC will issue the OBFC staff member a DOC ID badge.
4. OBFC staff will strive to schedule and make visits and conduct investigations in a way that minimizes disruption of prison operations.
5. OBFC staff will provide advance notice of facility visits, unless an unannounced visit is authorized by the Ombuds. DOC Staff may accompany OBFC staff on facility visits, but will also provide reasonable opportunities to speak with incarcerated individuals without DOC staff present.

#### **D. ACCESS TO INFORMATION AND DATA**

The OBFC may access DOC information and examine DOC records and documents; including data and medical data maintained by the DOC and classified as private data on individuals or confidential data on individuals when access to the data is necessary for the ombudsperson to receive, investigate, and act upon complaints. This data is necessarily inmate data. (Minn. Stat. § 13.856, subd. 4, § 241.93 subd. 1 and § 241.94)

1. The DOC will provide the OBFC with access to DOC information and records in a timely fashion and in a manner that seeks to minimize the time required by both DOC and OBFC to access it.
2. The OBFC will establish confidentiality guidelines and procedures for all information relating to DOC and DOC incarcerated individuals that is maintained by the OBFC.
3. OBFC staff, prior to being allowed access to records and data systems, must read and sign a Statement of Confidentiality and Non-Disclosure. Any forms used for such statements must be provided or reviewed by the DOC.
4. OBFC staff will complete the same Data Practices trainings required for DOC staff.
5. If either Party receives a document from the other that is attorney client privileged, they will immediately return the document and delete any copies that are in its possession. Inadvertent sharing of a privileged document shall not destroy the privilege.

6. The DOC will copy the OBFC on regular notices of DOC policy changes; and the Ombuds may review and provide comment on policy revisions.
7. The DOC will notify the OBFC when an inmate death occurs at a State correctional facility.
8. The DOC will notify the OBFC when a staff use of force incident resulting in substantial bodily harm occurs at a State correctional facility.

## **E. COMPLAINT PROCEDURES**

1. The Ombuds will establish how complaints are made, received, and acted upon by the OBFC. With some exceptions approved by the Ombuds, the OBFC will not investigate inmate complaints unless the inmate has exhausted the DOC's available grievance process.
2. Complaint procedures will be shared with DOC and DOC will share them with incarcerated individuals, and staff as appropriate. DOC will post a flyer or poster provided by the OBFC regarding its services in the living units, including segregation units, and the law and/or state library. DOC will include a brief notice and a link to the OBFC on the DOC's public webpage.
3. In accordance with Minn. Stat. § 241.93, a letter to the OBFC from a person in a facility under the control of DOC will be forwarded as immediately as practicable and unopened to the OBFC office. Correspondence from the OBFC to an incarcerated person shall be promptly delivered unopened to the person after its receipt by the facility. Mail to and from the OBFC will be handled as special/legal mail under the DOC's mail policy.
4. DOC will provide confidential and non-monitored toll-free telephonic and electronic means (where available) for incarcerated individuals to communicate with the OBFC in a manner developed with the OBFC.
5. DOC staff will not prevent or discourage the submission of complaints. Questions about complaint procedures will be referred to the OBFC and OBFC created materials. However, inmates should be advised in all cases to follow normal DOC grievance procedures.
6. No complainant shall be punished nor shall the general condition of the complainant's confinement or treatment be unfavorably altered as a result of the complainant having made a complaint to the OBFC. (Minn. Stat. § 241.93 subd. 4)
7. The OBFC will have the authority and reasonable opportunity to interview incarcerated individuals relating to an investigation. DOC staff will provide incarcerated individuals with access to either telephones, ITV (where available), or in-person interview rooms, when needed by OBFC staff for resolution of a complaint or investigation so they can conduct confidential interviews. DOC will provide reasonable accommodation to ensure interviews



are confidential. This may require DOC staff shifting to ensure adequate supervision and security for on-site interviews. The OBFC will schedule in-person or ITV interviews with the appropriate facility in order to allow the DOC time to ensure appropriate staffing.

8. OBFC staff will be given reasonable opportunity to interview DOC staff in relation to an investigation during work hours and at their work site. A represented employee has the right to a union representative at an interview, and employees will be advised that OBFC has no authority to initiate disciplinary action.
9. The Ombuds will notify the deputy commissioner for facility services when allegations or complaints pertaining to DOC staff necessitate appointing authority action (i.e. reports of sexual harassment, workplace misconduct...), in accordance with state personnel policies.
10. The Ombuds will notify the commissioner or their designee when information obtained in the course of official duties leads them to the reasonable belief that immediate danger of death, substantial bodily harm, or serious risk of harm exists for an incarcerated individual or DOC staff person to allow the agency to initiate immediate intervention options.
11. Before announcing a conclusion or recommendation that expressly or impliedly criticizes the DOC, the Ombuds will consult with the DOC. When publishing an opinion adverse to the DOC, the Ombuds will include in the publication the DOC's statement of reasonable length made in defense or mitigation of the DOC's action. (Minn. Stat. § 241.95).

## **F. LOCAL CORRECTIONAL FACILITIES**

OBFC jurisdiction includes local correctional facilities (adult jails, local/regional correctional facilities and juvenile detention/residential facilities). (Minn. Stat. § 241.91) The DOC Jail Inspection and Enforcement Unit (I & E) takes and investigates complaints regarding local correctional facility rule compliance. The OBFC and the DOC must enter into an arrangement with one another that ensures they are not duplicating services. (Minn. Stat. § 241.93 subd. 5)

1. I & E will continue to accept and investigate complaints regarding local correctional facilities.
2. The OBFC will refer local correctional facility complaints to I & E.
3. The OBFC may choose to investigate local facility complaints that are not being investigated by I & E. If I & E determines that a complaint does not fall within I & E jurisdiction, they will notify the complainant that they may contact the OBFC.
4. I & E will provide OBFC with complaint status updates, and access to case files and information when requested, in accordance with Minn. Stat. §§ 241.93 and 241.94.
5. I & E will notify the OBFC when they receive notification of a death, or injury requiring hospitalization, at a local correctional facility.

## **G. TRAINING**

The parties agree it is essential that OBFC staff are knowledgeable about DOC policies and safety/security procedures; and that DOC staff understand the role, responsibilities, and procedures of the OBFC.

1. DOC will provide orientation training to OBFC staff consisting of a curriculum necessary to ensure the safety of OBFC when visiting facilities and meeting inmates and to preserve the security of DOC staff, inmates, and facilities. DOC will make all DOC trainings available to OBFC staff.
2. OBFC will provide training to DOC staff on the role, responsibilities, and procedures of the OBFC, and DOC will provide time to do so in its training academy and other opportunities as deemed appropriate.

**H. AMENDMENT OF INTER-AGENCY AGREEMENT.** Modifications within the scope of this Agreement must be made with mutual consent of the Parties, by the issuance of a written Amendment, signed and dated by an authorized representative of each Party, prior to any changes being performed.

**I. TERMINATION OF INTER-AGENCY AGREEMENT.** Either Party, may terminate this Agreement, in whole or in part by giving the other Party thirty (30) days written notice.

**This AGREEMENT** consisting of five (5) pages is executed by the persons signing below who warrant they have the authority to execute this Agreement.

# Appendix J: OBFC website's frequently asked questions

- What can the Ombuds do?

The Ombuds and the Ombuds' designated staff can take complaints, perform investigations, make recommendations, and publish reports.

- Who can make a complaint?

Anyone. Incarcerated Minnesotans, corrections staff or contractors, other agency staff, friends and family of incarcerated individuals, and community members. The OBFC prioritizes complaints from incarcerated individuals and DOC staff. The Ombuds will not open a complaint on behalf of an individual without their consent (unless there is some underlying reason they cannot reasonably make that decision). All complaints, whether or not they are investigated individually, may be used to inform systemic issue investigations.

- Who does the OBFC represent?

The Ombuds works on behalf of all Minnesotans to provide a safer and more just process without regard to political or religious affiliation, race, gender, status, or economic status.

- Where can the Ombuds investigate?

All correctional facilities in Minnesota including jails and juvenile detention facilities. The Ombuds has the authority to take and investigate complaints from or about any Department of Corrections' staff or facility charged with the care and custody of inmates and any regional or local correctional facility licensed by the DOC in Minnesota. However, local facilities must follow the DOC Investigations & Enforcement process.

- Who decides the process for complaints and investigations?

The Ombuds is tasked with defining a process to take complaints, perform investigations, and report the findings and recommendations.

- What issues can the Ombuds investigate?

The Ombuds can investigate any issues related to incarcerated individuals including individual complaints or on systemic issues that the Ombuds determines need review. Minnesota law says that the Ombuds should particularly address DOC actions that may be:

- Against federal or state law or against DOC policy.
- Unreasonable, unfair, oppressive, or inconsistent
- Mistaken in law or arbitrary in the ascertainment of facts
- Unclear or inadequately explained when reasons should have been revealed
- Inefficiently performed.

It also says that the Ombuds can look at strengthening procedures and practices that lessen the risk for unjust actions towards incarcerated individuals.

- What information can the Ombuds access?

The Ombuds can request and must be given access to DOC records, documents, and information needed to complete their investigation.

- Where can the Ombuds go? Do they need permission?

The Ombuds can enter and inspect, at any time, any facility or premises under DOC control. However, unless there is a significant need, the Ombuds or staff will set up appointments and attempt to investigate during scheduled times.

- Can the Ombuds require DOC staff or others to talk with them?

The Ombuds can subpoena any person to appear, give testimony, or produce documents or other evidence that the Ombuds determines is relevant to the investigation. The Ombuds can ask the court to enforce the subpoena (and any witness who been subpoenaed is entitled to the same rights that any witness has under state law). However, the Ombuds prioritizes building cooperative relationships and will only compel testimony under significant need.

- Are corrections staff allowed to read or intercept letters, emails, or phone calls to the Ombuds?

No. All correspondence must be forwarded unopened immediately to the Ombuds' office. All replies from the Ombuds to incarcerated individuals must also be delivered unopened to the person.

- If I complain to the Ombuds, can the DOC retaliate?

Any retaliation or punishment as a result of a complaint to the Ombuds is illegal.

- How do I find out the status of my complaint?

After completing the investigation, the Office will let you know the results and the action taken. If the Office is not able to investigate, you will also be informed.

- Can the Ombuds file charges?

No. They can only make recommendations. If they believe a crime has been committed, they can forward the information to appropriate authorities.

- What can't the Ombuds do?

- The Ombuds cannot force the Department of Corrections to change course or reverse their decisions but they can make recommendations.
- The Ombuds cannot charge a fee for taking complaints.
- The Ombuds office cannot provide legal assistance. Please contact your attorney or the Legal Assistance to Minnesota Prisoners (LAMP) Clinic.
- The Ombuds and any OBFC staff cannot be forced to testify in court or to produce evidence about anything that pertains to matters related to their official duties. The only exception is if it would be necessary in order to enforce the Office's statutory duties (meaning in order to defend their right to do the work they are set up to do).

# Appendix K: Ombuds letter to Minnesota leaders on reducing the incarcerated population

May 24, 2020

The Honorable Tim Walz, Governor of Minnesota  
The Honorable Lorie Gildea, Chief Justice of the Minnesota Supreme Court  
The Honorable Paul Gazelka, Majority Leader of the Minnesota Senate  
The Honorable Melissa Hortman, Speaker of the Minnesota House of Representatives

Dear Governor, Chief Justice, Mr. Majority Leader, and Madame Speaker:

As you may know, the newly created Office of the Ombudsperson (Ombuds) for Corrections is not yet operational. However, because of the importance of the correctional response to the COVID-19 pandemic, I have been monitoring and investigating our State's response and preparation to the best of my ability. The purpose of this letter is to report on my preliminary findings and provide ideas for additional actions. The enabling statute for this office provides that my reports should be sent to the Governor, but because of the unique nature of current circumstances, and potential need for action by all three branches, I am addressing this to all of you.

The appropriate correctional response to this pandemic is critical to the health and safety of people held in our State and local correctional facilities, correctional staff, and the broader community. A high percentage of individuals in correctional facilities are more vulnerable to the COVID-19 virus. At the same time, close, enclosed quarters; difficulty maintaining sanitary conditions; and movement in and out of facilities creates increased risk of virus transmission both within and outside of jails and prisons. This applies to correctional staff as well; and they come and go from work to their families and communities. Additionally, correctional healthcare can only treat relatively minor problems for a limited number of people. This means that people who become seriously ill will need to be transferred to the community outside of facilities for care. For these reasons, and due to the unique nature of this situation, our response from a correctional perspective, like in other areas of our lives and government, must be swift, highly proactive, unified, and in some cases extraordinary.

To the extent I have been able to monitor it, I have so far been impressed by our response. I have been particularly impressed by the dedication, professionalism, and transparency of Department of Corrections Commissioner Schnell and his staff. The Department's response and preparation has been quick and thorough. I am attaching some of the information the Department has shared as of today on their public website. At this time, I have no recommendations regarding these actions. I only encourage the Commissioner to continue to move as quickly as possible within his authority to reduce the prison population through work release and limiting release revocations. I have also been impressed with the actions of some local authorities to reduce local correctional facility populations. For example, Hennepin

and Ramsey Counties have reduced their jail populations by over 30%. I do not know the status of other local detention facility populations throughout the State.

I am concerned, however, that we may not be doing enough, nor moving quickly enough, to lower the populations in our prisons and jails. There is no standard that I am aware of for how much we should do so. But the lower we can get the population, the more we can protect the safety of inmates, staff, and our communities. Fewer individuals entering facilities will reduce the likelihood of the virus being introduced to facilities and potentially later brought back into the outside community; and a lower population overall will allow for individuals and groups to be isolated and quarantined as needed. The number of single cells may be one measure to consider, but we must also consider the fact that staffing resources could be significantly reduced by illness. We do not want to create a situation where entire facilities are locked down for long indefinite periods of time; and the monitoring of symptoms in inmates, especially considering what we know about the progression of COVID-19, will require *additional* staffing. I do not believe targeting a percentage reduction overall is helpful or possible, especially considering the different circumstances in different facilities. But, the potential consequences require consideration of quickly reducing the population of jails and prisons by large percentages, and I am concerned that Statewide coordination for this is lacking at the local level and that the Commissioner of Corrections may not have enough authority and flexibility to make it happen in our State facilities.

I believe the best approach is to reduce the numbers of people incarcerated overall by limiting the admission of, and increasing the release of, those for whom there is the least penological interest in incarcerating. This includes people held pretrial who do not present a high risk; people held in local detention facilities post-conviction on short sentences or work release; people who have already been released but are subject to release revocations due to noncompliance with the terms of release or probation; and people in State facilities closest to their release date. There have been calls for those who are vulnerable to COVID-19 to be released. This approach may be appropriate in certain circumstances, but it seems challenging to implement widely because of the difficulty identifying precisely who is vulnerable; the variety of their circumstances; and the unfortunate reality that their circumstances relative to contact with the virus may not improve outside of facilities, *if* conditions in facilities allow for adequate separation.

I know that many people are working diligently on these issues both locally and at the State level, the situation is very fluid, and I do not have all the answers. With this in mind, below are some ideas for consideration. As noted earlier, implementation may require action by some or all of the three branches of government.

1. Provide statewide direction to law enforcement agencies to only bring people arrested to detention facilities if they are arrested for a violent offense or if other circumstances exist that impact the health or safety of the arrestee or the community. My understanding is that versions of this are already happening in many jurisdictions, but there is no statewide direction or guidance.
2. Provide statewide direction to release people held in local facilities both pre-trial and post-conviction who do not pose a threat to public safety. This is also happening on a jurisdiction by jurisdiction basis, for example by judicial district court order and prosecution-defense agreement,

but also without statewide guidance.

3. Provide statewide direction to suspend probation and release revocations without a finding of danger to the community. The Commissioner of Corrections has already given this direction to DOC hearing officers, but probation revocation falls under the jurisdiction of the courts.
4. Grant emergency broadening of authority to the Commissioner of Corrections to release inmates within 180 days of their current release date. The Commissioner already has some authority for early release, but it is significantly constrained by current conditions, law, and policy.
5. Provide easy public access to correctional population numbers and trends so that they can be monitored. The Department of Corrections already publishes daily population reports on its website. They should also publish information that allows for the tracking of changes in population over time. Local detention facilities should publish similar population information on their public websites.

Whether people are released from local or State facilities, they should be given the option of declining, and a verified housing placement should be required. Screening for COVID-19 should also occur to ensure appropriate treatment and placement. Of course, appropriate measures should be taken for community supervision, but because of community supervision resource constraints, these may need to be different, and less restrictive, at least temporarily, than current law and policy dictate. Other relevant law and policy, such as victim notification, may need to remain in place. Funding should be provided for additional community supervision and community support resources.

I would also like to remark on another critical issue – visitation and volunteer entry into local and State facilities. Suspending visitation and volunteer entry initially was clearly appropriate. But, providing more free phone calls, free video visits, and activities remotely must be a priority. It is not only the right thing to do as part of humane treatment and maintaining family and community contacts, but it will reduce unrest within facilities and improve safety for staff. Funding should be provided for this if needed, and I hope that vendors will provide as much of this free of charge as possible. And as the situation settles, I think measures should be taken soon to reintroduce in-person visitation, perhaps on a limited basis, using no-contact and social distancing procedures as appropriate. Making this happen in juvenile facilities should be the highest priority.

Thank you for your consideration of these issues, and for your leadership during this very difficult time. I will continue to monitor our correctional response to the best of my ability and of course help however I can. There are many national organizations providing resources on these issues and I'm happy to share them. I have created a Facebook page to share resources and information (MN Ombuds for Corrections COVID-19), and an email account where anyone can send their concerns about our local or state correctional facility response to COVID-19: [MNOBFCCOVID19@gmail.com](mailto:MNOBFCCOVID19@gmail.com). The Department of Corrections is also providing updated information at <https://mn.gov/doc/about/covid-19-updates/>, and is responding to questions at [DOCCcommunityinfo@state.mn.us](mailto:DOCCcommunityinfo@state.mn.us).

Sincerely,



Mark Haase  
Ombuds for Corrections

CC: The Honorable Peggy Flanagan, Lieutenant Governor of Minnesota; Department of Corrections Commissioner Paul Schnell; Minnesota Sheriffs Association Executive Director Bill Hutton; Attorney General Keith Ellison; Senator Susan Kent; Senator Warren Limmer; Senator Ron Latz; Representative Kurt Daudt; Representative Carlos Mariani; Representative Brian Johnson; Representative Jack Considine; Representative Marion O'Neil

Attachment: Department of Corrections information on COVID-19 response. This and updated information can be found at <https://mn.gov/doc/about/covid-19-updates/>.



# Appendix L: Ombuds follow-up letter on managing the incarcerated population

May 24, 2020

The Honorable Tim Walz, Governor of Minnesota  
The Honorable Paul Gazelka, Majority Leader of the Minnesota Senate  
The Honorable Melissa Hortman, Speaker of the Minnesota House of Representatives  
The Honorable Warren Limmer, Chair, Senate Judiciary and Public Safety Committee  
The Honorable Carlos Mariani, Chair, House Judiciary and Criminal Justice Reform Committee

Dear Governor, Mr. Majority Leader, Madame Speaker, and Chairs Limmer and Mariani:

This letter is an update to my letter of March 24<sup>th</sup> regarding Minnesota's correctional response to the COVID-19 pandemic. It also includes a recommendation for a statutory change, which I am making in accordance with Minnesota Statutes, section 241.93, subdivision 6, paragraph (c).

I previously noted the importance of our correctional response to the COVID-19 pandemic for the health and safety of people held in our state and local correctional facilities, correctional staff, and the broader community. The unique vulnerability of those who live in our correctional facilities, and the potential impact on correctional staff and all our communities, is well known. In my letter I also noted the need for swift, proactive, unified, and in some cases extraordinary action.

I am pleased to report that local officials seem to be taking this kind of action. I have surveyed the local correctional facility populations of nine of Minnesota's ten largest counties (Figure 1, pg. 4). From March 6 to March 27, the combined daily population of local correctional facilities in these counties was reduced by 39%. This should not necessarily lead to the conclusion that more local, or statewide, action is not still needed to reduce and maintain lower local correctional facility populations during this pandemic. But clearly, judges, prosecutors, defense attorneys, and sheriffs have recognized the need for reductions locally and have been able to work together to take extraordinary actions to reduce correctional populations quickly and significantly. These actions have been guided by appropriate public safety as well as public health concerns.

At the state level, population reduction has been negligible. On January 1 the total number of adults held at state correctional facilities was 8,873; on March 1 it was 8,857; and as of March 29, it was 8,841. This lack of significant change is not due to any failing on the part of Department of Corrections Commissioner Schnell or his staff. I believe that appropriate measures are being taken to reduce the population count to the extent allowed under current statutory authority, by minimizing release revocations and working to increase work release program numbers; and due to these efforts, there will be additional reductions. However, I believe they will be minor relative to what is needed, and that the Commissioner's statutory authority is just not sufficient for the extraordinary circumstances of the current situation. I believe the most important and urgent action to be taken currently is to give

him expanded release and intake discretion so that state correctional populations can be lowered like they have at the local level.

The Commissioner's authority to release people or otherwise limit the prison population in a situation like this is limited. Minnesota Statutes, section 243.57 allows for the removal of inmates from a state correctional facility to some other secure and suitable place for care and treatment in the case of an epidemic of infectious or contagious disease. It does not address the problems created by the kind of highly contagious and lethal virus we currently face, a virus that will quickly spread in all correctional facilities and the broader community simultaneously. As noted in my previous letter, I believe the best way to respond is to reduce the population overall so that appropriate social distancing measures can be taken without complete lockdowns; isolation/quarantine is possible as needed; and safety and security and appropriate health care can be maintained given anticipated staffing reductions. To address this shortcoming, I recommend that the legislature quickly amend statutes to allow for more overall population reduction through limiting intakes and expanding supervised release. There may be multiple ways to do this, but here is my recommendation for specific language:

#### **243.57 CONTAGIOUS DISEASE; ~~REMOVAL OF INMATES~~ MITIGATION MEASURES**

**Subdivision 1. Removal of Inmates.** In case of an epidemic of any infectious or contagious disease in any state correctional facility under control of the commissioner of corrections, by which the health or lives of the inmates may be endangered, the chief executive officer thereof, with the approval of the commissioner of corrections may cause the inmates so affected to be removed to some other secure and suitable place or places for care and treatment; and, if the facility is destroyed, in whole or in part, by fire or other casualty and becomes unsuitable for proper detention and custody of the inmates, the chief executive officer, with the approval of the commissioner, may remove them, or any number of inmates, to another safe and appropriate place as may be provided.

**Subd. 2. Population Reduction.** In case of an epidemic of any infectious or contagious disease likely to spread throughout all state correctional facilities under control of the commissioner of corrections by which the health or lives of the inmates may be endangered, and which can be mitigated by an overall state correctional facility population reduction, as determined in consultation with the commissioner of health, the commissioner of corrections may:

- (1) notwithstanding section 244.101 subdivision 1 and subject to section 244.05, place inmates on supervised release, within 180 days of their supervised release date, and determine eligibility, application and appeal process for release under this section; and
- (2) require that persons sentenced but not yet admitted to confinement in a state correctional facility be held for up to 180 days in a local correctional facility.

Additionally, for this statutory change to be effective, emergency funding will be required to support the increased numbers of people being released. A lack of safe housing and support systems will limit the Commissioner's ability to release people. Reentry into the community for people who have been incarcerated is difficult in the best of times; it will be much more so now. Also, limiting new admissions to state prisons and housing them locally will place an extra burden on local jurisdictions. This may require additional funding, although some of the burden might be absorbed considering the work local officials have already done to reduce their facility populations.

Granting this kind of extraordinary and ongoing authority to the Commissioner, in my opinion, should happen through legislative action. However, due to the urgent nature of the situation and the conditions under which the legislature is operating, I recommend that, until the legislature can act, the Governor consider furthering the goal of state correctional facility population reduction to the extent possible and allowed through Executive Order. For example, if the Commissioner thinks it would allow more individuals to be released under the work release program, the Governor could suspend certain eligibility criteria of DOC policy 205.120. There may be other actions that could be taken through State Court order or through the Board of Pardons, but I consider recommendations for those actions beyond the purview of my office.

Thank you. Please let me know if you have any questions or if there is any way I can be of assistance.

Respectfully,

A handwritten signature in black ink, appearing to read "Mark Haase", with a long horizontal flourish extending to the right.

Mark Haase  
Ombuds for Corrections

CC: Senator Susan Kent; Senator Ron Latz; Representative Kurt Daudt; Representative Jack Considine; Representative Brian Johnson; Representative Marion O'Neill; Chief Justice Lorie Gildea; Lieutenant Governor Peggy Flanagan; Attorney General Keith Ellison; Department of Corrections Commissioner Paul Schnell; Minnesota Sheriffs Association Executive Director Bill Hutton; State Public Defender William Ward; Minnesota County Attorneys Association Executive Director Robert Small

# Appendix M: Summary of legislation



## H.F. 3156

Second engrossment

Subject Public Safety Omnibus Bill

Authors Mariani

Analyst Jeff Diebel

Ben Johnson

Date May 14, 2020

### Overview

This is the public safety omnibus appropriations bill.

### Article 1: Appropriations

This article contains appropriations for the Department of Corrections, Sentencing Guidelines Commission, and Department of Public Safety.

#### Section Description – Article 1: Appropriations

**1. Appropriations.**

Summarizes direct appropriations by fund.

**2. Corrections.**

Appropriates \$1,014,000 in fiscal year 2020 and \$15,721,000 in fiscal year 2021 to the Department of Corrections. The appropriation funds increased compensation costs including overtime, increased funding for community services, and staffing for the procedure permitting early conditional release.

**3. Public safety; Bureau of Criminal Apprehension.**

Appropriates \$4,782,000 in fiscal year 2021 for testing and storage of sexual assault kits, expanding laboratory capacity, and operations support for a new task force.

**4. Sentencing Guidelines.**

Appropriates \$8,000 in fiscal year 2020 and \$36,000 in fiscal year 2021 for additional compensation costs.

**5. Expenditures eligible under the CARES Act.**

Directs the commissioner of management and budget to determine whether any expenditures made under this article is an eligible use of funding received under the federal CARES Act and, if so, to appropriate the money from the account where the CARES Act money was deposited.

## Article 2: Policy

This article contains a variety of corrections and public safety policy provisions that address COVID-19 related issues, requires storage and testing of sexual assault examination kits, and establishes a task force on sentencing for aiding and abetting felony murder.

### Section Description – Article 2: Policy

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**1. Public access to correctional facility population data.**

Requires the commissioner of corrections and sheriffs to post daily inmate population numbers for prisons, jails, and juvenile detention centers on publicly accessible websites administered by the agencies.

**2. Correctional institutions; occupancy limits of cells.**

Repeals language that encourages the commissioner of corrections to double bunk inmates as much as possible in the state’s custody level 1 to 4 correctional facilities. **[H.F. 4578]**

**3. Submission and storage of sexual assault examination kits.**

**(a)** Requires each unrestricted sexual assault examination kit to be tested and requires the kit to be retained indefinitely after being tested by the law enforcement agency investigating the case.

**(b)** Requires restricted sexual assault examination kits to be submitted to the BCA within 60 days and for the BCA to store the kits for at least 30 months. **[H.F. 4540 and H.F. 2983]**

**4. Uniform consent form.**

Directs the BCA to develop and distribute a uniform sexual assault examination kit consent form for victims of sexual violence. **[H.F. 4540 and H.F. 2983]**

**5. Web database requirement.**

Requires the BCA to create a searchable web database where victims may determine the status of their sexual assault examination kits. **[H.F. 4540 and H.F. 2983]**

**6. Motor vehicle charges and conviction data; report.**

Requires the court administrator to collect, compile, and report data on charges and convictions for driving after suspension or revocation, and payment of fines for violations related to the operation of a motor vehicle.

**7. Temporary emergency powers; commissioner of corrections.**

**Subd. 1. Applicability.** Limits the duration of the emergency powers granted to the commissioner of corrections under this section. The powers are retroactive to the date of the governor’s declaration of a peacetime emergency to respond to COVID-19. The powers expire when the peacetime emergency expires.

**Subd. 2. Temporary powers granted; limitations.** Grants temporary powers to the commissioner to protect the health and welfare of state correctional employees and inmates. The powers may only be used to prepare for or respond to an outbreak of COVID-19.

**Subd. 3. Expanded authority to grant early conditional release to certain offenders.** Grants the commissioner the authority to release certain nonviolent offenders who have 180 days or less in their term of imprisonment and pose a low risk of re-offending. The commissioner is directed to give priority for early release to inmates most likely to suffer serious illness or death from COVID-19. Provides additional requirements and guidance on applications, supervised release, and conformance with existing conditional release provisions.

**Subd. 4. Reports.** Requires the commissioner to report to the legislature within 30 days of the expiration of the peacetime emergency on the timeline about when the powers were exercised and an explanation for why the powers were necessary. Within 180 days of the expiration of the peacetime emergency, the commissioner must submit a second report to the legislature that provides specified aggregate data about the offenders to whom the commissioner granted early release.

**8. SARS-CoV-2 testing of public safety specialists.**

Directs health care providers to return SARS-CoV-2 test results to public safety specialists as soon as possible. Defines “public safety specialist,” “health care provider,” and “SARS-CoV-2” for purposes of this section.

**9. Task force on sentencing for aiding and abetting felony murder.**

Establishes a task force to review statutes and data related to charging, convicting, and sentencing individuals who aid and abet the commission of felony murder.

Section Description – Article 2: Policy

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**Subd. 1. Definitions.** Defines the terms “aiding and abetting” and “felony murder” for the purposes of the task force.

**Subd. 2. Establishment.** Establishes a task force to collect and analyze data related to sentencing individuals for aiding and abetting felony murder.

**Subd. 3. Membership.** Identifies the 12 members of the task force.

**Subd. 4. Officers; meetings.** Provides for the election of a chair, vice-chair, and any other necessary members of the task force. Requires the commissioner of corrections to convene the first meeting of the task force by August 1, 2020. Directs the task force to meet at least monthly and provides that the meetings are subject to the open meetings law. Directs the task force to request the cooperation of state agencies, academics, and others.

**Subd. 5. Duties.** Establishes duties for the task force including collecting and analyzing data related to charges and sentences for individuals convicted of aiding and abetting felony murder, reviewing relevant statutes, receiving input from victims and offenders; analyzing the benefits and unintended consequences of Minnesota’s laws related to charging, convicting, and sentencing individuals for aiding and abetting felony murder; and making recommendations to the legislature.

**Subd. 6. Report.** Directs the task force to submit a report by January 15, 2021.

**Subd. 7. Expiration.** Provides that the task force expires the day after it submits the required report. **[H.F. 3976]**

# Appendix N: OBFC summary of inmate COVID-19 concerns

## OBFC SUMMARY MEMO

**To:** Commissioner of Corrections

**From:** Ombuds for Corrections

**Subject:** Inmate COVID Concern Emails

**Date:** 5/22/20



### BACKGROUND

The Department of Corrections provided an email option on JPAY for inmates to share COVID related concerns with the Office of the Ombuds for Corrections beginning the afternoon of Wednesday, May 13<sup>th</sup>. An email memo was sent to inmates, and memos were provided to the DOC for posting, explaining that this would be used for them to share concerns and for the Office to gather overall information, but that inmates would not receive individual responses.

From Wed. May 13<sup>th</sup> – Wed. May 20<sup>th</sup>, this COVID Concern email address received 441 emails. The following summary represents an informal snapshot of the information gathered during this period. The emails continue to come in and will be catalogued for as long as it remains helpful.

### SUMMARY

Overall Inmates expressed an appreciation for the opportunity to share concerns but also a consistent request for more communications and information about what is going on related to COVID -19, particularly about early and medical release options, testing, protocols for transmission mitigation, next steps, and privileges.

There were many emails that expressed extreme frustration, fear, or panic, but also several that acknowledged that the DOC was doing the best they could in difficult circumstances. Many emails were not about the inmate that sent it but on behalf of someone else that they were worried about, showing a concern for the safety and wellbeing of one another.

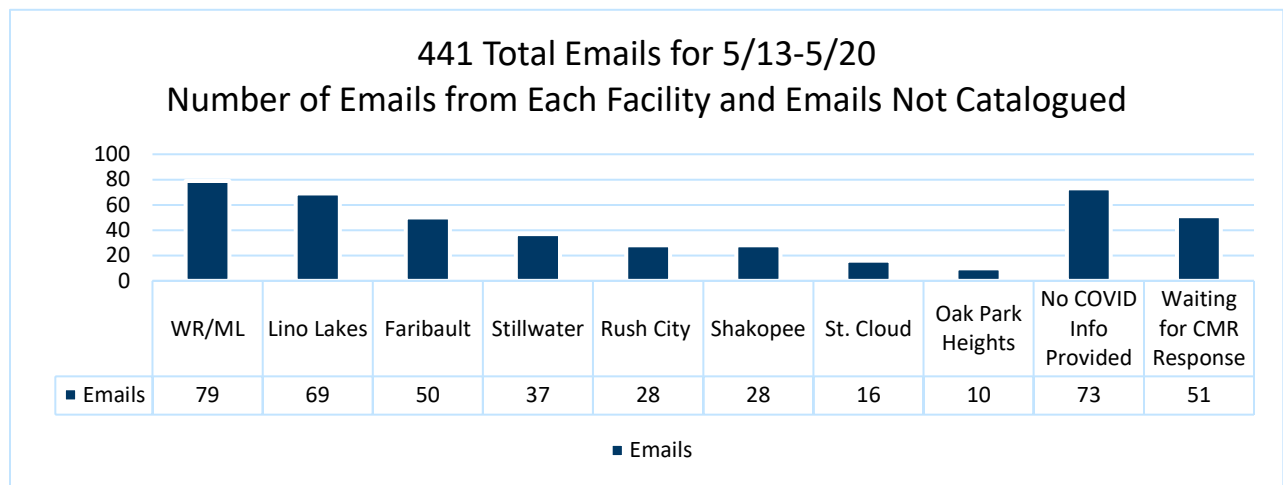
Not surprisingly, given the incidence of confirmed cases there, the highest number of emails were sent from Willow River/Moose Lake and Lino Lakes.



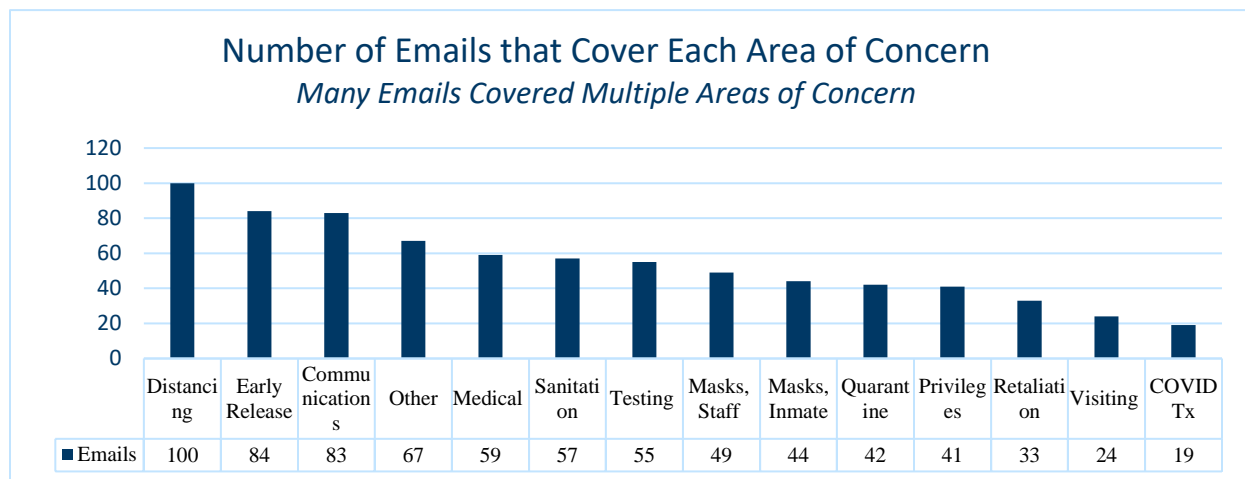
### Number of Emails from Each Facility and Emails Not Catalogued

Total Emails – 441 from 5/13-5/20

FACILITY								NOT CATALOGUED	
Willow River/ Moose Lake	Lino Lakes	Faribault	Stillwater	Rush City	Shakopee	St. Cloud	Oak Park Heights	No COVID related info provided	Waiting Update on CMR
79	69	50	37	28	28	16	10	73	51



Most emails identified several areas of concern but overall most areas of concern could be categorized in the following ways listed from the most to least mentions: Communications, COVID TX, Distancing, Early Release, Masks/Inmate, Masks/Staff, Medical, Other, Privileges, Quarantine, Retaliation, Sanitation, Testing, and Visiting.



## CONCERN AREAS

Many emails covered multiple areas of concern, such as the following [examples emails were edited out here to reduce the length of this appendix version]:

... Distancing: Inmates had concerns about the lack of proper distancing in bunks or in six person cells, in dining facilities, in lines at the med window, officers who would cluster in offices and then be out among the population, or officers who crowded the halls forcing inmates to walk by them closely.

... Early Release: Many emails wanted to know other options for early release besides medical release, criteria (MNSTARR vs days left, etc.), timeline for knowing more information, or why more inmates had not been released to supervision especially those on nonviolent, technical violations.

Communications: There was an overwhelming request for more information, for more details, for more updates, for clarifications on rumors, and for concern about how what the Commissioner announced was different from what Officers were doing or saying.

... Other: This included everything from wanting the Law Library re-opened at Oak Park Heights or access to handball which could be sanitized to feeling discriminated against based on religion or race (across the facilities there was concern that inmates were not being seen medically or not allowed to sing because they were Native American) or sexual orientation (trans inmates want to be able to use their approved hair clippers).

... Medical: Many inmates said that their non-COVID medical needs were not being addressed.

... Sanitation: Many inmates expressed concern about nurses not wearing gloves when handing out meds, Officers not changing gloves in between cells or facilities, lack of hand sanitizer, wrong type of hand sanitizer to be effective, germicide being watered down, wrong type of cleaning product, certain jobs possibly exposing them to the virus like cleaning the facilities or doing the laundry from long term care facilities, concern about certain areas where cross contamination happened frequently but there were not good protocols for cleaning like in between i, officers or inmates moving between facilities, etc.

... Testing: Particularly in Moose Lake and Lino Lakes, but also overall, there is significant calls for expanded testing (including antibody testing). And more information about what decisions are being made and why.

... Masks, Staff: Inmates shared significant frustration with staff not wearing masks properly or at all while interacting with inmates. Some inmates were frustrated that staff were not wearing their masks while at their desks when those desks were close to inmate areas particularly when barriers did not go up to the ceiling. There was concern about staff talking with one another in a small area without masks possibly causing transmission between staff and then going out among the population. There were two concerns about K9 not wearing a mask.

... Mask, Inmates: Many inmates expressed frustration that inmates had to wear masks even though they were not the ones bringing in the virus, the staff were. Many inmates expressed frustration that they were getting talked to or disciplined for not wearing masks or wearing masks correctly when staff were not either. Many inmates were concerned that other inmates were not being held accountable when they would not wear masks and felt other inmates were putting them in harm's way. Many concerns included falling apart masks and not a clear process for replacement, fit, material being too thick, or hard to breathe in.

... Quarantine: Concerns about length of quarantine being too long or not long enough especially for those transferring in or who had been tested or presumed positive. Some emails felt treatment of those in quarantine was

unfair. Many said that they or others were not disclosing their condition for fear of being quarantined or put in segregation.

... Privileges: Wanting options to continue treatment, time outside, sports, library, etc. Some mentioned being confined to their cells for as many as 23 hours many or most days.

... Retaliation: Many emails expressed that CO's threatened retaliation when they brought up medical or transmission concerns. Many emails felt that some of the protocols were basically retaliation.

... Visiting: There were many complaints that JPay video visits were not working at all or only for a few minutes. Shakopee in particular seems to be having network issues. Some inmates wanted options for calling on their tablets because of transmission concerns with shared phones. Some inmates suggested distanced visiting in person be allowed.

... Some inmates felt they were being unfairly treated by not being allowed any video visits due to their restrictions and asked for monitored video visits.

... COVID Treatment: Some inmates were frustrated with their treatment after they tested positive or were presumed positive.

### **HIGHLIGHTS PER FACILITY** *(See chart at the end of document)*

Willow River/Moose Lake: The majority of concerns are about inability to properly distance, need for more testing, lack of communication, quarantine protocols, early release options, and sanitization protocols.

Lino Lakes: The majority of concerns are about distancing, early release, lack of communication, and other such as lack of paper towel dispenser in K4, shut downs due to protests, kites being returned without being read/sent to correct person, discriminating against Native American inmates, doing things different when inspectors are there for show, and treatment options.

Faribault: Similar to medical concerns in other facilities, many inmates said they felt like non-COVID health care needs are not being met and are being lied about. Faribault especially IDs mental health as one of those medical concerns not being addressed.

Shakopee: Along with the areas of concern that all facilities identified, Shakopee had two standout areas which were difficulty with internet connectivity for video visits and discrimination against trans inmates for cutting their hair.

Stillwater: Officers not wearing masks correctly was a theme throughout several facilities. ... Two inmates at Stillwater had concerns about canine transmission and asked that the K9 Officer wear a mask.

Rush City: One inmate expressed that it "would be easier to accept the change requiring inmates wear masks if they had been told COs had tested positive."

St. Cloud: Priorities included concerns about transfer in procedures and cleaning protocols.

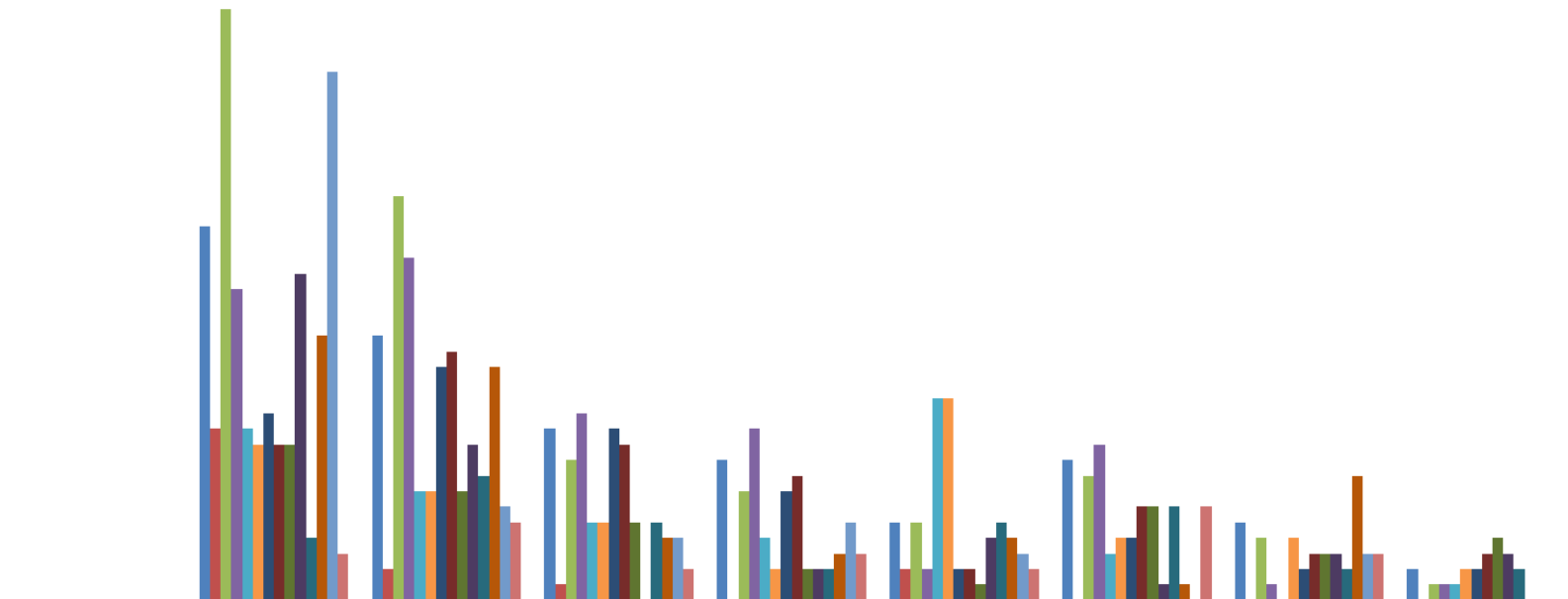
Oak Park Heights: Several emails wanted the Law Library to re-open with proper distancing and cleaning protocols.

### **CONCLUSIONS**

In general, the COVID Concern email allows inmates to express concerns and allows the Ombuds to gather generalized information without visiting facilities. The majority of the frustrations expressed by Inmates seem to

be related to the difficulty in regularly communicating with them as changes and developments arise as well as the added stress of the situation. The Ombuds has followed up with facility staff about getting inmates access to specific information or addressing specific concerns in just over a dozen cases and will continue to monitor the incoming emails for any emergent issues.

### Concerns by Facility



	WR/ML	Lino Lakes	Faribault	Stillwater	Rush City	Shakopee	St. Cloud	Oak Park Heights
■ Communications	24	17	11	9	5	9	5	2
■ COVID TX	11	2	1	0	2	0	0	0
■ Distancing	38	26	9	7	5	8	4	1
■ Early Release	20	22	12	11	2	10	1	1
■ Masks, Inmate	11	7	5	4	13	3	0	1
■ Masks, Staff	10	7	5	2	13	4	4	2
■ Medical	12	15	11	7	2	4	2	2
■ Other	10	16	10	8	2	6	3	3
■ Privileges	10	7	5	2	1	6	3	4
■ Quarentine	21	10	0	2	4	1	3	3
■ Retaliation	4	8	5	2	5	6	2	2
■ Sanitation	17	15	4	3	4	1	8	0
■ Testing	34	6	4	5	3	0	3	0
■ Visiting	3	5	2	3	2	6	3	0

# Appendix O: OBFC recommendations to DOC for COVID-19

**To:** Commissioner of Corrections

**From:** Ombuds for Corrections

**Subject:** Recommendations Based Upon Inmate COVID Concerns

**Date:** 5/22/20



## BACKGROUND

From Wed. May 13<sup>th</sup> – Wed. May 20<sup>th</sup>, the Office of the Ombuds for Corrections received 441 emails from inmates regarding concerns with the Department of Corrections response to COVID-19. The concerns raised are summarized in a separate memo. Based upon the information available I am making the recommendations below. In accordance with Minn. Stat. § 241.93 subd. 6, I request that you inform me about the action taken on these recommendations or the reasons for not following them by June 1, 2020.

## RECOMMENDATIONS:

Communication: A compelling request from inmates, and one of the most commonly heard, is for updated, accurate, and more regular communications about every concern area and particularly about medical and other early release timelines and decisions and COVID protocols. I recommend that you quickly provide communication directly to all inmates with an overall update, like what you did in your March 23 video message. There should also be a plan for ongoing regular communications to inmates if it is not already in place.

Distancing, PPE, Sanitization: The concerns regarding these issues indicate that along with communication about all of the protocols, the following may be helpful and are recommended:

- Better spacing protocol at medical windows.
- Adequate amount of gloves for nurses, cleaning crews, and those with wheelchairs.
- Reminders and clarification about mask wearing protocols.

Visiting: All inmates given access to video visits, monitored if necessary due to their offense, and continued effort made for better connectivity at MCF-Shakopee.

Trans and Religious Rights: Transgender inmates should be allowed to use already authorized hair clippers without threats of discipline. Native American inmates should be allowed to sing outside at proper distance just as Bible Study is still allowed.



Mark Haase  
Ombuds for Corrections

# Appendix P: DOC Commissioner's response to OBFC recommendations on COVID-19

June 3, 2020

Mr. Mark Haase, Ombuds for Corrections  
State of Minnesota - Office of the Ombuds for Corrections 540  
Fairview Ave. N. Suite 201  
St. Paul, MN 55104

Re: Recommendations based upon inmate COVID concerns Dear

Mr. Haase:

First, I want to thank you for providing me with some additional time to submit this response. As you know, I have been assisting in the state response to the officer-involved homicide of George Floyd and the subsequent community unrest.

I am writing in response to your memorandum outlining a series of recommendations based upon inmate COVID-19 response concerns. This letter fulfills compliance with the response requirement in Minnesota Statute 241.93, subdivision 6.

I will tell you that, in many instances, I find it challenging to either accept or reject your recommendations in whole. While you make recommendations based on themes from inmate JPay "O-Mail" feedback submitted by 441 DOC inmates, the recommendations appear to have been generated without the benefit of a more complete investigation or inquiry. For that reason, I feel compelled to address some of your underlying conclusions and provide a fuller picture of what is actually occurring. No doubt there are ways we can improve our response to COVID-19, but I believe an explanation or clarification of our actions and the underlying rationale will address at least some of your concerns and provide a basis for my acceptance or rejection of the corresponding recommendations. Absent a willingness to engage in direct problem-solving efforts, it is my hope that future recommendations will be based upon investigative findings.

**Communication:** Communication is always a challenge. That said, communication with incarcerated individuals comes in a variety of forms. You should be aware that the warden and/or members of the warden's leadership team meet with unit or resident representatives of the living units at each of the facilities on a weekly basis. Some facilities also prepare a daily or weekly memo to the incarcerated population.

Unit rep meetings have proven effective for the most part, but there is no doubt that there are limitations. It appears that the pass down of information from unit representatives may be lacking. I will prepare a general communication to the DOC's incarcerated population. In that communication, I will emphasize the need for incarcerated men and women to utilize their unit representatives to bring issues, concerns, or questions to facility management. Similarly, I will ask the wardens to remind unit representatives to broadly report back to those in the living units.

**COVID Release Communications:** Communication around early release decisions is a bit more challenging. The challenge is not in advising people about the status of population reduction efforts. The challenge is in explaining the complexity of the decision making process. Many of the inquiries I've received center on the specific factors for approval or denial of an application.

As you may know, we've received more than 1,500 applications for conditional medical release to date. The amount of work to process these applications is immense. One factor greatly impacting the process is the lack of electronic medical records and the resulting need to complete the entire process on paper. While we are making progress, the entire process from start to finish is slower than anyone would like, but we take seriously our obligation to fulfill the statutory obligations established in the authorizing language for conditional medical releases.

It is also important to note that many of the same DOC staff who are responsible for conditional medical release are also responsible for the expanded work release program that is ongoing. To date neither program has yielded a large number of actual releases.

**Distancing/PPE/Sanitization:** We have communicated with both staff and the population on the need and requirement to wear masks and exercise social distancing on an on-going basis. In instances of non-compliance with the mask wear requirement, wardens and other ranking personnel have done coaching with staff found to be in violation. In some instances, we learned that officers removed or lowered their masks to obtain some level of relief, while they were well distanced from other staff or incarcerated individuals. While this is not acceptable and is being addressed, it does not appear others were put in immediate danger.

I've checked with the wardens and I was assured that an adequate and accessible supply of gloves is available. You should know that the DOC, in line with health expert guidance, has not mandated the wearing of gloves by all staff at all times.

We will take these additional steps related to this issue:

1. Health Services will establish and implement a plan to demarcate spacing at or near medical windows.



2. The DOC's IMT will reassess glove supply and accessibility.
3. The Deputy Commissioner of Facility Services will continue to issue reminders about mask wear requirements.

**Video Visits:** Your recommendation is duly noted but cannot be implemented due to fiscal and staffing constraints. We will continue efforts to address video visit connectivity issues at MCF-Shakopee and elsewhere.

While our expansion of video visiting was not as robust as we may wish it had been, we did see a significant increase in usage compared to the same time period last year. Between January 1, 2019, and April 30, 2019, there were 246 video visits logged, totaling 123 hours of visiting time. Between January 1, 2020, and April 30, 2020, 1,265 video visits were logged, totaling 397.5 hours of visiting time. Though there is little doubt much of the increase is attributed to the cancellation of in-person visiting, we believe the steps we took to increase access to video visiting also helped.

You should know we have asked the wardens to work with their teams to develop plans to reopen in-person visiting. While this effort is underway, I caution that reopening visiting will be subject to CDC/MDH guidance, including distancing requirements, health screening, and mask wear. Staff are also developing plans that will prevent backups and allow distancing guidelines to be followed in waiting area spaces.

**Transgender Rights:** We are committed as an agency to increasing the safety of and respect for LGBTQ inmates in our facilities. That includes validating and addressing the unique needs and vulnerabilities they have, to the best of our ability.

You specifically raised the issue of haircuts for transgender inmates. Current policy prohibits all inmates from cutting their own hair because some (non-transgender) inmates had altered a razor blade to cut their hair, which created safety and health concerns. That prohibition means all haircuts must currently be completed via barbers or in the Cosmetology program. COVID-19 concerns have closed access to those services for inmates system wide. While transgender inmates are allowed to have beard trimmers to shave their faces but not hair clippers.

I recognize and am sensitive to the fact this policy has a particular impact on transgender inmates that it does not have on other inmates. I will share that, in line with the Governor's community-based executive order, the barbering and haircutting programs will reopen next week at 25 percent capacity.

**Religious Rights:** First, we are fully committed to facilitating, to the extent possible, the ability of inmates for free exercise of their religions and other spiritual and cultural practices.

You raised specific concerns around certain practices for our Native American inmates. We respect and are concerned about the challenge that social distancing creates for many Native American cultural and spiritual practices, including, but not limited to, Drum Circle and Sweat Lodge. Facilities have adopted the community standard as established through Executive Order, which at the time your letter was a prohibition of regular religious services in a congregate setting. We do continue to support individual practice of faith or spiritual traditions, but staff have and will continue to intervene in settings where social distancing standards are not recognized regardless of the activity.

I will close by noting I have reviewed the feedback you provided particular to each facility, and I've obtained feedback and information from many of the wardens that give greater insights into the context of some issues you highlighted in your memorandum. If it is your request for detailed responses from each facility, please let me know.

Please do not hesitate to contact me with any other questions or concerns.

Sincerely,

A handwritten signature in black ink that reads "Paul Schnell". The signature is written in a cursive, flowing style.

Paul P. Schnell Commissioner

C: Michelle Smith, Deputy Commissioner  
Nan Larson, Health Services Director  
Safia Khan, Government and Community Relations Director DOC  
Facility Wardens

# Appendix Q: Ombuds letter to MDH on early-phase vaccine distribution

May 24, 2020

Kris Ehresmann  
Director, Infectious Disease Epidemiology, Prevention, and Control Division  
Minnesota Department of Health

Dear Ms. Ehresmann,

As Minnesota's Ombudsperson for Corrections, I want to ensure that Minnesota's correctional populations and staff are fully and appropriately considered when State guidelines are established for early phase distribution of coronavirus vaccines. I know that Department of Corrections staff communicate regularly with MDH staff on COVID-19 mitigation measures, but I would like to share my own perspective and information specific to this issue, and I respectfully ask that you share this letter with the members of the Vaccine Allocation Advisory Group, and anyone else involved in the early distribution decision-making process.

We have a unique responsibility to those held in our correctional facilities because they are completely under the control and care of the State on our behalf; and the people who work there bear similar levels of virus exposure risk.

Few if any other locations subject people to conditions more unfavorable for this pandemic than correctional facilities. Despite a 17% reduction in Minnesota's prison population since the start of the pandemic, inmates and staff continue to live and work in crowded conditions, often in aging facilities with poor outside air exchange, multiple individuals in one sleeping area or cells open to shared air, and shared spaces such as bathrooms, dining facilities and industry areas. Inmates have higher rates of asthma, diabetes, heart disease, and other conditions that make them more vulnerable to COVID-19 than the general population.<sup>1</sup> The correctional population is also over-representative of other vulnerable communities. Over 55% of male inmates and 44% of female inmates in our prisons are persons of color and most will be returning to communities that have already been hard hit by the pandemic.

The indirect health impacts of COVID-19 in correctional facilities should also be considered. Mitigation measures have resulted in repeated "lock-down" periods of weeks at a time when inmates are locked in their cells up to 23 hours a day; programming, exercise, outdoor time, religious activities, and visiting are suspended or restricted; and these conditions are exacerbated by staffing shortages when staff become ill. When outbreaks occur, the size of facilities often limits the ability to fully separate those who test positive

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<sup>1</sup> Wilper AP, Woolhandler S, Boyd JW, et al. The health and health care of U.S. prisoners: results of a nationwide survey. *Am J Public Health*. 2009; 99: 666-672. <https://doi.org/10.2105/AJPH.2008.144279>

from others, leaving people feeling like they are just being left to wait until they get the disease. All of these indirect impacts unique to correctional settings take a heavy toll on physical and mental health, and the incarcerated population already experiences a higher rate of mental health issues than the general population.

Staff who work in correctional facilities are also at high risk of being exposed to the virus and go between the facilities and their homes and community, potentially spreading the virus more broadly; and the conditions create increased stress for them. Similar conditions to those described above also exist in local adult and juvenile correctional facilities.

With almost 4000 positive tests among Minnesota prison inmates and staff to date, this often-overlooked group is clearly one that should be considered as a high priority in the early stages of COVID-19 vaccination. I realize that distributing limited initial supplies of vaccines will be challenging, with a number of groups appropriate for priority access. I also know that you and the Advisory Committee will be looking to the Centers for Disease Control for guidance, but you can set guidelines specific to Minnesota. I only ask that you consider Minnesota's correctional populations and staff for early vaccine access fully informed of the situation, within the full context of the impacts the pandemic is having on them and their communities, and using the same criteria being used for others.

I have included some current information on correctional populations in Minnesota for your consideration on the third page of this letter. Please contact me with any questions or if you would like additional information going forward.

Respectfully,

A handwritten signature in black ink, appearing to read 'Mark Haase', with a long horizontal flourish extending to the right.

Mark Haase  
Ombudsperson for Corrections

CC: MDH Commissioner Jan Malcolm  
DOC Commissioner Paul Schnell  
Emily Lefholz

## Correctional Populations in Minnesota and COVID- 19 Infection Rates

### Current Minnesota COVID-19 Infection Rates 12/1/2020<sup>2</sup>

12/01/2020	Current Population	Inmates Positive	Staff Positive
Minnesota Prisons*	7357	564	286
County Jails**	4293 August ADP <sup>3</sup>	Not Available	Not Available

\*Minnesota Prisons release approximately 7200 persons per year.

\*\* County jails admit and release inmates at a much higher rate with average lengths of stay usually less than 3 days.

### Minnesota and Neighboring States<sup>4</sup>

Infection rates for corrections staff and inmates are much greater than the overall state infection rates in Minnesota and all neighboring states. <sup>5</sup>

State Prison Data	Covid Infection Rate - Inmates	Covid Infection Rate - Staff
<b>Minnesota</b>	<b>762% &gt; than state overall</b>	<b>705% &gt; than state overall</b>
Wisconsin	467% >	463% >
Iowa	646% >	213% >
North Dakota	210% >	641% >
South Dakota	739% >	238% >

*Infection rates shown as percentage greater than state overall.*

State Prison Data	Prison Population June 2020	Total Inmate Cases/Deaths	Total Staff Cases/Deaths	Cases per 10,000 prisoners
<b>Minnesota</b>	<b>8335</b>	<b>2744/5</b>	<b>672/0</b>	<b>3622</b>
Wisconsin	21,603	7047/10	1534/0	3334
Iowa	7600	2985/7	421/1	4055
North Dakota	1247	318/0	181/0	2684
South Dakota	3513	2078/3	154/0	6378

<sup>2</sup> <https://mn.gov/doc/about/covid-19-updates/>

<sup>3</sup> Average Daily Population

<sup>4</sup> <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons>

<sup>5</sup> The Marshall Project also compares prisoner death rates to general population death rates, and for Minnesota the prisoner COVID death rate is currently 24 percent lower than the general population, based on 4 deaths rather than the current 5 reported by DOC.