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OMBUDSMAN for CORRECTIONS

**Report to the Minnesota Legislature
January 2002**

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Department of Administration

MANAGEMENT ANALYSIS DIVISION

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OMBUDSMAN for CORRECTIONS

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January 2002



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Department of Administration
MANAGEMENT ANALYSIS DIVISION

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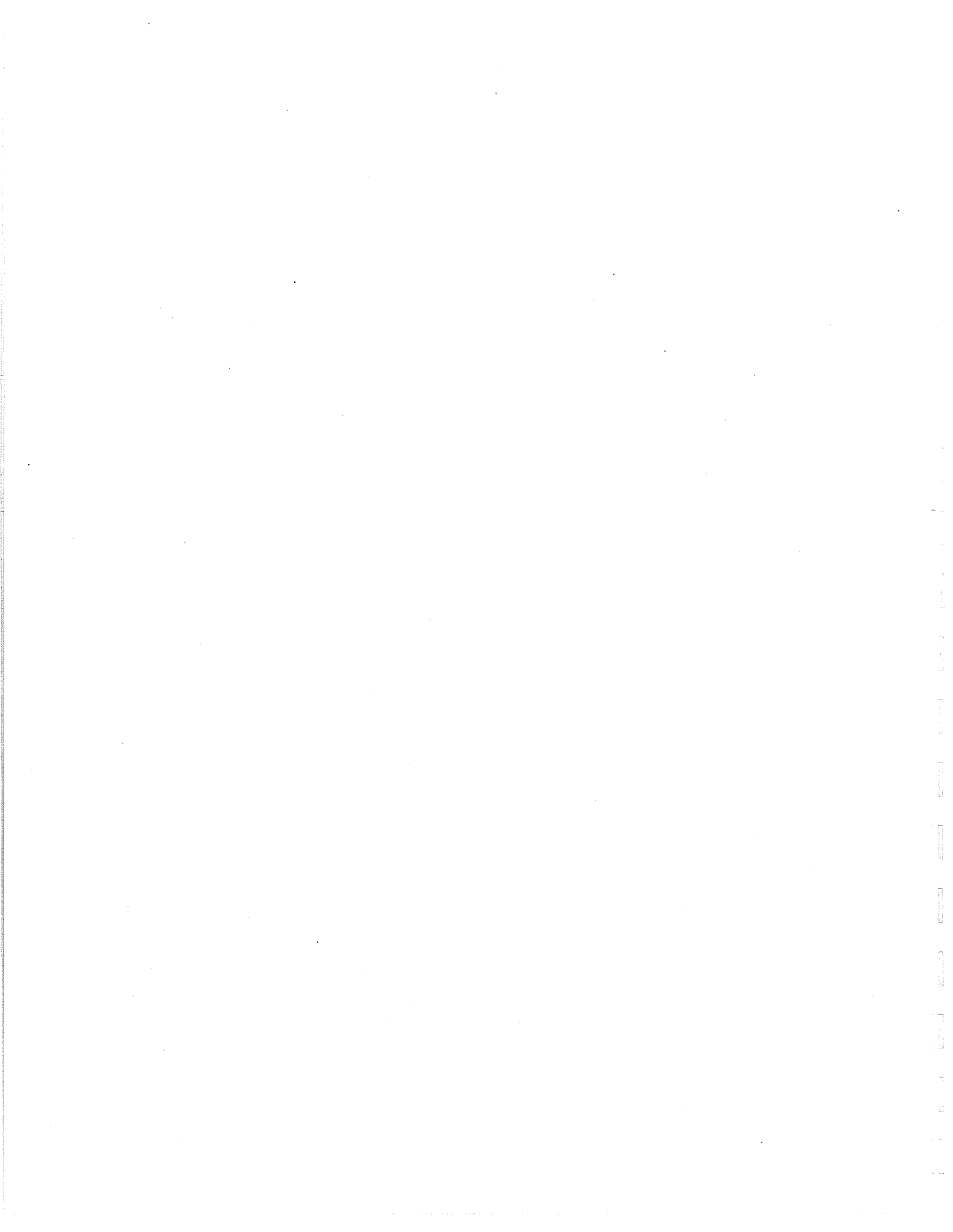
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INTRODUCTION

Project background and purpose

During the 2001 Minnesota legislative session, the Senate, House and Governor's Office did not agree on the need for an independent, public Ombudsman for Corrections office or how to best deliver the service. The 2001 Legislature called for a study:

[Special Session, Chapter 9, Article 18: Sec. 21] The office of the governor, in consultation with the department of administration, shall conduct a study of various models to deliver the services provided by the ombudsman for corrections, including the effects of privatizing certain functions of the ombudsman for corrections. The office must report its findings and recommendations to the chairs and ranking minority members of the senate and house committees responsible for corrections policy and finance by February 1, 2002.

The governor's office directed the Management Analysis Division of the Department of Administration to conduct the study. The division developed and researched the following questions:

- *What does the ombudsman's office do, and what value, if any, does it add to the corrections system? (In order to assess the potential for privatization, it first must be determined what the service or product is that will be contracted out.)*
- *Are the office's services redundant? (Redundant services would not have to be privatized, but could be eliminated, diffused or transferred.)*
- *Is there a better way to deliver the services, and in particular, can or should all or part of the function be privatized?*

Methodology

The division conducted research and interviews with representatives of the following groups to help answer these questions:

- Legislators and aides (4)
- Governor's staff (2)
- Department of Corrections (DOC) central office leadership (4)
- Prison officials in DOC adult and youth facilities (5)

- Ombudsmen from the Ombudsman for Corrections office and the Minnesota Ombudsman Roundtable (3)
- Ombudsman offices in four other states (4)
- A university professor and national author on ombudsman issues (1)
- American Corrections Association (1)

In addition, the division reviewed documents and conducted a site visit of the Ombudsman for Corrections office to observe the services being delivered and the value, if any, they added to the corrections system in Minnesota.

The division also interviewed representatives of four other states (Connecticut, Iowa, Missouri, and Nebraska) about their models of providing ombudsman services.

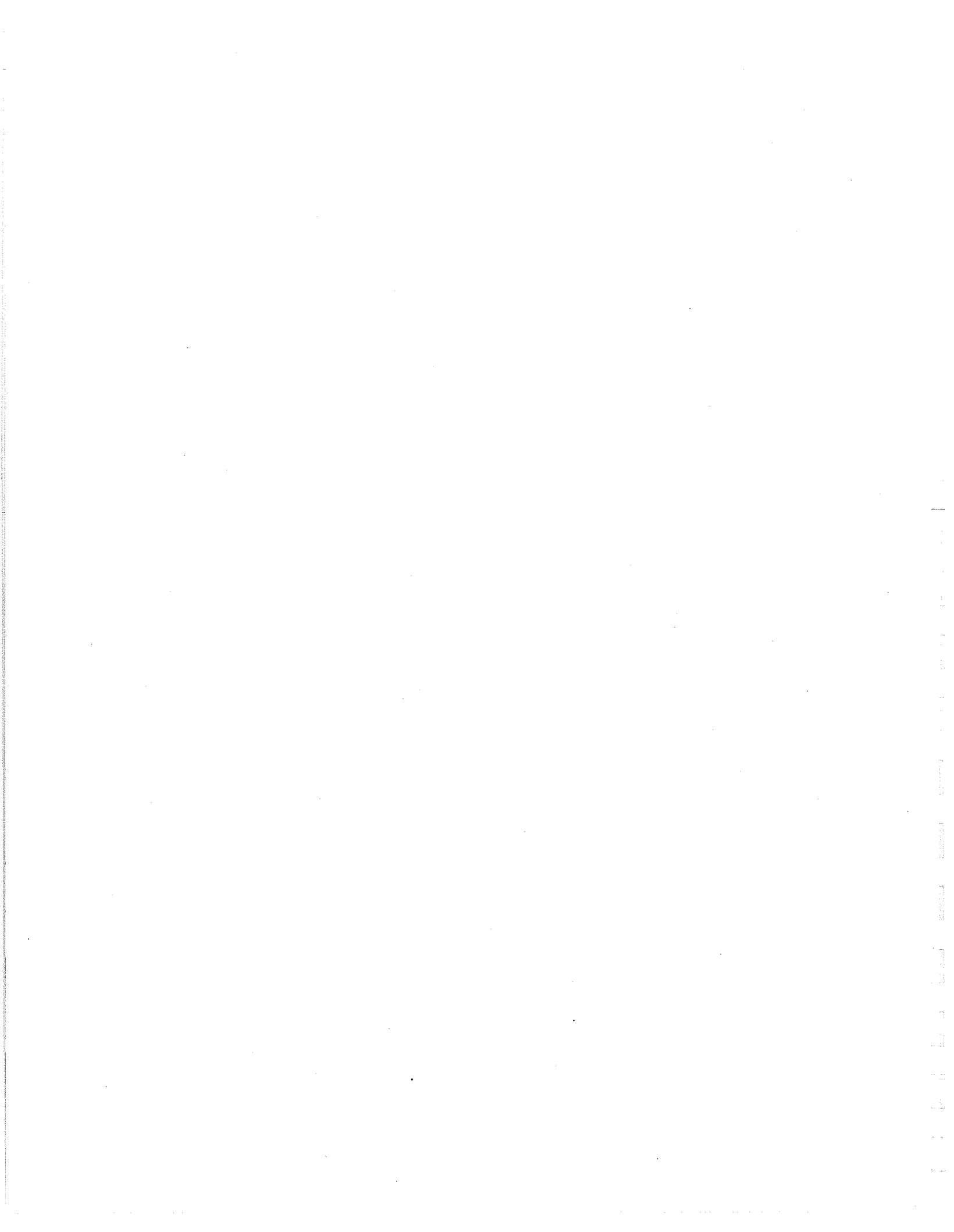
Management Analysis wishes to thank the participants in this study for their time and candor in discussing the issues raised. Their information and insights were essential to developing this report's findings, conclusions, and recommendations.

HISTORY and MISSION of the OMBUDSMAN'S OFFICE

Ombudsman offices, including Minnesota's, were formed beginning in the early 1970s in response to prison crises, such as riots over treatment and conditions, throughout the country. States responded by forming ombudsman offices to act as watchdogs over the prison system, to correct cases of unfair treatment and identify system-wide problems.

Most ombudsman offices were made independent from their respective corrections agencies with the goal of making them objective and preventing conflict of interest. They were intended to be neutral, not advocating for either side.

Often, ombudsman offices were given special powers by their legislatures to assure their effectiveness. These included virtually unrestricted access to prison facilities, confidential files, and subpoena power.



PRESENT OPERATIONS and PRACTICES of the OMBUDSMAN'S OFFICE

The 1999-2000 Ombudsman for Corrections Performance Report lists the following activities:

Information — a request for information that is known by the agency, which may come by telephone, letter or e-mail. In 2000 the office answered 3,055 information requests, in which the staff were able to answer the questions right away without significant additional work.

Assist — relatively uncomplicated complaints resolved with few contacts, and which provide an explanation of an administrative act or decision. In 2000, the office handled 700 assists. To be categorized as an assist, a complaint or inquiry must need some follow-up investigation or action. The follow-up work may involve investigation, meetings, negotiations, mediation, reaching conclusions, and resolving issues. Assists do not result in written reports or records. The informal nature of these activities is considered to lessen defensiveness by prison staff involved in the complaints.

Investigated — completed investigations where findings and/or informal recommendations are made. These involve inmate problems needing extensive research and fact-finding. They may concern an individual event or inmate, as well as system-wide conditions. They are generally initiated by a complaint, but may also be “proactive,” arising from a pattern detected over multiple cases. The office conducted three investigations in 2000.

Investigated with formal recommendations — completed investigations that result in formal recommendations having to do with improving systemic prison conditions, regulations, or treatment. Three systemic issues are currently under review:

- OSHA involvement in working conditions in the prisons
- Work release eligibility
- Mental health issues with released prisoners who are referred back to the system by relatives who are afraid of them.

These are multi-faceted investigations involving a variety of organizations, stakeholders

and system issues and may take considerable time. The office conducted four investigations with formal recommendations in 2000.

In conducting these four activities, investigators reported that they spend two to four days per week in the institutions visiting inmates and staff and reviewing confidential files. The ombudsman investigators have access to all facilities and records, and circulate freely and unaccompanied among the prisoners during their visits. The ombudsman's office does not file reports on these complaint investigations with the DOC' central administration. The only reporting is a statistical summary in its annual performance report.

Finally, the Ombudsman for Corrections has faced significant budget cuts over the past several years, which have resulted in a decrease of the number of formal investigations conducted by the office due to staff reductions.

FINDINGS

Most people interviewed spoke for or against maintaining an independent public ombudsman's office for corrections, although some interviewees saw valid points on both sides, or suggested alternatives.

In favor of maintaining the ombudsman's office

Arguments given supporting a continuing role for a public, independent ombudsman include:

- The ombudsman provides a pressure relief valve made possible only by its independence. Prisoners don't trust the system they think is unfair to them and won't accept an answer from the corrections department like they will from a neutral outside source. There would be more lawsuits and costly judgments without the ombudsman.
- The function must be independent to have credibility with inmates.
- Other groups can do some things the ombudsman can, but don't have the powers or legal authorities necessary to be effective. These include unrestricted access to prison facilities and confidential files.
- Most apparently redundant functions between the corrections ombudsman and other entities are not really the same things. They may serve a particular niche, or have a bias or different mission to pursue. Examples of this include the DOC grievance procedure, MNOSHA, and ACA accreditation reviews. Likewise, inmate representative groups are too narrow and don't take up matters of significance.
- Although it has become more open, with more advocacy groups and other avenues of complaint, the system is confusing, and there is a more vulnerable population of lower functioning people with disabilities and dual diagnoses. Many prisoners can't read or write.
- The corrections system needs a watchdog function for the public to keep an eye on how it is operating. Although the corrections system is better than it used to be, the watchdog function is still valid. An agency can't police itself adequately, especially if investigating potential wrongdoing.

In favor of moving the ombudsman's office or developing alternatives

People in favor of eliminating, downsizing, or privatizing the ombudsman function raised the following points:

- Ombudsman offices were started in the 1970s when prison conditions were worse than they are now. Most, if not all of the serious problems have been fixed and the culture has changed.
- The claim that lawsuits would increase without an ombudsman has not been substantiated.
- The system is more open than it used to be. The press has access and covers anything controversial. Many advocacy groups that didn't exist 25 years ago can today review the department's actions.
- Other avenues exist for prisoners to pursue complaints both within and outside of the system.
- The ombudsman's special powers aren't needed because the ombudsman doesn't really use them. Necessary powers could be arranged contractually or legislatively on a case-by-case basis.
- Various organizations now review aspects of the department's operations. The Minnesota Department of Labor and Industry Occupational Safety and Health Administration Compliance office (MNOSHA) looks at MINNCOR operations. The American Corrections Association (ACA) has standards for facilities and procedures and audits the DOC for compliance with these standards. The department's process for disciplining inmates now meets due process requirements.
- The department does a good job of policing itself and wants the system to work well and fairly.
- The department has a new grievance procedure allowing inmates the right to grieve decisions and/or actions they believe are unfair or improper.
- For issues affecting more than one inmate, the prisons now have inmate representative groups that meet regularly (at least quarterly) with the warden's office/staff.
- The statutes now allow more redress by the courts than they did previously.
- Numbers in the Ombudsman's Performance Report (see Appendix A) raise questions about whether the office is still doing significant work. For example, more than 75 percent of the ombudsman's inmate contacts were for information only. These don't lead to anything more and need only a simple answer. Information requests could be handled by an information service with a receptionist or a person in Corrections. At the same time, few investigations or recommendations come from the ombudsman's office —

three investigations in 2000, down from 21 in 1999. Investigations could be contracted out. Furthermore, the term "investigation" is misleading because most are not about substantive issues. For example, if an inmate says, "I didn't get my check from my grandmother. She said she sent it last week," the ombudsman would count it as an investigation. Most investigations are more like a complaint processing function of minor things that Corrections already looks into.

- Few recommendations or system changes result from the ombudsman office's work.

The conclusion that people with this perspective have reached is that the Ombudsman for Corrections' function has outgrown its usefulness. In their assessment, it has become redundant, and independent review is less necessary than it used to be.

Participants in this study agreed that many changes and reforms have occurred in the last 25 years that have improved the corrections system. They disagreed over whether these changes have made the ombudsman's office redundant and whether its services could be provided more effectively and economically in another way.

Expectations of a valuable ombudsman's office

State leadership in this area agreed that in order to add value to the corrections system, an ombudsman's office should

- make an impact through system changes;
- identify systemic issues that need organizational solutions;
- above all, produce investigations with formal reports that make major recommendations;
- be a proactive partner with the DOC in improving the system; and
- not merely duplicate what other actors in the system already provide or could provide.

Interviews with five officials in three DOC facilities — St. Cloud, Oak Park Heights and Faribault — focused on the value these officials believe that the ombudsman provides. They included a warden, associate warden, and three program managers familiar with the ombudsman's activities. They were selected at random.

They said that the ombudsman staff sometimes enable inmates to accept decisions they don't like and that the office provides a pressure relief valve. The office also provides valuable feedback for managers about the way they are handling things. One said, "It gives me reassurance as a manager to know that an outside person has examined what we've done and thinks we've done it properly." This works with prisoners, as well, who give prison managers more credibility when their decisions are backed up by the ombudsman.

They saw the ombudsman's office as a check and balance on the corrections system. Prison staff may also use the ombudsman's office for their own employment issues, such as whistle blower protection. They also saw value in the office's watchdog function. One official said, "My opinion is it's always great to have a watchdog outside the institution. They are wonderful if you have nothing to hide."

Two of the five interviewees, while finding value in these benefits, were not sure they justified the costs. The other three felt the costs were justified.

While finding value in the activities, some participants felt the ombudsman should refocus its mission and role. Comments included, "The office hasn't re-examined its role and policies, procedures, and mission. Is it user friendly? Is it still necessary? Is it still important to have this service? How should we most effectively deliver this service?"

Redundant activities

Three main areas of redundancy between the ombudsman's office and other entities were raised in this study: ACA audits, MNOSHA, and grievance and complaint processes.

ACA audits: The American Corrections Association audits state corrections systems for compliance with its standards, which cover a wide range of things, including facilities, rules and procedures. The department works with the ACA to make the improvements ACA thinks are needed.

The ombudsman may also investigate these same areas. According to the ombudsman, however, the ACA and ombudsman's reviews are significantly different:

- ACA audits are done every three years. Ombudsman feedback is real time and on-going.
- The ACA determines whether a state's facilities and procedures are in compliance with its standards. The ombudsman investigates whether they have been applied properly to specific cases, consistently, and whether the rules are fair.
- The ombudsman can correct specific instances of unfair treatment.
- The ombudsman provides the public a window on the system as the watchdog over conditions and operations of the corrections system.

MNOSHA: DOC staff said that MNOSHA checks for safety violations in prisons and that MNOSHA has jurisdiction over MINNCOR facilities and consults with the department. The Department of Labor and Industry (DLI) has told the ombudsman that MNOSHA does not have jurisdiction over inmates because they are not employees. For

example, DLI declined to investigate a case alleging unsafe working conditions in the prison laundry, where an inmate had been disciplined for refusing to work under conditions he deemed unsafe. The ombudsman's office looked into and resolved the case.

This study was not able to resolve the status of OSHA in the correctional system or the extent of its authority. The ombudsman's office has identified this as one of the systemic issues it needs to investigate.

Grievance and complaint resolution processes: Another area of duplication is the department's grievance process and the ombudsman's complaint resolution process. Copies of complaints are sometimes sent to four or more areas within the department. In the past, several department staff might have been working on the same complaint without knowing about the others. As a result, Corrections created a centralized complaint handling function.

Interviewees reported that copies of some of the same complaints are going to the ombudsman's office. Therefore, the ombudsman may investigate issues that Corrections is already working to resolve. Interviewees pointed out that the main difference is that the ombudsman can give an answer from an outside, neutral source. Also, the ombudsman may handle complaints that are not eligible to go through the department's system.

Service delivery alternatives

In investigating alternative ways to deliver ombudsman services, Management Analysis looked at four other states' systems. One of these states, Connecticut, had privatized ombudsman services and one, Missouri, has never had an ombudsman function independent from its Department of Corrections. The other two, Iowa and Nebraska, had public ombudsman offices independent from the states' corrections agency. The chart ON the next page shows basic information about these states' systems:

Ombudsman Services in Selected States¹

	Minnesota	Connecticut 2001	Iowa 1999	Missouri	Nebraska
State population	4,776,000	3,282,000	2,869,000	5,468,000	1,666,000
Inmate population	6,200	18,000		28,583	3,000
Budget/year	\$310,000	\$300,000		NA	\$394,000 est
Full FTE complement	3.0	4.0		6.0	3.5 plus clerical
Ombudsmen and investigators	3.0	4.0		4.0*	3.5
Clerical	None	None		2.0	Shared
Workload Assists/complaints	700	1200	420 2,224 cases	NA	868
Type of Ombudsman Structure	Specialized public ombudsman under the executive branch	Specialized private ombudsman under the executive branch Contracts with DOC	General government ombudsman under the legislature	None. DOC has an internal Constituent Services Office to provide services	General government ombudsman under the legislature

* Missouri does not have an ombudsman but has 4.0 CSOs (Constituent Services Officers) plus 2 clerical

Three options emerged as alternative structures for ombudsman services:

1. General government ombudsman vs. specific area ombudsman. (Some states have separate ombudsmen for specific fields and others have ombudsman offices that serve several fields.)

Iowa and Nebraska combine the functions of several types of ombudsmen in one office. Interviewees felt this achieved an economy of scale by sharing services. They also

¹ Direct comparison of numbers in this table is not possible. First, the number of facilities and geographical distances vary considerably from state to state. Second, assists and complaints are only part of the workload. In addition, these offices handle information calls, and more in-depth investigations or systemic issues were not available for this study.

thought that combining with others tended to shield the corrections ombudsman, because corrections is less popular. Corrections can still have its own dedicated ombudsman within the general ombudsman office model.

2. Executive vs. legislative ombudsman. (Some ombudsman offices are under the executive branch of government, and others are under the legislative branch.)

Interviewees reported that as elected officials and public sentiment change over time, ombudsman offices come under pressure to be more or less active. Therefore, it is easier to remain neutral under legislative oversight than under the governor's oversight. Individual legislators cannot exert as much pressure as a single governor can, and the legislature's oversight control is more diffuse. The legislative model, then, was deemed more independent.

Nebraska is under the direct oversight of a legislative executive board — 10 members of the legislature. Connecticut is, strictly speaking, an executive model because it contracts with the Department of Corrections. However, it has a blue ribbon board of directors to guide it. This board includes distinguished citizens and community leaders such as the head of Aetna Insurance, law school officials, and former United States' representatives and judges. Minnesota's ombudsman for corrections is under the governor and has no board or advisory committee to oversee and guide it.

3. Privatization

Connecticut was the only state found to have privatized ombudsman functions for corrections, and has had this structure for its entire 28-year history. The same person has been ombudsman the entire time; the contract is renewed each year.

Some interviewees raised the possibility of contracting out investigations on a case-by-case basis. Other ombudsman functions, such as information services, could either be retained in a downsized ombudsman's office, put under DOC, or be diffused in the system, assuming that other organizations already do or will do the same functions.

No one interviewed in this study wanted to change Minnesota's structure from executive to legislative. However, from the standpoint of independence of the function, a legislative model would better serve its long-term needs. It would be answerable to a board or committee rather than one person.

One additional variation was raised in this study: During the last legislative session, the governor's office proposed that several ombudsman offices be collocated physically so they could share administrative support. The one-time cost was estimated at \$200,000, and individual budgets would not be reduced because budgets have already been cut in

recent years. Therefore, the collocation would improve effectiveness of the ombudsmen but not produce cost savings. This economy of scale is in keeping with reports of an efficiency benefit from general government ombudsman offices.

CONCLUSIONS

- **The Ombudsman for Corrections' performance is not well-publicized or understood.**

This study found that the ombudsman's office is performing work that others are generally not aware of, and that its value to the corrections system is not fully understood. This is partly due to a poor job of presenting its work to leadership, resulting in a lack of understanding and an oversimplified view of the office. As a result, leaders have concluded that the ombudsman's functions and value are already being, or could be picked up by others, and do not have much impact on the prison system or inmates.

Another reason that leadership may not fully understand what the office is doing, and its value, is that the ombudsman tries whenever possible to solve problems informally without a paper trail. This strategy for effectiveness is valuable but doesn't provide a clear record of performance. Contacts with the DOC central office are rare — mostly formal reports. Most contacts with the DOC are at the mid- to upper-institution level and are informal. Therefore, much of their work is not brought to the attention of the DOC administration. This strategy also prevents inmates from using the ombudsman's office as a discovery vehicle for lawsuits.

The strategy of the ombudsman's office has been to informally problem-solve within the institutions. Since a highly visible and adversarial relationship would have gotten in the way of cooperation, formal reporting has been minimized. The advantage of this is to make their work more effective. The disadvantage is that higher-level decision makers are not informed of many of the activities and their impacts.

- **Leaders have different expectations of the office's performance.**

Different leaders had different expectations about the proper role or mission of the office. Many also held high performance expectations in regard to what they thought the proper role was.

Some expected evidence of a large number of significant mediation and/or negotiation sessions between inmates and staff, including investigations of major issues such as a death, racial bias, or abuse. Some expected more formal reports with significant recommendations having systemic impact. Others thought that if a service was available elsewhere for some cases that the ombudsman, who can serve all cases, was redundant. These viewpoints generally did not take into account the niche various services filled and how accessible they really are in practice.

They also may not account for the value of independent answers in helping inmates accept things they don't like. This study concluded that the office's independence is a major factor in adding value to the corrections system.

- **Privatization would probably not save money.**

Privatization is not likely to save money. If investigations were the only function contracted out, the office would lose an economy of scale that would hurt its ability to function well. It is also not clear that the value its non-investigative functions (complaint resolution and information calls) bring to the corrections system could or would be provided by others.

While no one is asking for a change in oversight function, from the standpoint of independence of the function, a legislative model would better serve its long-term needs. It would be answerable to a board or committee rather than one person.

- **Mission and strategy focus**

The ombudsman's office understands its mission, but stakeholders see its purpose and role somewhat differently. It is crucial that the ombudsman's office bring the different perspectives into alignment.

- **Value-added services**

Many of the questions answered by the ombudsman's office are significant issues that are answerable right away primarily because of two things: (1) The staff person answering the questions had many years of experience with the state corrections system, and (2) The staff's experience cuts across many areas (system-wide, individual institutions, programs, topics, and rules). It is not likely another single source of answers would be available without needing considerable research. (See Appendix B for examples of questions handled by the ombudsman's office.)

Most participants agreed that upset prisoners may sometimes accept an answer from an outside, neutral source that he or she couldn't accept from an internal source. This study found that this was of significant value.

Contrary to the belief that the ombudsman does not often use special statutory powers, this study found that the ombudsman's investigators use the powers almost continuously. Because of the low-key, informal way they use them, it may not be noticed by state leadership.

RECOMMENDATIONS

1. The Ombudsman's office needs to refocus its mission and strategies to better align its activities with stakeholders in the system.

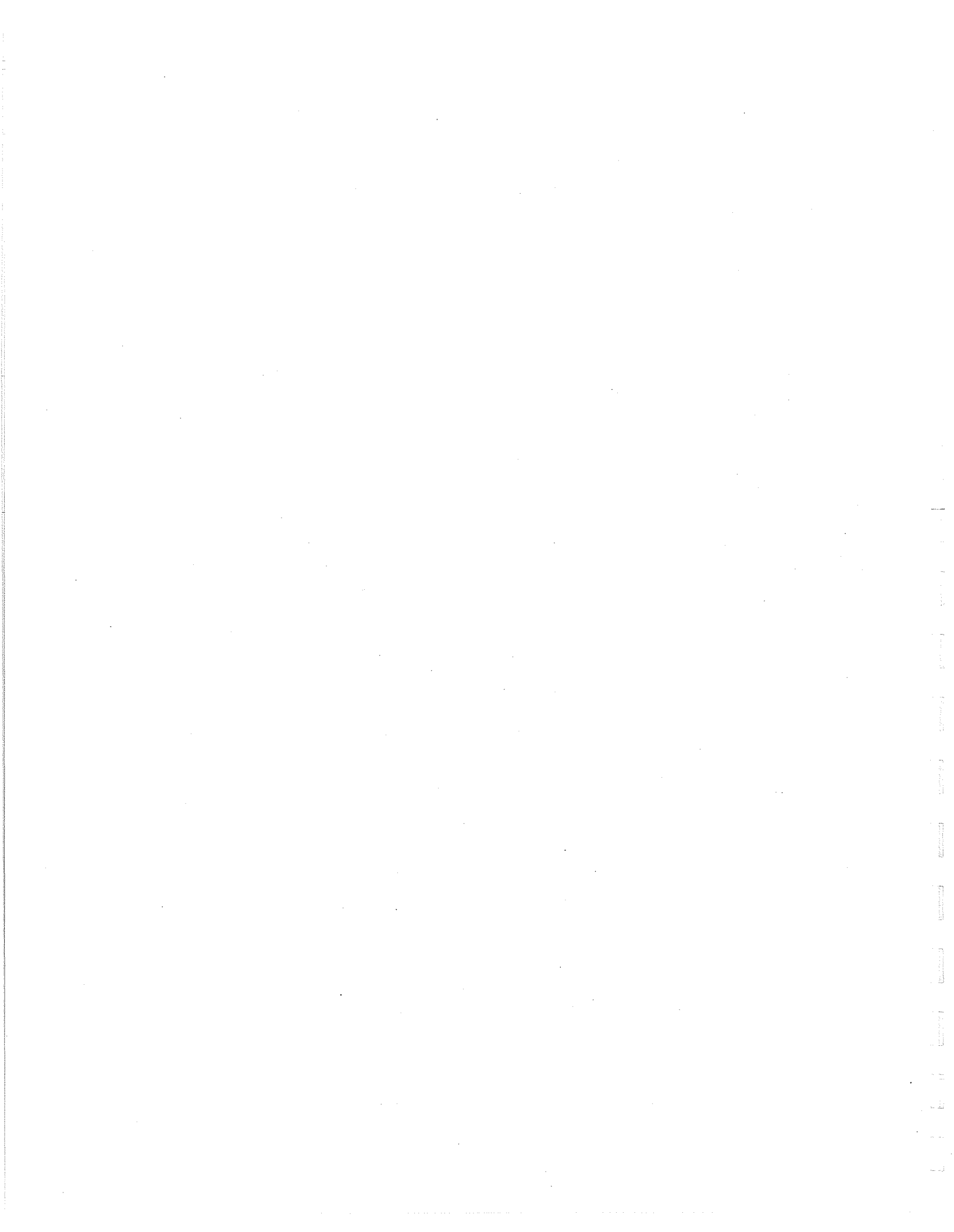
This could be done with the use of an advisory board that would include major stakeholders and/or community leaders. Care would have to be exercised so that this would not challenge the independence of the office. The board should see that activities of DOC and the ombudsman are coordinated so they are not needlessly redundant. The ombudsman must still be a watchdog.

2. Performance reporting should be changed to become more concrete and visible.

The ombudsman's office should consider renaming the category it calls "assists" in its performance reports. Summary reports should be made that reflect the informal mediating, negotiating, and problem solving that the ombudsman does in the institutions. These should be presented and discussed periodically with DOC leadership to review activities and trends, and to spot opportunities for the ombudsman to identify and address system-wide issues. Other states' ombudsman offices should be contacted for models of how to do this.

3. The ombudsman should do more to formally identify system-wide issues, make DOC administration aware of them, and write conclusions, recommendations and results.

Meeting with prisoner representative groups, with and without prison staff, could identify more system-wide, or multi-prisoner, issues.



APPENDIX A

Ombudsman for Corrections 1999 - 2000 performance report

	1999	Percent	2000	Percent
Information	3,998	71.60%	3,055	76.28%
Assist	1,303	23.33%	700	17.48%
Decline	93	1.66%	117	2.92%
Discontinued	68	3.01%	126	3.15%
Investigated	21	.38%	3	.07%
Recommendation with Formal Investigation	<u>1</u>	<u>.02%</u>	<u>4</u>	<u>.10%</u>
Total	5,484	100%	4,005	100%

APPENDIX B

Examples of questions that the Ombudsman's office categorizes as information calls:

Translation of new systems

The COMS System — on December 11, 2000, a new computer program was introduced that refigured all the inmates' supervised release dates (SRDs) and expirations. Since in some cases, it changed the dates, the office received many calls from inmates wanting to know what happened.

Placement

The inmate is in administrative segregation and doesn't know how long they can hold him.

The inmate is having problems with an institution treatment program; can they take good time if he fails the program?

Issues about segregation and the conditions of confinement in segregation.

The inmate wants to go to a facility out of state or another DOC facility. What are the rules governing this?

The inmate wants a high school diploma but already has a GED. Why won't they let him get a high school diploma?

Medical

An inmate came in with particular medications, and now he has been prescribed others by the facility doctor — aren't his rights being violated?

An inmate has Hepatitis C and feels he isn't being treated for it.

Questions on TB testing, AIDS testing, DNA testing.

An inmate feels he should be referred to a specialist and calls us for assistance.

An inmate's glasses were accidentally broken. What is the policy on glasses in the facility?

An inmate feels he has mental illness issues but doesn't know where to go.

An inmate's mental health medication has been changed, and he is unhappy with his new medication. What should he do?

Release

An inmate indicates he was put under Public Risk Monitoring but doesn't know what this means.

An inmate wants to know how to resolve his detainer.

An inmate has questions about Intensive Community Supervision.

An inmate has questions about his release plan or doesn't understand it.

An inmate commits a parole violation and doesn't know the process.

A particular program won't accept an inmate — what should he do and who can he be released to?

An inmate feels that the DOC might try to commit him as a Sexual Psychopathic Personality — what should he do? What is the process for this? What if he is committed?

Legal

How does the appeal process work and who should he call?

Property

The inmate has lost his property or it was stolen from him in the facility.

An inmate is having trouble with his TV that he purchased through the state.

An inmate was beaten up by the police when he was arrested. Who can he complain to?

Program

What are the rights of an inmate worker?

Many questions about job assignments

Many issues regarding the treatment program an inmate is in — confidentiality, groups, completion of treatment

Discrimination

Race discrimination a common question — what constitutes discrimination in prison?

Religion — one religion is seen as having more privileges than another, or problems exist with the privileges.

Records

How is good time computed?

Problems with inmate accounts — how does it work?

Problems with the paycheck — they were entitled to more, they thought.

Rules

Gate money — how does it accrue and can you get it while you are still in prison?

Urinary Analyses (UAs) — under what conditions can they be taken? Where are they sent for analysis? How accurate are they?

What are the visitation rules?

Threats and Abuse

What constitutes abuse of the use of force?

Services

Food problems and questions about nutrition and menu selections.

