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STATE OF MINNESOTA



OMBUDSMAN FOR CORRECTIONS

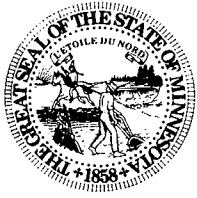


FISCAL YEAR
1993 - 1994
BIENNIAL REPORT

HV
7273
.A35a
1993/94

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STATE OF MINNESOTA
OMBUDSMAN for CORRECTIONS

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December 4, 1994

Honorable Arne Carlson, Governor
and
The Legislature of the State of Minnesota

I am pleased to submit the first biennial report of the Ombudsman for Corrections. In 1993, the Legislature changed the reporting requirement for the Ombudsman from an annual report to a biennial report due on or before the beginning of the legislative session.

Included in this report is statistical information describing the agency workload. For your interest, I have highlighted some of the recommendations which have been made by the Ombudsman in this reporting period. I have also included narratives of the type of cases which are routinely handled by the Ombudsman.

As with other corrections agencies, the increased numbers of persons in the correctional system has had an impact on the Ombudsman for Corrections workload; the case numbers continue to rise and the issues at times are more complex. In March and November, 1994, I hired additional investigators (two) to help with the workload; these are the first new investigator positions the Ombudsman has had since 1985.

I have continued to assess the agency workload; the types of contacts we receive and how they are dealt with. In June, we worked with the Management Analysis Division of the Department of Administration to develop a strategic plan. We have established goals which address the effectiveness of the use of our limited resources, communication processes and relationships. The entire staff was involved in the strategic planning process and have committed themselves to accomplish the goals identified in the plan.

I look forward to working with all of you this coming year. Please feel free to contact me for any additional information regarding the activities of the agency.

Sincerely,

Patricia Seleen

Patricia Seleen
Ombudsman for Corrections

THE CURRENT ROLE OF THE OMBUDSMAN FOR CORRECTIONS IN MINNESOTA

Safire's Political Dictionary defines an Ombudsman as an official intermediary between citizen and government to counteract the delay, injustice and impersonality of bureaucracy. A key characteristic of the Ombudsman, writes Professor Stanley Anderson of the University of California, is the accessibility to the public. Anyone may file a complaint by simply writing a letter. This is especially important to those deprived of their freedom in jails, hospitals, sanatoria, etc. In its classic form, the Ombudsman is independent from the agencies under his or her jurisdiction. This arrangement defines the Ombudsman's role as overseeing certain functions of government.

The investigatory powers of an Ombudsman are necessarily very broad. Without the power to investigate thoroughly, an Ombudsman would be crippled in efforts to understand and resolve grievances. In addition to investigatory authority, an Ombudsman is generally empowered to publish findings and conclusions and make recommendations to the agencies under its jurisdiction.

However, the Ombudsman's office does not have the authority to compel an agency to implement its recommendations. In its formal relationship with the agencies under its jurisdiction, an Ombudsman's office has only an advisory role. The Ombudsman

relies on fairness and persuasiveness to achieve objectives. It is widely accepted that an Ombudsman's office, by providing a direct and informal avenue for grievances, is a valuable tool to ultimately improve the administration of government itself.

The Minnesota Ombudsman for Corrections was established in 1972 as a constructive means for examining and resolving inmate grievances. The purpose of the Ombudsman's office remains the same today; "to promote the highest attainable standards of competency, efficiency and justice in the administration of corrections."¹

The primary on-going work of the Ombudsman has always included resolving inmate complaints. However, during this past year, the Ombudsman has made a special effort to proactively examine larger issues which may be systemic in nature. The Ombudsman's primary goals of promoting the highest standards of efficiency, competency and justice in the administration of corrections are truly attainable only through systemic vigilance. Resolving issues before they become inmate complaints can result in fewer frivolous legal actions being filed in the courts, saving valuable time and resources of other departments.

One systemic investigation resulted from a complaint from an inmate who had been injured

THE CURRENT ROLE OF THE OMBUDSMAN, CONTINUED

during an assault in a county jail. The inmate complained to the Ombudsman that he had concerns about his safety because of how the inmates were housed together in that jail. The Ombudsman investigated the classification system in that facility and made several recommendations for improvement:

- That the classification officer's position be filled and the facility's classification plan be implemented as initially designed.
- In the future, that the facility comply with the DOC requirement for reporting special occurrences.

While the administration in the facility concurred with the Ombudsman's recommendations, at the time of this writing they had not filled the position nor implemented their classification system.

For some years, the Ombudsman has voiced concerns to the Department of Corrections (DOC) about issues related to mentally ill inmates. This year the Ombudsman conducted two investigations which focused on the identification and treatment of mentally ill inmates in the DOC. The recommendations from those investigations included:

- That the DOC review the policies and practices which relate to the identification and treatment of mentally ill inmates and ensures that policies are ad-

equate and in compliance with good mental health practices and constitutional standards.

- That the DOC establish an independent review board to provide a quality assurance review of treatment provided to inmates at the mental health unit and other department institutions.
- That the DOC establish a special needs unit to deal with vulnerable, mentally ill and mentally retarded inmates.

We will continue to monitor these recommendations and work with the DOC for improvement in these areas.

In other efforts to better utilize the resources of the Ombudsman, we have been looking at ways to be proactive in identifying and resolving issues. We have asked the DOC for the opportunity to review and comment on policies before they become effective. The Commissioner of Corrections agreed with the Ombudsman that this would be a valuable working arrangement.

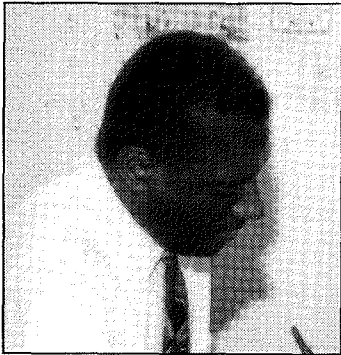
The Ombudsman has reviewed several proposed department-wide policies. The following recommendations for change in the proposed Allowable Items policy were accepted:

- That inmates be allowed to continue to wear their religious medallions; that the institution staff enforce the policy that the



Patricia Seleen,
Ombudsman for
Corrections

THE CURRENT ROLE OF THE OMBUDSMAN, CONTINUED



Daryl E. Lynn,
Assistant Ombudsman

medallions be worn under the inmate's shirt.

- With the approval of the medicine man, Native American inmates be allowed to continue to use cedar, sweet grass and sage for religious practices. Each institution should develop a form authorizing the inmate to possess these religious items.

The Ombudsman is continuing to monitor the implementation of this policy.

In addition, we have reviewed policies of individual county and state facilities and made the following recommendations which were accepted at those facilities:

- That each staff person involved in an incident write their own report of that incident.
- That staff use a spit mask instead of a towel when an inmate is spitting; the practice had been to wrap the inmate's head in a towel.
- That when an inmate is released from segregation, he be allowed to apply for assignment instead of having to wait 45 days following his release from segregation before being allowed to apply for assignment.
- That the institution review the phase system which did not allow for visiting privileges for inmates in segregation.
- That the use of certain kinds of restraints not be allowed be-

cause they are not consistent with ACA standards.

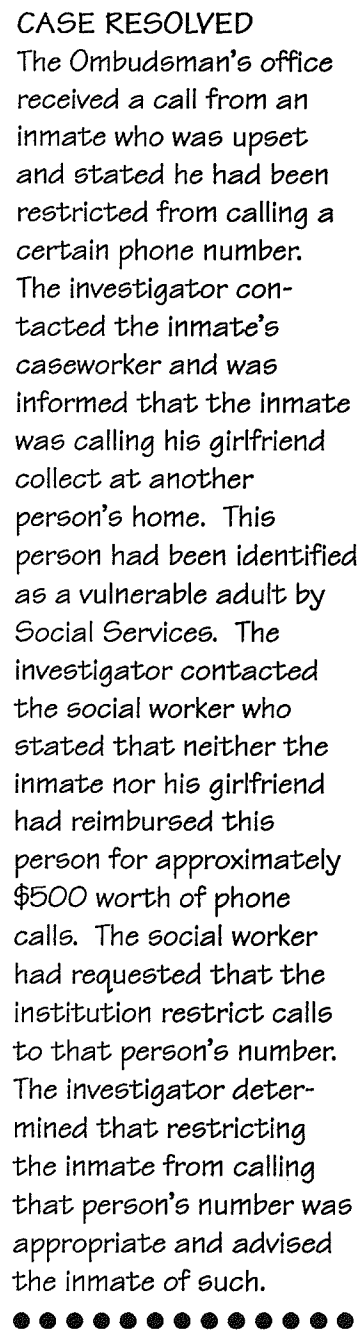
- That inmates in a county jail have access to photocopy services for legal and other documents; that the jail charge the inmate for the cost of copies.
- That inmates have access to certified mail in a county jail; that the jail charge the inmate for the cost of certified mail.

The Ombudsman has made other informal recommendations which did not require policy changes. The following recommendations have been implemented:

- Staff review the eligibility for assistance of parolees residing in a work release program. As a result, parolees are now eligible to receive a personal and incidental grant plus a General Assistance Medical Card.
- A DOC institution has made available a current listing of the programs available so caseworkers can advise inmates accurately what is available in that institution.
- Reading and legal materials are provided to inmates in segregation.
- There is better observation in the back areas of a cell block which improves inmate safety.
- TV cameras will be installed in quiet and observation cells.

¹ MN Statute 241.41

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Ombudsman For Corrections, 1994

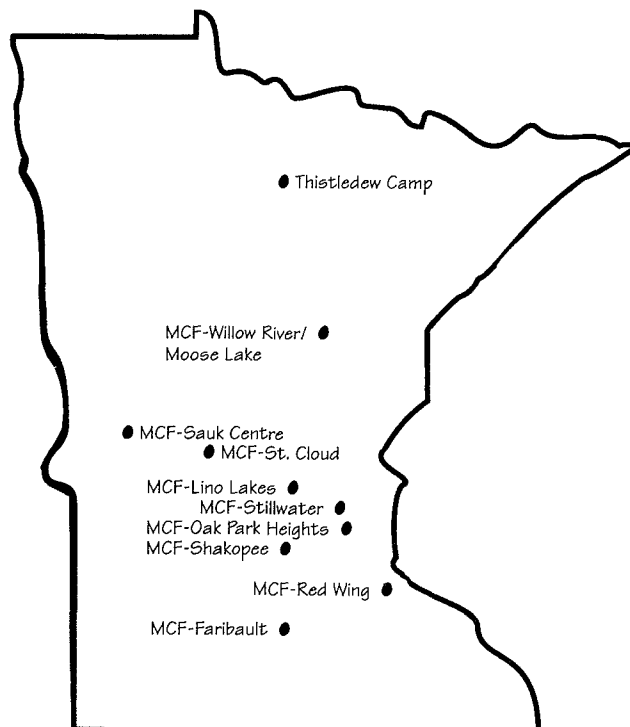
CASE RESOLVED

The office received a complaint from an individual on parole who had been arrested over the weekend. He was concerned because he had been in jail for more than three days. From his previous experience with the judicial system, he was accustomed to appearing in court the next day. He thought his parole officer was unaware he was in jail and needed to be contacted. The individual contacted the Ombudsman's office and the investigator told him that the parole officer had three working days to give him the notice of the charges against him, not including weekends or holidays. While the individual was unhappy with the response, it was the correct response.

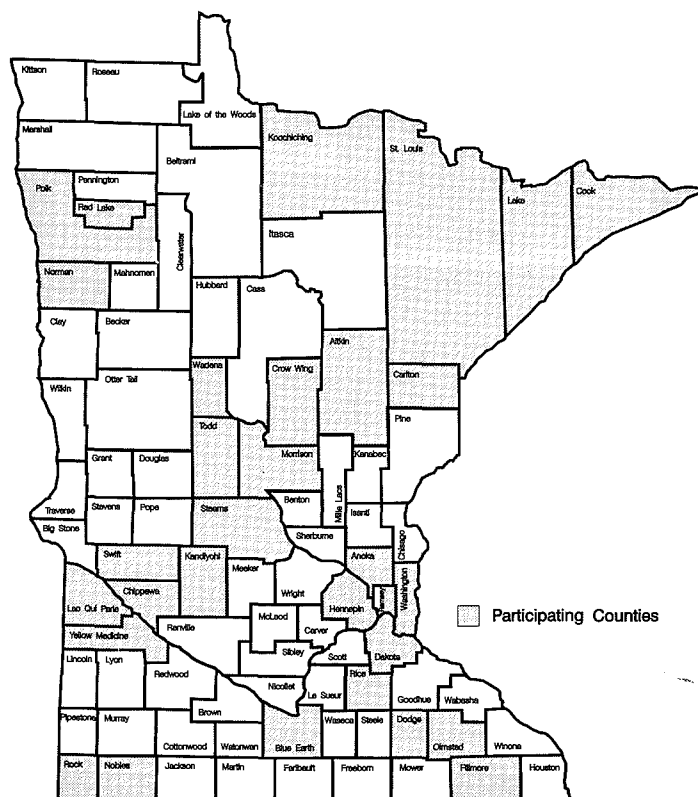


Mary Jo Reiter,
Investigator

MINNESOTA CORRECTIONAL FACILITIES



MINNESOTA COMMUNITY CORRECTIONS ACT -- PARTICIPATING COUNTIES



FISCAL YEAR 1993 - 1994

ACTIVITIES & STATISTICS

CASELOAD SUMMARY FISCAL YEAR 1994 (JULY, 1993 - JUNE, 1994)

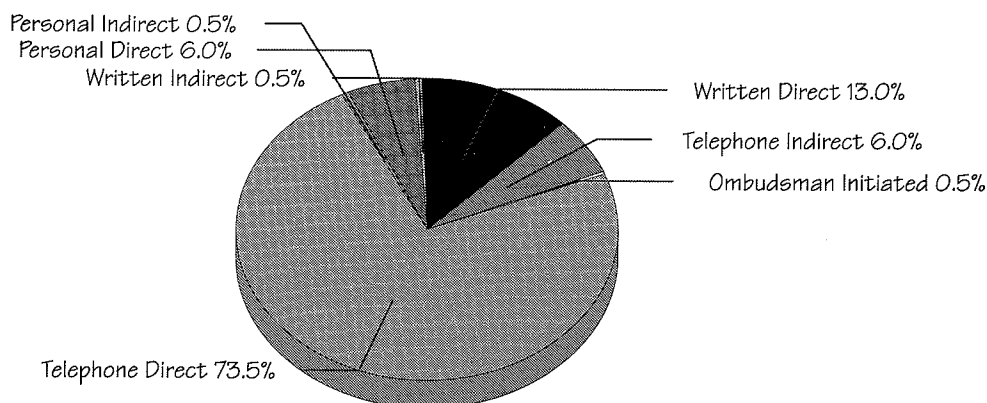
Carried Over Cases From 1993	51
Contacts Received In 1994	3332
Information Only Contacts	2778
Total Fiscal Year 1994 Caseload	6161
Cases Carried Over to Fiscal Year 1995.....	165



*Judith M. Williams,
Investigator*

INITIAL CONTACT WITH THE AGENCY

COMMUNICATION METHODS



CASE RESOLVED

An inmate contacted the Ombudsman to complain that he had not received enough jail credit. It was investigated and found to be true, however, the Ombudsman's office does not have the authority to grant jail credit. The investigator contacted the individual to inform them they were correct, however, the inmate now had to contact their lawyer or judge to have a court order prepared granting the appropriate jail credit.

TYPES AND DESCRIPTION OF CONTACTS

The Ombudsman systematically categorizes each contact received to help further define the source(s) of changes in both the number and nature of cases and to facilitate year-to-year comparisons.

CATEGORIES

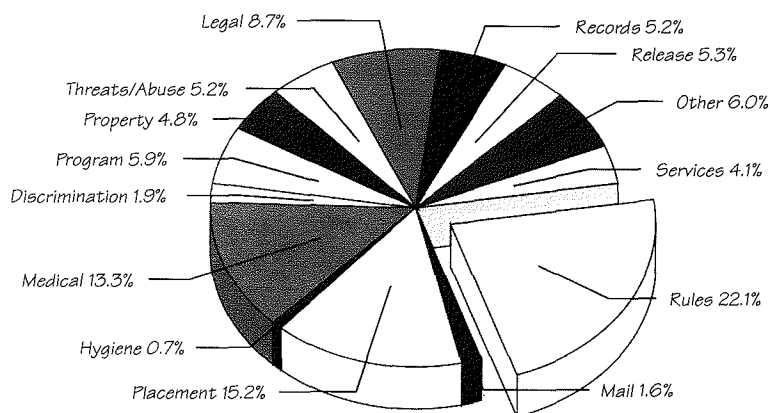


*Diane Grinde,
Investigator*

- **PAROLE:** Concerning any matter under the jurisdiction of the releasing authority, e.g., work release, supervised release, special review, etc.
- **MEDICAL:** Concerning availability of treatment or accessibility of a staff physician or other medical professional.
- **LEGAL:** Involving legal assistance or problems with getting a response from the Public Defender or other legal counsel.
- **PLACEMENT:** Concerning the facility, area, or physical unit to which an inmate is assigned.
- **PROPERTY:** Dealing with loss, destruction, or theft of personal property.
- **PROGRAM:** Relating to training, treatment program, or work assignment.
- **DISCRIMINATION:** Concerning unequal treatment based on race, color, creed, religion, national origin, or sex.
- **RECORDS:** Concerning data on inmate or staff files.
- **RULES:** Regarding administrative policies establishing regulations which an inmate, staff member, or other person affected by the operation of a facility or program is expected to follow, e.g., visits, disciplinary hearings, dress, etc.
- **THREATS /ABUSE:** Concerning threats of bodily harm, actual physical abuse, or harassment to an inmate or staff.
- **MAIL:** Regarding anything that may impact the normal, legal flow of mail in or out of an institution or how it is handled by institution staff.
- **HYGIENE:** Having to do with access to supplies and necessities for personal hygiene or the hygiene of physical surroundings.
- **SERVICES (Institution):** Regarding heat, water, window screens, blankets, etc.
- **OTHER:** Concerning those contacts not covered in the previous categories, e.g. food, etc.

Release.....	5.3%
Medical.....	13.3%
Legal.....	8.7%
Placement.....	15.2%
Property.....	4.8%
Program.....	5.9%
Discrimination.....	1.9%

Records	5.2%
Rules	22.1%
Threats/Abuse	5.2%
Mail	1.6%
Hygiene7%
Services	4.1%
Other	6.0%
<hr/>	
Total	100%



The Ombudsman's office was contacted by a man who thought he had been discriminated against because he is Hispanic. The man had been removed from Work Release by the judge after his third violation because he had failed to return to the institution by 4:00 p.m. from his job. Violations of this sort ordinarily result in removal from the special Work Release status. The inmate appealed to the Ombudsman's office to reinstate him because he needed the work to support his family. The investigator was not able to help the individual in this case, as only the judge could reinstate his work status.



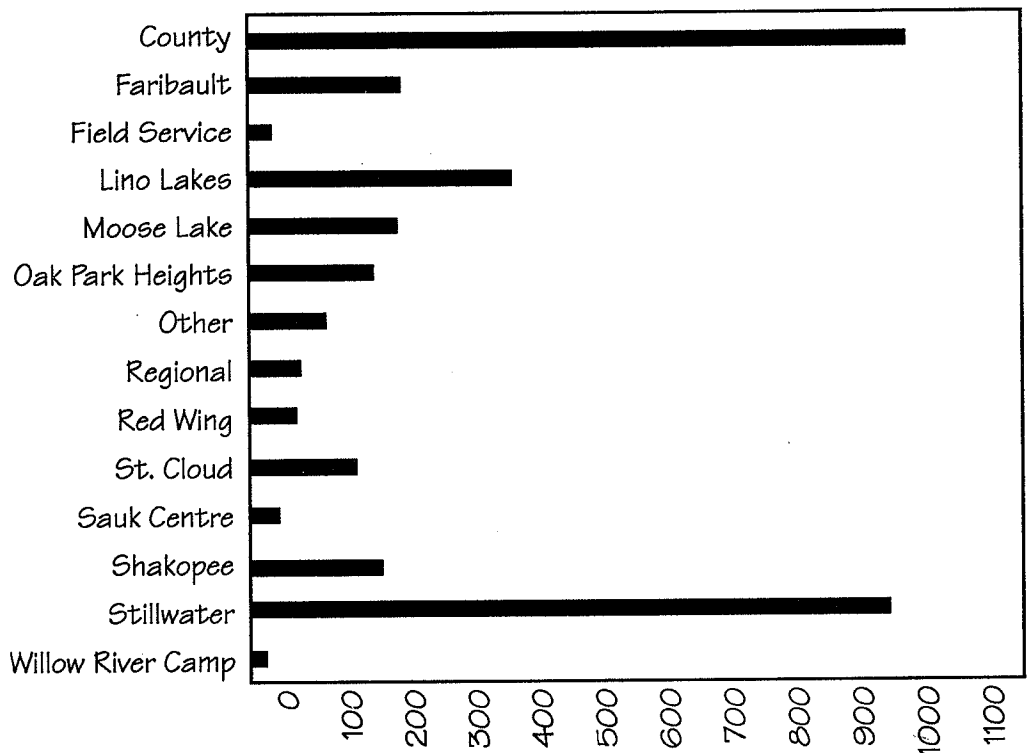
Maxine Regguinti,
Investigator

CLOSED CASES BY INSTITUTION*

INSTITUTION	CODE	# CASES
County	CTY	997
Faribault	FRB	190
Field Service	FS	26
Lino Lakes	LL	377
Moose Lake	ML	187
Oak Park Heights	OPH	143
Other	OTH	73
Regional	RGL	50
Red Wing	RW	43
St. Cloud	SCL	107
Sauk Centre	SCR	25
Shakopee	SHK	158
Stillwater	STW	946
Willow River Camp	WRC	10
TOTAL:		3332



Patricia Seleen,
Ombudsman for
Corrections with
Laura Ochs,
Office Manager



(*Statistics do not include information-only contacts)

RESPONSE AND CASE RESOLUTION TIME

INITIAL RESPONSE TIME

refers to the time taken to respond to a request. The Ombudsman's goal is to respond to cases within five days of receiving the request.

Fiscal Year 1994

Same day response 2,895
Information only
contacts 2,778
1 - 9 day response 289
10 plus day response 148

Total Closed Cases: 6,110

TIME TAKEN TO RESOLVE CASES

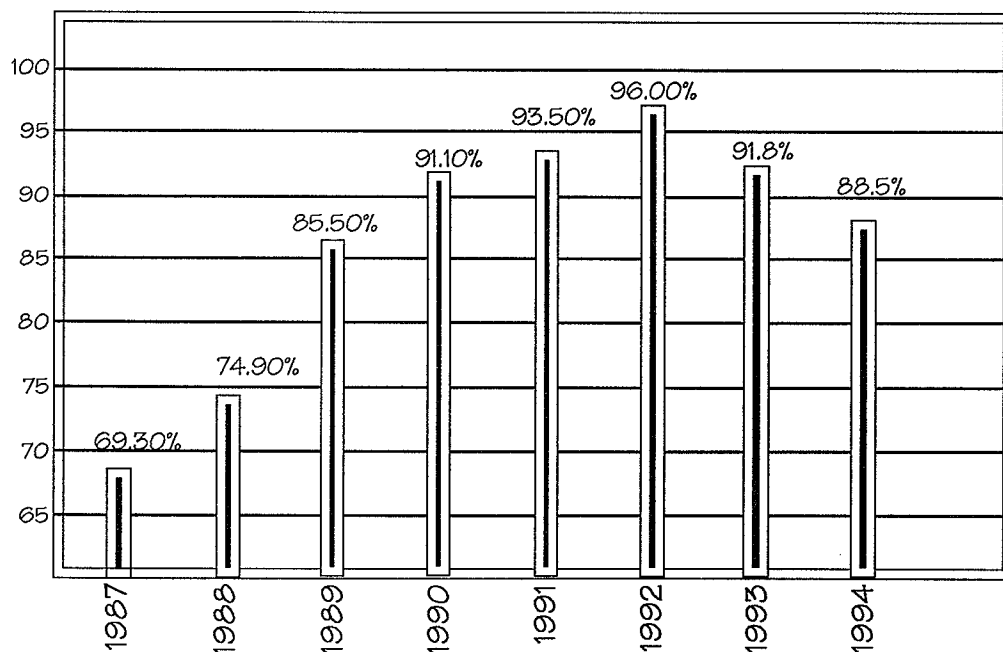
Timely resolution is a priority of the Ombudsman and is seen as a sign of efficiency.

Fiscal Year 1994

0 - 15 days 2,631
Information only
contacts 2,778
16 - 30 days 432
31 plus days 269

Total Closed Cases: 6,110

PERCENTAGE OF CASES RESOLVED IN ZERO - 15 DAYS



CASE RESOLVED

In a Program Review Team (PRT) meeting, we learned of an inmate's request for medical release. The inmate, incarcerated for a non-violent crime, had been recently diagnosed with terminal cancer. The PRT needed more information from the caseworker before deciding. Medical releases are generally considered only when the inmate has become non-ambulatory and can be considered a threat to no one.

The caseworker then received a letter from the inmate's brother indicating he felt threatened should the inmate be released. Public safety is always a prime concern so the request for medical release was discontinued. The OFC investigator maintained contact with the inmate and noted his rapid deterioration.

The investigator was contacted frequently by the inmate's wife and five children. The brother went to visit the inmate and then contacted the investigator, indicating he no longer felt threatened. The investigator again pursued the issue of medical release. The inmate was released to a hospice three days before his death.

CLOSED CASE STATUS

CASE RESOLVED

An inmate contacted the Ombudsman's office to complain that he was not receiving phone calls from a family member. When investigated, it was found that the inmate had failed to provide important information to the institution. The inmate also failed to inform the investigator of their lack of cooperation with the institution. The Ombudsman's office was able to advise the inmate that the only way to receive these calls was to cooperate and provide the necessary information to the institution.

The new data system we began using in July, 1993, allows us to track how we close cases. This information will assist us in developing our performance objectives and outcome measurements.

We document each contact as closed in one of 6 ways:

- **INFORMATION:** A request for information that is known by the agency.
- **ASSIST:** Relatively uncomplicated complaints resolved with few contacts and which provide an explanation of an administrative act or decision to the complainant.
- **DISCONTINUED:** Investigations which are initiated, but stop prior to completion.

- **DECLINE:** Complaints which are not pursued because of lack of jurisdiction or other prescribed reasons.

- **INVESTIGATED:** Completed investigations where findings and/or informal recommendations are made.

- **INVESTIGATED WITH FORMAL RECOMMENDATIONS:** Completed investigations which result in formal recommendations being made by the Ombudsman.

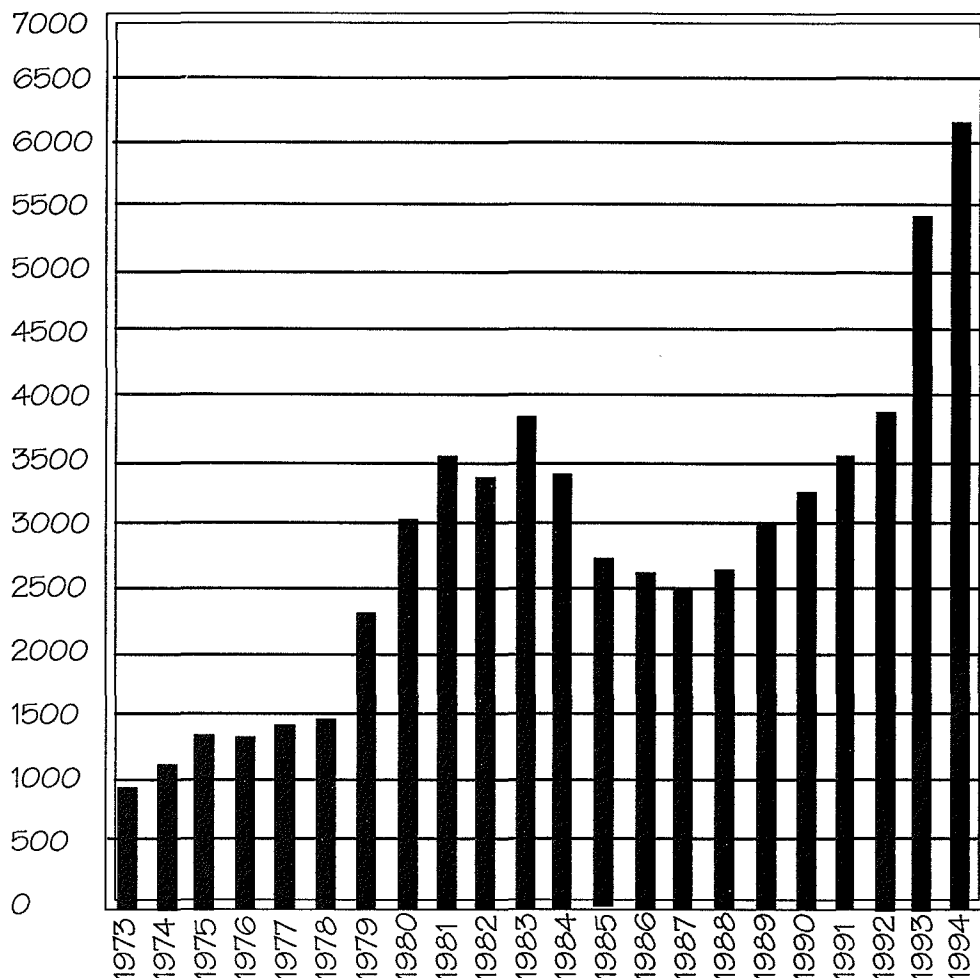
PERCENTAGE BY CATEGORIES

Information.....	0.1%
Assist.....	60.8%
Decline	4.9%
Discontinued	1.9%
Investigated	32.2%
Recommendation with Investigation	0.1%
Total.....	100%



Investigator Elbert Simmons with DOC Staff

Contacts Received



CONTACTS BY YEAR

1973	927	1984	3212
1974	1026	1985	2694
1975	1299	1986	2593
1976	1132	1987	2438
1977	1308	1988	2529
1978	1402	1989	2869
1979	2207	1990	3318
1980	2939	1991	3449
1981	3429	1992	3729
1982	3211	1993	5417
1983	3722	1994	6161

CASE RESOLVED

The DOC has introduced a new property policy. This policy must be complied with by all DOC institutions by March 1, 1995. If an inmate is transferred before this date, the institution must come into compliance with the new policy at the time of the transfer. One institution was opening new buildings within their grounds for inmate housing and wanted to enforce the new policy as a "transfer" move. The Ombudsman was contacted by an inmate who wanted an interpretation of the new property policy, and whether a "move" to another building within the same facility constituted a "transfer." We pointed out to institution staff that the new policy addressed transfers to other institutions and not buildings or unit changes within the same facility. The inmates were allowed to keep the property under the current guidelines.

STATUTE

241.41 OFFICE OF OMBUDSMAN; CREATION; QUALIFICATIONS; FUNCTIONS

The Office of the Ombudsman for the Minnesota State Department of Corrections is hereby created. The Ombudsman shall serve at the pleasure of the Governor in the unclassified service, shall be selected without regard to political affiliation, and shall be a person highly competent and qualified to analyze questions of law, administration, and public policy. No person may serve as Ombudsman while holding any other public office. The Ombudsman for the Department of 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.

241.42 DEFINITIONS

Subdivision 1. For the purposes of sections 241.41 to 241.45, the following terms shall have the meanings here given them.

Subd. 2. "Administrative Agency" or "agency" means any division, official, or employee of the Minnesota Department of Corrections, the Commissioner of Corrections, the Board of Pardons and regional correction or detention facilities of agencies for correction or detention programs including those programs or facilities operating under chapter 401, but does not include:

- (a) any court or judge;
- (b) any member of the Senate or House of Representatives of the State of Minnesota
- (c) the Governor or the Governor's personal staff;
- (d) any instrumentality of the federal government of the United States;
- (e) any political subdivision of the State of Minnesota;

(f) any interstate compact.

Subd. 3. "Commission" means the Ombudsman commission.

Subd. 4. (Repealed, 1976 c 318 s 18)

241.43 ORGANIZATION OF OFFICE OF OMBUDSMAN

Subdivision 1. The Ombudsman may select, appoint, and compensate out of available funds such assistants and employees as deemed necessary to discharge responsibilities. The Ombudsman and full-time staff shall be members of the Minnesota State Retirement Association.

Subd. 2. The Ombudsman may appoint an Assistant Ombudsman in the unclassified service.

Subd. 3. The Ombudsman may delegate to staff members any of the Ombudsman's 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 legislative.

241.44 POWERS OF OMBUDSMAN; INVESTIGATIONS; ACTIONS ON COMPLAINTS; RECOMMENDATIONS.

Subdivision 1. Powers. The Ombudsman may:

- (a) prescribe the methods by which complaints are to be made, reviewed, and acted upon; provided, however, that the Ombudsman may not levy a complaint fee;
- (b) determine the scope and manner of investigations to be made;
- (c) Except as otherwise provided, determine the form, frequency, and distribution of conclusions, recommendations, and proposals; provided, however, that the Governor or a representative may, at any time the Governor deems it necessary, request and receive information from the Ombudsman. Neither the Ombudsman nor any staff members shall be compelled to testify in any court with respect to any matter involving the exercise of the Ombudsman's official duties except as may be necessary to

STATUTE CONTINUED

enforce the provisions of sections 241.41 to 241.45;

(d) investigate, upon complaint or upon personal initiative, any action of an administrative agency;

(e) request and shall be given access to information in the possession of an administrative agency deemed necessary for the discharge of responsibilities;

(f) examine the records and documents of an administrative agency;

(g) enter and inspect, at any time, premises within the control of an administrative agency;

(h) subpoena any person to appear, give testimony, or produce documentary or other evidence which the Ombudsman deems relevant to a matter under inquiry, and may petition the appropriate state court to seek enforcement with the subpoena; provided, however, that any witness at a hearing or before an investigation as herein provided, shall possess the same privileges reserved to such a witness in the courts or under the laws of this state;

(i) bring an action in an appropriate state court to provide the operation of the powers provided in this subdivision. The Ombudsman may use the services of legal assistance to Minnesota prisoners for legal counsel. The provisions of sections 241.41 to 241.45 are in addition to other provisions of law under which any remedy or right of appeal or objection is provided for any person, or any procedure provided for inquiry or investigation concerning any matter. Nothing in sections 241.41 to 241.45 shall be construed to limit or affect any other remedy or right of appeal or objection, nor shall it be deemed part of an exclusionary process; and

(j) be present at the commissioner of corrections parole and parole revocation hearings and deliberations.

Subd. 1a. Actions against Ombudsman. No proceeding or civil actions except removal from office or a proceeding brought pursuant to chapter 13 shall be commenced against the Ombuds-

man for actions taken pursuant to the provisions of sections 241.41 to 241.45, unless the act or omission is actuated by malice or is grossly negligent.

Subd. 2. Matters appropriate for investigation.

(a) In selecting matters for attention, the Ombudsman should address particularly actions of an administrative agency which might be:

(1) contrary to law or rule;

(2) unreasonable, unfair, oppressive, or inconsistent with any policy or judgment of an administrative agency;

(3) mistaken in law or arbitrary in the ascertainment of facts;

(4) unclear or inadequately explained when reasons should have been revealed;

(5) inefficiently performed;

(b) The Ombudsman may also be concerned with strengthening procedures and practices which lessen the risk that objectionable actions of the administrative agency will occur.

Subd. 3. Complaints. The Ombudsman may receive a complaint from any source concerning an action of an administrative agency. The Ombudsman may, on personal motion or at the request of another, investigate any action of an administrative agency. The Ombudsman may exercise powers without regard to the finality of any action of an administrative agency; however, the Ombudsman may require a complainant to pursue other remedies or channels of complaint open to the complainant before accepting or investigating the complaint.

After completing investigation of a complaint, the Ombudsman shall inform the complainant, the administrative agency, and the official or employee of the action taken.

A letter to the Ombudsman from a person in an institution under the control of an administrative agency shall be forwarded immediately and unopened to the Ombudsman's office.

A reply from the Ombudsman to the person shall be delivered unopened to the person, promptly after its receipt by the institution.

STATUTE CONTINUED

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 Ombudsman.

Subd. 4. Recommendations.

(a) If, after duly considering a complaint and whatever materials the Ombudsman deems pertinent, the Ombudsman is of the opinion that the complaint is valid, the Ombudsman may recommend that an administrative agency should:

- (1) consider the matter further;
- (2) modify or cancel its actions;
- (3) alter a ruling;
- (4) explain more fully the action in question; or
- (5) take any other step which the Ombudsman recommends to the administrative agency involved.

If the Ombudsman so requests, the agency shall within the time the Ombudsman specified, inform the Ombudsman about the action taken on the Ombudsman's recommendation or the reasons for not complying with it.

(b) If the Ombudsman has reason to believe that any public official or employee has acted in a manner warranting criminal or disciplinary proceedings, the Ombudsman may refer the matter to the appropriate authorities.

(c) If the Ombudsman believes that an action upon which a valid complaint is founded has been dictated by a statute, and the statute produces results or effects which are unfair or otherwise objectionable, the Ombudsman shall bring to the attention of the Governor and the Legislature the Ombudsman's view concerning desirable statutory change.

241.441 ACCESS BY OMBUDSMAN TO DATA

Notwithstanding section 13.42 or 13.85, the Ombudsman has access to corrections and detention data and medical data maintained by an agency and classified as private data on

individuals or confidential data on individuals when access to the data is necessary for the Ombudsman to perform the powers under section 241.44

241.45 PUBLICATION OF RECOMMENDATIONS, REPORTS

Subdivision 1. The Ombudsman may publish conclusions and suggestions by transmitting them to the Office of the Governor. Before announcing a conclusion or recommendation that expressly or impliedly criticizes an administrative agency, or any person, the Ombudsman shall consult with that agency or person. When publishing an opinion adverse to an administrative agency, or any person, the Ombudsman shall include in such publication any statement of reasonable length made to the Ombudsman by that agency or person in defense or mitigation of the action.

Subd. 2. In addition to whatever reports the Ombudsman may make on an ad hoc basis, the Ombudsman shall biennially report to the Governor concerning the exercise of the Ombudsman's function during the preceding biennium. The biennial report is due on or before the beginning of the legislative session following the end of the biennium.

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Fiscal year ... biennial

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The Office of the Ombudsman for Corrections wishes to
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Design, Editing Wendy Nemitz Kokkinos,
Expressive Ink

Writing Brenda Brakken,
Student Intern

Photography Bruce O'Leary Photography
Elbert Simmons

Printing Peak Printing

Proofing Martha Anderson
Dominique Kaufman

.....
OMBUDSMAN FOR CORRECTIONS

PATRICIA SELEEN
1885 UNIVERSITY AVENUE
SUITE 395
ST. PAUL, MN 55105

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