



Reprinted
April 13, 2001

ENGROSSED

SENATE BILL No. 373

DIGEST OF SB 373 (Updated April 12, 2001 11:35 AM - DI 51)

Citations Affected: IC 4-13; IC 11-8; IC 11-11; IC 34-30; noncode.

Synopsis: Department of correction. Describes the duties of the board of correction. Creates the department of correction ombudsman bureau in the department of administration. Provides that the department of administration shall determine salaries and other personnel matters of the department of correction ombudsman bureau. Establishes the bureau for persons who allege that their health or safety has been endangered by the department of correction, or that the department of correction has violated a law, rule, or written policy. Prohibits the ombudsman from investigating complaints related to labor relations. Provides that the ombudsman and a person who provides records to the ombudsman are immune from civil liability. Makes certain actions that impede the ombudsman's investigation a Class B misdemeanor. Voids bylaws adopted by the board of correction before October 1, 1980.

Effective: July 1, 2001.

Ford, Skillman, Long, Bowser, Zakas, Rogers

(HOUSE SPONSORS — SMITH V, FOLEY, CHENEY, AYRES)

January 17, 2001, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.

February 22, 2001, amended, reported favorably — Do Pass.

February 26, 2001, read second time, ordered engrossed. Engrossed.

March 1, 2001, read third time, passed. Yeas 31, nays 16.

HOUSE ACTION

March 12, 2001, read first time and referred to Committee on Courts and Criminal Code.

April 9, 2001, amended, reported — Do Pass.

April 11, 2001, read second time, amended, ordered engrossed.

April 12, 2001, engrossed. Read third time, recommitted to Committee of One, amended; passed. Yeas 81, nays 14.

ES 373—LS 8056/DI 77+



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April 13, 2001

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

ENGROSSED SENATE BILL No. 373

A BILL FOR AN ACT to amend the Indiana Code concerning corrections and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 4-13-1-4, AS AMENDED BY P.L.267-1999,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2001]: Sec. 4. The department shall, subject to this chapter,
4 do the following:
- 5 (1) Execute and administer all appropriations as provided by law,
6 and execute and administer all provisions of law that impose
7 duties and functions upon the executive department of
8 government, including executive investigation of state agencies
9 supported by appropriations and the assembly of all required data
10 and information for the use of the executive department and the
11 legislative department.
 - 12 (2) Supervise and regulate the making of contracts by state
13 agencies.
 - 14 (3) Perform the property management functions required by
15 IC 4-20.5-6.
 - 16 (4) Assign office space and storage space for state agencies in the
17 manner provided by IC 4-20.5-5.

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1 (5) Maintain and operate the following for state agencies:

2 (A) Central duplicating.

3 (B) Printing.

4 (C) Machine tabulating.

5 (D) Mailing services.

6 (E) Centrally available supplemental personnel and other
7 essential supporting services.

8 (F) Information services.

9 (G) Telecommunication services.

10 The department may require state agencies to use these general
11 services in the interests of economy and efficiency. The general
12 services rotary fund, the telephone rotary fund, and the data
13 processing rotary fund are established through which these
14 services may be rendered to state agencies. The budget agency
15 shall determine the amount for each rotary fund.

16 (6) Control and supervise the acquisition, operation, maintenance,
17 and replacement of state owned vehicles by all state agencies. The
18 department may establish and operate, in the interest of economy
19 and efficiency, a motor vehicle pool, and may finance the pool by
20 a rotary fund of not to exceed two hundred fifty thousand dollars
21 (\$250,000).

22 (7) Promulgate and enforce rules relative to the travel of officers
23 and employees of all state agencies when engaged in the
24 performance of state business. These rules may allow
25 reimbursement for travel expenses by any of the following
26 methods:

27 (A) Per diem.

28 (B) For expenses necessarily and actually incurred.

29 (C) Any combination of the methods in clauses (A) and (B).

30 The rules must require the approval of the travel by the
31 commissioner and the head of the officer's or employee's
32 department prior to payment.

33 (8) Administer IC 4-13.6.

34 (9) Prescribe the amount and form of certified checks, deposits,
35 or bonds to be submitted in connection with bids and contracts
36 when not otherwise provided for by law.

37 (10) Rent out, with the approval of the governor, any state
38 property, real or personal:

39 (A) not needed for public use; or

40 (B) for the purpose of providing services to the state or
41 employees of the state;

42 the rental of which is not otherwise provided for or prohibited by

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1 law. Property may not be rented out under this subdivision for a
 2 term exceeding ten (10) years at a time. However, if property is
 3 rented out for a term of more than four (4) years, the
 4 commissioner must make a written determination stating the
 5 reasons that it is in the best interests of the state to rent property
 6 for the longer term. This subdivision does not include the power
 7 to grant or issue permits or leases to explore for or take coal, sand,
 8 gravel, stone, gas, oil, or other minerals or substances from or
 9 under the bed of any of the navigable waters of the state or other
 10 lands owned by the state.

11 (11) Have charge of all central storerooms, supply rooms, and
 12 warehouses established and operated by the state and serving
 13 more than one (1) agency.

14 (12) Enter into contracts and issue orders for printing as provided
 15 by IC 4-13-4.1.

16 (13) Sell or dispose of surplus property under IC 5-22-22, or if
 17 advantageous, to exchange or trade in the surplus property toward
 18 the purchase of other supplies, materials, or equipment, and to
 19 make proper adjustments in the accounts and inventory pertaining
 20 to the state agencies concerned.

21 (14) With respect to power, heating, and lighting plants owned,
 22 operated, or maintained by any state agency:

23 (A) inspect;

24 (B) regulate their operation; and

25 (C) recommend improvements to those plants to promote
 26 economical and efficient operation.

27 **(15) Administer, determine salaries, and determine other**
 28 **personnel matters of the department of correction**
 29 **ombudsman bureau established by IC 4-13-1.2-3.**

30 SECTION 2. IC 4-13-1.2 IS ADDED TO THE INDIANA CODE
 31 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2001]:

33 **Chapter 1.2. Department of Correction Ombudsman Bureau**

34 **Sec. 1. As used in this chapter, "bureau" refers to the**
 35 **department of correction ombudsman bureau established by**
 36 **section 3 of this chapter. The term includes individuals approved**
 37 **to act in the capacity of ombudsmen by the department of**
 38 **correction ombudsman bureau.**

39 **Sec. 2. As used in this chapter, "ombudsman" means an**
 40 **employee of the bureau or an individual approved by the bureau**
 41 **to investigate and resolve complaints that the department of**
 42 **correction endangered the health and safety of any person, or that**

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1 the department of correction violated specific laws, rules, or
2 written policies.

3 **Sec. 3. The department of correction ombudsman bureau is**
4 **established as a separate bureau within the department of**
5 **administration.**

6 **Sec. 4. (a) The governor shall appoint a director of the bureau.**
7 **The governor shall appoint a successor director within thirty (30)**
8 **days of a vacancy in the position of the director. The director**
9 **serves at the pleasure of the governor.**

10 **(b) The director may employ technical experts and other**
11 **employees to carry out the purposes of this chapter. However, the**
12 **director may not hire an individual to serve as an ombudsman who**
13 **has been employed by the department of correction during the**
14 **preceding year.**

15 **Sec. 5. (a) The ombudsman shall receive, investigate, and**
16 **attempt to resolve complaints that the department of correction:**

17 **(1) violated a specific law, rule, or department written policy;**
18 **or**

19 **(2) endangered the health or safety of any person.**

20 **However, the ombudsman shall not investigate a complaint from**
21 **an employee of the department of correction that relates to the**
22 **employee's employment relationship with the department of**
23 **correction.**

24 **(b) At the conclusion of an investigation of a complaint, the**
25 **ombudsman shall report the ombudsman's findings to the**
26 **complainant.**

27 **(c) If the ombudsman does not investigate a complaint, the**
28 **ombudsman shall notify the complainant of the decision not to**
29 **investigate and the reasons for the decision.**

30 **Sec. 6. (a) An ombudsman shall be given:**

31 **(1) appropriate access to the records of an offender who files**
32 **a complaint under this chapter; and**

33 **(2) immediate access to any correctional facility administered**
34 **or supervised by the department of correction.**

35 **(b) A state or local government agency or entity that has records**
36 **that are relevant to a complaint or an investigation conducted by**
37 **the ombudsman shall provide the ombudsman with access to the**
38 **records.**

39 **(c) A person is immune from:**

40 **(1) civil or criminal liability; and**

41 **(2) actions taken under a professional disciplinary procedure**
42 **dealing with an employee of the department of correction;**

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1 for the release or disclosure of records to the ombudsman under
2 this chapter.

3 **Sec. 7. (a) The ombudsman shall do the following:**

4 (1) Establish procedures to receive and investigate complaints.

5 (2) Establish access controls for all information maintained by
6 the bureau.

7 (3) Except as is necessary to investigate and resolve a
8 complaint, ensure that the identity of a complainant will not
9 be disclosed without:

10 (A) the complainant's written consent; or

11 (B) a court order.

12 (b) The correspondence and communication between the
13 ombudsman and any person is a privileged communication.

14 **Sec. 8. The bureau may adopt rules under IC 4-22-2 necessary
15 to carry out this chapter.**

16 **Sec. 9. The ombudsman is not civilly liable for the good faith
17 performance of official duties.**

18 **Sec. 10. (a) The director of the bureau shall prepare a report
19 each year on the operations of the bureau.**

20 (b) A copy of the report shall be provided to the following:

21 (1) The governor.

22 (2) The legislative council.

23 (3) The department.

24 (4) The department of correction.

25 **Sec. 11. A person who:**

26 (1) intentionally interferes with or prevents the completion of
27 the work of the ombudsman;

28 (2) knowingly offers compensation to the ombudsman in an
29 effort to affect the outcome of an investigation or a potential
30 investigation;

31 (3) knowingly or intentionally retaliates against an offender
32 or another person who provides information to the
33 ombudsman; or

34 (4) makes threats because of an investigation or potential
35 investigation against the ombudsman, a person who has filed
36 a complaint, or a person who provides information to the
37 ombudsman;

38 **commits a Class A misdemeanor.**

39 **Sec. 12. The Indiana department of administration shall provide
40 and maintain office space for the bureau.**

41 SECTION 3. IC 11-8-2-3 IS AMENDED TO READ AS FOLLOWS
42 [EFFECTIVE JULY 1, 2001]: Sec. 3. (a) The board shall:

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- 1 (1) adopt rules for the conduct of its own business;
- 2 (2) approve or disapprove, before adoption, any rule to be adopted
- 3 by the department under IC 4-22-2;
- 4 (3) approve or disapprove, before implementation, any resolution,
- 5 **or directive, or other statement** of the department, **relating**
- 6 **including the commissioner, regardless of its name or**
- 7 **designation, that relates** to departmental organization or policy,
- 8 **including general internal organization, policies, standards, or**
- 9 **procedures applicable to one (1) or more facilities, programs,**
- 10 **or categories of persons under the jurisdiction of the**
- 11 **department, employees, or contractors;** and
- 12 (4) keep records of all its official actions and make them
- 13 accessible according to law.
- 14 (b) The board may:
 - 15 (1) appoint temporary advisory committees for any purpose;
 - 16 (2) visit and inspect, without notice, any facility or program of the
 - 17 department, either individually or collectively, to examine the
 - 18 affairs and condition of the department; and
 - 19 (3) exercise any other power reasonably necessary in discharging
 - 20 its duties and powers.
- 21 (c) The board has no direct administrative or executive powers other
- 22 than those granted by this section.
- 23 (d) For purposes of IC 4-22-2, the term "rule" as used in subsection
- 24 (a)(1) relates solely to internal policy, organization, and procedure not
- 25 having the force of law.
- 26 **(e) This section shall be liberally construed for conduct of the**
- 27 **board after June 30, 2001, to implement the intent of the general**
- 28 **assembly, as first stated in the commentary to the proposed final**
- 29 **draft of the correctional code published by the correctional code**
- 30 **commission in October 1977, to place policy authority in a seven**
- 31 **(7) member board of correction rather than a single department**
- 32 **head.**
- 33 SECTION 4. IC 11-8-5-2 IS AMENDED TO READ AS FOLLOWS
- 34 [EFFECTIVE JULY 1, 2001]: Sec. 2. (a) The department may, under
- 35 IC 4-22-2, classify as confidential the following personal information
- 36 maintained on a person who has been committed to the department or
- 37 who has received correctional services from the department:
 - 38 (1) Medical, psychiatric, or psychological data or opinion which
 - 39 might adversely affect that person's emotional well-being.
 - 40 (2) Information relating to a pending investigation of alleged
 - 41 criminal activity or other misconduct.
 - 42 (3) Information which, if disclosed, might result in physical harm

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- 1 to that person or other persons.
- 2 (4) Sources of information obtained only upon a promise of
- 3 confidentiality.
- 4 (5) Information required by law or promulgated rule to be
- 5 maintained as confidential.
- 6 (b) The department may deny the person about whom the
- 7 information pertains and other persons access to information classified
- 8 as confidential under subsection (a). However, confidential information
- 9 shall be disclosed:
- 10 (1) upon the order of a court;
- 11 (2) to employees of the department who need the information in
- 12 the performance of their lawful duties;
- 13 (3) to other agencies in accord with IC 4-1-6-2(m) and
- 14 IC 4-1-6-8.5;
- 15 (4) to the governor or ~~his~~ **the governor's** designee;
- 16 (5) for research purposes in accord with IC 4-1-6-8.6(b); ~~or~~
- 17 **(6) to the department of correction ombudsman bureau in**
- 18 **accordance with IC 4-13-1.2; or**
- 19 **(7) if the commissioner determines there exists a compelling**
- 20 **public interest as defined in IC 4-1-6-1, for disclosure which**
- 21 **overrides the interest to be served by nondisclosure.**
- 22 (c) The department shall disclose information classified as
- 23 confidential under subsection (a)(1) to a physician, psychiatrist, or
- 24 psychologist designated in writing by the person about whom the
- 25 information pertains.
- 26 SECTION 5. IC 11-11-1.5 IS ADDED TO THE INDIANA CODE
- 27 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 28 JULY 1, 2001]:
- 29 **Chapter 1.5. Department of Correction Ombudsman Bureau**
- 30 **Sec. 1. As used in this chapter, "bureau" refers to the**
- 31 **department of correction ombudsman bureau established within**
- 32 **the Indiana department of administration by IC 4-13-1.2-3. The**
- 33 **term includes individuals approved to act in the capacity of**
- 34 **ombudsmen by the department of correction ombudsman bureau.**
- 35 **Sec. 2. As used in this chapter, "ombudsman" means an**
- 36 **employee of the bureau or an individual approved by the bureau**
- 37 **to investigate and resolve complaints regarding the health and**
- 38 **safety of any person, and violations by the department of specific**
- 39 **laws, rules, or written policies.**
- 40 **Sec. 3. The department shall provide an ombudsman with:**
- 41 **(1) appropriate access to the records of an offender who files**
- 42 **a complaint under this chapter; and**

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(2) immediate access to any correctional facility administered or supervised by the department of correction.

Sec. 4. An ombudsman shall not investigate a complaint from an employee of the department that relates to the employee's employment relationship with the department.

SECTION 6. IC 34-30-2-39.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 39.3. IC 4-13-1.2-6 (Concerning a person who releases information to the department of correction ombudsman).**

SECTION 7. IC 34-30-2-39.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 39.5. IC 4-13-1.2-9 (Concerning the department of correction ombudsman).**

SECTION 8. [EFFECTIVE JULY 1, 2001] **(a) A bylaw adopted by the board of correction before October 1, 1980, (the date on which the enactment of IC 11-8-2-3 became effective) is void.**

(b) IC 11-8-2-3, as amended by this act, applies only to resolutions, directives, and other statements of the department of correction, including the commissioner, adopted or amended after June 30, 2001. However, the board of correction may review and make recommendations for change for any resolution, directive, or other statement of the department of correction, including the commissioner, relating to departmental organization or policy.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Corrections, Criminal and Civil Procedures, to which was referred Senate Bill No. 373, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to SB 373 as introduced.)

LONG, Chairperson

Committee Vote: Yeas 6, Nays 3.

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SENATE MOTION

Mr. President: I move that Senators Skillman and Long be added as coauthors of Engrossed Senate Bill 373.

FORD

SENATE MOTION

Mr. President: I move that Senators Bowser and Zakas be added as coauthors of Engrossed Senate Bill 0373.

FORD

SENATE MOTION

Mr. President: I move that Senator Rogers be added as coauthor of Engrossed Senate Bill 373.

FORD

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 373, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, between lines 19 and 20, begin a new line blocked left and insert:

"However, the ombudsman shall not investigate a complaint from an employee of the department of correction that relates to the employee's employment relationship with the department of correction."

Page 7, between lines 8 and 9, begin a new paragraph and insert:

"Sec. 5. An ombudsman shall not investigate a complaint from an employee of the department that relates to the employee's employment relationship with the department."

and when so amended that said bill do pass.

(Reference is to SB 373 as printed February 23, 2001.)

DVORAK, Chair

Committee Vote: yeas 9, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 373 be amended to read as follows:

Page 7, delete lines 25 through 33.

Re-number all SECTIONS consecutively.

(Reference is to ESB 373 as printed April 9, 2001.)

SMITH V

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 373 be amended to read as follows:

Page 5, line 39, after "The" insert "**Indiana**".

Page 5, line 39, delete "correction" and insert "**administration**".

Page 7, line 11, delete "The department shall provide and maintain office space".

Page 7, delete line 12.

Page 7, line 13, delete "Sec. 5.".

Page 7, run in lines 11 through 13.

(Reference is to ESB 373 as printed April 9, 2001.)

SMITH V

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HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 373 be recommitted to a Committee of One, its sponsor, with specific instructions to amend as follows:

Page 5, between lines 40 and 41, begin a new paragraph and insert: "SECTION 3. IC 11-8-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 3. (a) The board shall:

- (1) adopt rules for the conduct of its own business;
- (2) approve or disapprove, before adoption, any rule to be adopted by the department under IC 4-22-2;
- (3) approve or disapprove, before implementation, any resolution, or directive, or other statement of the department, relating including the commissioner, regardless of its name or designation, that relates to departmental organization or policy, including general internal organization, policies, standards, or procedures applicable to one (1) or more facilities, programs, or categories of persons under the jurisdiction of the department, employees, or contractors; and
- (4) keep records of all its official actions and make them accessible according to law.

(b) The board may:

- (1) appoint temporary advisory committees for any purpose;
- (2) visit and inspect, without notice, any facility or program of the department, either individually or collectively, to examine the affairs and condition of the department; and
- (3) exercise any other power reasonably necessary in discharging its duties and powers.

(c) The board has no direct administrative or executive powers other than those granted by this section.

(d) For purposes of IC 4-22-2, the term "rule" as used in subsection (a)(1) relates solely to internal policy, organization, and procedure not having the force of law.

(e) This section shall be liberally construed for conduct of the board after June 30, 2001, to implement the intent of the general assembly, as first stated in the commentary to the proposed final draft of the correctional code published by the correctional code commission in October 1977, to place policy authority in a seven (7) member board of correction rather than a single department head."

Page 7, after line 22, begin a new paragraph and insert:

"SECTION 8. [EFFECTIVE JULY 1, 2001] (a) A bylaw adopted by the board of correction before October 1, 1980, (the date on

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which the enactment of IC 11-8-2-3 became effective) is void.

(b) IC 11-8-2-3, as amended by this act, applies only to resolutions, directives, and other statements of the department of correction, including the commissioner, adopted or amended after June 30, 2001. However, the board of correction may review and make recommendations for change for any resolution, directive, or other statement of the department of correction, including the commissioner, relating to departmental organization or policy."

Renumber all SECTIONS consecutively.

(Reference is to ESB 373 as reprinted April 12, 2001.)

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COMMITTEE REPORT

Mr. Speaker: Your Committee of One, to which was referred Engrossed Senate Bill 373, begs leave to report that said bill has been amended as directed.

SMITH V

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