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# SENATE BILL No. 373

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 11-8; IC 11-11-1.5; IC 34-30-2-39.3; IC 34-30-2-39.5

**Synopsis:** Department of correction ombudsman. Provides that the board of correction shall determine salaries and other personnel matters of the department of correction ombudsman bureau (bureau). Establishes the bureau for offenders who allege that their health or safety has been endangered or that the department of correction has violated a law, rule, or written policy. 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. Appropriates \$200,000 to the bureau for both the 2001-2002 and 2002-2003 state fiscal years.

**Effective:** July 1, 2001.

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January 18, 2001, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.

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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.

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## 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 11-8-2-3 IS AMENDED TO READ AS FOLLOWS
- 2 [EFFECTIVE JULY 1, 2001]: Sec. 3. (a) The board shall:
- 3 (1) adopt rules for the conduct of its own business;
- 4 (2) approve or disapprove, before adoption, any rule to be adopted
- 5 by the department under IC 4-22-2;
- 6 (3) approve or disapprove, before implementation, any resolution
- 7 or directive of the department relating to departmental
- 8 organization or policy; ~~and~~
- 9 (4) **determine salaries and other personnel matters of the**
- 10 **department of correction ombudsman bureau under**
- 11 **IC 11-11-1.5; and**
- 12 (5) 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



1 affairs and condition of the department; and

2 (3) exercise any other power reasonably necessary in discharging  
3 its duties and powers.

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

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

9 SECTION 2. IC 11-8-5-2 IS AMENDED TO READ AS FOLLOWS  
10 [EFFECTIVE JULY 1, 2001]: Sec. 2. (a) The department may, under  
11 IC 4-22-2, classify as confidential the following personal information  
12 maintained on a person who has been committed to the department or  
13 who has received correctional services from the department:

14 (1) Medical, psychiatric, or psychological data or opinion which  
15 might adversely affect that person's emotional well-being.

16 (2) Information relating to a pending investigation of alleged  
17 criminal activity or other misconduct.

18 (3) Information which, if disclosed, might result in physical harm  
19 to that person or other persons.

20 (4) Sources of information obtained only upon a promise of  
21 confidentiality.

22 (5) Information required by law or promulgated rule to be  
23 maintained as confidential.

24 (b) The department may deny the person about whom the  
25 information pertains and other persons access to information classified  
26 as confidential under subsection (a). However, confidential information  
27 shall be disclosed:

28 (1) upon the order of a court;

29 (2) to employees of the department who need the information in  
30 the performance of their lawful duties;

31 (3) to other agencies in accord with IC 4-1-6-2(m) and  
32 IC 4-1-6-8.5;

33 (4) to the governor or ~~his~~ **the governor's** designee;

34 (5) for research purposes in accord with IC 4-1-6-8.6(b); ~~or~~

35 **(6) to the department of correction ombudsman bureau in**  
36 **accord with IC 11-11-1.5; or**

37 **(7) if the commissioner determines there exists a compelling**  
38 **public interest as defined in IC 4-1-6-1, for disclosure which**  
39 **overrides the interest to be served by nondisclosure.**

40 (c) The department shall disclose information classified as  
41 confidential under subsection (a)(1) to a physician, psychiatrist, or  
42 psychologist designated in writing by the person about whom the

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1 information pertains.

2 SECTION 3. IC 11-11-1.5 IS ADDED TO THE INDIANA CODE  
3 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
4 JULY 1, 2001]:

5 **Chapter 1.5. Department of Correction Ombudsman Bureau**

6 **Sec. 1. This chapter applies only to an offender who:**

7 (1) is placed under the custody or made a ward of the  
8 department; and

9 (2) has submitted a grievance under IC 11-11-1-2 not less than  
10 twenty-one (21) days before filing a complaint under this  
11 chapter.

12 **Sec. 2. As used in this chapter, "bureau" refers to the**  
13 **department of correction ombudsman bureau established by**  
14 **section 4 of this chapter. The term includes individuals approved**  
15 **to act in the capacity of ombudsmen by the department of**  
16 **correction ombudsman bureau.**

17 **Sec. 3. As used in this chapter, "ombudsman" means an**  
18 **employee of the bureau or an individual approved by the bureau**  
19 **to investigate and resolve complaints regarding the health and**  
20 **safety of offenders, and violations by the department of specific**  
21 **laws, rules, or written policies.**

22 **Sec. 4. The department of correction ombudsman bureau is**  
23 **established as a separate bureau within the department.**

24 **Sec. 5. (a) The governor shall appoint a director of the bureau.**  
25 **The governor shall appoint a successor director within thirty (30)**  
26 **days of a vacancy in the position of the director. The director**  
27 **serves at the pleasure of the governor.**

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

32 **Sec. 6. (a) The ombudsman shall receive, investigate, and**  
33 **attempt to resolve complaints that are made by a committed**  
34 **offender that allege that the department:**

35 (1) violated a specific law, rule, or department written policy;  
36 or

37 (2) endangered the health or safety of the offender.

38 **(b) At the conclusion of an investigation of a complaint, the**  
39 **ombudsman shall report the ombudsman's findings to the**  
40 **complainant.**

41 **(c) If the ombudsman does not investigate a complaint, the**  
42 **ombudsman shall notify the complainant of the decision not to**

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1 investigate and the reasons for the decision.

2 **Sec. 7. (a) An ombudsman shall be given:**

- 3 (1) appropriate access to the records of an offender who files  
4 a complaint under this chapter; and  
5 (2) immediate access to any correctional facility administered  
6 or supervised by the department.

7 (b) A state or local government agency or entity that has records  
8 that are relevant to a complaint or an investigation conducted by  
9 the ombudsman shall provide the ombudsman with access to the  
10 records.

11 (c) A person is immune from:

- 12 (1) civil or criminal liability; and  
13 (2) actions taken under a professional disciplinary procedure;  
14 for the release or disclosure of records to the ombudsman under  
15 this chapter.

16 **Sec. 8. (a) The ombudsman shall do the following:**

- 17 (1) Establish procedures to receive and investigate complaints  
18 filed by an offender.  
19 (2) Establish access controls for all information maintained by  
20 the bureau.  
21 (3) Except as is necessary to investigate and resolve a  
22 complaint, ensure that the identity of a complainant will not  
23 be disclosed without:  
24 (A) the complainant's written consent; or  
25 (B) a court order.

26 (b) The correspondence and communication between the  
27 ombudsman and an offender who has filed a complaint is a  
28 privileged communication.

29 **Sec. 9. The bureau may adopt rules under IC 4-22-2 necessary  
30 to carry out this chapter.**

31 **Sec. 10. The ombudsman is not civilly liable for the good faith  
32 performance of official duties.**

33 **Sec. 11. (a) The director of the bureau shall prepare a report  
34 each year on the operations of the bureau.**

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

- 36 (1) The governor.  
37 (2) The legislative council.  
38 (3) The department.

39 **Sec. 12. A person who:**

- 40 (1) intentionally prevents the work of the ombudsman;  
41 (2) knowingly offers compensation to the ombudsman in an  
42 effort to affect the outcome of an investigation or a potential

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investigation;  
**(3) knowingly or intentionally retaliates against an offender or another person who provides information to the ombudsman; or**  
**(4) makes threats because of an investigation or potential investigation against the ombudsman, an offender who has filed a complaint, or another person who provides information to ombudsman;**  
**commits a Class A misdemeanor.**

**Sec. 13. The department shall provide and maintain office space for the bureau.**

SECTION 4. 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 11-11-1.5-7 (Concerning a person who releases information to the department of correction ombudsman).**

SECTION 5. 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 11-11-1.5-10 (Concerning the department of correction ombudsman).**

SECTION 6. [EFFECTIVE JULY 1, 2001] **(a) There is appropriated to the department of correction ombudsman bureau established by IC 11-11-1.5-4, as added by this act, from the state general fund:**

- (1) two hundred thousand dollars (\$200,000) for the period beginning July 1, 2001, and ending June 30, 2002; and**
- (2) two hundred thousand dollars (\$200,000) for the period beginning July 1, 2002, and ending June 30, 2003.**

**(b) This SECTION expires July 1, 2003.**

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