

94TH CONGRESS  
1ST SESSION

# H. R. 2325

## IN THE HOUSE OF REPRESENTATIVES

JANUARY 29, 1975

Mr. KASTENMEIER (for himself, Mr. RODINO, Mr. RAILSBACK, Mr. EDWARDS of California, Mr. HUNGATE, Mr. CONYERS, Mr. EILBERG, Mr. SEIBERLING, Ms. JORDAN, Ms. HOLTZMAN, Mr. BADILLO, Mr. DIGGS, Mr. ROSENTHAL, Mr. PEPPER, Mr. MURPHY of New York, Mr. HELSTOSKI, Mr. BIESTER, Mr. HARRINGTON, Mr. KOCH, Mr. STOKES, Ms. ABZUG, Mr. ASPIN, Mr. METCALFE, Mr. RANGEL, and Mr. CONTE) introduced the following bill; which was referred to the Committee on the Judiciary

## A BILL

To amend title 18 of the United States Code to establish an Office of the United States Correctional Ombudsman.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### SHORT TITLE

3  
4 SECTION 1. This Act may be cited as the "Federal  
5 Correctional Ombudsman Act of 1975".

### AMENDMENT OF TITLE 18 OF THE UNITED STATES

### CODE

6  
7  
8 SEC. 2 (a) Title 18 of the United States Code (relating  
9 to crimes and criminal procedure) is amended by adding at  
10 the end thereof the following new part:

1       **“Part VI.—CORRECTIONAL OMBUDSMAN**

“Chap.	Sec.
“701. ESTABLISHMENT AND ORGANIZATION OF OFFICE-----	7001.
“702. POWERS AND DUTIES-----	7011.
“703. DEFINITIONS; REPORT; MISCELLANEOUS PROVISIONS-----	7021.

2       **“Chapter 701.—ESTABLISHMENT AND ORGANIZA-**  
 3       **TION OF OFFICE**

“Sec.

“7001. Establishment of Office.
“7002. Appointment, term, and removal of Chief Ombudsman.
“7003. Assistant Ombudsman.
“7004. Compensation.
“7005. Civil Service laws.
“7006. Conflict of interest.
“7007. Delegation of authority.
“7008. Experts and consultants.

4       **“§ 7001. Establishment of Office**

5       “There is hereby established an office of the United  
 6 States Correctional Ombudsman (hereinafter in this part  
 7 referred to as the ‘Office’) to be composed of a Chief Ombuds-  
 8 man, an Assistant Ombudsman, and such Deputy Ombuds-  
 9 man and other staff and employees as the Chief Ombudsman  
 10 shall appoint.

11       **“§ 7002. Appointment, term, and removal of Chief Ombuds-**  
 12       **man**

13       “(a) The Chief Ombudsman shall be appointed by the  
 14 President, by and with the advice and consent of the Senate.  
 15 No person may be appointed to serve as Chief Ombudsman  
 16 who has served as a Member of the United States House of  
 17 Representatives, or the United States Senate, at any time

1 within the two-year period immediately preceding such  
2 appointment.

3 “(b) The Chief Ombudsman shall serve for a term of  
4 five years. No individual may be appointed to serve more  
5 than two terms as Chief Ombudsman.

6 “(c) The Chief Ombudsman may be suspended or re-  
7 moved from office at any time by the President only for  
8 disability, neglect of duty, or misconduct.

9 **“§ 7003. Assistant Ombudsman**

10 “The President shall, by and with the advice and con-  
11 sent of the Senate, appoint an Assistant Ombudsman. Such  
12 Assistant shall serve for a term of five years. If the office  
13 of Chief Ombudsman becomes vacant for any cause, the  
14 Assistant Ombudsman shall have the authority and duties  
15 of the Chief Ombudsman, until such time as another Chief  
16 Ombudsman is appointed.

17 **“§ 7004. Compensation**

18 “(a) The Chief Ombudsman shall be compensated at  
19 the same rate as provided by section 5315 of title 5 for  
20 individuals at level IV of the Executive Schedule.

21 “(b) The Assistant Ombudsman shall be compensated at  
22 the same rate as is provided by section 5316 of title 5 for  
23 individuals at level V of the Executive Schedule.

24 “(c) The Deputy Ombudsmen and other staff and  
25 employees of the Office shall be compensated at such rates

1 and under such regulations as the Chief Ombudsman shall  
2 prescribe.

3 **“§ 7005. Civil Service laws**

4 “The Deputy Ombudsmen and other staff and employees  
5 of the office may be appointed without regard to the provi-  
6 sions of title 5 governing appointments in the competitive  
7 service, and may be paid without regard to the provisions of  
8 chapter 51 and subchapter III of chapter 55 of such title  
9 (relating to classification and General Schedule pay rates).  
10 For purposes of applying the provisions of chapters 81 (re-  
11 lating to compensation for work injuries), 83 (relating to  
12 retirement), 85 (relating to unemployment compensation),  
13 87 (relating to life insurance), and 89 (relating to health in-  
14 surance), the Chief, Assistant, and Deputy Ombudsmen and  
15 other staff and employees of the Office shall be treated in the  
16 same manner as congressional employees.

17 **“§ 7006. Conflict of interest**

18 “No Chief Assistant, or Deputy Ombudsman, or other  
19 staff or employee of the Office shall—

20 “(1) hold any other office of trust or profit under  
21 the laws of the United States or of any State or political  
22 subdivision thereof;

23 “(2) engage in any other employment or activity for  
24 remuneration;

1           “(3) hold membership in any association of Federal,  
2           State, or local government employees; or

3           “(4) engage in any business transactions with  
4           individuals against whom complaints may be made under  
5           this part.

6           **“§ 7007. Delegation of authority**

7           “The Chief Ombudsman may delegate any authority or  
8           duties conferred on him in order to carry out the purposes  
9           of this part. The preceding sentence shall not apply to the  
10          authority and duties described in section 7014 (b).

11          **“§ 7008. Experts and consultants**

12          “The Chief Ombudsman may procure temporary and  
13          intermittent services to the same extent as is authorized by  
14          section 3109 (b) of title 5, but at rates for individuals not  
15          to exceed \$100 per diem.

16                           **“Chapter 702.—POWERS AND DUTIES**

          “Sec.

          “7011. Authority to investigate.

          “7012. Investigation procedures.

          “7013. Action taken after investigation.

          “7014. Notice.

          “7015. General studies; preventive concerns.

17          **“§ 7011. Authority to investigate**

18          “(a) The Chief Ombudsman shall have the authority  
19          to investigate in such manner as he sees fit, either upon  
20          complaint or upon his own initiative, any administrative  
21          act of the Bureau of Prisons (or of any authority having



1 a contract with such Bureau under section 4002), or of the  
2 Board of Parole, pertaining to—

3 “(1) the treatment of any Federal prisoner or  
4 parolee, or

5 “(2) the conditions in any Federal penal or cor-  
6 rectional institution or any institution which has con-  
7 tracted, under section 4002, for the imprisonment, sub-  
8 sistence, care, or proper employment of any Federal  
9 prisoner.

10 “(b) The Chief Ombudsman shall have the duty to in-  
11 vestigate any complaint made by any person in connection  
12 with any administration act with respect to which he has  
13 investigative authority under subsection (a), but he may  
14 decline to investigate, or may discontinue the investigation  
15 of, any complaint if he finds that—

16 “(1) the complainant has an adequate and avail-  
17 able remedy under existing law or administrative prac-  
18 tice,

19 “(2) the complaint is trivial, frivolous, vexatious,  
20 not made in good faith, or otherwise unjustified, or

21 “(3) the complainant had knowledge of the matter  
22 complained of for a substantial period and did not make  
23 a complaint within such period.

24 **“§ 7012. Investigation procedures**

25 “(a) In the course of any investigation authorized un-  
26 der section 7011, the Chief Ombudsman may—

1 “(1) enter and inspect any penal or correctional  
2 institution, or related facility, described in section 7011

3 (a) (2),

4 “(2) conduct interviews and investigative hear-  
5 ings with respect to any matter within his investigative  
6 authority and examine any records or other documents  
7 relating to such investigation, and

8 “(3) request, from any agency referred to in sec-  
9 tion 7011 (a), assistance and information which he  
10 deems necessary for the discharge of his responsibilities.

11 Interview and hearings conducted under this subsection  
12 shall be conducted in private in any case in which the Chief  
13 Ombudsman determines that the safety of complainants or  
14 witnesses so requires.

15 “(b) The Chief Ombudsman shall have the power to  
16 issue subpoenas requiring the attendance and testimony of wit-  
17 nesses and the production of any evidence that relates to any  
18 matter within his investigative authority. Such attendance of  
19 witnesses and the production of such evidence may be re-  
20 quired from any place within a judicial district at any desig-  
21 nated place of hearing within such judicial district. If a person  
22 issued a subpoena under this section refuses to obey or is guilty  
23 of contumacy, any court of the United States within such  
24 judicial district or within the judicial district within which  
25 such person is found or resides or transacts business may  
26 (upon application of the Chief Ombudsman) order such per-

1 son to appear before the Chief Ombudsman to produce evi-  
2 dence or give testimony touching the matter under investiga-  
3 tion. Any failure to obey such order of the court may be  
4 punished by such court as a contempt thereof. Such subpoenas  
5 shall be served in the manner provided for subpoenas issued by  
6 a United States district court under the Federal Rules of Civil  
7 Procedure for the United States district courts. All process  
8 of any court to which application may be made under this  
9 section may be served in the judicial district wherein the  
10 person required to be served resides or may be found.

11 “(c) A person required by the Chief Ombudsman to  
12 provide information shall be paid the same fees and travel  
13 allowances as are paid to witnesses whose attendance has  
14 been required in the United States district court in the ju-  
15 dicial district in which such information is required to be  
16 provided.

17 “(d) A person who provides oral or documentary in-  
18 formation requested by the Chief Ombudsman (whether  
19 pursuant to subpoena or otherwise) shall be entitled to the  
20 same privileges and immunities as witnesses in the United  
21 States district courts and shall be entitled to representation  
22 by an attorney. Such attorney may be retained by such  
23 person or appointed pursuant to section 3006A of Chapter  
24 201.



1 **“§ 7013. Action taken after investigation**

2 “(a) If, after investigation, the Chief Ombudsman finds  
3 that any administrative act is—

4 “(1) contrary to law,

5 “(2) unreasonable, unfair, oppressive, or unneces-  
6 sarily discriminatory,

7 “(3) based on mistaken ascertainment of fact,

8 “(4) based on improper or irrelevant grounds,

9 “(5) performed in an inefficient manner,

10 “(6) unclear or inadequately explained when rea-  
11 sons should have been revealed, or

12 “(7) otherwise objectionable,

13 he shall consult with the appropriate official or employee in  
14 order to make a satisfactory disposition of the matter.

15 “(b) (1) If the Chief Ombudsman finds that a satis-  
16 factory disposition of any matter has not been made within  
17 a reasonable period of time after consultation under subsec-  
18 tion (a), he shall make recommendations to the appropriate  
19 official or employee, and if the Chief Ombudsman so requests,  
20 such official or employee shall inform the Chief Ombudsman,  
21 within a specified time, as to the action taken on his rec-  
22 ommendations or the reasons for not complying with them.

23 “(2) If the Chief Ombudsman believes that an adminis-  
24 trative act has been dictated by laws whose results are  
25 unfair or otherwise objectionable, he shall notify the ap-

1 appropriate committees of the United States Senate and the  
2 United States House of Representatives.

3 “(3) In any case in which recommendations made  
4 under paragraph (1) to any official or employee by the  
5 Chief Ombudsman were not complied with, he may publish  
6 and otherwise make public such recommendations if he in-  
7 cludes in such publication the substance of any statement  
8 of reasons for noncompliance which the official or employee  
9 submits to him.

10 “(4) In appropriate instances if he finds probable cause  
11 indicating a violation of law by any official or employee, the  
12 Chief Ombudsman shall refer the matter to the appropriate  
13 authorities for criminal prosecution.

14 **§ 7014. Notice**

15 “(a) In the case of any investigation initiated by  
16 complaint, the Chief Ombudsman shall promptly inform the  
17 complainant of the beginning of the investigation and shall,  
18 from time to time as may be appropriate, inform him as to  
19 the status of his complaint. In any case in which the Om-  
20 budsman declines to investigate any complaint, or discon-  
21 tinues the investigation of any complaint, he shall promptly  
22 inform the complainant of the reasons for such action. As  
23 soon as practicable following any action taken by the Chief  
24 Ombudsman under section 7013 (b), he shall inform the  
25 complainant of the action taken.

1       “(b) When appropriate, upon completion of an investi-  
 2 gation of the agency referred to in section 7011 (a) the Chief  
 3 Ombudsman shall inform such agency of the results of his  
 4 investigation.

5       **“§ 7015. General studies; preventive concerns**

6       “(a) The Chief Ombudsman may undertake, participate  
 7 in, or cooperate with, general studies or inquiries, whether  
 8 or not related to any agency referred to in section 7011 (a)  
 9 or to any particular administrative act, if he believes that  
 10 such studies or inquiries may enhance knowledge about or  
 11 lead to improvements in the functioning of such agencies.

12       “(b) The Chief Ombudsman may concern himself with  
 13 strengthening procedures and practices which lessen the risk  
 14 that objectionable administrative acts will occur.

15       **“Chapter 703.—DEFINITIONS; REPORTS; MISCEL-  
 16 LANEOUS PROVISIONS**

“Sec.

“7021. Confidentiality.

“7022. Other remedies unaffected.

“7023. Complaints.

“7024. Penalty for obstruction.

“7025. Judicial review; immunities.

“7026. Report.

“7027. Definitions.

17       **“§ 7021. Confidentiality**

18       “(a) No information (including information relating to  
 19 the identity of any informant or complainant) disclosed to  
 20 any Ombudsman or to any staff or employee of the Office  
 21 in connection with an investigation under this part shall be

1 disclosed to any other person except to the extent the Chief  
2 Ombudsman determines necessary to carry out the purposes  
3 of this part.

4 “(b) Notwithstanding any other provision of law, no  
5 correspondence or other communication between the Office  
6 and any Federal prisoner shall be subject to any censorship  
7 or inspection by any officer or employee of any penal, cor-  
8 rectional, or related facility.

9 **“§ 7022. Other remedies unaffected**

10 “The provisions of this part are in addition to any other  
11 provisions of law under which any remedy or right of appeal  
12 or objection is provided for the inquiry into, or investigation  
13 of, any matter. Nothing in this part shall be construed to  
14 limit, postpone, or otherwise affect any such remedy, right  
15 of appeal, or objection. The authority conferred on the Chief  
16 Ombudsman by this part may be exercised notwithstanding  
17 any provision of law relating to the finality or unappealabil-  
18 ity of any administrative act.

19 **“§ 7023. Complaints**

20 “(a) No fee or other charge may be imposed by the  
21 Chief Ombudsman on the filing of any complaint under this  
22 part.

23 “(b) No complaint made to the Chief Ombudsman  
24 shall be required to be in writing.

1 **“§ 7024. Penalty for obstruction**

2 “Any person who willfully hinders or obstructs the law-  
3 ful actions, or willfully refuses to comply with a lawful re-  
4 quest, of the Chief Ombudsman or his delegate shall be fined  
5 not more than \$5,000, or imprisoned for not more than 2  
6 years, or both.

7 **“§ 7025. Judicial review, immunities**

8 “(a) No proceeding, opinion, or expression of the Chief  
9 Ombudsman shall be reviewable in any court.

10 “(b) No civil action may be brought by any person  
11 against the Chief Ombudsman or any other officer or em-  
12 ployee of the Office for any act done, or statement made,  
13 within the scope of his authority.

14 “(c) No officer or employee of the Office shall be re-  
15 quired to testify or produce evidence in any judicial or admin-  
16 istrative proceeding concerning matters within the scope of  
17 his official cognizance except to the extent necessary to carry  
18 out the purposes of sections 7012 (b), 7013 (b) (4), and  
19 7024.

20 **“§ 7026. Report**

21 “The Chief Ombudsman shall report annually to the  
22 Congress on the operations of the Office, and such report  
23 shall be published by the Office as a public document. If  
24 such report contains criticism of any agency, or official or  
25 employee of any agency, it shall include the substance of



1 their replies, if any, to such criticism.

2 **“§ 7027. Definitions**

3 “As used in this part, the term—

4 “ (1) ‘administrative act’ includes any act, omis-  
5 sion, decision, recommendation, practice or procedure;

6 and

7 “ (2) ‘parolee’ means any Federal prisoner released  
8 on parole or deemed as if released on parole under sec-  
9 tion 4164 (relating to mandatory release).”

10 (b) The table of contents for such title 18 is amended  
11 by adding at the end thereof the following new item:

“VI. CORRECTIONAL OMBUDSMAN----- 7001.”

12 EFFECTIVE DATE OF CERTAIN PROVISIONS

13 SEC. 3. Section 7011 (b) (3) of title 18 of the United  
14 States Code, as added by section 2 of this Act, shall not  
15 apply with respect to any complaint made prior to the date  
16 eighteen months after the date of enactment of this Act.

18 on the purposes of sections 7013 (b) (1) (A) and

19 “§ 7023. Complaints

20 “ (a) No fee or charge shall be assessed

21 The Chief Ombudsman shall report annually to the

22 Congress on the operations of the Office, and subpara-

23 graph shall be published by the Office in a public document.

24 such report contains criticism of any agency or official for

25 employee of any agency, it shall include the substance of