

January 31, 2021

Delegate Luke Torian
Chair, House Appropriations Committee
Pocahontas Building
900 E. Main St,
Richmond, Virginia 23219

Re: Fiscal Impact of H.B. 2325 (Creation of the Office of the Department of Corrections Ombudsman)

Honorable Chair Torian and Members of the Appropriations Committee:

We write on behalf of the undersigned organizations and individuals, including formerly-incarcerated individuals, and loved ones of people incarcerated in Virginia prisons, to provide this committee with information relevant to H.B. 2325 and its fiscal impact, and to urge this committee to appropriate the money needed to provide meaningful and independent civilian oversight over the Virginia Department of Corrections (VDOC). H.B. 2325 will create a new Office of the Ombudsman that will be entrusted to monitor VDOC facilities, resolve concerns of incarcerated people and their loved ones, and ultimately ensure that external stakeholders, including members of the Virginia general assembly, have the information necessary to bring much-needed transparency and accountability to an agency with a \$1.4 billion annual budget. Although we understand that VDOC has estimated such an office will cost between \$9 and \$11 million, annually, the experience of other states strongly suggests this figure is overblown and that approximately \$1.5-\$2 million is all that is necessary to fully fund an agency that will enable greater transparency and improved stewardship over a major component of the Commonwealth's annual budget.

1. The experience of other states shows the anticipated fiscal impact statement for this bill is greatly inflated

Although we have not yet received the fiscal impact statement (FIS) attached to H.B. 2325, we have learned that VDOC has estimated that the bill will cost upwards of \$10.8 million and \$8.9 million in employees, equipment, and other costs in its first two years of operation. We believe these figures are wildly exaggerated and represent an underhanded attempt to defeat the bill rather than a good-faith estimate of its costs to the Commonwealth. In reality, the experience of other states demonstrates that a budget of \$2 million will be more than sufficient to provide adequate funding to an effective prison oversight and monitoring agency.

A recent fiscal note attached to a similar bill in Arizona—whose Department of Corrections has an annual budget that is comparable to Virginia's¹—estimated that an independent corrections ombudsman and oversight committee of the sort provided for in H.B. 2325 would cost the state no more than \$1.6 million annually.² This is consistent with the experience of Washington State, which budgeted \$1.2 million and \$1.1 million in 2019 and 2020, respectively, to operate its Office of the Ombuds,³ which has oversight

¹ For FY 2021, the annual budget for the Ariz. Dep't of Corrections was nearly \$1.3 billion. See FY 2021 Appropriations Report - State Dep't of Corrections, <https://www.azleg.gov/jlbc/21AR/adc.pdf>.

² See Fiscal Note for Ariz. H.B. 2167 (2021), <https://www.azleg.gov/legtext/55leg/1R/fiscal/HB2167.DOCX.htm>.

³ See Annual Report, Washington Office of the Ombuds (2020), at 7, <https://oco.wa.gov/sites/default/files/public/Annual%20Report%202020%20Final.pdf>.

responsibilities over a department with an annual budget similar to that of the Virginia Department of Corrections. Within its budget, the Washington Ombuds accomplished the following in 2020 alone:

- conducted 12 prison visits and published findings related to each;
- opened nearly 3,000 cases relating to nearly 2,000 individuals, providing assistance or self-advocacy information in 40 percent of cases;
- held weekly phone calls with the public in addition to public stakeholder meetings, communicated with legislators, and engaged in countless meetings with DOC staff to discuss concerns and solutions;
- completed a detailed review of DOC's compliance with the CDC's guidance on management of COVID-19 in its facilities;
- organized a workgroup with family members of incarcerated individuals to develop recommendations to improve the lives of incarcerated people during the pandemic, and published a report based on its findings;
- published an Annual Report with overall findings and recommendations regarding individual case summaries and systemic issues within the Department.⁴

2. The Ombudsman's Office will allow for greater oversight and transparency regarding the \$1.4 billion spent annually on the Department of Corrections

The Virginia Department of Corrections has an annual budget of \$1.4 billion,⁵ employs more than 12,000 individuals, and is responsible for the health and safety of more than 25,000 Virginians in its custody. Yet its operations are largely hidden from public view and scrutiny, and the job of monitoring VDOC falls largely to VDOC itself. Legislators, advocates, and the public rely largely on VDOC to publish accurate and reliable information about the Department's compliance with laws and best practices, and its treatment of people in its custody. This presents a significant conflict of interest, as the Department has a strong incentive to present information that is self-serving rather than conduct an honest accounting of its successes and failures.

In fact, the Department has frequently responded to criticism in ways that are defensive or dismissive of concerns, or in a manner that relies on semantic arguments to deny or evade responsibility. For example:

- On May 10, 2018, the ACLU of Virginia released a report entitled *Silent Injustice: Solitary Confinement in Virginia*, about the overuse of solitary confinement in VDOC facilities, and provided a variety of recommendations for VDOC to consider. Rather than attempt to investigate and address the many concerns in the report, on the same day as the release of the ACLU report, VDOC issued a press release entitled, "Virginia Stands Out for Operating a Corrections System Without the Use of Solitary Confinement."⁶
- In recent weeks, VDOC settled a case against a limited English proficient man who spent more than twelve years in long-term restrictive housing. The settlement requires VDOC to establish a language access policy to ensure that people with limited English proficiency are provided meaningful access to Departmental services and programs. During the case, a representative for

⁴ See *id.* at 5-6.

⁵ 2021 Executive Budget Document, available at <https://dpm.virginia.gov/budget/budget.cfm>.

⁶ Press Release, *Virginia Stands Out for Operating a Corrections System Without the Use of Solitary Confinement*, May 10, 2018, available at https://acluva.org/sites/default/files/field_documents/commonwealth_of_virginia_-_department_of_corrections_-_virginia_recognizes_its_correctional_officers.pdf

the Department of Corrections and former Warden of Red Onion State Prison testified that VDOC has never had a policy regarding providing language assistance to people with limited English proficiency. Yet, when asked to comment on the new policy, VDOC claimed to the Washington Post that it would simply represent a centralization of existing language policies.⁷

- Members of Interfaith Action for Human Rights (IAHR), a faith-based community group that advocates against unnecessarily punitive corrections practices, raise frequent concerns on behalf of people incarcerated in Virginia prisons with VDOC officials, only to be told in virtually every instance of alleged mistreatment that the allegations are meritless. VDOC does not release the number of percentage of complaints or grievances by incarcerated people that are found to have merit.
- In 2020, the ACLU of Virginia reached a settlement agreement with VDOC regarding its handling of the COVID-19 pandemic in its facilities. When ACLU-VA later took issue with VDOC's noncompliance with various provisions of the agreement, including the slow pace at which it was reviewing incarcerated people for early release, VDOC responded with a dismissive public statement asserting that, "It's unfortunate to see the Virginia branch of the ACLU struggle to remain relevant by attacking what by any objective measure has been amazing work."⁸ The Court subsequently ordered VDOC to speed up its pace of review.

As these examples demonstrate, the information released by VDOC is often sharply at odds with the accounts of people who are incarcerated and those who advocate on their behalf. In the absence of an independent oversight body, the public has little ability to sort fact from fiction. The inflated estimated fiscal impact of this bill is perhaps yet another example of this dynamic and itself suggests the need for independent oversight. H.B. 2325 will help provide valuable, reliable information regarding the state of the Department of Corrections that will in turn allow the legislature, the Governor, and other stakeholders to better fulfill their duties to oversee its practices and policies.

3. **H.B. 2325 will ensure better stewardship of taxpayer money**

We believe that in the long run, this bill has the potential to provide significant benefit to VDOC itself, including in the form of cost savings and enhanced credibility with the public. No doubt, some of the disconnect between the allegations of incarcerated people and official VDOC responses may be on account of an inability on the part of VDOC leadership to obtain accurate information about what is occurring within its sprawling bureaucracy. An independent oversight office will assist VDOC leadership to better understand where problems are occurring. Likewise, it will help vindicate the Department where it is truly succeeding and where allegations of poor treatment are meritless. Further, it will help identify and address any problems early, before they become too costly to fix, or result in expensive litigation. In the first half of 2020 alone, Virginia spent at least \$1 million on legal fees for private counsel to defend just two civil rights lawsuits that—despite the existence of significant barriers to successful federal

⁷ Rachel Weiner, *Virginia Pays \$115,000 to Prisoner Who Says He Was Punished For Not Speaking English*, WASH. POST, Jan. 22, 2021, https://www.washingtonpost.com/local/legal-issues/virginia-pays-115000-to-prisoner-who-says-he-was-punished-for-not-speaking-english/2021/01/22/014e015c-5c28-11eb-8bcf-3877871c819d_story.html

⁸ VDOC Press Release, *Virginia Department of Corrections Responds to Virginia ACLU Complaint regarding Early Release Plan*, <https://vadoc.virginia.gov/media/1568/vadoc-response-to-virginia-aclu-2020-06-25.pdf>.

prisoners' rights lawsuits—recently settled for more than \$100,000 each, in addition to other relief.⁹ H.B. 2325 will thus help VDOC become better stewards of the \$1.4 billion in taxpayer funds entrusted to it.

As the General Assembly works to address the many pressing injustices of our criminal legal system, it cannot forget the men and women who are serving out their sentences at VDOC with little oversight from the public. An agency that is responsible for the care and safety of nearly 30,000 people needs transparency. We urge you to support and pass H.B. 2325.

Sincerely,

American Civil Liberties Union of Virginia

FAMM

Interfaith Action for Human Rights

Justice Forward Virginia

The Humanization Project

Virginia Coalition Against Solitary Confinement, a coalition of concerned organizations and individuals, including SALT (Social Action Linking Together), the Jewish Community Relations Council of Greater Washington, VACURE, the National Association of Social Workers (VA chapter), Social Workers Against Solitary Confinement, the National Religious Campaign Against Torture, and others

Legal Aid Justice Center

The Coalition for Justice

Virginia Prison Justice Network

Virginia Interfaith Center for Public Policy

⁹ Rachel Weiner, *Second Recent Settlement in Solitary Confinement Suits Against Virginia Dep't of Corrections*, Wash. Post, Jan. 31, 2021, https://richmond.com/news/state-and-regional/second-recent-settlement-in-solitary-confinement-suits-against-virginia-department-of-corrections/article_8d420217-a4b4-57d5-8428-e0b8584af661.html.