

LEGISLATOR BRIEF

Independent Corrections Oversight When the Grievance System Fails

Target: Va. Code § 53.1-17.7 (Authority to investigate complaints) and § 53.1-17.8 (Annual report)

ASK

Please sponsor or support a narrow amendment to § 53.1-17.7 (and a conforming reporting update in § 53.1-17.8) so the Corrections Ombudsman can investigate serious allegations even when the DOC grievance process did not function or could not be safely used.

THE PROBLEM

The Corrections Ombudsman was created to provide independent oversight of prisons. Current law, however, forces oversight behind the DOC grievance system by requiring the Office to decline many complaints unless the incarcerated person can prove legitimacy and meet a narrow exception.

In facilities where retaliation suppresses reporting, grievances are rejected, delayed, “lost,” or never logged, and serious incidents occur with limited usable documentation. When grievance failure becomes a reason not to investigate, the most serious harms become the hardest to see.

WHAT THE AMENDMENT DOES

This is a limited, practical fix that preserves triage while removing a structural barrier to oversight.

- **Converts mandatory declination into discretion:** changes the exhaustion gate from “shall decline” to “may decline.”
- **Makes clear exhaustion is not a prerequisite:** explicitly states that failure to exhaust the administrative remedy process is **not** a prerequisite to an investigation.
- **Prevents declination solely for non-exhaustion in serious cases:** the Office shall not decline on grievance non-exhaustion when there are **credible allegations or a reasonable basis to believe** the complaint involves:

- serious bodily injury or death;
 - sexual abuse, sexual assault, or sexual harassment;
 - medical neglect or denial of necessary medical or mental health care;
 - retaliation or intimidation for reporting, grieving, or communicating with oversight;
 - racial discrimination; or
 - conditions posing a substantial risk of serious physical or psychological harm.
- **Clarifies permissible sources of credible information:** allows consideration of submissions from incarcerated people, family members or representatives, attorneys, advocates, staff, or other third parties, whether or not a grievance was completed.
 - **Defines “impeded” grievance access:** includes circumstances making grievance use unsafe, unavailable, futile, or reasonably likely to result in retaliation or loss of access to basic rights or communication (including lockdowns, restrictive housing/segregation constraints, denial of forms, interference with mail/communications, intimidation/fear of retaliation, disability or language barriers, and other deterrent conditions).
 - **Preserves Ombudsman discretion to triage:** clarifies nothing requires investigation of every complaint; the Office retains discretion to prioritize, defer, or decline consistent with capacity, risk, and statutory authority.
 - **Preserves the grievance system:** clarifies the amendment does not eliminate, replace, or invalidate DOC’s grievance process.
 - **Adds evidence preservation authority:** upon determining eligibility, the Office may request preservation of relevant records, video footage, communications, or other evidence.
 - **Adds accountability reporting (in § 53.1-17.8):** requires standardized reason codes for declinations and annual aggregate reporting of declinations by reason code and facility.
-

WHAT IT DOES NOT DO

- Does not eliminate the grievance system.
- Does not dictate Ombudsman findings or outcomes.
- Does not create new enforcement powers or a new cause of action.
- Does not assume allegations are true.

It prevents procedural failure from being treated like factual clearance.

WHY NOW

Recent oversight findings have leaned heavily on DOC-generated records, limited video, and grievance outcomes controlled at the facility level. At the same time, families and community

members have documented repeated instances where the grievance process itself is inaccessible or retaliatory. Oversight cannot be independent if it is gated by the system it reviews.

FISCAL IMPACT

Minimal.

REQUESTED ACTION

Sponsor or support the amendment and move it through committee.

ONE-LINE SUMMARY

Oversight isn't independent if the agency under review gets to decide what can be investigated.