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N.J. prison watchdog just got new powers to curb abuse. Advocates fear they won't be used.

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Months before New Jersey prisoners began dying with the coronavirus at the highest rate in the country, lawmakers quietly beefed up oversight of state prisons.

Advocates for reform were concerned the corrections ombudsman, a small state office that investigates complaints, hadn't been effective for years, so they gave it new powers to make it one of the strongest watchdogs in the nation.

Those new powers — which include forcing those accused of neglect or abuse to testify under oath — took effect Aug. 1

But the ombudsman's office has recently been criticized by federal investigators, and the pandemic has threatened staffing and budgets.

Now advocates say they're worried the reforms will fall by the wayside just when they're needed most.

"I have serious concerns over the effectiveness of the office," said state Assemblywoman Yvonne Lopez, D-Middlesex, one of the reform bill's sponsors. "Our prison system is not adequately equipped to protect inmates."

The ombudsman, Dan DiBenedetti, defended his office's work, and said they regularly help improve living conditions behind bars. Staff "has been able to get the information it needs" from prison officials, he said, even without new powers.

Eight people work for the ombudsman's office, according to pension records, and the state allocates more than \$700,000 a year for it to act as an independent watchdog. A strong ombudsman can save taxpayers money by stopping abuse before it leads to a lawsuit, said Maggie Aguero, who led the office from 1988 through 2001.

"An ombudsman is an absolute necessity, but one that has teeth," Aguero said. "If they don't have teeth, it's just paperwork."

The office rarely receives media attention. One of the only NJ.com stories mentioning it is from 2009, and five people who reached out to NJ Advance Media on behalf of friends or family behind bars said they'd never heard of it.

Others said the ombudsman was not effective. Eleven current and former inmates and their loved ones told NJ Advance Media staff was not equipped to fully investigate concerns.

Many prisoners had given up calling the office in the same way some people have given up voting, said Marshall “Justice” Rountree, a former prisoner on the civilian task force overseeing the Essex County jail.

“After years you come to the determination that this just isn’t something that’s working,” Rountree said. “Why am I going to keep reaching out to somebody that’s just going to add insult to injury?”

The U.S. Department of Justice also censured the office in an April report that found widespread abuse in the state’s only women’s prison.

Although people should be able to anonymously report abuse to the ombudsman, federal investigators wrote, “the reports we reviewed clearly identified the reporters of sexual abuse, without any mention of anonymity or confidentiality.”

After one officer was charged with sexual abuse, the officer’s brother (who worked in the same prison) began harassing the woman who reported the abuse, according to the report. She told the ombudsman’s office, but they failed to pass that information along to the prison’s administrator, investigators said.

“If you’d had an office of the ombudsman that was functional and serious and had authority, you would not have needed a Department of Justice probe,” said Lydia Thornton, another former inmate who now advocates for prisoners’ rights.

DiBenedetti, who spent almost two decades working for the prison system before taking over as ombudsman in 2009, responded to questions from NJ Advance Media in an email sent by a spokesman for Gov. Phil Murphy.

“I am certainly unhappy to hear that anyone was not satisfied with the assistance received,” DiBenedetti wrote. Staff field dozens of questions a day, he said, and the office regularly helps inmates get supplies and guided family members through the parole process, among other tasks.

Sometimes non-prisoners asked for information they were legally barred from providing, he said, and “this ultimately results in an unhappy caller.”

He gave no examples of when the office had ever contacted law enforcement on behalf of a prisoner because the ombudsman “investigates administrative complaints, not criminal complaints,” he said.

In response to the federal report, DiBenedetti said “anyone can anonymously report allegations or information to this office at any time.” He declined to comment on any specific incident, although he said sexual harassment and assault allegations were “immediately” referred to prison staff and every case was reviewed “to determine if any further action should be taken.”

It's difficult for the public to assess the office's performance.

The ombudsman currently reports to the governor's office, but for years it has not had to produce any public reports. One of the last available reviews is from more than a decade ago, and state budgets give little information beyond that the office handled about 15,200 cases last year, an increase from more than 13,200 cases a few years prior.

Inmates are not always given detailed information either. Earlier this year, a prisoner who said he'd been assaulted by an officer received only an 82-word letter from an assistant ombudsman, directing him to find his own paralegal if he wanted to challenge prison officials, according to a copy of the letter obtained by NJ Advance Media. DiBenedetti questioned whether that letter was the only thing the prisoner received from the office, although he wrote it wasn't their job to "provide legal assistance or legal counsel."

Ombudsman inspectors are not blocked from visiting prisons during the pandemic, according to corrections spokesman Matthew Schuman, but when asked how many on-site inspections the office conducted this year, Schuman wrote that "precise number" was "not available." DiBenedetti also said it would be hard to count how many unannounced visits they'd recently made, but he said staff showed up "as often as possible to conduct interviews, review inmate records, observe living conditions, and tour areas of the facilities."

When asked for more details about how the ombudsman reports to the governor, both DiBenedetti and Murphy spokesman Jerrel Harvey wrote the two offices maintain a "close relationship" to "carry out the work of the administration."

A new law aims to change the status quo.

Signed by Murphy early this year, the law gives the ombudsman broad investigatory powers. Proponents have emphasized parts of the law that made it easier to visit loved ones behind bars, but the bulk of the proposal dealt with prison oversight: The ombudsman would soon be able to subpoena witnesses and documents and hold public hearings.

That would make New Jersey's ombudsman one of the strongest in the United States, said Michele Deitch, a senior lecturer at the Lyndon B. Johnson School of Public Affairs at the University of Texas and an expert on prison oversight.

Unannounced inspections were particularly important, she said. "When has it ever been more urgent than it is right now?" Deitch asked.

New Jersey's law was modeled after one in Washington, where that state's "corrections ombuds" has already published more than two dozen investigations just since March of last year. When inmates recently said they had to defecate into coffee cans because of pandemic rules limiting bathroom breaks, inspectors showed up and prison officials

changed policy that same day, according to Joanna Carns, director of Washington's office.

Under New Jersey's reforms, the ombudsman must track complaints the office receives in order to flag systemic issues. Although the corrections department may withhold information in certain cases, like surveillance video, the ombudsman must generally report its findings publicly.

The law solidifies an inmate's confidentiality when filing a complaint, to protect against retaliation, and creates a new advisory board for the office that must include a former inmate or relative of a prisoner. Law enforcement must be looped in if they receive criminal complaints.

Taken together, the powers allow the office to aggressively probe how well prison officers and officials are doing their jobs.

Supporters of the changes worry the coronavirus will delay reforms.

Every employee but DiBenedetti was furloughed in the weeks leading up to Aug. 1, the day the law took effect. All four assistant ombudsmen and three other staffers could not work for ten days between June 29 and the end of July, officials said.

"I do have real concerns, especially related to budget, that the pandemic will mean that it's a slow rollout," said Tess Borden, a lawyer with the American Civil Liberties Union of New Jersey who helped pass the reform bill. Budget cuts were obviously a statewide problem, she said, but ignoring prisons with thousands of infections would be a "potentially life threatening" mistake.

DiBenedetti wrote his office "will do the best that we can to be in compliance" with the reforms.

Some advocates also expressed hope the current ombudsman would be replaced with someone never employed by state prisons.

DiBenedetti spent nearly 20 years with the corrections department, beginning as a typist in 1990 and finishing as executive assistant under an operations commissioner in 2009, according to a prison spokesman. During that time, he also spent more than a year as an assistant ombudsman, when the office was still part of corrections.

The new law says an ombudsman can't have worked for an organization that received money from the corrections department within the past five years. DiBenedetti has not been paid by state prisons for more than ten.

"I do not believe that my prior work ... has negatively affected my work in any way," DiBenedetti wrote. "My nineteen years of experience with the Department of Corrections

has enabled me to have a greater understanding of the prison system in order to successfully assist the inmate population and effectively address any concerns received.”

An ombudsman serves five-year terms, although tenure is essentially indefinite until a successor is named. A Murphy spokesman said they had no plans to announce a new ombudsman, and DiBenedetti declined to say if he'd like to be reappointed.

Maggie Agüero, the former ombudsman, overlapped with DiBenedetti at the corrections department. She called DiBenedetti a “wonderful, wonderful” man who is deeply knowledgeable of state prisons.

But she said the job ultimately needs someone willing to fight more aggressively against a system long resistant to scrutiny.

Without those fights, she said, persistent abuse can transform inmates for the worse.

“In the end, they're going to come back out, and be your neighbor and my neighbor,” she said. “And having a monster living next to you is not good for anybody.”