State of Iowa Citizens' Aide/Ombudsman

2010 Annual Report

May 2011

Ombudsman's Message:

"Changes, Cases, and Commitment"

Ruth H. Cooperrider
Iowa Ombudsman

It is an honor for me to write this message in my new role as the Citizens/Aide Ombudsman for the State of Iowa. I became the Acting Ombudsman on June 25, 2010, after William (Bill) Angrick II retired as the Ombudsman after serving in that position for 32 years. I had the privilege of working under the tutelage and alongside of Bill for 20 of those years, first as Legal Counsel and later as Deputy Ombudsman. His approach to our work—to be thorough in fact-gathering, research, and analysis, to be impartial in reaching conclusions, and to be proactive on addressing or recommending ways to improve government—embodies the traits of an effective ombudsman office. I intend to continue applying this approach in how we perform our work.

I want to express my appreciation to the members of the Legislative Council and the General Assembly for recommending and approving my appointment during the 2011 legislative session.

Like many government agencies, our office continued to fulfill its responsibilities with fewer resources and staff in 2010, after early retirements and no-growth budgets. The Legal Counsel position was vacant for the latter half of 2010, and the Deputy Ombudsman position I held previously remains vacant. Nevertheless, I have not taken any steps to curtail the number or types of complaints coming to our office. That is reflected in our overall statistics for the year 2010.

* * *

During 2010 we received a total of 4716 contacts from the general public, government officials, and inmates in Iowa's correctional system. Of the cases that have been closed:

- 3097 were complaints about state or local government agencies within our jurisdiction
- 590 were complaints about matters outside of the Ombudsman's authority
- 866 were requests for information about both jurisdictional and non-jurisdictional issues.

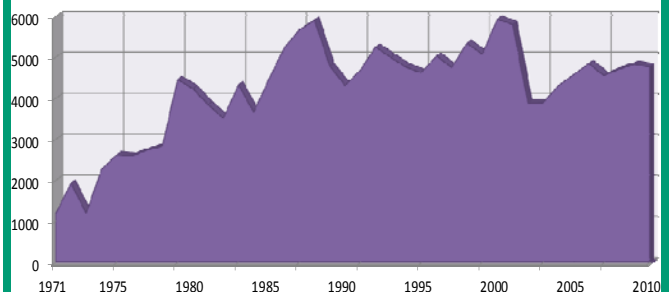
Although the total number of contacts in 2010 decreased slightly from the 4764 contacts in 2009, we actually handled a few more jurisdictional complaints in 2010.

Most of our casework is handled informally, including communication of the resolution in a case with the complainant or an agency. I may decide to publish reports of our investigations in some cases involving serious or important issues of broad impact or interest. In 2010 we issued a public report concerning actions by a city council member, who also served as the city's fire chief, which we believed created a conflict of interest. The report, entitled "Whose Interest is Being Served?" is discussed in the Local Government section of this annual report and is available in its entirety on our office's web site.

Occasionally agencies will resist our access to records or information, claiming the information is confidential or privileged under law. We have successfully argued in several court cases that our statute, Iowa Code section 2C, allows us access to confidential information relevant to our investigations. In 2010 we filed a lawsuit against the Iowa Department of Corrections, which had

(Continued on page 26)

Annual Contacts to Ombudsman Since 1970



This chart shows the number of contacts received by the Ombudsman's office each year from 1970 through 2010.

Inside This Issue

From the Ombudsman's Case Files

Mental Health System Reform Needed Sooner, Not Later

Linda Brundies
Assistant Ombudsman

It is spring 2011 as I write this, and I am cautiously optimistic the Iowa Legislature is committed to redesigning Iowa's mental health system. Both houses want to address access and funding issues but are proposing different means to do so. There is currently no consensus on how best to resolve the many and varied problems nor on funding the system. The details may be left to the Department of Human Services (DHS) to work out with stakeholders. I will report next year on the resulting legislation. Meanwhile, our lawmakers deserve kudos for tackling mental health system issues this legislative session.

There is no doubt that a redesign of Iowa's mental health system is necessary and needs to happen sooner rather than later. An April 2011 decision by the Iowa Court of Appeals, *In the Matter of B.R.*, illustrates why we need mental health reform in Iowa.

B.R. is hearing-impaired, mentally ill, and has substance abuse issues. The court case involved B.R.'s placement and treatment. In a commitment action, the district court repeatedly ordered Pottawattamie County to place B.R. in a specialized facility in Florida and pay for it. The decision notes multiple review hearings and orders which the county apparently ignored. An Iowa Legal Aid attorney for B.R. tried to have the county cited for contempt for not providing the placement and treatment the court ordered. The district court refused to find the county in contempt, stating B.R. did not meet the burden of proving willful and intentional contempt. The Court of Appeals affirmed the district court decision, but in a notable dissent, one judge stated she would "have no trouble concluding the county willfully and intentionally violated court directives."

It is my hope a redesigned system will eliminate placement and treatment issues like this.

* * *

I spent a good part of 2010 in meetings with stakeholders and policymakers who are all interested in improving Iowa's mental health and disability system.

We continued meeting quarterly with several agency directors and advocacy groups. This year we added John Baldwin, the director of the Iowa Department of Corrections (DOC), to our group. Director Baldwin has seen an increase in the number of seriously mentally ill in prison and believes that is not likely to change. On the date of our September 2010 meeting, the forensic hospital at the Iowa Medical and Classification Center in Oakdale had 30 patients—only two of which were already DOC prisoners. The remaining 28 were county patients who were transferred from jails or the state's Mental Health Institutes. The Iowa Code allows DOC the discretion to accept or reject potentially dangerous mentally ill patients, but DOC officials have considered it their duty to accept the patients. Director Baldwin says this population is exhausting

(Continued on page 27)

Extra Milers

Public employees we recognize as special because they deliver top quality service

Susan Battani, Director, Financial Audit Division, State Auditor's Office—for her conscientious oversight of government agencies' financial activities and her initiative in bringing open meetings and open records concerns to the Ombudsman's attention. Through Battani's active collaboration with the Ombudsman, both offices were better equipped to address problems identified in several Iowa cities.

Brice Oleson, Unemployment Insurance Manager, Iowa Workforce Development—for consistently quick, thorough, and candid responses to our inquiries about a rising number of unemployment-benefit disputes. In one case where an unemployment hearing was slow in coming, Oleson admitted the agency was at fault and sped up the claimant's hearing.

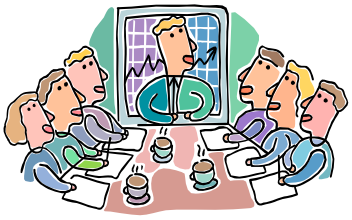
Can We Talk....

....to your organization or group? Staff from the Ombudsman's office is available to give talks about our services. Brochures and newsletters are available in quantity.

Address: Ola Babcock Miller Bldg., 1112 E. Grand Avenue,
Des Moines, IA 50319
Phone: 1-888-426-6283 or 515-281-3592
Fax: 515-242-6007
Email: ombudsman@legis.state.ia.us
Web Site: www.legis.iowa.gov/ombudsman

Public Records and Open Meetings

Council (Illegally) Asks Citizens to Leave Open Meeting



Is it okay for a government body to ask people to leave the room during an open meeting?

This issue arose after we received a complaint from the owner of a solid-waste removal company. The small business owner had submitted the lower of two bids for a single-stream recycling contract with a city in southeast Iowa, but a committee of the city council recommended hiring the high bidder. Questioning this decision, the owner contacted our office. While explaining his concerns, he mentioned the committee had gone into closed session to discuss the bids, and that city officials later admitted the closed session was not authorized by state law.

After studying state law on public contracts, we found the city was not required to award the contract to the low bidder, mainly because the law only applies to certain construction projects. We also found the committee did question whether the lower bidder was responsive and responsible.

To learn more about the closed session issue, we called the city attorney. He called the committee's closed session "a glitch that won't happen again." But the city attorney also told us the committee could have asked both contractors to leave the open meeting, adding "we've done that in the past."

Our review found questionable legal basis for any government body to ask a member of the public to leave an open meeting. Iowa's Open Meetings Law allows government bodies to close a meeting in specific situations, but this did not involve going into a closed session.

We shared our findings in a letter to the city attorney, urging him to reconsider his position. Our letter noted that any person can file a lawsuit alleging a violation of the Open Meetings Law. We copied the letter to all members of the city council. Since that time, our office has received no reports of similar activity involving the city council or its committees.

Small Town Ignores Requirement On Publicizing Minutes

An auditor reported to us that a small city in central Iowa had not been publishing minutes of its city council meetings, as required by law. Meeting minutes are required to be published in newspapers for cities of 200 or more residents to enable citizens to follow its government's activities with relative ease. Cities under 200 in population are alternatively allowed to post their minutes in three prominent places, but there was no indication this city had followed that procedure, either.

Although the population of the city was around 360, the city's own ordinances continued (incorrectly) to allow for posting of the minutes in town.

After discussions with the mayor, we saw to it the city amend its ordinance to require regular publication of meeting minutes in the local newspaper. We closed our complaint only after we had monitored the city's compliance with the law for six subsequent months.

City Charges Double the Fees Allowable by Law

A citizen in an eastern Iowa town called us with concerns about fees charged by city officials for public records. Iowa law provides government with a guideline that says fees should not exceed the "actual costs" of copying and retrieving records, or for supervising their examination.

Through inquiries, we discovered the clerk of the city in question made $16 an hour—the same rate the city was charging records requesters for one-half hour of her work. A city policy also charged requesters $1 per page for photocopies.

We recommended that the city change its policy by lowering its per page copying fee and hourly copying rate. The city accepted our recommendation but included a nice additional feature, agreeing to provide its first 30 minutes of work for free. The city revised its copying fee to 50 cents per page.

From Our Viewpoint: Matters Concerning Open Records, Open Meetings, and Privacy

Iowa's Open Records Law and Open Meetings Law deal with two of the most basic functions for state and local governments. Yet, from the number of complaints we receive, and the energy expended in recent years in considering legislation to clarify their application and to create an administrative enforcement process, it is clear that many of our public officials continue to lack the knowledge necessary to comply with the laws. Public officials often tell me that they have received at least some training or instruction on the state's sunshine laws, but there still appears to be a lot of complacency or disconnect when it comes to complying with them. While they appear to understand the concept of openness and the reasons for it, they do not always know how to implement it.

Based upon all the debate and discussion we have seen at the State Capitol over the last few years, I think it's time to rethink the status quo. To do that, it will be important for public officials (and associations they belong to) to challenge each other, get in-depth training, and review their policies and procedures to ensure the laws are followed efficiently and effectively. Knowing the rules will work to their benefit in the eyes of their constituencies and will prevent the need for apologizing and back pedaling.

To get more information about the correct handling of records requests and meetings, there are several online resources. The full text of Iowa Code chapters 21 and 22 can be found on the legislative web page. Also, check out the Iowa Attorney General's *Sunshine Advisories* and the Iowa Freedom of Information Council's web site. If you cannot find the answer to your questions with those sources, you may contact our office. While we cannot provide legal advice, we can explain the law and share our observations about the best practices in dealing with certain issues.

Angela McBride
Assistant Ombudsman, Public Records, Open Meetings, and Privacy Specialist

Another resource is our office's web site, which contains investigative reports and annual report summaries on various open records and open meetings issues. I urge every public official to take the time to read the case summaries in this report. My discussion of cases later on contains some comments and tips to help public officials comply with the laws.

Have Training, Will Travel

In 2010 our office was asked to give several presentations on the Open Records Law and Open Meetings Law. In all, we gave presentations to an estimated 181 public officials around the state. Our presentations are free, but we typically ask for reimbursement of travel expenses. If you are interested in organizing a training in your area, please contact us for more information.

Statistics

We fielded 263 complaints and information requests last year relating to open records, open meetings, and privacy issues. Of the 179 complaints we received, we substantiated 23 cases, down from 31 such cases in 2009 and 36 in 2008. Because several cases received in 2010 remain open, our

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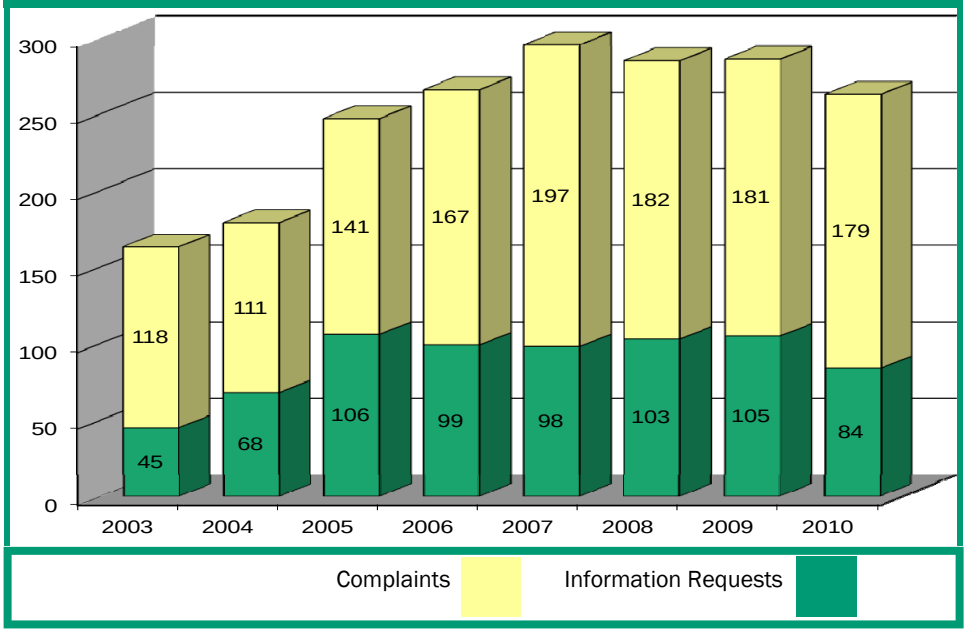
Public Records, Open Meetings, and Privacy Jurisdictional Complaints and Information Requests Received by the Ombudsman



Police Hesitant to Release Public Information

A newspaper in northeast Iowa, fed up about the lack of information released by a sheriff regarding an officer-involved shooting, filed a formal records request for reports and copied the Ombudsman.

Although police agencies are understandably stressed by shootings involving their officers, Iowa law requires police to release the time, date, specific location, and immediate facts and circumstances surrounding any crime or incident unless the investigation would be harmed by its release.

Within a day of the newspaper's formal request, the specific location of the shooting and the identity of a suspect was released. Later that day, as we monitored the sheriff's response, we issued a formal request to release the name of the officer by the end of the following workday, or an explanation why the information must be kept confidential.

The next morning, the sheriff called us, with a desire to address our concerns. The sheriff acknowledged his lack of experience in handling officer-involved shootings and was uncertain about what information he could safely release. The sheriff said he was concerned about the officer's family and their privacy, as well as the agency's ability to interview the suspect, who had been in and out of surgery.

After we talked through the legal expectations, the sheriff agreed that day to release the information requested by the newspaper, including the officer's name.

Secret Ballots Not Permitted Under Iowa Open Meetings Law

Secret ballots are not allowed by Iowa's Open Meetings Law. That was our response to a call from a member of a regional planning commission who explained the commission had recently conducted a vote by secret ballot. Nobody knew how each individual member voted, and he wondered if this was consistent with state law.

The investigator who took the call reviewed the Iowa Code and quickly found the answer in section 21.3. Our investigator read the section to the caller. It states in part, "The vote of each member present shall be made public at the open session."

The caller said he would relay this information to the board chairman with a suggestion that the board find a way to resolve the secret ballot vote. He called back the next week and reported the chairman asked board members who voted by secret ballot to indicate how they voted. The board then agreed to amend the meeting minutes to disclose each member's vote. We approved of the board's remedial actions.

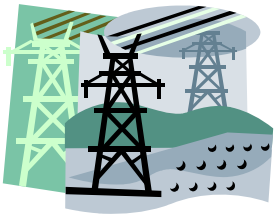
School Board Minutes Published Late

We received a complaint that the secretary of a school board in western Iowa was only publishing a summary of the board's meeting minutes, and was not doing so within two weeks, as Iowa law requires. In an interview, the secretary told us she thought she had two weeks to deliver the minutes to the local newspaper. We advised her our interpretation of the statute was that minutes are to be published within two weeks following a school board meeting.

Our complainant also pointed out the minutes published in the newspaper constituted only a summary of the actual minutes, and referred readers to the district's web site for the full version. We reviewed the school's web site and found the minutes were not kept current.

We sent a letter to the school board and school superintendent advising them of the two-week publication requirement. We also suggested that the district's web site be kept up to date if the secretary published only summary minutes. The school board subsequently directed the secretary to timely publish the minutes. The board also decided to publish full minutes in the newspaper until web site issues were resolved.

One Excuse After Another



A citizen of north central Iowa requested from a municipal utility the dollar amounts and kilowatt usage by each of seven different rate classes described in city ordinances. The requester told us he wanted to ensure that varying electric customers were being charged the appropriate rates. In response, the city provided the citizen with a consolidated report, claiming it would be too difficult and expensive to provide itemized information as requested because their internal reports categorized the information differently.

We believed it was reasonable and fiscally responsible for the city to compile the information in accordance with its ordinance, and recommended that officials obtain software capable of running such reports. The city argued that a software change would be too expensive and quoted the requester $2,000 for each of the seven rate classes to manually compile the information. The city further claimed the information, if released, would harm customers' "competitive position." We disagreed and provided the city with case law indicating that competition for electric service was nonexistent and the information should be public.

We substantiated the citizen's complaint and referred the case to the Iowa Attorney General's office for enforcement of Iowa's Open Records Law. The Attorney General and the city ultimately entered into an agreement whereby the complainant could obtain three months of records for $100.

Spending Public Money…in Private?

A city in eastern Iowa refused to disclose details to local media of a separation agreement its council reached with the city's outgoing financial director. Our complainant requested the separation agreement under Iowa's Open Records Law and the city refused to provide it, claiming it was a confidential personnel record.

We requested and received a copy of the agreement to review and determine whether it in fact contained confidential information. We also carefully reviewed Iowa law and case law. We concluded the separation agreement contained no personal information and could not be considered confidential due to the public's overarching interest in government spending, and case law that declared government employee salary and benefit information to be public record. We also relied upon a 1992 Iowa Supreme Court decision which ordered the disclosure of a settlement agreement labeled as confidential because public funds were paid.

The city ultimately agreed with our determination that the entire agreement should be public record and released a copy to our complainant.

Public Records, Open Meeting Resources

- The Attorney General's office has published easy to read "Sunshine Advisories" which interpret the basic nuts and bolts of Iowa law. Go to: http://www.state.ia.us/government/ag/open_government/Open_and_Sunshine.html
- The Iowa Freedom of Information Council provides some training and publishes the Iowa Open Meetings, Open Records Handbook. Fourteenth edition copies can be obtained (for a fee) by calling the Council at (515)271-2295 or go to: http://www.drakejournalism.com/newsite_ifoic/
- Local government officials can get information and training from the Iowa League of Cities, the Iowa State Association of Counties, and the Iowa Association of School Boards.
- For legal advice or more formal oral or written opinion, contact your attorney or the attorney working for the governmental body.
- If these resources do not answer your questions, contact our office at 515-281-3592 or 1-888-426-6283.

Human Services

Agency's Testimony Not Supported by Reports

A central Iowa grandmother complained to us that the worker of a child protection agency testified in court to events of which she had no personal knowledge. She also complained the worker had unfairly portrayed her as conflict oriented. The worker's testimony was instrumental, our complainant said, in a judge's decision to remove her granddaughter from her parents.

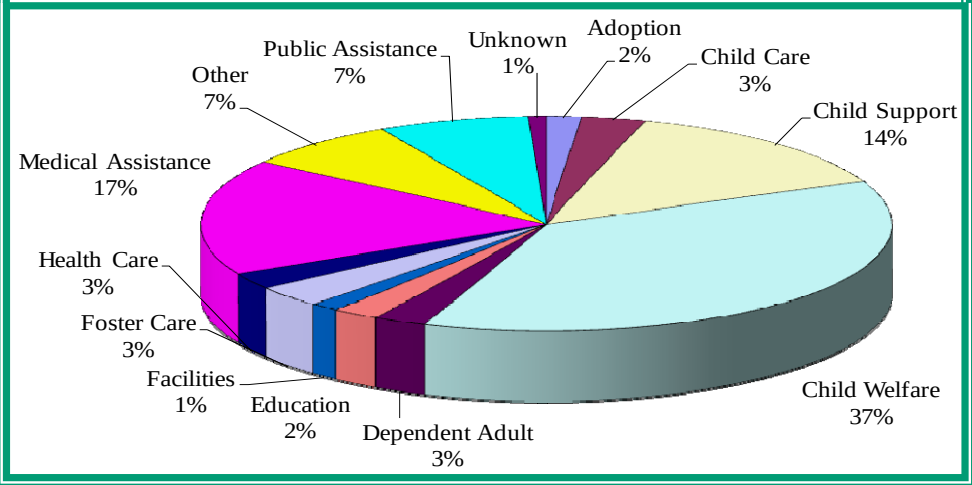
In our review of the court records, we learned the worker had testified the grandmother was uncooperative with a home search conducted months earlier by the agency. The worker specifically attacked the grandmother's character by alleging she would not allow police officers and an agency worker into her son's bedroom.

We found the worker who testified to these events was not personally present during the agency's search of the house. In our review of the notes of another agency worker who was present, we found no account portraying the grandmother as uncooperative. In fact, the notes indicated the grandmother allowed officers into her home and attempted unsuccessfully to reach her son to gain access to his room, which was padlocked.

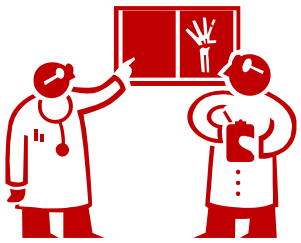
We expressed concern about the unsubstantiated testimony to the worker's supervisors. One supervisor responded with the suggestion the grandmother, finding the door locked, should have tried to break the door down. Having met the grandmother in person, we informed the supervisor that such an expectation was unreasonable from a barely-100 pound grandmother.

The placement hearing for the granddaughter could not be revisited by the time we finished our investigation, but in substantiating the grandmother's complaint, we discussed the errors with the agency and expressed the importance of staff testifying accurately to the facts of a case.

Human Services Contacts to the Ombudsman



A Father's Concern



The father of a teenager in a group home for delinquent boys contacted our office, concerned that an injury suffered by his son was being overlooked by facility supervisors. The son had injured his hand in a fall. The hand was now swollen, but no x-ray had been taken to determine if there was a fracture. The father knew his son would have to continue to use his hand in the course of completing his assigned tasks at the facility. He was concerned the hand might be broken and further injured if it were not diagnosed and treated correctly.

We contacted the director of the facility. He told us the boy had visited the facility's health services unit up to three times daily over the past 11 days. Ibuprofen was provided by the nurse, as was an ice pack on occasion. The nurse considered the injury only to be a sprain.

The director of the facility agreed the nurse should have called the clinical medical director for further assessment or direction. An x-ray was then taken of the boy's hand, which was found to be fractured. The director took full responsibility for the situation, and offered to discuss the matter in depth with the boy's father. He said that personnel action was taken against the nurse.

Lack of Communication, Flexibility Prompts Mass Complaints

We received about a dozen complaints over two months from Medicaid recipients who were having difficulty getting mileage reimbursement for trips to their doctors or therapists. In most instances, the patients were told their claims failed to include all the necessary information in a timely manner and thus would not be paid. Often, representatives were described as rude, inefficient, and inflexible.

We quickly discerned the claims were being rejected by a private firm contracted by the state. The firm was hired to handle mileage claims with an eye toward preventing fraudulent claims. We found that some of the claims were rejected because patients had failed to provide a fax number for their doctors' offices. However, we also found the firm's requirement for the fax numbers was not explained on forms mailed to patients by the state. The firm also was standing by a policy that required patients to give 72 hours' notice of a trip to their doctor, even if the appointments were made on short notice.

At our urging, and with the input of the state's Medicaid office, the firm agreed to allow patients to submit the fax numbers late in order to receive reimbursement. The firm also agreed to relax its requirement in select cases for 72 hours' notice.

In regular meetings, the state discussed with the firm the substance and scope of the complaints it was receiving, to ensure fair and consistent responses to Medicaid recipients. The state also agreed to notify recipients of the new fax requirement in future mailings to avoid further confusion.

Due Process vs. Safer Children: Iowa Policymakers Search for the Right Balance

Barbara Van Allen
Assistant Ombudsman, Child Welfare Specialist

An important Iowa Supreme Court decision issued in August 2010 received significant media attention for its definition of child abuse, and when and how abusers should be placed on the Central Child Abuse Registry. These topics continue to generate discussion amongst legislators, Department of Human Services (DHS) officials, and persons impacted by them.

In the case, *Jane Doe v. Ia. Dept. of Human Services*, 786 N.W.2d 853 (Iowa 2010), the court ruled that a caregiver cannot be placed on the Registry for "denial of critical care" based solely on a failure to properly supervise a child. Although DHS rules allowed for Registry placement based on inadequate supervision, this criterion is not specified in the statute. The court noted in footnotes that 1) the DHS had not argued that Doe's lawsuit was untimely, and 2) a person placed on the Registry for lack of proper supervision can still be on the Registry if another statutory basis for placement was met.

DHS interpreted the court's statements to mean the ruling only applied to future or current cases involving inadequate supervision that were on appeal or within the six-months appeal period. As a result, approximately 26,000 individuals still remain on the Registry based on a finding of denial of critical care due to inadequate supervision.

This interpretation is controversial and will likely remain problematic for many of these individuals who are still on the Registry based on a finding of inadequate supervision. Even though DHS will review an individual on a case-by-case basis for the purpose of an employment check, the person still remains on the Registry. DHS has said "…without any other judicial or legislative mandate, those persons will remain on" the Registry. We question DHS's interpretation to keep all these individuals on the Registry since DHS had no legal authority under Iowa law to place them on the Registry in the first place. We believe DHS should consider removal of these individuals who were placed on the Registry solely for inadequate supervision, at least for those individuals who no longer present a risk of harm to children.

In response to the *Doe* case, the Iowa Legislature passed House File 562 (effective July 1, 2011) to amend the Iowa Code so that failure to provide adequate supervision of a child can constitute child abuse for the purpose of placement on the Registry. However, it did not require DHS to review the 26,000 or so cases that remain on the Registry.

In the past couple years, Ombudsman Ruth Cooperrider and I have participated in many discussions on these issues and have advocated for some changes, so we are pleased to see this directive from the Legislature. We hope Iowa's policymakers, in their ongoing review, will keep in mind the important purpose of the child abuse and registry systems administered by DHS, as well as the due process rights of

(Continued on page 30)

Corrections

Most Jails Now Sharing Medical Information With Prisons

Eight years ago, our office discovered systemic problems and inconsistencies with the transfer of medical information when an offender is transported from Iowa's county jails to state prison. We found that, in most cases, the only medical information the prisons received during the reception process came directly from the offenders. There was little, if any, documentation on the offenders' known health problems or medications. In one complaint we received, the offender told the prison he was on only one medication when, in reality, he had been on six prescriptions in jail. In addition, neither the offender nor the jail advised the prison the offender had been released from the hospital just two days prior for an attempted suicide.

Our office initially advocated for revisions to the Iowa Administrative Code to require the transfer of medical information on a standardized form. We later settled for developing a Health Status Transfer Sheet with the help of jail and prison staffs. The form we created is modeled after one that is mandated by law in Texas. State corrections officials distributed the forms to Iowa's county jails in 2004. Since that time, we have conducted periodic checks to determine whether jails were consistently using the form. Statistics for 16 days in December 2009 indicated only 21 of the 314 offenders transferred to prison during that time period did not arrive with the form our office created—a 93 percent compliance rate.

We continue to support changing Iowa law to mandate the use of such a form to ensure continuity of health care for offenders, and others apparently agree. We learned in 2011 legislation was introduced to direct the state's corrections director, in cooperation with the Iowa state sheriffs' and deputies' association, to develop a uniform medical form to be used by all county jails in providing a prisoner's medical information to the receiving prison. However, the bill, House File 504, was not enacted.

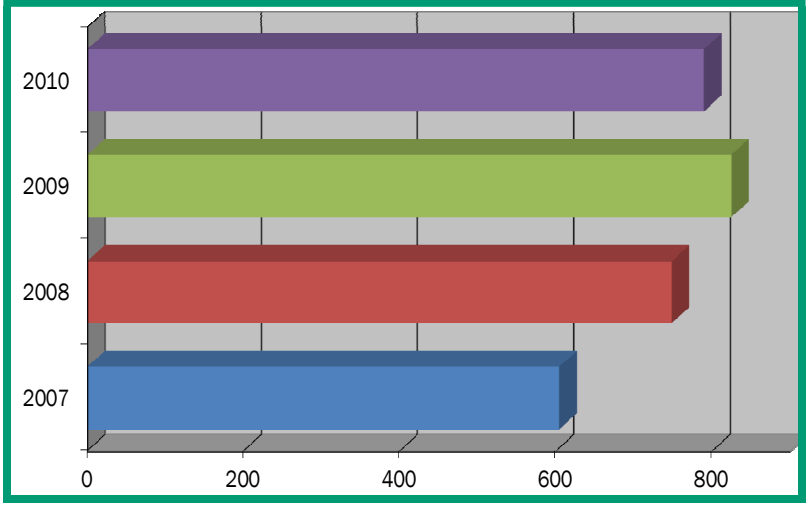
Inmate Grievances Do Get Results—Sort Of

We received two letters from the same prison alleging that officers were opening and reading inmates' confidential legal mail. By policy, prison staff is allowed to search most incoming and outgoing mail for contraband, or to verify the mail is actually from the purported letter-writer, but correspondence with the courts, attorneys, legislators, and other select officials may not be read without a court order.

Both offenders had filed grievances on the matter, but both were unsuccessful when the grievance officer learned the letters were merely being scanned as a security measure. Upon appeal, the warden correctly pointed out that legal mail was not supposed to be scanned and ordered the practice stopped.

However, we continued to receive reports the scanning of legal mail at the prison was continuing. We shared our concerns with the warden, who surmised his order was not adequately circulated among prison staff. The warden repeated his expectations among prison staff, and we later found that inmates had ceased to file grievances on the subject.

Number of Prison Issue Complaints/ Questions Received by the Ombudsman



The Corrections Corner

Eleena Mitchell-Sadler
Assistant Ombudsman, Corrections Specialist

The Prison Ombudsman

Let's face it—many people just don't have a soft spot in their heart for prisoners. Many harbor the attitude that prisoners shouldn't have broken the law and they deserve whatever happens to them while in jail or prison. Are we really that callous? Do we really believe that just because someone is incarcerated, it is okay to subject him or her to any extreme condition, any degrading comment, any torturous act, any loss of privilege, without reason? An old saying in the corrections field is: "They are sent to prison as punishment, not for punishment." However, those who are entrusted with the authority to oversee these individuals' safe incarceration have been known to violate that trust. No matter how heinous a prisoner's crime may have been, the reality is, he or she is in a very vulnerable position; they have no authority, no power, no say, and no way out.

In 1970, under Governor Robert Ray, a pilot Ombudsman's office was opened in Iowa with federal grant dollars. In 1972, legislation was passed creating the Office of Citizens' Aide/Ombudsman. This legislation included two staffing requirements. One was for the Ombudsman to designate a deputy; the other was to appoint an assistant primarily responsible for investigating complaints relating to penal or correctional agencies.

Before then, and since that time, several other ombudsman's offices have been created that have authority to review correctional matters. Tenured offices include those in Hawaii, Alaska, Nebraska, Michigan, Indiana, New Jersey, and Connecticut. Nebraska expanded its ombudsman's authority over correctional issues in 2008 to include jails. Michigan resurrected its corrections ombudsman about two years ago after it had been defunded for several years. Legislation is currently being considered in Nevada and in Maine. It's hard to quantify the cost savings a corrections ombudsman brings to a state, but clearly the benefits are being recognized all across the country.

The Nature of the Beast…Defeated

It seems we are constantly being hit with bad news. But it is the role of an Ombudsman's office to receive, review, and investigate citizens' complaints about state and local government agencies. No one ever calls our office to compliment an agency or to express gratitude for someone taking an extra step in customer service. While we hear complaints all the time, we also recognize there are a lot of good things going on in the corrections field. Below are some of those "good things" that could result in fewer complaints coming to us.

Integrity at Work

Some may recall hearing the story last year about a county jailer who used an electronic shield on an inmate without provocation. While some hearing about this incident may have been understandably appalled at the jailer's behavior, I was highly impressed with the sheriff's response, which was to hand it over to another agency for criminal investigation. In a news story, the sheriff said he didn't think the jailer's actions were malicious, but he acknowledged his deputies have professional standards they must hold themselves to. We commend the sheriff for taking this stance and not allowing the possibility of bad publicity to overshadow his good judgment.

Openness

I have made presentations about our office to hundreds of new jail staff during the short time I have worked here. I have been asked many times, "If an inmate asks for a grievance form, should I give it to him?" My response typically begins with, "Why wouldn't you give an inmate a grievance form?" My take on this has always been, if you have nothing to hide, why would you hinder the inmate's ability to voice his complaints?

Jails that employ a proper grievance process are being proactive in resolving problems (or perceived problems) that could lead to lawsuits or violence. The grievance gives the inmate a voice. To taint the process by denying an inmate a form, or making it unnecessarily difficult to file a grievance, is not the right thing to do.

I was once told by a new jailer his jail administrator specifically directs employees not to give out our office's contact information. He said his gut told him it was wrong to keep that information from the inmates and he asked for my advice. I told him he needs to follow lawful orders, and the law does not require any jail to offer our contact information. However, that directive did cause me concern. I suggested he speak

(Continued on page 31)

Inmate Socked With a Big Bill, No Explanation

State prison officials agreed to draft new policies on disciplinary billings to inmates after we discovered one inmate was ordered to pay $1,400 more than he should have been.

The inmate lost three months of earned time and was placed in solitary confinement for three months after he punched a correctional officer in the face during a dispute. An administrative law judge also ordered the inmate to pay all of the officer's medical costs and lost wages.

The prison issued a bill to the inmate one year after the incident in the amount of $5,348. Immediately, the prison began to withhold a percentage of the inmate's prison wages toward repayment. The inmate requested a line-item accounting of the billing, as prison policy and the law allows. But the accounting never came. Records show it took prison officials 27 months to respond to the inmate's request, despite six repeated attempts to obtain the information. When the information finally arrived, it offered no explanation of how the prison calculated the officer's lost wages, which totaled $3,896.

After receiving the inmate's complaint, we also could not find anyone who would take responsibility for the calculations. We reviewed the officer's time cards and worker's compensation records, which showed the state actually paid the officer $2,372 during his time off work—about $1,500 less than the prison billed to the inmate.

Top corrections officials ultimately agreed to lower the total amount owed by the inmate. They also agreed to formulate a system-wide policy for prison officials on the appropriate calculating and handling of restitution claims against inmates.

Can't Win for Losin'

An offender received a major disciplinary report for having a dictionary in his possession he had legitimately purchased a year earlier.

The offender contacted us when none of three different prison employees would help him obtain a copy of his store receipt in order to prove his rightful ownership. At his disciplinary hearing, the inmate told the administrative law judge the book was his, and that he had lost his receipt. He requested additional time to get a copy of the receipt, but his request was denied and he was found guilty.

As a result of the guilty verdict, the inmate's dictionary was confiscated and he faced a spending restriction, loss of earned time, and several days in confinement.

Our office contacted the prison store supervisor to request a copy of the offender's store orders for the time period he stated he had purchased the item. Within the hour, we had all that was needed to prove the offender had purchased the book.

When we shared this information with prison staff, a new hearing was promptly held and completed. The dictionary was returned to the offender and his spending restriction was removed.

Unfortunately, during questioning about ownership of the dictionary, the offender, in his frustration, stated: "I am glad that this place is getting its budget cut." This comment was judged to be "disruptive," so the loss of earned time and the time in confinement remained in place.

Our Services Are Available to:

- All residents of the State of Iowa, including those confined in state institutions.
- Persons from other states and countries who may have complaints against agencies of Iowa government.

But I'm Not a Sex Offender!

Prison officials required an offender to enter sex offender treatment and were denying him visits with his minor son, despite official documentation clearing the offender of any sex offense.

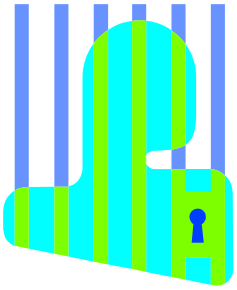
Prison officials routinely require sex offenders to complete treatment before they will support their release to the state's parole board. If the sex offense involved a minor, in most circumstances the sex offender will also not be allowed visits with minors until treatment is completed.

In this case, the offender explained he had pleaded guilty to a sex offense (along with other non-sex related charges) at the advice of his attorney as part of a favorable plea deal. The inmate said his attorney assured him the charge of indecent contact with a child would be vacated on appeal because there was no child involved. Eight years later, however, prison officials still had the inmate labeled as a sex offender and were treating him as such. The offender contacted us when he failed to get the sex offender label removed and the prison's requirements lifted.

In the prison's own records, we found a copy of an appellate court ruling vacating the inmate's judgment and sentence on sex charges and its remand for dismissal. We also found months-old communications among prison officials stating the sex charge was "out" because there was no factual basis to support the guilty plea. Despite these records, the inmate's visitation restriction remained.

We pointed out this information to prison officials and asked why sex offender treatment was being required. Within a week, the offender's treatment requirement was lifted and his minor son was approved for visits.

Confusion Reigns, Parolee Suffers



The wife of an inmate asked for our help in figuring out why her husband remained in prison nearly two months after he received his parole. The inmate's parole was apparently unusual in that it required him to sign in at a work-release facility before he could be released to the home approved by parole officers.

Corrections officials had reportedly told the woman they were unable to arrange a satisfactory time when they could meet with the inmate at the work release facility.

We asked a district director whether the process of paroling the inmate should take so long. The director promised to look into the situation, and the inmate was sent home within two days.

The director later explained the parole officer was confused by the parole orders, and rather than seeking clarification, he had simply postponed action on the parole. The director acknowledged the parole officer was negligent, and she said a severe shortage of supervisors had contributed to the oversight. She promised to ensure all staff understood protocols for that specific type of parole in the future.

We suggested the inmate file a tort claim with the state for any time he spent in prison unnecessarily.

Policy on Visits With Minors Misleads; Improvements Made

A 22-year-old inmate who had successfully completed sex offender treatment asked us to intervene when prison officials denied him visits with several of his minor nieces and nephews.

Prison policies generally allow sex offenders to have visits with minors after completion of treatment programs. The prisons can deny visits on a case-by-case basis, but must explain why. In this case, the only explanation given to the inmate was that a denial was in "alignment with institutional practice."

We asked prison officials to explain the meaning of the phrase. The superintendent said it was standard practice at that prison to allow visits with minors only if they were the offender's children. We pointed out existing prison policies did not distinguish one minor visitor from another. We sought to know why that distinction was being made.

Corrections officials agreed the decision to deny the inmate's visits appeared arbitrary. They agreed to rewrite the policy to require prisons that deny visits with minors to make their decision based on specific factors—the inmate's progress in treatment, whether they passed a polygraph test, the potential for family reunification, and the welfare of the child.

Officials also agreed to entertain an appeal of the inmate's denial based on our findings.

2010: Contacts Opened by Agency

Name	Information Requests	Non-jurisdictional Complaints	Jurisdictional Complaints	Pending	Total	Percentage of Total
Administrative Services	7	0	8	0	15	0.32%
Aging	13	0	0	0	13	0.28%
Agriculture & Land Stewardship	1	0	7	2	10	0.21%
Attorney General/Department of Justice	52	0	9	0	61	1.29%
Auditor	2	0	0	0	2	0.04%
Blind	0	0	0	0	0	0.00%
Citizens' Aide/Ombudsman	57	0	2	0	59	1.25%
Civil Rights Commission	11	0	8	2	21	0.45%
College Aid Commission	0	0	1	0	1	0.02%
Commerce	9	0	10	0	19	0.40%
Corrections	38	0	789	41	868	18.41%
County Agricultural Extension	0	0	1	0	1	0.02%
Cultural Affairs	1	0	0	0	1	0.02%
Economic Development	2	0	1	1	4	0.08%
Education	3	0	5	0	8	0.17%
Educational Examiners Board	0	0	1	0	1	0.02%
Energy Independence	0	0	10	0	10	0.21%
Ethics and Campaign Disclosure Board	0	0	0	0	0	0.00%
Executive Council	0	0	0	0	0	0.00%
Human Rights	4	0	3	0	7	0.15%
Human Services	33	0	305	23	361	7.65%
Independent Professional Licensure	0	0	6	0	6	0.13%
Inspections & Appeals	10	0	35	2	47	1.00%
Institute for Tomorrow's Workforce	0	0	0	0	0	0.00%
Iowa Communication Network	0	0	1	0	1	0.02%
Iowa Finance Authority	0	0	2	0	2	0.04%
Iowa Lottery	1	0	1	0	2	0.04%
Iowa Public Employees Retirement System	1	0	0	0	1	0.02%
Iowa Public Television	0	0	0	0	0	0.00%
Law Enforcement Academy	0	0	0	0	0	0.00%
Management	1	0	2	0	3	0.06%
Municipal Fire & Police Retirement System	0	0	0	0	0	0.00%
Natural Resources	10	0	26	0	36	0.76%
Parole Board	10	0	31	2	43	0.91%
Professional Teachers Practice Commission	0	0	0	0	0	0.00%
Public Defense	0	0	1	0	1	0.02%
Public Employees Relations Board	0	0	0	0	0	0.00%
Public Health	18	0	12	1	31	0.66%
Public Safety	5	0	26	4	35	0.74%
Regents	1	0	17	2	20	0.42%
Revenue & Finance	20	0	58	1	79	1.68%
Secretary of State	1	0	2	0	3	0.06%
State Fair Authority	0	0	1	0	1	0.02%
State Government (General)	187	0	95	3	285	6.04%
Transportation	15	0	42	0	57	1.21%
Treasurer	2	0	1	0	3	0.06%
Veterans Affairs Commission	2	0	0	0	2	0.04%
Workforce Development	17	0	61	3	81	1.72%
State government - non-jurisdictional						0.00%
Governor	8	4	0	0	12	0.25%
Judiciary	43	136	0	0	179	3.80%
Legislature and Legislative Agencies	5	6	0	0	11	0.23%
Governmental Employee-Employer	2	37	0	0	39	0.83%
Local government						
City Government	60	0	571	38	669	14.19%
County Government	40	0	674	25	739	15.67%
Metropolitan/Regional Government	7	0	27	6	40	0.85%
Community Based Correctional Facilities/Programs	19	0	196	4	219	4.64%
Schools & School Districts	10	0	49	1	60	1.27%
Non-Jurisdictional						
Non-Iowa Government	34	78	0	0	112	2.37%
Private	104	329	0	2	435	9.22%
Totals	**866**	**590**	**3097**	**163**	**4716**	100.00%

Other Agencies

Life-Saving Agency Collaboration

A central Iowa woman seeking a liver transplant for her gravely ill adult son called us in frustration that she had not yet received a disability determination. The man needed to verify his Medicaid coverage before the hospital could place him on the transplant list.

We contacted the state worker handling the case. She said she was waiting for medical information she needed to process the application, but agreed to make follow-up inquiries immediately. We soon learned the agency had sent the man's case to the Social Security Administration in Maryland as part of a random case review process. The agency flagged the file as urgent, and we contacted federal authorities and our complainant's senator to see what more could be done to speed up the process. The Maryland office quickly issued a favorable decision and sent the case back to the local office. The state processed the sick man's medical assistance application and the hospital placed him on the transplant list.

The extra efforts helped speed up the processing of the man's transplant request from several months to about two weeks.

Agency Sends Two Persons' Sensitive Documents to the Same Party

A woman from northeast Iowa who was awaiting a date for an unemployment hearing was stunned to learn her notice was sent to another person. The person called our complainant to notify her of the misdirected mail, which contained her Social Security number. The woman feared this could lead to identity fraud.

We asked the agency to investigate the cause of the mistake, and found out an automated folding and sorting machine accidentally mailed two different notices to the same address. Staff checked the machine for calibration, apologized to our complainant, and agreed to provide her with one year of credit monitoring to ensure her identity had not been stolen.

With the (Wrong) Click of a Button, Man is Billed $10,000

A central Iowa man alleged the State was attempting to collect much more in back income taxes than he believed he owed. Although he believed he owed no more than $2,000 or $3,000, the state had already collected $10,000 from him and claimed he owed another $10,000.

In our review of the man's history of past income tax payments, we found he had failed to file taxes for a number of years and did owe a substantial sum. However, we did raise some questions with the taxing agency that caused officials to take a second look. Upon further review, the agency determined the taxpayer indeed did not owe $10,885, as billed, but instead owed only $125.47. The agency requested additional information from the man that it said may reduce that amount even further. Officials discovered an examiner "forgot to click a couple of buttons," which resulted in the excessive billing to the taxpayer.

Seat Belt Law Wrongly Applied

An employee of an entity that delivers food to the elderly complained workers were being pulled over and ticketed by police for not wearing their seatbelts. The complainant argued the tickets were unreasonable for people who made frequent stops in residential areas, and she feared that such a precedent would turn away volunteers.

We reviewed the state's seatbelt law and found a provision that allows delivery drivers who stay under 25 miles per hour not to wear the safety devices. Armed with this section of the Iowa Code, our complainant discussed the matter with the law enforcement agency that issued the tickets. She later informed us the agency dismissed the tickets voluntarily.

Unemployed Iowans Get Relief Following Call to Ombudsman

When unemployment is low, the Ombudsman's office generally receives few complaints involving unemployment benefits. Unemployment in 2010, however, was not low. In three separate cases, our office was able to help Iowans who experienced significant delays in receiving their unemployment benefits.

In one case, a woman said she was approved for unemployment benefits after an appeal hearing that was held two months prior. But she still hadn't received any actual benefits, even after making several phone calls to the state agency that handles the claims

We contacted an agency supervisor. Within an hour, the supervisor agreed the woman had a legitimate complaint—she should have been receiving benefits for the prior two months, but had not due to a glitch in a computer system. The supervisor took quick action to get the woman's benefits going immediately.

We thanked the supervisor for her quick action, but we also asked why the problem had not been resolved sooner, since the woman said she had made several calls to the agency. Two weeks later, we received a letter from a second agency supervisor. Based on an internal investigation, the agency offered to make a formal apology to the woman for not correcting the problem sooner. While staff had no documentation the woman had called previously, the supervisor wrote "we will take her word for it" and reminded front-line staff "they are to be professional, responsive and thorough in their delivery of service."

In a second case, a woman had applied for unemployment benefits nearly three months earlier. The agency sent the woman a notice indicating she'd been approved pending a telephone hearing, but she never received information about when the hearing would be held, nor had she received any payments.

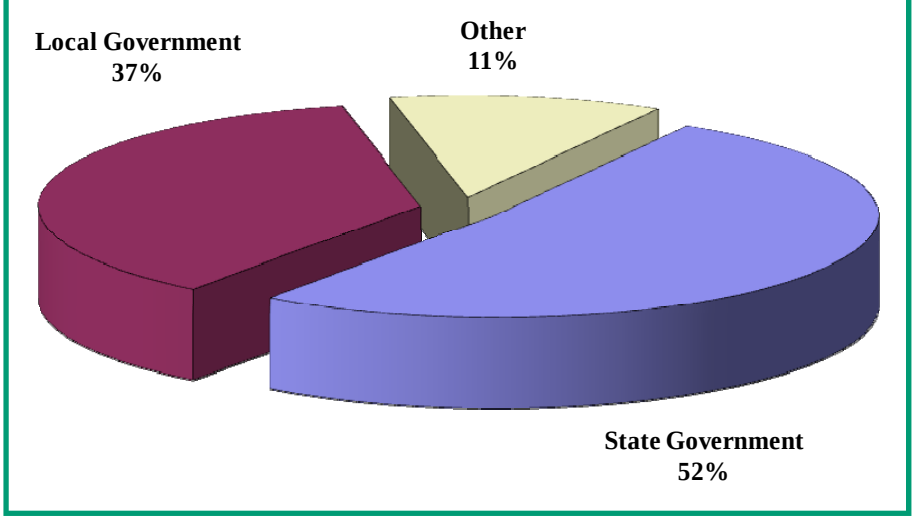
We immediately called an agency administrator who agreed the woman's hearing should have been held shortly after her application was received. He offered to call the woman that night to resolve the problem. We later learned the agency released 11 weeks of unemployment benefits to the woman that day, and a fact-finding hearing was scheduled.

In a third case, a woman applied for unemployment benefits shortly after losing her job. After waiting about six weeks with no meaningful responses, she called our office for help. All the woman knew was that her employer was going to contest her claim. She said money was getting tight and she really needed unemployment benefits.

We contacted an agency division manager. Within a day, he advised that a fact-finding hearing had been scheduled for the following week. He added that the agency had violated federal guidelines on the length of time it took to take the case to a hearing. He explained a final decision should have been reached several days earlier, according to the guidelines. He admitted the agency was also in violation for most cases requiring a fact-finding hearing.

The violations, he said, were the result of several factors. The first was the protracted recession which had put the unemployment rate over 10 percent—an extremely high figure, historically speaking. Additionally, a number of critical employees had taken early retirement in 2010. The manager said the agency had been devoting much of its attention to resolving these delays and was completing training for a number of new employees who would soon be processing unemployment claims.

Subjects of Complaints to the Ombudsman



Revenue Agency Agrees to Return $1,250 to Delinquent Account Holder

When the state seizes your entire bank account and refuses to negotiate with you, calling the Ombudsman's office might just be your best move.

That's what one northern Iowa woman learned last year. She owed money on four court-ordered fines. She had been making monthly payments towards the two biggest fines, but was not able to make any payments toward the other two cases.

Then, one day, she received notice that state tax collectors had just seized her entire bank account, about $2,500, leaving her with no money.

The woman tried working with an agent to get some of her money returned. She hoped to get a least half of her account back, but she felt the agent was not being reasonable in his response.

In explaining her complaint to us, she acknowledged she owed the money in question. But she also noted she has other legal debts that she is attempting to pay off as well.

We contacted an administrator for the state agency and explained the woman's request. The next day, he directed the agent to release half of the money back to the woman and set up a payment plan for the remaining debts.

After careful investigation, research, and analysis, the Ombudsman makes recommendations to resolve complaints that are found justified. Additionally, the Ombudsman may provide information and answer questions relating to government.

Lien on me

We received two complaints in the same week about unreleased liens for tax problems that had been long resolved. Both of the tax obligations had been paid over six months earlier and both complainants discovered the problem when they attempted to refinance their homes.

The state agency that placed the liens admitted to us both liens should have been released months prior; however, the agency was unable to provide a specific explanation as to why this had not taken place. The agency blamed staffing shortages but conceded the liens still should have been released within 30 to 60 days of payment.

We were told an automated system was scheduled to be implemented later in the year that would automatically release a lien upon payment of the obligation. Our complainants' liens were released within a week of contacting our office.

More "Robocalls" Reported

Over the course of three months in 2009, we received calls from five different people who said they were receiving automated phone messages from a state agency urging their prompt reply. In each case, the citizens returned the calls, only to learn they had been contacted by mistake. Yet the calls continued, in some cases, as often as twice a day.

At that time, the agency, which collects debts for the state, told us new software prevented them from easily removing the mistaken phone numbers from their calling system. Soon after the agency thought it found a fix to the problem, the calls started up once again. We reported the scope of the problem to the agency's director and asked for a response. Almost immediately, the agency recognized the annoyance it was causing some citizens and put a halt to the calls until it could devise a permanent solution.

Six months later, in June 2010, we received a similar complaint, and two more in August 2010. We reported these new problems to the agency, noting the agency had made previous assurances they would be stopping the calls. The agency quickly discovered some telephone numbers thought to have been removed were "stuck" in its computer system. Our complainants' phone numbers were promptly removed from the automated system, and we have not received any additional complaints since.

Local Government

Smooth Road Makes for Rough Ride

A road-widening project helped ease traffic congestion in one east-central Iowa town, but it made matters more difficult for one family whose driveway was significantly altered in the process.

The family told us city officials assured them their property would not be affected by the project. Once the road went in, however, its shoulder cut into a hill that supported the end of the family's driveway. The result was a steep drop-off that prevented drivers from entering or exiting the driveway without scraping the bottom of their vehicles. The family also argued the landing of the driveway was unsafe because water was pooling there and would freeze during the winter. The family said it was forced to spend $8,000 or more to mitigate the problem, which it blamed on the road contractor. The contractor maintained the project was completed according to plan and the angle of the driveway was within acceptable limits.

We quickly discovered that prior disputes between the city and the family were coloring the city's response to the complaint. Disregarding that past history, we set out to independently review all of the project plans in an effort to determine whether the project was actually faulty. We also discussed the technical documents with engineers. After our review, we concluded the designers had inadvertently omitted the road's shoulder from part of its plans, meaning they had miscalculated the effect the road would have on the family's driveway. We then reviewed the family's bills related to flattening and supporting the driveway and informed the city the family's request for $8,000 appeared reasonable.

Shortly thereafter, the mayor and city council negotiated a settlement with the road contractor and agreed to fully reimburse the family.

City Streets Worker Retaliates Against Citizen Whistleblower

In a published report, we concluded the City of Stuart's street superintendent committed official misconduct when he repeatedly used city equipment at his home despite admonitions from city officials and the frequent complaints of citizens. In two documented instances, the street superintendent was paid overtime wages to clear his own driveway with a city plow.

State law generally prohibits public employees from using public property for personal gain.

Later, during heavy snow storms, the street superintendent, Bob Airhart, issued a sidewalk citation to a citizen who reported his improprieties to city officials. We determined Airhart issued the citation in retribution for the citizen's complaints.

We also concluded Stuart's mayor, city council, and city administrator knew about Airhart's actions but failed to adequately address them. This occurred despite a city policy that forbade the personal use of city equipment.

The 22-page report, entitled "*Turning a Blind Eye*," made six recommendations to Stuart city leaders to tighten up policies and practices. The city agreed to adopt all six recommendations. We referred our investigation to the Adair County Attorney for its consideration of prosecution.

The full report can be read at www.legis.state.ia.us/Ombudsman/reports/.

The Ombudsman investigates complaints against agencies or officials of state and local governments in Iowa. We perform this service, without a fee, in an independent and, when appropriate, confidential manner.

Better Late Than Never: Town Returns Water Deposit

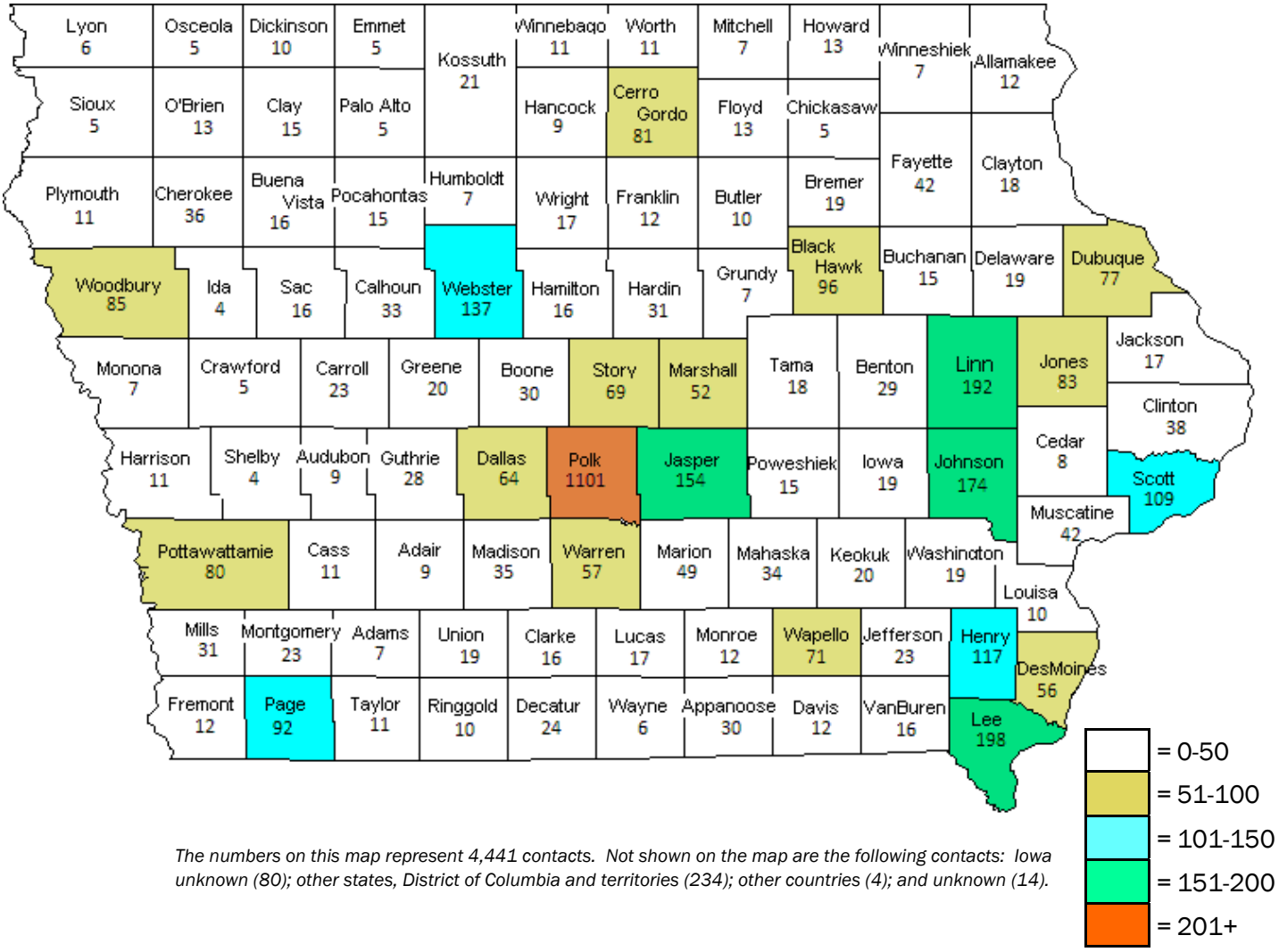
How long should a city be able to keep the deposits paid by new water customers? This question was raised by a small town homeowner who had been a municipal water customer for six years and counting. When she moved in, the city required her to make a $75 deposit to obtain water service for the home.

With the passage of six years, the woman felt the city should return the $75 to her, in light of her good payment record. The city had told her the deposit would be returned only if she moved away or died. The woman felt this practice was not reasonable or fair. We reviewed state law and several similar complaints previously handled by our office. We found that at least some smaller towns did refund a homeowner's water deposit after one year, provided the account is in "good standing."

We then called the city clerk. We were surprised when the clerk explained her standard practice was to return deposits to any homeowner whose account is in "good standing" after one year. The clerk then agreed to check the records for the status of this particular account.

The clerk called us back later the same day with another surprise: Not only was this account in good standing, but the woman's deposit should have been returned to her five years prior. Apparently, this did not happen due to an unintentional oversight by the city. The clerk said she would apologize to the homeowner and immediately refund her $75 deposit.

Where is Your County?
Contacts Opened by Citizens' Aide/Ombudsman In 2010



The numbers on this map represent 4,441 contacts. Not shown on the map are the following contacts: Iowa unknown (80); other states, District of Columbia and territories (234); other countries (4); and unknown (14).

Grieving Family Receives Refund of Faulty Fee

Our office was contacted by the sister of a suicide victim. The victim was driving a car registered to their mother at the time of her death and the police impounded the car as part of their investigation.

The caller and her father told us they attempted to retrieve the car from a private towing company on the same day they were notified the police investigation was complete. The towing company told our caller their mother needed to sign for the car since she was the registered owner. The whole family returned to the lot the following day, at which time her mother was charged a $360 impound fee.

After the family complained to the police department, the fee was reduced to $288.27. The caller still questioned whether her mother should be charged any impound fees for the time the vehicle was held by police.

When we contacted police, officials justified the impound fee because they had contacted the family four days before the car was picked up. When we relayed this information to the caller, she shared a time-stamped voicemail recording with us that disputed the police version of events and supported their own. We copied the recording and provided it to the police chief, who later agreed to refund the entire fee to the family.

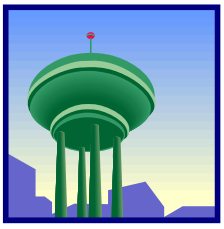
Rattrap Flourishes Due to Legal Misunderstanding

Raccoons, mice, and weeds had overrun an abandoned house in rural north central Iowa, but despite overwhelming smells of mold and animal feces coming from the property, a nearby neighbor said she could not convince officials to do anything about it.

The man charged with policing nuisances in the county told us he sympathized with the neighbor, but was instructed by his superiors that nothing could be done. After further inquiry, we learned a county attorney had told officials the county lacked the authority to clean up the property. Aware that Iowa's counties indeed have the authority to abate residential nuisances, we pointed county officials to the law and asked them to reconsider action at the site. Complicating the matter was the fact that the county in question contracted with staff of a neighboring county to do the work.

At our urging, a different county attorney reviewed the information and agreed the county could order the owner to clean up the house, or do it themselves and bill the owner for the work. The county has since made several attempts by letter and public notice to find the owner, without success. The house is scheduled to be demolished by local officials in 2011.

City's Wasteful Spigot Finally Turned Off



A resident of a south-central Iowa town said regular spillage from the city's water tower had been undermining her property for years—causing water to bubble up in her garage and her swimming pool to collapse. She said the city refused to address the issue and knowingly allowed the tower to continue to overspill.

When we determined a state agency had regulatory authority over municipal water towers, we asked the agency to investigate. The agency informed us that it had responded to a similar complaint two years earlier, but it agreed to do a follow-up inspection of the tower.

The agency told us the water tower was not contributing to the resident's water woes, which were caused by the home's proximity to a former drainage way, heavy rains, and the absence of a storm water collection system in town.

However, the agency agreed that the city was wasting a significant amount of water through spillage, at a significant cost to the city. The agency noted a fix would be expensive for the city in the short term, but not as expensive in the long term, as the city purchased all the water it used (and spilled) from a rural water district. The agency offered the city three options to permanently stop the spillage, and officials agreed to make adjustments and improvements to minimize the spills.

Whose Interest is Being Served?

A conflict of interest was brought to our attention concerning a fire chief who also sat on the city council of the eastern Iowa town of Walker. It was alleged that Chief Bill Smith regularly voted on matters pertaining to the Fire Department that came before the council. Of particular concern was a vote cast by Smith as a council member to retain himself in office as fire chief.

Relying upon opinions issued by the Iowa Supreme Court and the Iowa Attorney General's office, we criticized Smith for not abstaining in these instances. The court had said that the "integrity of representative government demands that the administrative officials should be able to exercise their judgment free from objectionable pressure of conflicting interests." It is well established elected officials must always steer clear of giving themselves any personal advantage, financial or otherwise, in the exercise of their public duty. Even the *potential* for a conflict of interest must be avoided for the sake of maintaining the public trust.

The city attorney defended Smith's actions by asserting an amendment to the Iowa Code in 2004 allows a city council person to also hold both the office of volunteer fire department chief, as long as the area served by the fire department exceeds 2,000 people. The city attorney inferred that since the Legislature allowed an elected official to hold both positions, the Legislature also meant to imply that no conflict of interest could ever arise for the person holding both offices. The city attorney could not cite any legal authority that supported this assertion.

We disagreed with his argument. The doctrine of incompatibility (whether a person can legally hold two different offices at the same time) is a separate issue from that of conflict of interest. The fact that two offices could be held simultaneously does not remove all potential for a conflict of interest. To the contrary, the potential for a conflict of interest is heightened. Officers must be vigilant to discern which of their actions are serving which interest. A conflicted official not only gains personally from taking part in such a vote, but also runs the risk of contaminating the vote of the remaining officials, thereby casting doubt on the impartiality of the body's deliberations.

Smith clearly benefited from his vote to affirm his appointment as fire chief because it broke a tie among the other council members. He should have abstained from voting on this issue. If a council member seeks to hold another position of responsibility, power, and authority, a conflict of interest clearly arises when he creates an advantage for himself by voting on his own appointment. Even the city attorney told the council the better practice would be to abstain from voting in such instances.

Our published report identified a number of situations when Smith voted as a council member on matters affecting the Fire Department and his position as fire chief. We concluded Smith was legally obligated to abstain from voting on such matters, and must do so in the future, stating his reasons for abstaining in the council minutes. Additionally, we recommended the council reconsider its actions on those matters which were rendered invalid because of Smith's illegal vote.

The ombudsman system is based on the principle that everyone has a right to have his or her grievances against the government heard, and if justified, satisfied. The Office of the Citizens' Aide/Ombudsman provides Iowans a non-partisan independent agency where action can be taken to resolve their complaint.

Access the full report:
http://www.legis.state.ia.us/caodocs/Invstgtv_Reports/2010/CIWPA002.PDF)

Give Me Credit

How would you like to spend 414 days in jail and get credit for serving only 35? That's what had happened to an offender who contacted our office, and he wasn't very happy about it.

Prior to being sent to prison, the offender was housed at a couple of jails. A month after he was initially booked at one jail, he was transferred to a hospital and was later released to a second jail until the original jail could retake custody.

We located police records, prison records, and online court records that clearly showed the offender was in jail from October 2008 to December 2009. So why wasn't the jail giving him credit? We inquired with the jail administrator, whose records showed the inmate had been housed there for only 35 days. When we referenced the information we had compiled, the jail administrator requested a couple of days to research the issue.

Less than a day passed when the jail administrator called us back to say, "How's 414 days sound?" He explained the inmate was originally booked under one name, then was given a slightly different name upon his return from the hospital. When the offender asked the jail to calculate his credit, he used the name under which it had originally booked him.

The jail administrator sent a letter to the offender explaining the confusion. He also sent the prison a form crediting the offender with 414 days of time served.

Eight Steps for Resolving Your Own Complaints

"What steps have you taken to resolve the problem?" That is often one of the first questions we ask people who contact us with a complaint.

Under law, one of the scenarios in which the Ombudsman is not required to investigate is when people have available "another remedy or channel of complaint which [they] could reasonably be expected to use." [Iowa Code section 2C.12(1)] And it is not just the law, it is also simple common sense. Disputes and grievances can be resolved with simple, honest communication. Certainly not all the time, but enough that it is almost always worth trying *before* filing a complaint with our office.

Here are some basic, important guidelines to follow when you are trying to resolve any "consumer" problem, whether it involves a government agency or not.

1. Be pleasant, persistent, and patient. The wheels of government usually move, but not always quickly. We have found the citizens who are best able to get problems resolved have three core traits in common: they treat everyone with respect and courtesy; they don't give up easily; and they realize that most problems are not resolved overnight.

2. Exercise your appeal rights. Does the problem involve a decision or action that has a formal appeal process? If you are not sure, ask the agency. The right to appeal usually has a deadline. Respond well before the deadline and consider sending your appeal by certified mail. If you cannot write before the deadline, call to see if you can get an extension or if you can appeal by telephone.

3. Choose the right communication mode. If you are not filing a formal appeal, decide whether you want to contact the agency in person, over the phone, or through a letter or e-mail. Go with the mode you are most comfortable with, unless the problem is urgent, in which case you will probably want to rule out a letter or e-mail.

4. Strategize. Before making contact, consider who your likely audience will be. Will it be someone who can actually fix the problem to your satisfaction? If not, your initial goal might be along the lines of patiently explaining your concern, listening to the response, and then politely asking to speak with a supervisor—perhaps even more than once!

5. Plan your questions. Write down your questions before calling or visiting the agency. Be sure to specifically ask which law, rule, or policy authorized the agency's actions. Then ask for a copy of the law, rule, or policy (so you can read it for yourself, to see whether you agree).

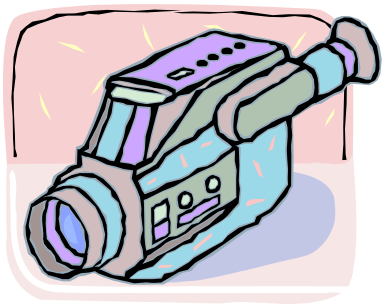
6. Be prepared. Be sure to have any relevant information available before contacting the agency. If you are wanting face-to-face contact, we recommend you call first. A short phone call could save headaches and wasted time, such as finding that the person you need to talk to is sick that day.

7. Keep records. Take good notes of all conversations. This should include the person's name and title, the time and date, and what they told you. Keep all records received from the agency, even envelopes. Also keep copies of any letters, faxes, or e-mails you send to the agency.

8. Read what is sent to you. Carefully read everything from the agency, front and back including the fine print!

If all that fails, contact us. Our office has authority to investigate complaints about most agencies of state and local government in Iowa. Major exceptions include the courts, the legislature, and the Governor. We do not have authority to investigate any federal agency.

Jail Criticized for Failure to Videotape Removal of Offender



The main task of any Ombudsman's investigation is to determine whether a complaint is substantiated or unsubstantiated based on the facts. Occasionally, even after reviewing all available information, this review leaves us unable to decide. In these rare cases, we code the complaint as "indeterminate"—neither substantiated nor unsubstantiated. This is what happened in the case of an inmate who alleged that jailers had used excessive force against him.

The inmate was scheduled for a court appearance on charges of assaulting a jail employee when jail staff arrived at his cell to take him to the hearing. The inmate told us that staff assaulted him when they entered his cell to remove him.

We reviewed all relevant records, including incident reports, video recordings, and Taser data records. We also considered information from various witnesses, including jail staff and other inmates who were in the same unit. (The inmates generally alleged staff members were the aggressors and used too much force. Staff, on the other hand, generally alleged the inmate was the aggressor and that the force used by jailers was necessary and appropriate.)

We also found, however, staff had made seven procedural errors where staff did not act in accordance with established jail policy. Most importantly, staff had failed to assign an officer to videotape jailers' "cell extraction" efforts. The other procedural errors involved improper procedures related to the jailers' use of restraint chairs on the inmate after removing him from the cell.

We reported our findings and conclusions to jail officials. In response, jail administrators provided written assurances staff were reminded of the various policy requirements.

Peace By Any Means is Not Always Justice

A small business owner in far eastern Iowa planned to erect a mini-storage complex at the edge of town. The property he purchased for this purpose was zoned "residential." The city told him it did not have the money to install a lift station to provide sewer at the site. However, the business owner told the city council this would not be a deterrent. He asserted storage units do not require a sewage system. Additionally, he argued his facility would generate new property tax revenue for the city. The city council was enthusiastic about the project.

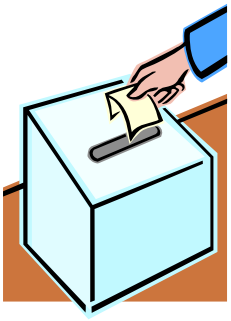
The city's planning and zoning board rejected the owner's request for a variance to allow a commercial building at the site because one of the two adjacent property owners objected. The landowner said he did not want a storage unit as part of his view. The city council initially supported the zoning board's decision, for the sake of peace in the town of under 700 residents. The business owner offered to erect a privacy fence or screen the site with landscaping. Negotiations continued between the objector and the applicant business owner without success.

The business owner called our office for assistance. We contacted the mayor and found city ordinances provided an entirely different procedure for the granting of variances than what the council had followed by tradition. According to the city code, a variance could be denied only for health or safety considerations. The adjacent owner then objected to the project on the grounds the storage units would generate too much traffic. The city council decided that argument had no merit. Following their codified procedure, and discarding those traditions not established by ordinance, the city council rezoned the property to accommodate the storage units and the plans for building proceeded.

After receiving a complaint about a prison or jail, we review the relevant information and decide whether staff:

- **Followed the law and institution policy**
- **Acted reasonably and fairly**

Citizens Prevail With Special Election



Citizens unhappy with their central Iowa city council's choice of a replacement for a deceased council member petitioned for a special election. Under Iowa law, such elections must be called within 90 days of the vacancy, or at the earliest practicable date, if the petition is valid.

After the council position became vacant in late May, the county election commissioner identified a date in August as the earliest practicable date for the special election. However, in order to save money, the city council voted to postpone the election until November, when they could simply add the measure to the ballot of a regularly scheduled general election.

One citizen who disagreed with the council's action asked us to intervene. After a close reading of the state law, we were convinced the city was without authority to delay the special election and expressed our feelings to city officials. Since the general election was well beyond 90 days from the date of the vacancy, and since a special election *could have* been held sooner, we explained Iowa law appeared to *prohibit* the council from postponing this special election. The city council grudgingly agreed and a special election was held in September. The citizens' candidate prevailed and was sworn in on October 11, 2010.

Top Ten Government Web Sites

We've put together a list of ten web sites that will quickly put you in touch with almost any facet of state and local government in Iowa. This is certainly not an exhaustive list, but one that should help you get started in finding whatever you might be looking for.

1. Official State of Iowa website—www.iowa.gov
2. State agencies—http://phonebook.iowa.gov/agency.aspx
3. Legislative—www.legis.iowa.gov
4. Judicial—www.iowacourts.gov
5. Cities—www.iowaleague.org
6. Counties—www.iowacounties.org
7. Public school districts and Area Education Agencies—www.ia-sb.org
8. Iowa law—www.legis.iowa.gov/IowaLaw/statutoryLaw.aspx
9. "Sunshine Advisories"—www.iowaattorneygeneral.org/sunshine_advisories/ (primers on the Open Meetings and Public Records laws)
10. Citizens' Aide/Ombudsman—www.legis.iowa.gov/Ombudsman

Hate Crime Considerations Get Short Shrift

Residents in a north Iowa city were upset authorities declined to file hate-crime charges against a man who hung a threatening Nazi-themed sign on the fence of the home of an African-American family. Media reports indicated prosecutors did not think the act met all the legal elements of a hate crime and charged the man only with third-degree harassment.

Under Iowa law, a hate crime can be prosecuted if racial motivations can be proven only as part of an assault, criminal mischief, a civil-rights violation, or trespass. After a close review of the law, it appeared to us the sign-hanging could have been prosecuted as a trespass hate crime. When we pointed this out to the county attorney, he told us he had not considered trespass as a possible basis for a hate-crime charge. Police, meanwhile, said they understood that charges would not be filed because hanging a sign on a person's fence would not normally be treated as a crime. These responses gave us concern that some authorities might not fully appreciate the intent and the provisions of Iowa's hate-crime statute.

We requested a report from court officials which showed that prosecutors in 61 of Iowa's 99 counties had never charged a hate crime since the law was passed in 1992. At the same time, we learned a state training council had not conducted a hate-crime training course for police and prosecutors since the measure became law, despite a requirement that a course be developed.

A few months after our inquiries, a new training course on hate-crime prosecutions was held for Iowa's county attorneys.

Meanwhile, after the suspect in the crime pleaded guilty to state charges of harassment, federal prosecutors filed separate charges of interfering with the housing rights of the family. The man pleaded guilty to the federal charges and was sentenced to eight months in prison.

Toll-Free Numbers

State Government

Aging (Department)-Long-Term Care Ombudsman	1-866-236-1430
Blind (Department)	1-800-362-2587
Child Abuse/Dependent Adult Hotline	1-800-362-2178
Child Support Recovery Unit	1-888-229-9223
Child Advocacy Board	1-866-448-4608
Citizens' Aide/Ombudsman	1-888-426-6283
Civil Rights Commission	1-800-457-4416
College Student Aid Commission	1-877-272-4456
Commission on the Status of Women	1-800-558-4427
Consumer Protection Division	1-888-777-4590
Crime Victim Assistance Division	1-800-373-5044
Economic Development (Department)	1-800-245-4692
Gambling Treatment Hotline	1-800-238-7633
HAWK-I (insurance for low-income kids)	1-800-257-8563
Home Health Hotline	1-800-383-4920
Human Services-Administrative Offices	1-800-972-2017
Insurance Division	1-877-955-1212
Iowa Client Assistance Program (advocacy for clients of Vocational Rehabilitation and Blind Department)	1-800-652-4298
Iowa COMPASS (information and referral for Iowans with disabilities)	1-800-779-2001
Iowa Finance Authority	1-800-432-7230
Iowa Waste Reduction Center	1-800-422-3109
Narcotics Division	1-800-532-0052
Nursing Home Complaint Hotline (DIA)	1-877-686-0027
Public Health (Department) Immunization Program	1-800-831-6293
Revenue and Finance (Department)	1-800-367-3388
SHIIP (Senior Health Insurance Information Program)	1-800-351-4664
Small Business License Information	1-800-532-1216
State Fair	1-800-545-3247
State Patrol Highway Emergency Help	1-800-525-5555
Substance Abuse Information Center	1-866-242-4111
Tourism Information	1-800-345-4692
Transportation (Department)	1-800-532-1121
Veterans Affairs Commission	1-800-838-4692
Utilities Board Customer Service	1-877-565-4450
Vocational Rehabilitation Division	1-800-532-1486
Welfare Fraud Hotline	1-800-831-1394
Workforce Development Department	1-800-562-4692

Miscellaneous

ADA Project	1-800-949-4232
Better Business Bureau	1-800-222-1600
Disability Rights IOWA	1-800-779-2502
Domestic Abuse Hotline	1-800-942-0333
Federal Information Hotline	1-800-688-9889
Iowa Legal Aid	1-800-532-1275
Lawyer Referral Service	1-800-532-1108
Legal Hotline for Older Iowans	1-800-992-8161
Youth Law Center	1-800-728-1172

The Ombudsman's Authority

Iowa law gives the Ombudsman the authority to investigate the administrative actions of most local and state governments when those actions might be:

- Contrary to law or regulation.
- Unreasonable, unfair, oppressive, or inconsistent with the general course of an agency's functioning, even though in accordance with law.
- Based on a mistake of law or arbitrary in ascertainments of fact.
- Based on improper motivation or irrelevant consideration.
- Unaccompanied by an adequate statement of reasons.

By law, the Ombudsman cannot investigate the Iowa courts, legislators and their staffs, the Governor and his staff, or multi-state agencies.

Ombudsman—(Continued from page 1)

refused to comply with our request to take sworn testimony from one of its administrative law judges regarding a disciplinary decision. Because the administrative law judge's informal explanation to us about the decision was inconsistent with the warden's and because the warden had communicated with her about the desired sanction before the hearing, we decided it would be best to obtain testimony from her, just as we had done with the warden and her supervisor. That case is currently before an Iowa district court.

* * *

We continued to play an active role on issues related to public records, open meetings, and privacy. We received a total of 263 complaints or information requests about these matters in 2010. Additional information about our casework is in the section of this report dealing with this topic. Through these and other complaints over the years, we have identified some issues that we think should be addressed or clarified by new legislation. This led to my decision to submit two proposed bill drafts in November 2010 for consideration by the General Assembly in 2011.

One legislative proposal sought to expand on the advisory bodies covered by the Open Meetings Law. It also would clarify the applicability of the Open Meetings Law to advisory bodies that make recommendations on policy matters, even if they are not making policies themselves.

The other proposal would create an "open government advisory committee" to examine other issues related to the Open Meetings Law and Open Records Law that require legislative solutions, including:

- creation of an effective administrative enforcement process
- the effectiveness of current exemptions under both laws
- time limits and processes to respond to public records requests
- fees chargeable for public records, including requests for bulk and electronic data
- draft records that may be kept confidential or must be disclosed
- serial gatherings or "walking quorums" by members of governmental bodies

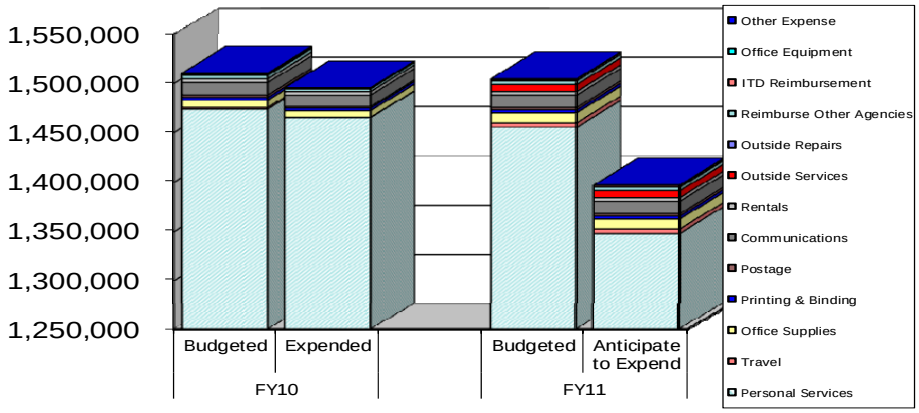
As of the publication date of this report, neither of our proposals was enacted. Nevertheless, our office will continue to be an active participant in sharing information and ideas about these issues to assist policymakers, so that Iowans will have greater clarity about their access to government meetings and records. During times of economic stress, it is especially important for government bodies to be transparent and accountable on decisions affecting citizens.

Most importantly, I am committed to being more proactive on matters about open meetings and public records by doing two things. One is to put more priority on handling complaints, so we can process them quicker. When appropriate, I will refer violations of law to the Attorney General to determine if further enforcement action is warranted. The other is to create a web site focused on the Open Meetings Law and the Open Records Law, to serve as a central source of information for citizens and government officials. Education is the foundation to assuring compliance with these laws.

As you will read in the columns by my staff, besides our daily casework, we have been involved in discussing and offering input on other significant systemic issues—including mental health, developmental disabilities, child support, child abuse registry, and various corrections matters—through our participation or attendance at meetings of work groups, committees, or boards. We will stay involved in these activities in 2011, while fulfilling our casework responsibilities.

I look forward to working with the dedicated staff in our office in serving the citizens of Iowa.

Office of Citizens' Aide/Ombudsman



The above information is presented to meet the requirement that state government annual reports to the General Assembly include certain financial information.

Mental Health—(Continued from page 2)

the prisons' resources. The DOC is currently building new mental health treatment space at the Iowa State Penitentiary in Fort Madison and Iowa Correctional Institution for Women in Mitchellville.

Oakdale also houses three units of severely mentally ill prisoners. These units are not licensed as a hospital. The DOC houses mentally ill prisoners at the Clinical Care Unit at the Iowa State Penitentiary in Fort Madison and Clarinda Correctional Facility, where 400 inmates, including the intellectually disabled, are housed with other inmates among its general population.

Director Baldwin told us the intellectually disabled are a small but growing population in the prison system. He would like to see Iowa maintain a separate facility for the population of mentally ill who are physically assaultive where treatment could be offered with a high-security component. The prisons currently do not have the treatment staff for such inmates, nor does DHS have the security staff for them.

The members of our group shared the belief that jails and prisons are generally not the most effective or the most humane place to house and treat the mentally ill. We discussed our hope the Legislature would take action to improve the situation of this mentally ill population.

The Ombudsman's office also submitted comments last year to the DHS' Olmstead Plan. The purpose of the plan is to ensure "people with disabilities, of any age, receive supports in the most integrated setting consistent with their needs." You can find the Iowa Olmstead Plan at http://iowamhdsplan.org/

The suggestions we offered to the Olmstead Plan were based upon complaints brought to our office and our resulting casework, as well as the results of a survey we sent to all Iowa counties, and information from a workgroup established by our office with agency directors and advocacy groups.

To the plan's principles, we suggested adding language that Iowans with disabilities will live and work in environments that are safe and free from neglect, harm, or discrimination.

We also suggested adding the following objectives or strategies to the plan's goal of access:

- Facilitate communication and collaboration between all parties in the commitment system. Establish a unified commitment process so the mentally ill and their families can know what to expect from the process.
- Collaborate with the judicial branch and mental health centers to provide an assessment process prior to commitment so a clinician is making a commitment recommendation to the judge.
- Review and collaborate on a rewrite of Iowa Code chapter 229 as needed to clarify who is responsible for what role in the commitment process to encourage consistency across the state.
- Establish a pilot project or mandate use of community mental health centers to pre-evaluate alleged mentally ill persons prior to court-ordered commitment.
- Re-purpose the Mental Health Institutes to provide sub-acute care and provide open and immediate access for commitment of "dangerous" individuals (defined as threatening or assaultive to oneself or others).
- Collaborate with the judicial branch to establish mental health courts. Please see the guide, "*Mental Health Courts: A Guide to Research-Informed Policy and Practice*," which was released in September 2009. The guide explains how mental health courts address the issues related to people with mental illnesses in the criminal-justice system.
- Obtain information and support from counties with already established mental health courts.
- Collaborate with county jails and community mental health centers to assure mental health treatment for jail inmates.

Lastly, we suggested adding an objective or strategy to the plan's goal of accountability that DHS collaborate with the Department of Public Health and others to establish teams to review deaths of disabled individuals.

Shortly after we made these suggestions, DHS invited our office to serve on a legislatively mandated task force. The Legislature asked DHS and the judicial branch to facilitate regular meetings and other communication among representatives of the criminal-justice system, service providers, the counties' central point of coordination administrators, and other pertinent state agencies and stakeholders to improve the processes for involuntary commitment for chronic substance abuse under Iowa Code chapter 125 and serious mental illness under chapter 229.

I attended all four of the group's meetings in 2010. The group identified the following low-cost or no-cost solutions to

(Continued on page 28)

Mental Health—(Continued from page 27)

improve the mental health/substance abuse commitment process:

- Develop a web based tool to assist with finding a bed when commitment is determined.
- Resolve the issue of medical pre screens that are mandated by some hospitals.
- Provide sub acute care.
- Utilize the Mental Health Advocate more effectively.
- Remove restrictions on Nurse Practitioner for Outpatient only.
- Provide a pre commitment mental health evaluation.
- Provide annual training on mental health commitment procedures to magistrates, CPCs, physicians, and clerks of court.
- Provide a step-by-step committal procedure for those magistrates across the state that encounter only one or two committals each year.
- Educate psychiatrists on the judicial process and language.
- Revise the standard application and affidavit to include questions regarding dissolution proceedings, domestic violence, and custody issues.

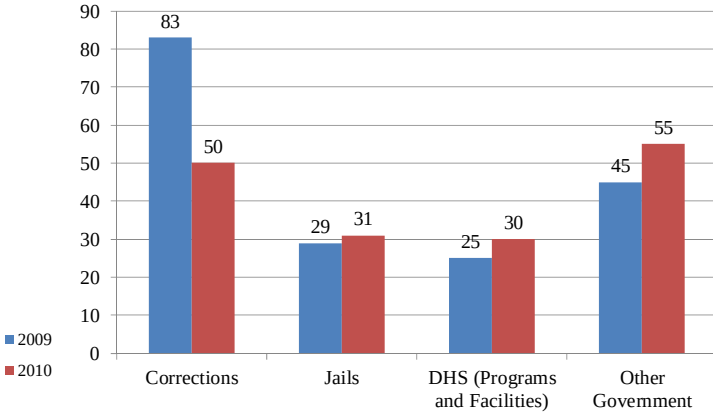
The group will likely continue meeting in 2011 to address such issues as transportation by the county sheriff; the role, supervision, and funding of mental health advocates; and civil commitment prescreening.

* * *

In 2008 our office began to track cases in which the complainants had issues regarding the delivery and availability of mental health services or claimed they were adversely affected due to their mental illness. As shown by the accompanying chart, during 2010 we received 166 jurisdictional cases with a mental health component, a decrease from the 182 cases in 2009. The biggest difference was that cases coded against prisons decreased from 83 in 2009 to 50 in 2010.

I will continue to check our casework for any trends. In addition, I will monitor what develops on mental health legislation and attend meetings with stakeholders, so the Ombudsman can provide information and recommendations to legislators or agency officials when appropriate. I hope I have more optimistic news to report next year.

166 Mental Health Related Cases to the Ombudsman



Public Meetings, Open Records & Privacy—(Continued from page 5)

total number of substantiated cases could increase.

Eleven counties were the subjects of six or more contacts in 2010. In total, these counties represented half of all our open records and open meetings contacts last year. They were: Polk (54), Cerro Gordo (12), Warren (11), Linn (10), Johnson (8), Dallas (7), Dubuque (7), Scott (7), Marion (6), Webster (6), Woodbury (6).

From Our Case Files

The following is some commentary about cases we investigated in 2010 and some suggestions for avoiding the same mistakes.

- ***Open Records***

We received a complaint last year that highlighted an important concept: Information stored in an electronic format should be as readily accessible to the public as information on paper. The variety of complaints we received on fees also illustrated why there isn't one single perfect fee policy for all types of records or for every lawful custodian.

When it comes to fees for records, one thing is clear: The Legislature did not intend for government agencies to make a profit. Any fee charged by a government agency that goes above and beyond "actual cost" violates the Open Records Law and is an improper barrier to the public to gain access to those records. If a policy allows the charging of fees that are not commensurate with the cost of your time and materials, then it needs to be revised. Special attention may be needed for electronic records. Unlike a standard sheet of paper, electronic records

(Continued on page 29)

Public Meetings, Open Records & Privacy—(Continued from page 28)

might never be printed. It is also possible for a massive number of electronic records to be searched, sorted, and compiled in a fraction of time it would take to do the same with paper records. This means that, in some instances, fulfilling a request electronically could be cheaper than printing off paper copies. Requesters should be charged accordingly. "Actual cost" is a fairly simple concept which is often overlooked by public officials.

We also had an interesting case whereby a separation agreement with a key employee was riddled with language about keeping the terms of the agreement confidential. Nothing in Iowa law allowed the terms of the agreement to be confidential. In fact, a 2011 bill (Senate File 289), which just recently became law, affirmatively states that a settlement agreement and any summary of it shall be a public record. Public officials should be cognizant of this prior to entering into such an agreement, to spare themselves some uncomfortable situations.

- ***Open Meetings***

Every year we hear about situations where agencies fail to realize there is a specific process required for going into a closed session. A quick read of Iowa Code section 21.5 will show that the process is not a difficult one to grasp.

There was one instance last year where a government body wasn't even aware that by simply asking the public to leave its open session, it held an illegally closed session. The public is always allowed to be present for the discussions, deliberations, and actions of an elected body unless there is a lawful reason for a closed session. Furthermore, procedural steps must be taken during the open session to vote to hold a closed session and to state the reason and specific exemption for holding a closed session. It is important for public officials to know under what circumstances a closed session can be used, and how to accomplish it.

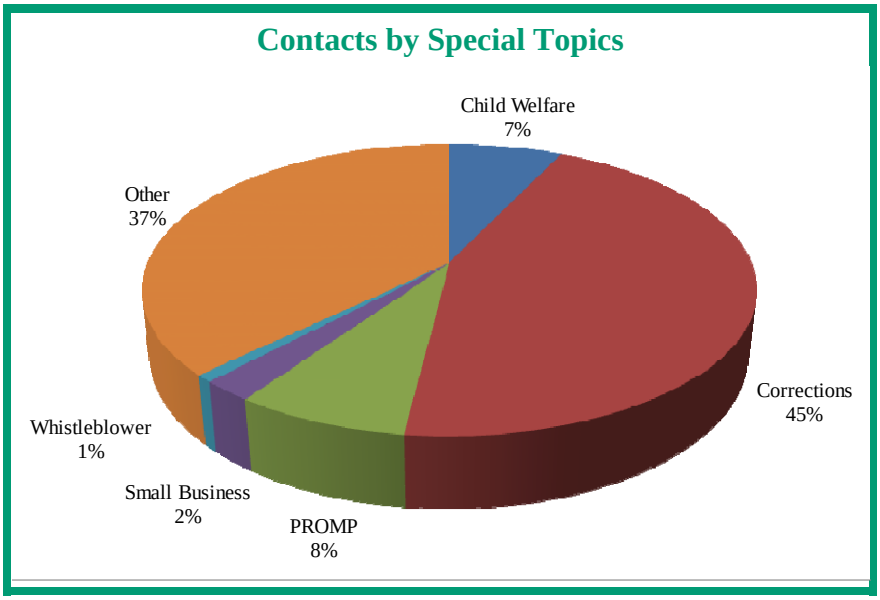
We saw two cases where agencies were not publishing its meeting minutes as required by law. Cities around 200 in population need to pay attention to the data from the 2010 census to ensure they are following the law—all cities above 200 must publish minutes in a local newspaper. Agencies should also be reminded that they have a very short time period to submit the minutes for publication.

Speaking of meeting minutes, they must indicate "information sufficient to indicate the vote of each member present." As one agency found out from our investigation, that requirement cannot be met by using secret ballots to take a vote. Secret ballots are not allowed by state law.

- ***Privacy***

In 2010 we received only a handful of complaints about privacy that resulted from an agency's action or inaction. I think the low numbers can be attributed to an increased awareness about the dangers of identity theft. As a result, agencies have limited the use and collection of personal information such as Social Security numbers. Some agencies that have good reason to collect a Social Security number should know the law requires them to take reasonable steps to protect them from others' prying eyes.

Nonetheless, we do still receive occasional complaints about unauthorized access to personal information by employees and other forms of security breaches.



What's Ahead

Several legislative attempts over the past several years to create an enforcement board or other administrative enforcement process have failed to date. As the Ombudsman has stated in her message, our office will try to put more priority on educating the public and government officials and on resolving complaints about the Open Meeting Law and Open Records Law in the coming year. We hope these efforts will help to minimize the need to resort to enforcement actions to address violations of those laws.

Human Services—(Continued from page 9)

parents or other caretakers accused of child abuse.

DHS begins a child abuse assessment when it receives an allegation that a child has been abused. Every year, DHS intake workers process over 35,000 such reports. Of those, about 25,000 meet the legal threshold for sending an investigator. In 2010 there were 26,413 assessments for child abuse, up 2 percent from 2009. Most abuse reports turn out to be unfounded, but there were 6,794 "founded" abuse assessments in 2010, the second lowest number recorded over the past five years. For more information, see "*Child Welfare by the Numbers Calendar Year 2010*" at http://www.dhs.state.ia.us/docs/childwelfarebynumbers2010.pdf.

A founded case of abuse remains on a person's record for at least ten years before it is expunged or removed. Currently, Iowa has approximately 50,000 individuals on the Registry who were founded or responsible for some type of child abuse. The definition of child abuse is found in Iowa Code section 232.68(2)(a-j). The statutes governing the Registry are found in Iowa Code chapter 235A.

Besides having the stigma of being labeled a child abuser, a person who is placed on the Registry can wind up losing their job or custody of their child. As a result, concerns have developed about that person's due process rights prior to an administrative hearing or final agency decision. Iowa's Registry placement procedures are not unique. Other states also have similar procedures. However, there are a growing number of recent court opinions from other states, including Maryland, Missouri, North Carolina, and Connecticut that have held those states' central registry laws to be unconstitutional because they determined that placement on a child abuse registry prior to a hearing violated the individual's due process rights under the Fifth and Fourteenth Amendments.

In addition to due process concerns, concerns have been expressed in Iowa about the lack of statutory timeframes to ensure accused parents receive timely administrative hearings and final agency decisions. We had found it was not uncommon for an individual to wait up to a year for an administrative hearing when appealing a founded child abuse assessment and placement on the Registry. If the DHS Director is then asked to review a hearing decision, it could take an additional 180 to 190 days before a final agency decision was issued.

Approximately 1,349 appeals of child-abuse determinations were filed in 2010. Of those appeals, 472 proceeded to an administrative hearing, and of those cases, an administrative law judge reversed abuse determinations 103 times. Delays of almost two years for a final agency decision create serious consequences for many individuals seeking to overturn their founded assessment.

In 2010 we provided comments and proposed amendments to establish a new, expedited appeal process and time limits in response to a bill, House File 2223. We recommended a 90-day timeframe for holding an administrative hearing and issuing a decision in most cases, with an expedited process for those persons whose employment situation would be impacted by placement on the Registry. We also recommended an amendment to make an administrative law judge's decision the final agency decision, eliminating the DHS Director's review of that decision as an option. The result would have allowed an individual to pursue their right to a district court appeal in an expedited manner, to avoid additional delay in the process.

House File 2223 did not pass. However, House File 562, which did pass and takes effect July 1, 2011, at least *shortened the time for filing an appeal from six months to 90 days*. Just as significant, House File 562 also requires DHS to work with other entities, including our office, to suggest improvements to the Registry process. Specifically, they are charged to "develop and implement improvements in the child abuse assessment and registry processes and other child protection system provisions . . . to ensure the due process rights of persons alleged to have committed child abuse are addressed in a more timely manner while also ensuring that children are protected from abuse." Options to be considered include who is placed on the Registry and for what conduct, and how long an individual remains on the Registry based upon the severity of the abuse and the rehabilitation of an individual. In the meantime, DHS is also required to implement solutions that do not require legislation to expedite the processing of Registry appeals.

DHS is to report back on these matters to the Legislature by De-

(Continued on page 31)

Human Services—Continued from page 30)

cember 15, 2011. After DHS submits the report, it is likely lawmakers will consider another bill aimed at making additional changes to the child abuse Registry system. All stakeholders, parents, or individuals who care for or work with children should stay informed and involved to ensure the right balance between competing interests is reached.

Corrections—(Continued from page 11)

with the jail administrator in private about it, and he could also simply tell the inmate to get that information from his family.

On the flipside, there are jails that make it a priority to inform inmates at reception about their right to contact our office at any time if they have a complaint. One particular jail administrator told me he allows inmates unlimited calls to our office at no charge to them. When asked why he does this, he said, "Why not, I have nothing to hide?" and the administrator went on to say that he values our impartial input and a chance to improve upon his procedures.

Awareness

The Prison Rape Elimination Act (PREA) became federal law in 2003. One of the findings Congress made in the passage of the law was most prison staff are not adequately trained or prepared to prevent, report, or treat inmate sexual assaults. The Act's purpose is to reduce prison rape by urging correctional facilities to adopt a "zero-tolerance" policy, to complete training and research, and to share information.

Last summer, efforts got underway at Iowa's statewide jail academy to implement PREA into its basic jail school, and its school for veteran jail staff. The initial "meeting of the minds" included a variety of jail staff, from officers to sergeants, and jail administrators to medical personnel. I also attended. The purpose behind the incorporation of PREA into these schools is to make staff aware of tools available to prevent misconduct and to say more than, "Don't do that!" Educating staff about PREA goes hand in hand with teaching integrity, professionalism, security, and report writing.

Complaints Decreasing

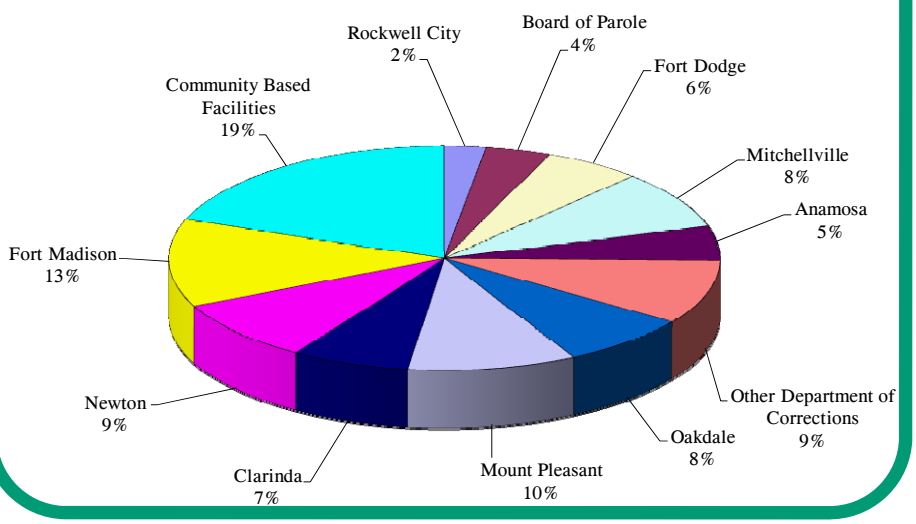
While I was compiling some figures for a report, I noticed complaints about one prison in western Iowa had gone down considerably in 2010. We received 36 percent fewer complaints overall from this prison. Specific categories of complaints which had an impressive decrease were in the areas of disciplinary reports, health services, and transfers, which declined by 59 percent, 50 percent, and 40 percent, respectively. Other areas of complaint at this prison either stayed the same or did not dramatically increase or decrease during the year. Though we can't pinpoint the reason for the decrease, I shared this positive news with the warden.

Recognition Banquet

At another western Iowa prison, a banquet was held for offenders who had been in the Iowa prison system for at least a year and had not received a major disciplinary report or serious minor infraction in a year. The warden said it meant a lot to the offenders to be recognized for doing well instead of being recognized for being in trouble. About 350 offenders were in attendance after receiving personal invitations. Dinner was served by other offenders, table cloths were used, music was played, and there were a few speakers, including the Chief Justice of the Iowa Supreme Court, Mark Cady. Plans for the next banquet are underway, and it appears the prison

(Continued on page 32)

Subjects of Corrections Contacts to the Ombudsman



Corrections—(Continued from page 31)

may have 100 more inmates in attendance in 2011. The warden said to the group his dream is that one day every inmate at the prison would be in attendance. Not a bad dream at all.

Easy Access

Nearly ten years ago, the Iowa Department of Corrections allowed our office to have access to the agency's statewide database of offenders. The database holds just about any information one would need to know about an offender, such as job assignments, disciplinary reports, required classes, banking, visitation details, general everyday notations, criminal charges, time computation, custody scoring, and medical information, to name just a few. Last year, offender grievances were added to the database and we were granted access to those as well.

Because of this access, we are able to review and research more issues without interrupting prison employees to answer our questions. The information we find also allows us to give better advice or better explain matters to offenders or family members. This has proven to be an invaluable resource for our office over the years, and we are thankful to the Department for its gesture of trust and openness.

Ombudsman Outreach

As part of our outreach efforts and staying informed, I continued to attend Iowa Board of Corrections meetings around the state in 2010. This has given me a chance to hear what's going on in prisons and work-release facilities in different parts of the state. It also has allowed me the opportunity to talk with officials from those departments about topics unrelated to complaints.

One of the highlights of the past year was being invited to speak at the Iowa Corrections Association Fall Conference last September. This was a first for our office and we were extremely pleased for the invitation. The venue chosen accommodated both prison and jail personnel, and it was a pleasure to be able to address both groups of employees together. I have since been asked about presenting at another conference this coming fall.

In 2010 I remained a presenter at training classes for new employees in prisons and jails. This placed me in front of a couple hundred new correctional employees from over 30 counties. My topics included the Ombudsman's jurisdiction, how complaints come to our office, and the ways complaints can be investigated. I stressed that our office is an impartial fact finder and an advocate for fairness and justice.

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Ronald R. Rowland, Legal Counsel 1
Retired in June 2010

We're on the Web!

www.legis.iowa.gov/ombudsman