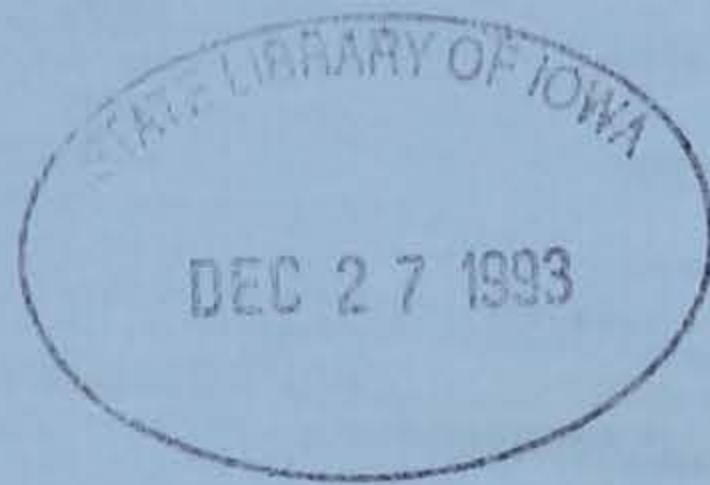


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Office of the Citizens' Aide/Ombudsman  
State of Iowa



**1992**  
**ANNUAL REPORT**

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# Overview of 1992

by

**William P. Angrick II**  
**Citizens' Aide/Ombudsman**

Nineteen ninety-two will be remembered as the year during which we investigated the Des Moines Police Department's arrest of Larry Milton; reviewed the Department of Human Services' responses to complaints from relatives of Jonathan Waller; participated in the gubernatorial commutation of Kathy Sallis' life sentence and her successful out-of-state parole; declined a gubernatorial request to investigate allegations that state Racing Commission officials interfered with DCI background checks of riverboat gambling operations; and pursued litigation with the Iowa Department of Corrections over access by the Ombudsman to a copy of a video tape of a cell house incident during which correctional officials used a chemical deterrent to subdue an inmate.

It was also the year in which I publicly expressed concern that state programs and services were deteriorating because employees were expected to accomplish more while being provided fewer resources resulting in backlogs, delays and errors. Accordingly, we experienced an upsurge of complaints and inquiries totaling 5,251, one of the highest numbers in the history of the office.

Nineteen ninety-two was the year during which we made progress in the establishment of routine services to residents of the four mental health institutes and the veterans home. During the year we initiated services to the state juvenile home, training school and both hospital-schools.

A definite trend we have experienced over the past several years has been the increasingly sensitive and complex nature of the complaints raised to our office. That sensitivity and complexity affected the investigations undertaken. Some complaints, such as those alleging inadequate or overzealous child abuse investigations or improper law enforcement procedures, require collection and review of information specifically confidential by law. Allegations involving conflicting descriptions of what was done or said may require the use of more formalized questioning procedures such as sworn statements to ascertain an objective, independent perspective of the truth. In some of these cases official transcription is needed.

Increasingly our office has been contacted by individuals dissatisfied with the way professional licensing boards have responded to their complaints about regulated professionals. Those boards and their counsel from the attorney general's office take the position the individual making the complaint is not a party and therefore has no standing to review the findings or the rationale for their actions. They have resisted opening the files to this office and as a result their investigations and findings cannot be scrutinized by an outside authority on behalf of a complainant to one of the licensing boards. We are currently litigating in district court one board's resistance to a Citizens' Aide/Ombudsman's subpoena which seeks information to determine whether that board's investigation and response to a complaint were appropriate.



Activity in the receipt and handling of complaints about compliance with Iowa's domestic abuse law continued. Those concerns involve all actors and levels of the system: law enforcement, county attorneys, the judiciary and corrections. Deficiencies in the current law prompted the CA/O to recommend legislative changes to the Iowa General Assembly addressing our concerns. A CA/O assistant helped train correctional employees regarding their enhanced responsibilities to provide educational counseling to convicted abusers.

Attendance at certain American Corrections Association and Probation and Parole conferences during the year brought immediate and direct results, allowing us to assess and work with corrections officials in the improvement of urinalysis testing and meeting the state's obligations to inmates under the Americans with Disabilities Act (ADA).

Commitment was made to enroll CA/O staff in the Council on Certification Licensure, Enforcement, and Regulation (CLEAR, a section of the Council on State Governments) investigator certification program and to date six of the eight professional staff have attended the program and qualified for certification. By the end of 1993 the entire staff of CA/O assistants should be trained and certified by this national organization.

Having experienced a major case investigation early in 1992 and several others throughout the remainder of the year, it often felt as if we were trying to catch up what should have been finished the week before. During the year a more structured monthly management review with each professional staff member was instituted to maintain oversight and consistency in our work. The valuable daily staff meeting was abandoned as staff work loads, schedules and size made that meeting unwieldy. In its place the staff member who took cases on a particular day or who visited an institution reports to the deputy or citizens' aide. We all lose the collegial knowledge gained from a daily staffing of new contacts, a feature of on-the-job training which rapidly exposed newer staff members to the range and variety of the complaints we receive and how they might be resolved. On the other hand we were able to meet the increased complexity and number of contacts without developing many significant delays in the performance of our duties.

During 1992 the Iowa Code Editor prepared the 1993 Code of Iowa in which the statute creating the office of Citizens' Aide/Ombudsman was changed from Iowa Code Chapter 601G to 2C. This reorganization of the Code places the CA/O statute with the others defining the legislative branch of government. A copy of Chapter 2C is printed at the end of this annual report.



*In 1986 I appeared on a panel of a conference, Privatization - An Option, sponsored in Des Moines by a number of community organizations. Subsequently I was asked to write my remarks as an opinion published in the Drake University Institute of Public Affairs and Administration's News and Notes and reprinted in The Iowa County Magazine. Recently I was asked to present a guest editorial on privatization for the Alaskan Ombudsman's 1992 Annual Report. When re-reading this piece I was struck that it is probably more timely for Iowa now than it was in 1986, hence the decision to reprint it in this annual report.*

## Privatization: Optional Accountability

Privatization of public services has received considerable attention and comment in recent years. The concept is not exceptionally novel. But its attractiveness, especially in a time of reduced public revenues, has been on the increase. Public interest in this option is reflected in the number of professional journal articles, news media stories, forums and conferences.

The range of services and responsibilities which can be, and have been, privatized vary. Some are capital intensive and technologically complex, e.g., waste water treatment. Others may be labor intensive and require interpersonal skills and specialized training, such as correctional services.

A debate has developed about the concept and practice of privatization. On one side are the proponents who contend the private sector can operate many public programs more efficiently and effectively than government. And still make a profit! The opponents argue that the price of privatization is lower employee wages and reduced quality of service. Proponents of the concept tend to include the taxpayer watchdog organizations and those individuals favoring a reduction in the costs of government, as well as the private business sector which may envision a double advantage of lower taxes and expanded profit-making opportunities. Various exponents of the privatization option have established research and information centers or institutes such as The Local Government Center and The Privatization Council. The vocal opponents have been the public and private sector unions which foresee the economic welfare of their memberships as primary losers in a move toward privatization. Other public sector opponents are the administrators and managers whose responsibilities may be reassigned in a privatization project.

To the best of my knowledge, to date, a relatively silent party has been the program client or consumer of the government service. These individuals are among those whose reaction should be sought in any decision to privatize; and their perspectives would prove valuable in the evaluation and modification of existing privatization efforts. Rather than enter into the private/public debate as defined by the vocal participants to date, I wish to offer a number of cautions and criteria to be considered whenever implementing a privatization decision.

1. A decision to privatize should not be made upon cost savings factors alone. Cost effectiveness must be balanced with cost benefit analysis, and a paramount consideration should be given to any reduction in the level or quality of services delivered.



2. If service quality or delivery is to be reduced or modified, those decisions should be made by a governmental authority responsible and responsive to the citizenry.

3. Privatized programs and services should not be allowed to internalize client or consumer complaints and appeals. If an individual is denied a service, reduced from a previous level of benefit, those decisions should be reviewable upon appeal or petition to a governmental authority.

4. Those governmental authorities which choose to experiment with privatization should ensure that a precise, preferably written understanding of the level of services and oversight is agreed upon before transfer.

5. Initial experiments with privatization should be sunset, either by written contract or legislation (statute or ordinance). While the nuances of a privatization project are administrative, the fundamental commitment should reflect legislative intent and approval.

6. A state or regional inventory should be undertaken to identify the privatization already established and selected case studies should be made of those which have failed. This task may be best undertaken by a state commission on intergovernmental relations or a university institute of public affairs or administration.

7. Criteria for governmental authorities considering privatization should be developed. This task may be suitable for a legislative interim study or perhaps the membership associations of municipal, county and school district entities.

8. As with all management strategies, privatization should be approached as an option; it is not a panacea.



# Annual report narrative

During the calendar year 1992 the office of Citizens' Aide/Ombudsman received 5,251 contacts from individuals with complaints or requests for information. These contacts were received from each of the 99 Iowa counties, 40 states, the District of Columbia and three foreign countries. A map illustrating the geographic distribution of the contacts originating from Iowa is included elsewhere in this report.

Individuals may contact the office by telephone, TDD, FAX, mail or in person. Flexibility is sought and there are no initial forms to complete. However, written complaints may be requested when the issues are detailed, complex or sensitive. Written complaints are generally requested for complaints dealing with law enforcement. During 1992 contacts were initiated with the office in the following proportions:

<u>SOURCE</u>	<u>TOTAL</u>	<u>PERCENT</u>
Telephone	4,059	77%
Institutional Visit	566	10%
Mail	534	10%
Office Visit	81	1%
Self-Initiated	8	less than 1%
Site Visit	3	less than 1%
	<hr/> 5,251	100%

In 1992 approximately 17 percent of the 2,213 jurisdictional complaints received were found to be justified or partially justified; 37 percent were determined not justified; and 46 percent were either referred, withdrawn or there was no basis to evaluate the merits of the complaint.

Non-jurisdictional complaints accounted for 1,009 of the contacts received in 1992. Jurisdictional information requests numbered 999 during the year, while 659 of the contacts were non-jurisdictional information requests. Sixty-four contacts were of undetermined nature.

Of the 5,251 contacts received during 1992, 94 percent were completed and closed during the year. Three hundred and seven contacts remained open and under investigation into 1993.

The length of time a contact remained open -- that is, until the complaint was evaluated as justified or not justified, and if determined to be justified an equitable resolution achieved; the information located and provided; or an appropriate referral made -- ranged considerably. Statistics demonstrate 87 percent of the contacts were completed in 60 days or less.



<u>DAYS OPEN</u>	<u>NUMBER OF CONTACTS</u>	<u>PERCENT</u>
10 days or less	3,539	67%
11 - 30 days	660	13%
31 - 60 days	346	7%
61 - 90 days	165	3%
91 - 180 days	189	3%
181 days or more	45	less than 1%
Remained open into 1993	307	6%
	<u>5,251</u>	<u>100%</u>

Approximately 19.1 percent of the contacts dealt with divisions, institutions, or programs of the Department of Corrections and the Board of Parole. Lesser numbers involved the Department of Human Services (10.4 percent); the Department of Transportation (2.5 percent); and the Department of Employment Services (1.9 percent). Municipal government generally accounted for 9.5 percent and county government generally comprised 7.8 percent of the contacts received during the year. Municipal and county government complaints increased as we received markedly more police, sheriff and jail complaints during the year than we have previously. Less than one percent pertained to schools and school districts. A complete listing of the agencies, levels of government, and other categories about which the Ombudsman received contacts is presented elsewhere in this report.

The Citizens' Aide/Ombudsman has statutory authority to issue reports regarding governmental officers and agencies. These reports may be either critical or special in nature. A critical report may conclude an agency or official acted arbitrarily, capriciously, unreasonably, or contrary to law. A special report details investigative findings that are not critical of an officer or agency yet involve matters sufficiently important or which have generated public attention to a degree that the Ombudsman believes a public statement is necessary. Copies of any public reports issued by the office are available upon request.

In 1992 the Citizens' Aide/Ombudsman issued one special report, "Investigation of the Des Moines Police Department: Use of force in the arrest of Larry Milton, review of police internal affairs investigation system, review of police training procedures." While this report exonerated three Des Moines Police officers from allegations of use of excessive force in an arrest, it also made findings and offered recommendations for improvements in the internal affairs complaint handling procedures of the Des Moines Police Department. Later in the year Des Moines Police Chief William Moulder and Des Moines City Manager Cy Carney established an Office of Professional Standards in the police department. That move, suggested in our report, appears to address the structural/organizational concerns raised by the CA/O in the Milton report.



# Legislative recommendations

The CA/O made the following legislative recommendations to the 1992 Iowa General Assembly, entitled:

1. "An Act relating to information subject to the review or control of the office of Citizens' Aide." (Amended versions of this bill draft, HF 2394 and HF 2487, twice passed the General Assembly and were both vetoed in 1992.)
2. "An Act relating to domestic abuse to include assaults between parents of the same child and persons who are involved or have been involved together in a dating, courtship, engagement, or marriage relationship, including certain assaults involving minors, and providing penalties." (While this bill draft did not progress during the legislative session, aspects of our ideas were considered in the domestic abuse legislation which did pass and become law.)
3. "An Act relating to the kinds of separately metered properties for which a landlord may be exempted from a lien for delinquent charges for water services." (An amended version of this bill draft, HF 2377, passed the House of Representatives but was deferred and died in the Senate.)

## Budget and staffing

During Fiscal Year 1991-92 the state appropriation for operation of the office of Citizens' Aide/Ombudsman was \$587,267. Staff includes the deputy citizens' aide/ombudsman, legal counsel, assistants for corrections and public safety, four assistants with general assignment, and three clerical.



# Professional staff

## **Ruth L. Mosher, Senior Deputy**

- administrative oversight of clerical staff
- professional staff case management reviews and intake oversight
- new staff trainer
- specific assignment to Iowa Correctional Institution for Women
- general casework

## **Ruth H. Cooperrider, Legal Counsel II**

- external legal representative of the office
- legal research, advice and opinions to staff
- affirmative action officer
- general casework

## **Michael J. Ferjak, Assistant for Public Safety (Assistant III)**

- overall responsibility for complaints dealing with law enforcement, fire protection, disaster relief, and emergency medical services and county jails
- general casework

## **Judith A. Milosevich, Assistant for Corrections (Assistant I)**

- overall responsibility for complaints dealing with adult correctional facilities and jails
- specific assignment to Iowa State Penitentiary, John Bennett Correctional Center, Medium Security Unit, Riverview Release Center, county jails, and community based correctional facilities

## **Connie L. Bencke, Assistant I**

- general casework
- specific assignment to the four mental health institutes, the Correctional Treatment Unit, and the Iowa Veterans' Home

## **Wendy L. Sheetz, Assistant I**

- general casework
- specific assignment to the two juvenile institutions and the two hospital-schools

## **Steven L. Exley, Assistant**

- general casework
- specific assignment to the Iowa Men's Reformatory, Iowa Medical & Classification Center, and North Central Correctional Facility

## **Jeffrey E. Burnham, Assistant**

- started employment June 1992
- general casework and special assignments

## **Tina M. Eick, Assistant**

- employed until May 1992
- general casework and special assignments

# Clerical staff

**Judith L. Green, Executive Secretary**  
**Patricia Nett, Administrative Secretary**  
**Maureen Lee, CA/O Secretary**



# 1992 Citizens' Aide/Ombudsman Contact statistics

Bracketed figures indicate divisional totals, figures in parenthesis represent sub-divisional totals.

JURISDICTIONAL AGENCIES, DEPARTMENTS AND OFFICES	TOTAL NUMBER OF CONTACTS	PERCENT OF TOTAL CONTACTS
State of Iowa (General)	201	3.8%
- Iowa Law/Bill Status	[169]	
- Governmental Financial Assistance	[ 15]	
- Open Meetings/Public Records	[ 2]	
Citizens' Aide/Ombudsman	50	0.9%
Department of Justice (Attorney General)	46	0.8%
Auditor of State	4	less than 0.0%
Secretary of State	17	0.3%
- Notaries Public	[ 3]	
Treasurer of State	5	less than 0.0%
Department of Agriculture and Land Stewardship	9	0.1%
- Administrative Division	[ 1]	
- Regulatory Division	[ 4]	
- Soil Conservation Division	[ 1]	
State Fair Board	7	0.1%
Civil Rights Commission	17	0.3%
College Aid Commission	10	0.1%
Department for the Blind	1	less than 0.0%



Department of Commerce	51	0.9%
- Alcoholic Beverages Division	[ 1]	
- Banking Division	[ 3]	
- Insurance Division	[ 30]	
- Professional Licensing and Regulation Division		
- Real Estate Commission	( 2)	
- Savings & Loan Division	[ 1]	
- Utilities Division	[ 11]	
Department of Corrections	933	17.7%
- Administration Division	[ 4]	
- Community Services Division	[ 1]	
- Community Based Corrections	( 67)	
- Parole and Probation	( 38)	
- Work Release	( 37)	
- Institution Division	[ 9]	
- Iowa Men's Reformatory, Anamosa and Luster Heights Facility	(152)	
- Correctional Treatment Unit, Clarinda	( 94)	
- Iowa State Penitentiary, John Bennett Correctional Center and Prison Farms, Fort Madison	(112)	
- Iowa Correctional Institution for Women, Mitchellville	(118)	
- Medium Security Unit, Mount Pleasant	(140)	
- Riverview Release Center, Newton	( 17)	
- Iowa Medical and Classification Center, Oakdale	(100)	
- North Central Correctional Facility, Rockwell City	( 34)	
Board of Parole	73	1.3%
Department of Cultural Affairs	4	less than 0.0%
- Historical Division	[ 1]	
- Library Division	[ 1]	
Iowa Public Television	3	less than 0.0%
Department of Economic Development	20	0.3%
- Job Training Division	[ 1]	
- Local Assistance Division	[ 2]	
- Marketing & Business Development Division	[ 11]	
- Iowa Finance Authority	[ 5]	
Department of Education	29	0.5%
- Administrative Services Division	[ 3]	
- Area Education Agencies	[ 1]	
- Instructional Services Division	[ 3]	
- Community Colleges	[ 8]	
- Vocational Rehabilitation Division	[ 9]	



Department of Elder Affairs	31	0.5%
- Nursing Home Ombudsman	[ 30]	
- Area Agencies on Aging	[ 1]	
Department of Employment Services	100	1.9%
- Industrial Services Division	[ 6]	
- Job Service Division	[ 17]	
- Field Operations	( 15)	
- Job Insurance	( 28)	
- Job Service	( 5)	
- Labor Services Division	[ 8]	
- Employee Protection	( 4)	
- Inspections and Reporting	( 3)	
- Occupational Safety & Health	( 7)	
- Legal & Appeals Division	[ 3]	
Department of General Services	9	less than 0.1%
- Administrative Services Division	[ 1]	
- Property Management Division	[ 1]	
- Purchasing & Materials Division	[ 1]	
- Vehicle Dispatcher Division	[ 2]	
Department of Human Rights	14	0.2%
- Children, Youth & Families Division	[ 1]	
- Community Action Agencies Division	[ 2]	
- Deaf Services Division	[ 3]	
- Persons with Disabilities Division	[ 5]	
- Status of Women Division	[ 1]	
- Criminal and Juvenile Justice Planning Agency	[ 1]	
Department of Human Services	549	10.4%
- Community Services Division	[ 12]	
- Collections	(199)	
- District and County Offices	(144)	
- Iowa Veteran's Home, Marshalltown	[ 7]	
- Management & Budget Division	[ 1]	
- Mental Health, Mental Retardation, and Developmental Disabilities Division	[ 5]	
- Mental Health Institute, Cherokee	( 18)	
- Mental Health Institute, Clarinda	( 6)	
- Mental Health Institute, Independence	( 6)	
- Mental Health Institute, Mount Pleasant	( 2)	
- State Hospital-School, Glenwood	( 1)	
- State Hospital-School, Woodward	( 4)	
- Social Services Division	[ 3]	
- Economic Assistance Bureau	( 34)	
- Medical Services Bureau	( 32)	
- Adult, Children & Family Services	( 49)	
- State Training School, Eldora	( 7)	
- Iowa Juvenile Home, Toledo	( 11)	



Department of Inspections and Appeals	26	0.4%
- Appeals & Fair Hearings Division	[ 1]	
- Audits Division	[ 1]	
- Inspections Division	[ 9]	
- Investigations Division	[ 2]	
- State Appellate Defender	[ 5]	
- Racing & Gaming Commission	[ 4]	
Department of Management	1	less than 0.0%
Campaign Finance Disclosure Commission	3	less than 0.0%
Department of Natural Resources	33	0.6%
- Administrative Services Division	[ 2]	
- Energy and Geological Resources Division	[ 1]	
- Environmental Protection Division	[ 15]	
- Fish and Wildlife Division	[ 3]	
- Parks, Recreation, and Preserves Division	[ 5]	
Department of Personnel	24	0.4%
- Administration, Development & Pre-employment Division	[ 2]	
- Employment Operations Division	[ 4]	
- Iowa Public Employees Retirement System (IPERS)	[ 16]	
Public Employment Relations Board	2	less than 0.0%
Department of Public Defense	4	less than 0.0%
- Disaster Services Division	[ 1]	
- Military Division	[ 1]	
- Veterans Affairs Division	[ 2]	
Department of Public Health	20	0.3%
- Board of Chiropractic Examiners	( 2)	
- Board of Cosmetology Examiners	( 1)	
- Board of Mortuary Science Examiners	( 1)	
- Board of Physical & Occupational Therapy Examiners	( 1)	
- Board of Psychology Examiners	( 1)	
- Family & Community Health Division	[ 2]	
- Substance Abuse Division	[ 1]	
Professional Licensure Boards	18	0.3%
- Board of Medical Examiners	[ 8]	
- Board of Dental Examiners	[ 1]	
- Board of Nursing Examiners	[ 4]	
- Board of Pharmacy Examiners	[ 3]	



Department of Public Safety	22	0.4%
- Administrative Services Division	[ 2]	
- Criminal Investigation Division	[ 3]	
- Fire Marshal Division	[ 4]	
- State Patrol Division	[ 8]	
- Medical Examiner	[ 1]	

Board of Regents	23	0.4%
- University of Iowa	[ 4]	
- Hospitals and Clinics	( 8)	
- Iowa State University	[ 4]	
- University of Northern Iowa	[ 3]	
- Iowa School for the Deaf	[ 1]	

Department of Revenue and Finance	59	1.1%
- Audit & Compliance Division	[ 22]	
- Information & Management Services Division	[ 8]	
- Local Government Services Division	[ 1]	
- Lottery Division	[ 6]	

Department of Transportation	135	2.5%
- Administration Division	[ 6]	
- Air and Transit Division	[ 1]	
- Highway Division	[ 12]	
- Motor Vehicle Division	[109]	

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Schools and School Districts	47	0.8%
- Administration	[ 15]	
- Board	[ 12]	
- Teachers	[ 4]	

Municipal Government	501	9.5%
- Administration/Clerk/Manager	[ 28]	
- Attorney	[ 1]	
- Housing and Zoning	[ 46]	
- Mayor/Council	[ 64]	
- Municipal Utilities	[ 25]	
- Parks/Recreation	[ 3]	
- Police/Jails	[271]	
- Public Works	[ 20]	



County Government	413	7.8%
- Assessor/Conference Board/Board of Review	[ 9]	
- Attorney	[101]	
- Auditor	[ 6]	
- Engineer/Roads Department	[ 5]	
- General Relief	[ 16]	
- Recorder	[ 2]	
- Sheriff/Jail	[205]	
- Board of Supervisors	[ 23]	
- Township Trustees/Benefitted Districts	[ 4]	
- Treasurer	[ 9]	
- Weed Commissioner	[ 4]	
- Zoning	[ 3]	

Metropolitan/Regional Government 10 less than 0.1%

Private Non-Profit Quasi-Government Agency 5 less than 0.0%

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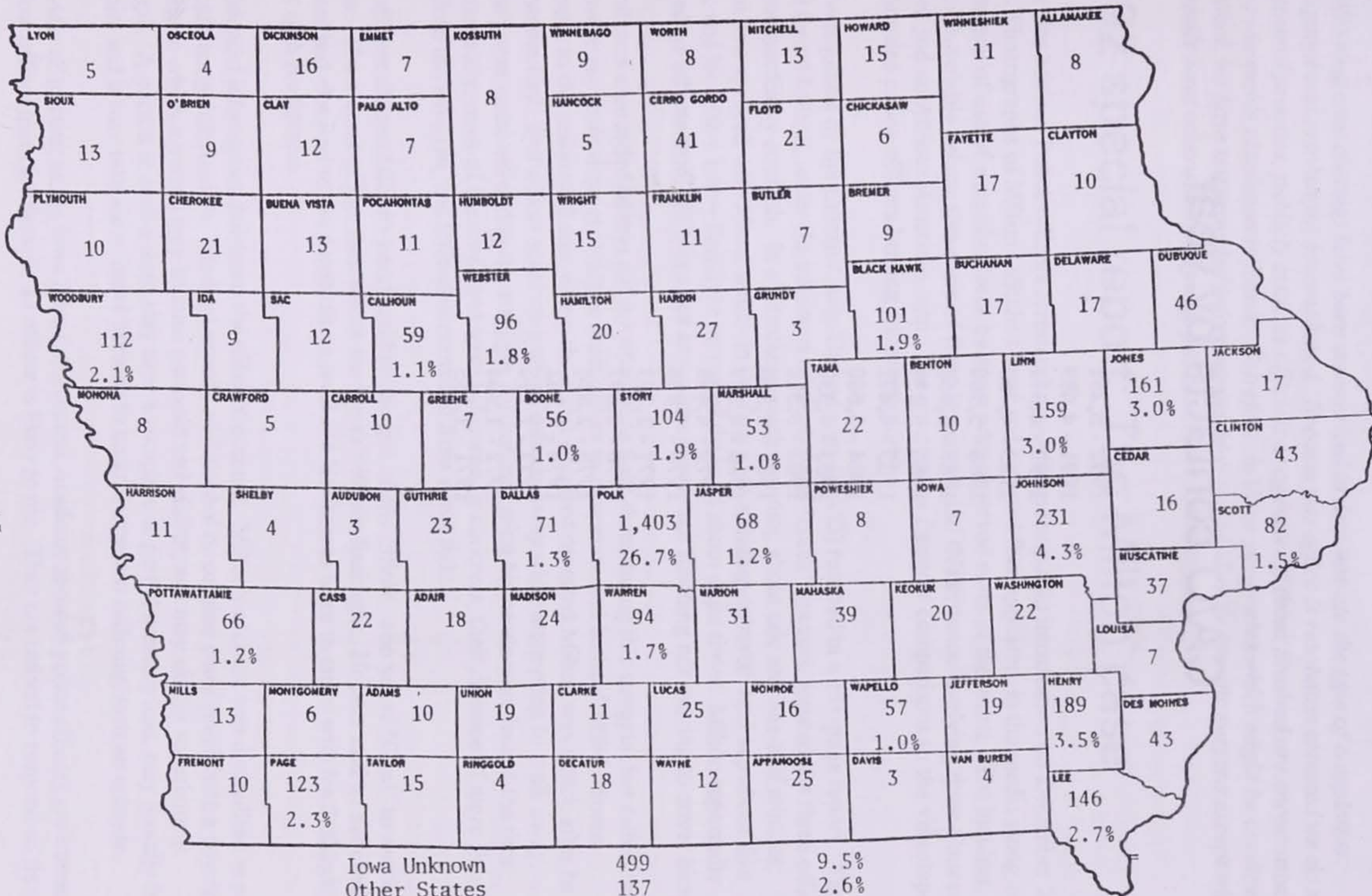
**NON-JURISDICTIONAL**

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Government, State	202	3.8%
- Governor and Staff	[ 27]	
- Judiciary	[136]	
- Clerks of Court	[ 20]	
- Legislature/Legislative Agencies	[ 18]	
States Other Than Iowa	38	0.7%
- Interstate Compact Matters	[ 3]	
Government, Federal	134	2.5%
Government, International	1	less than 0.0%
Non-Jurisdictional - General	1,289	24.5%
- Consumer	[ 209]	
- Employer/Employee	[ 292]	
- Financial Institution	[ 25]	
- Insurance	[ 51]	
- Landlord/Tenant	[ 72]	
- Legal (Private)	[ 410]	
- Health Professionals	[ 30]	
- Nursing Homes	[ 14]	
- Utilities	[ 44]	
Undetermined	58	1.1%



1992 CONTACTS BY COUNTY



Iowa Unknown	499	9.5%
Other States	137	2.6%
District of Columbia	6	
Foreign Countries	3	
Unknown	3	

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For counties reflecting contact count without percentage figure the percentage was less than one percent



## CA/O contacts by year

1992 - 5,251  
1991 - 4,689  
1990 - 4,311  
1989 - 4,783  
1988 - 5,900  
1987 - 5,668  
1986 - 5,231  
1985 - 4,471  
1984 - 3,660  
1983 - 4,330  
1982 - 3,512  
1981 - 3,846  
1980 - 4,237  
1979 - 4,458  
1978 - 2,838  
1977 - 2,733  
1976 - 2,597  
1975 - 2,624  
1974 - 2,262  
1973 - 1,199  
1972 - 1,934  
1971 - 1,185



# Case summaries

*The following case closings have been summarized to demonstrate the type of complaints investigated and resolutions accomplished. Because this office is resolution oriented we do not, as a general practice, publicly criticize officials or agencies if those involved are cooperative and a reasonable resolution is found. Therefore, in those summaries which might be construed as critical, we have not provided information which would identify specific persons except where the details have otherwise been made public.*

## 1992 special report: The Milton case

Three Des Moines Police officers arrested Larry Milton for public intoxication on December 28, 1991. Photographs of Milton's stitched head and battered face appeared in the media along with accusations of use of excessive force by some who observed parts of the arrest. The incident sparked a volatile debate about use of force in general and this instance involving three Caucasian officers and an African-American man. The arrest drew frequent comparisons to the videotape of Los Angeles police officers beating a black motorist.

An investigation by the Citizens' Aide/Ombudsman (CA/O) resulted in a 131-page report. The CA/O found Milton, under the influence of alcohol and "crack" cocaine, resisted the three officers with extraordinary strength. In a wrestling match spanning about one and one-half minutes, Milton was sprayed with Mace, struck in the face with a leather-covered, lead sap about five times, and hit with a heavy flashlight on top of the head about eight times. Milton reportedly showed no effects from the Mace nor any of the blows, not flinching nor moving to cover himself.

The officers contended Milton did not attempt to fight them during this struggle, but rather tried to move away from them contrary to their orders to cooperate and be handcuffed. Some witnesses in the residential area where the arrest occurred reported Milton was struck after he was handcuffed. But others saw him pushing officers away while attempting to walk away. Milton's coat came off during the struggle, further indicating his hands were free at the time. Unfortunately, most of the witnesses were hampered by darkness, their distance of more than 100 feet from the struggle, and limited illumination from street lights.

The officers alleged Milton's hand grabbed the gun of one officer, who yelled "Gun!" to another officer. The second officer then struck the blows with the flashlight. He later said he believed the incident had elevated to the deadly force level and his choices were to strike with his flashlight or shoot with his firearm.

Confidential information bolstered the officers' account. Milton's account was discredited in part by confidential information. Medical experts said alcohol or cocaine could precipitate a psychotic episode in which a person may become paranoid and violent, and may exhibit superhuman strength. A person in such a state may have a complete or partial memory loss, may literally feel no pain, and it may take six or more persons to control a person suffering such an episode.

A review of training at the Iowa Law Enforcement Academy showed police officers are trained if a fellow officer loses his firearm, an officer is likely to die. They are trained to respond to threats



of weapon loss with deadly force. Medical experts said the blows from a heavy flashlight to a person's head may reasonably be classified as deadly force.

The CA/O questioned Des Moines Police Department's internal investigation process and some actions. For instance, the police chief made a preliminary statement the force used was not excessive. Such a statement before an investigation may discourage officers from reaching independent conclusions which may contradict their boss' public stance. It may also jeopardize the public's confidence in the department's ability to investigate itself. Further, model police internal investigations are separated as much as possible from the police chain of command, which was not the case in the Des Moines department. Rather than reporting findings independently to the chief, investigators gave their findings to the chain of command for response and recommended sanctions. The supervisors of the officers being investigated, and their supervisors, may have a vested interest in finding complaints unfounded.

Des Moines Police Chief William Moulder and City Manager Cy Carney said the internal affairs process would be changed. Subsequently, an Office of Professional Standards was established which appears to address suggestions made by the CA/O in the Milton report.

## Department of Human Services

**CA/O REVIEWS LACK OF CHILD ABUSE INVESTIGATION:** The CA/O was contacted regarding a young child hospitalized with severe injuries as a result of apparent child abuse. The prognosis for survival was poor, as the child suffered severe head blows and numerous other injuries. Extended family members publicly stated they previously contacted DHS with concerns regarding the child and a sibling, but DHS had not acted. A legislator requested the CA/O investigate DHS' actions. CA/O staff reviewed DHS documents and interviewed the extended family members regarding their communications with DHS. CA/O staff also interviewed seven DHS employees. From the information obtained, CA/O staff could not determine DHS staff acted incorrectly or contrary to law, rule or policy. CA/O staff determined the information provided to DHS by extended family members did not meet the necessary criteria for initiating an investigation. One extended family member told CA/O staff that while family members had reported their concerns to DHS, those family members did not know for certain the children were being abused; rather, they felt something was wrong, telling CA/O staff it was an "intuition thing." The CA/O reported its findings to the legislator, extended family members and DHS. The CA/O also discussed its concerns regarding the inability to provide some answers to the public in cases such as this due to confidentiality provisions. In letters to the legislator and DHS, the CA/O suggested allowing release of certain information (while ensuring the child's best interest remain paramount) may bring several benefits: allowing the public a better understanding of the DHS system for investigating complaints of child abuse; making DHS more accountable to the public, and providing the public with information needed to determine if the State of Iowa has sufficient safeguards to protect children.

**CHILD ABUSE REPORT "FOUNDED" PREMATURELY:** A mother complained her daughter was misled while being investigated for two child abuse allegations. The teen-aged daughter denied the allegations. Both involved children the daughter had babysat. The daughter was interviewed by a DHS Child Protective Investigator (CPI) and local law enforcement. After



the interview, the mother said, the CPI told her daughter the situation was so "muddled, that nothing was going to come of the investigation." They were shocked when they received notification the allegations were founded. The mother contacted the CA/O, which explained how to get a copy of the CPI's report and request correction or expungement. CA/O staff determined the CPI "founded" both reports without contacting other families the daughter babysat for to verify the type of care she provided. CA/O staff also learned the CPI "founded" both cases two hours before the interview with the alleged perpetrator. It appeared to CA/O staff this was at least partly due to a local district policy requiring reports either be completed or extension requests filed by noon of the due date or a demerit would go to the CPI, who faced further consequences based on the number of demerits. The CA/O contacted DHS with these concerns, which were shared with program and field staff and also incorporated into training of CPI workers and supervisors. In this case, the daughter appealed to the child abuse registry and the findings were changed to "undetermined."

**DHS CAUTIONED FOR INTERVIEWING HOSPITALIZED WOMAN:** A woman complained a DHS worker conducted an interview for a food stamps quality control review while the woman was hospitalized. The interview was scheduled at the woman's home, but she became seriously ill and was hospitalized. Her daughter said she called the DHS worker and asked to reschedule the interview. The DHS worker went ahead with the interview at the hospital, later noting the woman did not object once the interview began. DHS believed the interview was not detrimental to the woman's health. DHS said it is often not practical for a worker to reschedule an interview, due to travel, time deadlines and staffing shortages. After speaking with each of the persons, CA/O staff concluded the worker was informed of the woman's ailing condition and her objection to doing the review at the hospital. Federal policy holds interviews should be held in the home unless circumstances justify holding them elsewhere. Federal policy also specifies that "inconvenience and staffing shortages are not adequate justification." The CA/O cautioned DHS against routinely relying on the reasons given in this case for deviating from policy.

**MEDICAL BILLS PAID FOR TERMINALLY ILL WOMAN:** A woman contacted the CA/O on behalf of her sister who was terminally ill. The sister and her husband were having problems with DHS Medicaid (Title XIX) payments for medical bills as well as food stamp benefits. There were unpaid medical bills from 1990 during a period when the woman qualified for benefits. DHS reported a former DHS employee had not processed the paperwork correctly. The present worker said there was nothing she could do regarding the old payments and advised the family to appeal the decision, which they did. Eventually, the appeal was denied because it was not timely. The CA/O continued to work with DHS personnel on the case and confirmed again the woman was eligible when the bills were incurred. DHS confirmed the bills were not paid at the time because the application for Medicaid and the bills were processed late. Eventually, the DHS payment agent authorized payment of the old bills. Problems with the current benefits were traced to the husband's varying income. The benefits were based on income projections which were accurate, but were completed late. Benefits eventually were provided for the months in question. The woman had outstanding medical bills for one month, for which Medicaid was approved and would pay. In addition, there were outstanding medical bills from an out-of-state provider. DHS said the woman would have to ask the provider to apply to be approved as an Iowa provider, then submit the bill to Medicaid in Iowa. The information was provided to the family.



**CA/O HELPS FAMILY RESOLVE MEDICAL BILL:** A mother and father complained they were being forced to pay medical bills DHS should have paid through Medicaid (Title XIX). The bills were for treatment their 13-year-old daughter received at University of Iowa Hospitals and Clinics (UIHC). Before treatment, DHS approved the family's application for Medicaid benefits. The program operates in two-month certification periods, during which the family would pay a spend-down (approximately the first \$4,000 in medical bills) and Medicaid would pay the rest. Because of construction at UIHC and a backlog involving the child's physician, the treatment was delayed until the end of the first certification period and extended into the next. As a result, the family was required to pay two spend-downs instead of one, even though the delays were beyond their control. The family asked DHS to make an exception to policy. DHS denied the request. Upon inquiry from CA/O staff, DHS explained the DHS director believes he lacks authority to create an eligibility group not identified or appropriated for by the Legislature. While UIHC could not forgive the bill, UIHC staff noted the family could apply for "state papers" to pay the bill. "State papers" is an allotment to counties to cover the costs of medical care for qualified residents at UIHC. CA/O staff presented the idea to the family, which applied for "state papers" through Des Moines County General Relief (GR). Their initial request for "state papers" was denied because GR officials believed Medicaid recipients were not eligible for "state papers." After numerous contacts involving CA/O and UIHC staff with the GR director, the family reapplied, was approved and the bills were paid through "state papers."

**DAUGHTER GETS GUARDIAN WITHOUT PARENTS' KNOWLEDGE:** A mother and father complained someone else was appointed their 17-year-old daughter's legal guardian, without their knowledge beforehand. Their daughter left home one night and filed a voluntary petition the next day requesting her boyfriend's mother be appointed her legal guardian. A district court judge approved the appointment immediately, based upon the papers filed, and no notice of hearing was provided to the parents. DHS became involved at the guardian's request and placed the daughter in independent living foster care, creating another obstacle for the daughter's return home. CA/O staff found there is no statutory requirement in Iowa Code Chapter 633 to notify parents and give them a hearing before a guardianship appointment. The CA/O believes parents with legal and physical custody of a minor child should be entitled to notice of any guardianship action by or on behalf of the minor child. The parents could then request a hearing if they wish to object or have input. The CA/O is not aware how often this type of situation occurs. The CA/O anticipates proposing legislation in 1994 to avoid similar situations.

**BUSY SIGNAL FRUSTRATES CALLERS TO CHILD SUPPORT OFFICE:** A father complained he usually got a busy signal or recording when calling his worker at his local CSRU office. CA/O staff had received similar complaints from others. CA/O staff contacted CSRU, which acknowledged a new policy restricting public telephone access to two hours each weekday (1:30 to 3:30 p.m.) was creating problems, especially in the complainant's local CSRU office. The CSRU inquired into the problem and found the receptionist was placing callers on hold until the worker was located or able to take the call. This practice resulted in many callers being placed on hold too often and too long. It also meant many callers got a busy signal whenever they called. The local CSRU discontinued the practice. Instead, messages are now supposed to be taken when the workers are unavailable. Also, the complainant's local CSRU office has changed its



procedure for handling walk-in traffic. If a worker cannot meet with a person who walks in without an appointment, information from the person will be taken on a priority message sheet which will be given expedited attention and reply by the worker. The CSRU will continue restricting public phone access to two hours daily because it has enabled workers to work more efficiently, contributing to a substantial increase in collections. However, CSRU and CA/O staff will continue to monitor how the policy is working in all CSRU offices.

**CA/O HELPS MOTHER GET MISSING \$800 IN CHILD SUPPORT:** A mother complained she did not receive four checks totaling \$800 from the CSRU. When the woman reported the problem, CSRU staff told her the checks had been signed and cashed by a second woman with a virtually identical name. The two women lived about 60 miles apart. CSRU staff sent an affidavit to the first woman to get her signature. If it did not match the signature on the cashed checks, the CSRU would issue an \$800 check to the first woman and consider legal action against the second woman. The first woman signed the affidavit and mailed it back. She was shocked when she received a letter from CSRU stating the signature matched those on the cashed checks and CSRU would not take further action. The woman contacted the CA/O, which contacted CSRU and obtained copies of the cashed checks and the affidavit. In the untrained eyes of CA/O staff, there appeared to be little doubt the signatures did not match. A CSRU official agreed. At the CA/O's request, the CSRU official looked into the matter and found CSRU staff had incorrectly addressed the first three checks to the second woman, who is also on the CSRU system. CSRU staff properly addressed the fourth check, only to have it returned to CSRU with a sticker from the post office indicating it should be forwarded to the second woman. The CSRU employee who opened the mail that day followed the post office's instructions and mailed it to the second woman. CSRU staff and the first woman reported the mix-up to postal officials, who were unable to provide any answers. At that point, the CSRU issued an \$800 check to the first woman. While legal action was considered against the second woman, the CSRU ultimately declined, due to the relatively small amount involved, the time it would require and the difficulty in proving intent.

**CHILD SUPPORT ARRIVES AFTER MATH ERROR FOUND:** A woman complained the CSRU mistakenly told her ex-husband he had overpaid his court-ordered child support by \$969. The CSRU worker allegedly told the ex-husband he need not make any payments for five months. The woman contended her ex-husband was in fact one month behind. She was struggling to provide for her children due to the CSRU worker allegedly granting the ex-husband permission to put payments on hold. CA/O staff contacted CSRU staff to get copies of payment records. CSRU staff confirmed the case worker told ex-husband he was overpaid. It was ultimately determined the CSRU worker erred by crediting numerous payments twice. As a result, the ex-husband actually was \$1,198 behind. CSRU staff notified the ex-husband and gave him 16 days to make payment. He paid the arrearage shortly thereafter.

**HAVE CALCULATOR, WILL UNRAVEL:** A father complained the CSRU was still garnishing wages for a delinquency he had already paid. In July 1991, the CSRU started garnishing \$100 monthly from father's paycheck to pay off a \$660 delinquency. At that rate, the father thought the delinquency would have been paid off by February 1992, but CSRU records showed he still had a delinquency at that point. CA/O staff contacted the CSRU to obtain copies



of the father's file. After a considerable length of time spent unraveling the file, it was found the \$660 delinquency arrived at in July 1991 was in error. Instead, it should have been \$440. Adding to the confusion, CSRU staff in July 1992 debited the account an additional \$320 for an income tax refund mistakenly sent to the father twice. But since CSRU staff made the \$320 error, the CSRU agreed to credit the father's account for that amount. However, CSRU staff set up a separate account to collect the \$320 voluntarily from the father. By the time this confusing case was resolved, the father was awarded physical custody of his children and was in the process of trying to modify his current child support order.

## Law enforcement

**POLICE CHIEF STRIKES, INJURES GIRL:** A husband and wife complained a police chief struck their 11-year-old daughter across the face, causing an injury. CA/O staff obtained statements from the police chief, a parent of the girl who was present during the incident and a U.S. postal inspector also present. The police chief did not deny striking the child, who apparently became disruptive during the interview. The police chief said it was not his intent to harm or intimidate the child. The blow split the child's lower lip and knocked her from her chair. The CA/O determined the chief's actions were completely inappropriate. The police chief resigned during the CA/O's investigation and has taken a civilian occupation. The CA/O believes he should be held accountable for his actions while in office. The CA/O sent a letter setting forth findings to the former police chief, the mayor and the parents. The CA/O also suggested that should the former police chief reenter law enforcement, he seek appropriate intensive remedial training first.

**POLICE CHIEF INVESTIGATES THEFT; FAMILY MEMBER A SUSPECT:** A citizen complained a police chief was investigating a theft where one of the suspects was a member of the chief's family. The complainant was also a suspect, as was a third individual. The complainant believed he was the prime suspect. No one had been charged when the citizen contacted the CA/O, which in turn contacted the police chief. In his response, the police chief said he handled the investigation the same way as he would had his family member not been a suspect. With three suspects, the chief set up polygraph examinations for each. His stated plan was to conduct the examinations until he had "the right person" and then stop. The third individual agreed to go first and passed the polygraph. The citizen (who later complained to CA/O) went next and failed the polygraph. The chief said he did not give the polygraph to the final suspect, his family member, because he believed it was unnecessary. The CA/O believed that decision was inappropriate and constituted at least the appearance of a conflict of interest. While initially defending his actions, the chief ultimately conceded he should not have been involved in the investigation and all suspects should have been given a polygraph examination. At the CA/O's request, the chief adopted a departmental policy prohibiting employees from participating in an investigation involving a member of their own family. Several months after the alleged theft, no one had been charged.



# Department of Transportation

**SON KILLED IN ACCIDENT, MOTHER BILLED FOR TRAFFIC CONTROL:** A mother expressed outrage at being billed by the DOT for traffic control after an accident which killed her 18-year-old son. He was negotiating a curve on a state highway when he lost control of his car, which crossed the center line and hit a semi-trailer truck. About a month later, his mother received an invoice from DOT billing her \$261.49 for "traffic control." The costs, in addition to labor for traffic control, were for putting sand on spilled diesel fuel and on ice formed from water used to extinguish a fire. The mother refused to pay and contacted the CA/O, which asked DOT to cite its authority for billing the mother. While DOT eventually agreed not to sue the mother over the bill, DOT contended it has sufficient authority to continue billing for traffic control and damage to highways in similar situations. DOT noted it incurs significant costs from accidents, including about \$882,000 in 1989, and recoups a significant portion of these costs through this program. The CA/O on several grounds disputed DOT's authority to recover costs for traffic control and any costs not involving damage to a highway or highway structure resulting from a violation of the size, weight and load provisions in Iowa Code Chapter 321. The CA/O took these concerns to the Administrative Rules Review Committee (a committee of legislators which reviews rules promulgated by administrative agencies) hoping to clarify the issue. The Legislature later approved a bill directing DOT to adopt rules clarifying policies for recovering costs and prohibiting DOT from recovering the costs of traffic control at the scene of an accident. While DOT rules prohibit DOT from recovering costs of traffic control at the accident scene, the new rules failed to address the other issues involved. The legislative committee approved the rules as proposed by DOT.

**CA/O, NEBRASKA OMBUDSMAN HELP SOLVE CASE OF MISTAKEN IDENTITY:** An Iowa man got notice DOT was going to suspend his license for a drunken driving conviction in Nebraska. The man said he had never been charged with drunken driving in Nebraska or Iowa. He believed someone else had used his name. CA/O staff contacted DOT, which had received a Nebraska court order stating the Iowa man had been convicted. To drop the suspension, DOT needed a Nebraska court order indicating someone else had been convicted. CA/O staff contacted the Nebraska ombudsman's office and, working together, gathered information indicating the person convicted was actually the man's brother. Nebraska officials subsequently arrested the Iowa man's brother on a charge of giving fraudulent information. A Nebraska judge issued a corrective order, which was provided to DOT, which in turn removed the conviction from the Iowa man's driving record and canceled plans to suspend his license.

**DOT CUTS RENT FOR CONDEMNED DREAM HOME:** A husband and wife complained DOT was punishing them for initially fighting the condemnation of their dream home for a highway project. After a lengthy appeal process, including a condemnation hearing, the couple agreed to sell the house to DOT. The sale agreement provided DOT would rent the house back to the couple for a few months while they built a new home. Unfortunately, they did not discuss the amount of rent. When DOT sent a rental agreement stipulating rent would be twice the amount of the couple's house payments, they believed DOT was trying to get back at them for fighting the initial sale. The parties became deadlocked, as the couple refused to pay any rent and DOT refused to reduce the rent. CA/O asked DOT how it arrived at the rental amount. DOT



contended the amount was fair, as it was based on information received from a local Realtor. After further review, DOT offered to compromise by setting rent halfway between its proposal and the couple's previous mortgage payments. CA/O staff passed the offer to the couple, who agreed to the new rental amount.

**DRIVER'S LICENSE RETURNED:** A would-be licensed driver complained various delays resulted in the DOT suspension of his driver's license remaining in effect longer than necessary. There was a delay of more than three months between his conviction for operating while intoxicated (OWI) and his subsequent suspension. The delay was caused in part by Polk County District Court which reported the conviction to DOT nearly six weeks after it occurred, and by DOT which did not begin the suspension for more than six weeks after it was notified. No statute or rule gives DOT any deadline for enforcing suspensions. A DOT administrator said the process involved a "number of labor-intensive steps including violation coding, microfilming, data entry, image processing and notice preparation. For the year 1991, this office processed 172,433 convictions.... This office issued a total of 82,878 sanctions in 1991." Despite all this, DOT agreed to change the effective date of the suspension so the complainant could reclaim his drivers' license more than three months earlier than first scheduled. DOT has changed its processing goal, attempting to accomplish the sanctions within two weeks of notice of the conviction. It also planned to start a pilot program with Polk County for sharing conviction information electronically, which may decrease the time between conviction and suspension notices.

## Department of Corrections

**INMATE ASSESSED FOR SWALLOWING ITEMS:** An inmate at Iowa State Penitentiary at Fort Madison received disciplinary reports for violating rule 27, obstructive/disruptive conduct and rule 41, attempt or complicity. The inmate had been asked by another inmate to keep two balloons because the other inmate learned his cell was to be searched. The inmate who accepted the balloons also learned his cell was about to be searched, so he swallowed the two balloons and their contents. As the day progressed, he began to worry the balloons may burst in his stomach. He did not know the contents but thought the balloons may contain illegal drugs. The inmate told the prison staff he swallowed the balloons, but he refused to identify the other inmate. The inmate was taken to University of Iowa Hospitals where his stomach was pumped. The balloons contained instant coffee, an item not allowed at his custody level. As part of his disciplinary sanctions, the inmate was billed for medical, security and transportation costs, in excess of \$6,000. The CA/O believed the disciplinary reports were justified. The inmate also was placed in a protective custody cell, against his wishes, as a result of fears over his safety. Eventually, the inmate transferred to another state.

**INMATE APPROVES BURIAL REQUEST:** A funeral home staff member asked the CA/O to help contact an inmate to aid with a funeral request. The inmate was owner of three burial plots. The inmate's late wife was buried in the center spot, and her family requested her sister be buried next to her. The funeral home staff saw the situation as delicate because the inmate's late wife had been the victim of a murder which he was convicted of arranging in a contract killing. The CA/O coordinated having the funeral home send the necessary permission forms by fax to the prison, which forwarded them to the inmate and explained the request. The inmate agreed and signed the



forms. Prison officials witnessed the signature and returned fax copies and the form with the original signature to the funeral home, allowing the funeral home to bury the sister in the neighboring plot.

**CRIMINAL, VICTIM SPLIT INCOME TAX REFUND:** An inmate at Iowa Men's Reformatory at Anamosa sent an income tax refund check to a prison volunteer and requested help in cashing it. The volunteer turned to the CA/O's office for guidance. The \$213.36 check was issued jointly to the inmate and a woman for a return filed jointly when they lived together. The inmate had signed the check and wanted to split it evenly with the woman. But the inmate had been convicted of raping the woman at gun point. The CA/O was reluctant to contact the woman, not wishing to cause any additional emotional distress. The situation was exacerbated by the inmate's limited ability to use the English language. While the Internal Revenue Service used to reissue a returned check, splitting the proceeds between two estranged parties, it had stopped that practice. The two parties could file amended returns seeking separate payments, but the inmate had limited access to his tax documents and limited ability to correspond in English. The check was returned to prison and placed in the prison safe without further action. Time passed and the check neared its one-year expiration date. The CA/O contacted a rape victim coordinator who located the woman based on information from a county attorney's victim services officer. The victim coordinator explained the situation. The woman agreed she could use the money, but indicated the inmate owed her \$150 from just prior to the criminal act. The inmate agreed to a split of \$150 for her and \$63.36 for him, with his portion reduced \$1 to pay for a money order sent to him at prison.

**CA/O, FRIENDS OF PRISONERS ARRANGE GIFTS:** A group Friends of Prisoners at Mitchellville learned the Iowa Correctional Institution for Women (ICIW) was no longer going to provide gift packets to be sent to prisoners at Christmas. On behalf of the group, the CA/O contacted the warden and learned the local grocery changed ownership and the new owner was not willing to continue the project. The situation was complicated by a new rule which required 20 percent of gifts to inmate accounts must be used for restitution. Since the institution's account manager retired and the position could not be filled, the institution had no one to process the orders through the inmates' accounts. Further, the number of inmates had more than doubled to more than 200. And the food in the packets attracted rodents. The CA/O asked if the warden would approve an arrangement allowing the group to take over the project. She agreed and decided the bookkeeping requirements for restitution could be streamlined if the group wished to take over the project. A volunteer arranged with a different grocery store to provide a \$15 packet with sausage, cheese, calendar, stationery and gloves. Inmates were not pleased with the contents of the packets and the grocery store was not pleased because of 200 packages assembled, only 78 were sold.

**SMOKING DISALLOWED ON BUS:** An inmate's family contacted the CA/O to complain about his exposure to asbestos at the North Central Correctional Facility in Rockwell City. The CA/O contacted the inmate who had been moved to Riverview Correctional Release Center at Newton. The inmate had been exposed to asbestos. He believed the exposure had caused him some health problems. A doctor at a University of Iowa clinic said asbestos-exposure health problems would not manifest themselves until years after the exposure, and testing revealed no



health problem at this time. The inmate also complained about secondhand smoke he was subjected to on trips of the work bus between Newton and Des Moines. The CA/O advised the release center superintendent of this complaint. The superintendent immediately moved to enforce a policy which prohibited smoking on the bus. The release center, like Iowa Medical and Classification Center at Oakdale, recently dramatically restricted smoking by inmates and employees in the facility. Some county jails have prohibited smoking as well.

**INMATE SEEKS POLICY CHANGE:** An inmate at Mount Pleasant Correctional Facility (MPCF) was convicted of a rules violation for possessing too many cans of tobacco. The inmate indicated the facility had no policy limiting the number of cans of tobacco. The policy does restrict the number of cartons of cigarettes an inmate may possess. Staff at MPCF contended one can of tobacco approximately equals one carton of cigarettes, because the manufacturer includes 200 cigarette rolling papers with each can. The CA/O contacted the Department of Corrections central office to suggest institutions may wish to amend their policies to specify a number of cans of tobacco. Shortly afterwards, Iowa State Penitentiary at Fort Madison changed its policy, although MPCF had not taken similar action by the time the case was closed.

## Department of Employment Services

**JOB SERVICE JUDGE MAKES OFFENSIVE REMARKS:** A waitress who quit her job due to lack of breaks complained about treatment from a Job Service Administrative Law Judge (ALJ) during a hearing for unemployment benefits. The citizen felt humiliated by what she called repeated badgering and belittling comments by the ALJ. The CA/O reviewed the transcript and found numerous comments by the ALJ to be questionable. Included was a passage where the ALJ compared her to a "slave" and asked if "clubs and whips" were used to keep her from taking breaks. CA/O staff documented the questionable comments and brought the matter to the attention of the chief ALJ for Job Service. The chief ALJ agreed the ALJ had too vigorously pursued a line of questioning and used highly inappropriate language. The chief ALJ took actions in response to his findings. The CA/O was satisfied the actions taken were appropriate, but could not disclose the nature of those actions, which are personnel matters and confidential by law.

**CA/O HELPS REMOVE COSTLY RED FLAG:** The Nebraska ombudsman contacted the CA/O on behalf of an Iowa man who owed \$2,394 in unemployment benefits "overpaid" by Nebraska Department of Labor in 1987-88. The complainant received benefits before Nebraska officials discovered the employer had not contributed to Nebraska's unemployment fund. The Nebraska Department of Labor chose not to sue the complainant. But if he filed for Nebraska unemployment benefits at any time through April 1991, he would be asked to give up part of the new benefits for repayment. After April 1991, Nebraska's Department of Labor was to purge the account. Instead, it sent a March 6, 1992 letter to Iowa's DES asking DES to collect for the overpayment if the citizen filed for unemployment benefits in Iowa. CA/O staff contacted DES and found DES had red-flagged the citizen's account in case he filed for benefits in Iowa. CA/O staff questioned whether DES could collect an overpayment for Nebraska when Nebraska's authority to collect had expired. Meanwhile, the Nebraska ombudsman received notice from Nebraska's Department of Labor that the overpayment was not collectible in Iowa. CA/O staff monitored with DES to ensure notice was received, at which point the red flag was removed.



**AGENCY TAKES ON COMPLICATED CASE:** A complainant said the Wage Enforcement Unit (WEU) of the DES Employee Protection Bureau took from June 1988 until July 1991 to resolve his case. He also said the department contacted his private attorney rather than him for information, contributing to his private attorney's billing of \$4,000. The file on the case was about eight inches thick and probably should not have been accepted by WEU since wage collection rules in Chapter 347 of the Iowa Administrative Code allows the division to determine a case unenforceable if it requires extensive legal work and the claim involves a large amount of wages. WEU took the case because of a potential for early settlement. A stock fraud lawsuit caused a delay in resolution. A settlement (confession of judgment) for \$35,000 eventually was gained. WEU has attempted to collect, but the employer apparently has no Iowa assets. The employer moved to Colorado and because the three companies involved are not doing well, the complainant may never collect the settlement. The employer and complainant had been good friends. The employer and complainant had a business in which they both purchased stock. The employer sold his without notifying anyone and moved out of state. He contended the complainant was an independent contractor, not an employee. The CA/O believed the complaints against WEU to be unfounded because of the complicated nature of the case. The CA/O believed WEU's efforts to be extraordinary. WEU said it contacted the complainant's attorney about three times and the attorney contacted WEU about two times which contributed to the legal bill. WEU agreed to verify the contacts if the complainant wished to double check the attorney's itemized bill. WEU agreed to pay the charges for any copies of information provided by the private attorney if the attorney would bill the cost to the agency.

**INFORMATION HELPS MAN INCREASE FINE:** A man said his adult son was injured in his first three hours of work at a meat packing plant. The son signed a release of medical information request to have information released to his father. The meat packer refused and Iowa Occupational Safety and Health (IOSH) Enforcement Bureau of DES issued a notice of fine of \$5,000 for failure to release medical information and \$5,000 for failure to have a protective guard on the machinery involved. The meat packer contested the fine on the medical information. Resolution was delayed for 11 months as court action loomed. The CA/O advised the complainant a state administrative hearing had been set, and he might be able to gain intervenor status to have some input. According to the complainant, the meat packer and IOSH were ready to agree to a \$1,000 fine for withholding information but he successfully gained intervenor status and encouraged the hearing officer to increase the fine to \$2,500. The complainant believed IOSH should be pushing for punitive damages and greatly increased fines, but the enhanced fines could not be levied except on subsequent violations. In the meantime, the son returned to work and a meat packer supervisor, allegedly against medical advice, returned the son to the chitterlings area where his cut hand and finger soon succumbed to infection. Doctors had to amputate a finger. The complainant said eventually the supervisor was reassigned and the safety director replaced by the meat packer.



# Local government

**JAIL AGREES TO CHANGES IN MAIL:** A man in a county jail complained about his legal representation and the county attorney. CA/O staff, as is the office's practice, referred the former complaint to the Iowa State Bar Association's Committee on Professional Ethics and Grievances, and the latter to the Iowa County Attorneys Association. However, the CA/O noticed the man's letter was dated seven days prior to its postmark and inquired. The man said there were various problems with the county jail's mail practices. The jail administrator indicated when the man's letter was sent, the person who usually dealt with inmate mail was on leave. The CA/O explained there must be a backup system to keep the mail moving in a consistent and timely fashion. A review of the overall mail policy showed several problems including inspection of outgoing mail to legal entities such as attorneys and courts. Eventually, an attorney for the jail agreed to allow privileged legal correspondence to be sent sealed as prescribed by the Iowa Administrative Code and case law; the jail policy be changed to reflect that practice; references to "censorship" be dropped from a form inmates were required to sign, and the jail develop a policy on how to deal with rejected mail. The attorney agreed to the changes.

**INQUIRY ANSWERS QUESTION ABOUT DUST:** A complainant said Warren County was not doing enough to control dust on County Line Road in front of his residence. He lives on the south side of the road in rural Warren County and observed city of Des Moines trucks applying dust control mixtures in front of homes on the north side of the road, within city limits. He could not understand why Warren County did not provide the same service. A 28E intergovernmental agreement between the city of Des Moines and Warren County governs maintenance of County Line Road and states the portion in front of the complainant's home is the responsibility of Warren County. Routine maintenance may include dust control, but the agreement provided maintenance shall be provided by the responsible party in accordance with its normal practices. Warren County said it cannot afford dust control and does not provide it. Individual property owners may provide their own. The city of Des Moines applies some "dilute asphalt emulsion" as dust control when its residents complain, even if their properties are along Warren County's area of maintenance on the road. The complainant did see dust control applied periodically in front of his house, probably because a Des Moines resident lives across the road from him. The CA/O concluded Warren County's decision not to provide dust control was within the county's discretion and was not unreasonable or contrary to the 28E agreement.

**COUNTY SITS ON WARRANTS TO SAVE MONEY:** A resident complained his neighbor was continually violating city zoning and nuisance laws. The man complained frequently to the city housing inspector, who had filed for court relief against the property owner -- the neighbor's elderly sister who lived in another county. While judges in the complainant's county issued four simple-misdemeanor warrants against the property owner, the warrants were never served. City officials said the other county sheriff refused to serve the warrants on the elderly woman, who was in poor health. In an attempt to trace the warrants, CA/O staff first contacted the sheriff in the complainant's county, who conceded he never mailed the warrants to the other county sheriff. The complainant's sheriff referred CA/O staff to that county's attorney, who cited a cost-cutting policy whereby warrants would be served statewide only when the bond amount is \$500 or more (serious misdemeanors and more serious offenses.) The county attorney conceded he lacked



statutory authority to restrict the serving of misdemeanor warrants. But he noted Iowa Code Chapters 818 and 820 grant him authority to choose who will travel to collect a person for extradition. The county attorney said he goes through lists of unserved warrants periodically to decide which to have served and which to dismiss. However, he had no answer for why the warrants in this matter had not been served or dismissed. The county attorney met with other local officials and agreed to a new policy to serve all misdemeanor warrants statewide except those involving unpaid parking fines and violations of animal ordinances. Though the new policy cleared the way for service of the four warrants in question, officials learned the elderly woman was hospitalized. They arranged for her grandson to appear on her behalf in court. The grandson entered into a stipulation whereby he would clean the property by a specified deadline.

**LANDLORD RECEIVES TAX-TIME SURPRISE:** A Des Moines-area landlord was surprised to learn a tax lien had been placed against his commercial rental property due to an unpaid water bill of more than \$500. The water bill was significantly higher than normal because water leaked on the property for more than four months. The commercial renter's business eventually failed. The Des Moines Water Works attempted to send the landlord notice of the impending tax lien, but for some reason, sent it to the wrong address. The errant notice was returned to the water works, which did not attempt another notice to a different address. The tenant was notified of the increased bills which indicated the leak, and of the delinquency, but the tenant did not act to repair the leak. At first the tenant paid the higher monthly bills but eventually quit paying. The landlord learned of the tax lien only three days prior to the deadline before property tax bills become delinquent. A water works employee pointed out landlords may protect themselves against tax liens in such situations under Iowa Code Section 384.84. The section provides landlords may be notified prior to liens being placed on rental properties if they provide a deposit in the amount of three months' normal bills. Due to the CA/O's inquiries, however, the water works became aware the statute specifically refers to residential rental properties. The CA/O proposed to the 1992 Legislature it strike the word "residential" from the section, but the bill did not become law.

**CA/O HELPS CLARIFY RULES FOR REJECTING ABSENTEE BALLOTS:** A group of voters complained a county auditor counted votes cast on absentee ballots which had incomplete affidavits. Group members believed those votes should not have counted in the election, a school bond issue which won narrow approval. The county auditor allowed the group to examine the absentee ballots. After two reviews, the group concluded 23 should not have been counted due to incomplete information on the affidavits. Missing information included addresses and dates. The group understood the CA/O could not change the election outcome, but wanted the matter pursued to ensure affidavits for absentee ballots are screened consistently statewide. CA/O staff discussed the matter with the Secretary of State's office and the president of the State Auditor's Association. While this type of complaint has been rare, all parties acknowledged inconsistencies in the screening of absentee ballots. There was agreement absentee ballots are being used more than previously. The CA/O asked the Secretary of State's office to consider proposing administrative rules to clarify the criteria for rejecting absentee ballots due to insufficient affidavits. The Secretary of State's office responded by proposing administrative rules providing an absentee ballot shall be rejected if it lacks the voter's signature, address or (in primary elections only) party affiliation. The CA/O reviewed proposed definition and believed it addressed the issues at hand. The new rules were adopted as proposed.



**BIDDING PROCESS APPEARS APPROPRIATE:** According to a complainant a county sale of property for delinquent taxes was unfair and possibly illegal. The county sought sealed bids for the property, then opened the sale to oral bids. CA/O staff researched the statutes and found no prohibitive violation by allowing oral bids. No unfair advantage occurred because statute does not prohibit oral bids after the opening of sealed bids. The complainant believed sealed bids would be opened after oral bidding was concluded. The sales notice provided all interested parties may attend "for the purpose of giving oral bids." There was nothing in the notice to indicate oral bids would be heard first. The complainant acted upon his own assumption, and at his own risk. The investigation revealed, however, the county may have violated Iowa Code section 446.15 by accepting bids in excess of the total delinquent taxes, interest and costs for the property in question. That matter was referred to the State Auditor for review and possible action.

**INCREASED INTEREST IN TAX SALES:** A resident complained she was not notified prior to her property being sold by Jackson County at a delinquent tax sale. The complainant also said the county treasurer allowed the purchaser to buy taxes which were not yet due, which increased the amount of interest she was forced to pay the purchaser to redeem her property. A review of records showed a notice of delinquent tax was mailed to the complainant, and not returned. Only one notice for delinquent taxes is required by law (Iowa Code section 445.36). Iowa Code section 446.32 has, for some time, allowed purchasers to buy one year of subsequent taxes in delinquency cases. The 1991 legislature changed the interest rate from 9 percent to 24 percent, increasing the number of purchasers buying the subsequent year's taxes. Senate File 9, introduced in the 1993 legislature, would delay the purchase of the subsequent taxes until the tax was 14 days past due. The complainant was apprised of these findings and advised she may wish to contact her legislators in support of the legislation.

**CITIZEN: AGENDAS NOT KEPT, MINUTES NOT COMPLETE:** A resident of a small town complained the city clerk was failing to comply with two of the mandates in Iowa Code section 372.13. First, he complained the clerk had not been including a list of all claims approved by the city council with the posted minutes of the council's proceedings. Second, he complained the clerk had been discarding agendas after city council meetings. The resident said he complained repeatedly to the clerk and council with no results. CA/O staff reviewed Iowa Code section 372.13 and found it requires council minutes to include a list of all claims approved. It also requires "city records and documents" be kept at least five years. CA/O staff presented the complaints to the clerk and city council along with an explanation about the requirements of Iowa Code section 372.13. City officials replied they were not aware of the requirements and pledged they would begin complying immediately.



## Other cases

**CA/O URGES PROSECUTION OF ILLEGAL PUPPY MILLS:** A citizen complained the Bureau of Animal Welfare in the Department of Agriculture (DOA) was failing to act against four puppy mills allegedly operating in poor condition and without licenses. CA/O staff reviewed DOA's case files on the four alleged violators. CA/O staff found one is federally licensed and not subject to state regulation. DOA had taken enforcement action against a second. CA/O staff found the other two alleged violators had managed to continue operation, at least off and on, without valid licenses for at least two years. DOA's case file showed dogs at one of the facilities were not receiving proper care. DOA staff had periodically monitored, inspected and warned the operators, who were able to forestall enforcement action by claiming they were seeking licensure or would take other corrective actions. The CA/O urged DOA to pursue more aggressive action against the alleged violators. DOA staff conducted follow-up inspections and eventually referred the cases to the respective county attorneys. Both operators pleaded guilty to simple misdemeanor charges. The CA/O also suggested DOA adopt written policies to provide general guidelines and timetables for regulating unlicensed and state-licensed operators, including steps for bringing violators into compliance. While DOA expressed a willingness to prepare policies in line with the CA/O's suggestions, preparation has been delayed due to internal reorganization at DOA, as well as staff and resource shortages. CA/O staff continues to monitor DOA's progress in developing such policies.

**SURGEON'S ESTIMATE OFF; BILL CUT:** A father complained a bill for his daughter's surgery at University of Iowa Hospitals and Clinics was \$2,181 more than the surgeon's estimate. The father had no health insurance and was concerned how he would pay the additional money. The surgeon had sent the father a letter seeking preauthorization to perform the surgery. The letter had indicated the total bill, including both surgeon's fees and hospital services, would be no more than \$15,000. The father was surprised after the surgery when he was billed for \$17,181 -- a difference of \$2,181. His daughter brought the problem to the hospital's attention. The hospital responded the charges were appropriate. The father contacted the CA/O, which in turn contacted hospital officials. They looked into the matter and reported the surgeon had erred by issuing an estimate for hospital services without consulting the hospital. Had the surgeon done so, hospital officials said the estimate would have been correct. Hospital officials offered to reduce the total bill \$2,000, with the hospital and surgeon splitting the "discount." That brought the total bill to \$15,181, compared to the original estimate of \$15,000. CA/O staff passed the offer on to the father, who accepted.

**THE CHECK IS (LOST) IN THE MAIL:** A woman complained the Consumer Protection Division (CPD) of the Attorney General's Office refused to spend \$15 to cancel a \$71 check misaddressed by CPD staff. The woman initially contacted the CPD alleging an auto repair shop refused to return \$400 for car repairs never performed. After investigating the complaint, CPD staff agreed to settle with the repair shop about a year later for \$71. The repair shop mailed a check for \$71 to the CPD, which in turn mailed the check to the complainant. She waited for the check but it never arrived. She called CPD staff and learned CPD staff misaddressed the envelope holding the check. She asked CPD staff to have a second check issued. CPD staff said repair shop refused to cancel first check because the error was not the repair shop's. CPD staff said it



could not pay the \$15 cancellation fee because the CPD has no statutory authority for such an expenditure. CPD staff said the woman needed to wait for the first check to turn up. She called the CA/O, which made inquiry to the CPD. CPD staff agreed to contact postal officials towards locating the missing check. With no results, CA/O staff pressed CPD staff as to under what circumstances the CPD would take responsibility for what it acknowledged was its own error. CPD staff responded they would continue monitoring efforts to find the first check and would spend the \$15 cancellation fee "only as a last resort." After several more weeks and several more discussions, CPD staff ultimately agreed to pay the \$15 cancellation fee. The woman received the replacement \$71 check shortly thereafter.

**ERRORS IN HIRING AT DOG TRACK:** A woman applied for a part-time pari-mutuel clerk's position at a dog-racing track at Waterloo. Another applicant received the job, which involved overseeing track employees rather than working at the betting window. The Iowa Department of Personnel (IDOP) and the Iowa Racing and Gaming Commission (IRGC) agreed they erred at least three times in the selection process. The complainant had scored 98 on the merit test, which she erroneously believed gave her the top score. In fact, there were three higher scores including that of the woman who eventually won the job. Still, people with test scores as low as 86 were interviewed, and the complainant felt her interpersonal skills and retail experience would have helped her gain the job. The complainant agreed with the CA/O it wouldn't be fair to remove the new employee from her job based on the errors. There seemed to be little which could correct the situation. The complainant said if the two agencies would agree to consider her if a similar position comes open, and if her test results would remain valid for a time, she would be satisfied. The agencies agreed. IDOP said it would change all of the applications to "any" shift designation so all would be on an equal footing, and her test results would remain valid for two years and could be extended beyond that upon request. The complainant, while not pleased about the errors, accepted that conclusion and indicated her satisfaction with receiving answers after some frustration in gaining information directly from the agencies.

**CA/O HELPS SCULPT NAIL TECHNOLOGIST LAWS:** A woman performing nail sculpturing without a license in a barbershop expressed concern she would lose her job and clientele. At the time, people practicing manicuring had to be licensed by the Cosmetology Board. However, a barbering law exempted from licensure those manicurists practicing in a licensed barbershop since before July 1989. The complainant believed she fell within the exemption. The Cosmetology Board disagreed, while the Barber Board opted to further study the issue. CA/O staff contacted both boards and learned the Cosmetology Board's definition of manicurist did not include nail sculpturing. Over the next 18 months, CA/O staff conducted extensive research into the issue, including discussions and meetings with both boards, legislators, cosmetologists and barbers. CA/O staff gave input at several appearances before the Administrative Rules Review Committee. During this process, the complainant was allowed to continue her practice. The efforts by CA/O staff helped bring about a rewrite of the entire cosmetology statute which created a new licensure category for nail technology, including sculpturing. The new statute further allowed nail technologists practicing before July 1992 to become licensed upon adequate documentation. The Cosmetology Board then adopted new administrative rules clarifying the documentation process. As a result of these changes, the complainant became the first licensed nail technologist in Iowa.



## CHAPTER 2C

### CITIZENS' AIDE

This chapter not enacted as a part of this title: transferred from chapter 601G in Code 1993

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#### §2C.1. CITIZENS' AIDE

##### 2C.1 Definitions.

As used in this chapter:

1. "Administrative action" means any policy or action taken by an agency or failure to act pursuant to law.

2. "Agency" means all governmental entities, departments, boards, commissions, councils or institutions, and any officer, employee or member thereof acting or purporting to act in the exercise of official duties, but it does not include:

a. Any court or judge or appurtenant judicial staff.

b. The members, committees, or permanent or temporary staffs of the Iowa general assembly.

c. The governor of Iowa or the governor's personal staff.

d. Any instrumentality formed pursuant to an interstate compact and answerable to more than one state.

3. "Employee" means any employee of an agency.

4. "Officer" means any officer of an agency.

5. "Person" means an individual, aggregate of individuals, corporation, partnership, or unincorporated association.

[C73, 75, 77, 79, 81, §601G.1]

C93, §2C.1

Section transferred from §601G.1  
Subsections renumbered to alphabetize

##### 2C.2 Office established.

The office of citizens' aide is established.

[C73, 75, 77, 79, 81, §601G.2]

C93, §2C.2

Section transferred from §601G.2

##### 2C.3 Appointment — vacancy.

The citizens' aide shall be appointed by the legislative council with the approval and confirmation of a constitutional majority of the senate and with the approval and confirmation of a constitutional majority of the house of representatives. The legislative council shall fill a vacancy in this office in the same manner as the original appointment. If the appointment or vacancy occurs while the general assembly is not in session, such appointment shall be reported to the senate and the house of representatives within thirty days of their convening at their next regular session for approval and confirmation.

The citizens' aide shall employ and supervise all employees under the citizens' aide's direction in such positions and at such salaries as shall be authorized by the legislative council. The legislative council shall hear and act upon appeals of aggrieved employees of the office of the citizens' aide.

[C73, 75, 77, 79, 81, §601G.3]

C93, §2C.3

Section transferred from §601G.3

##### 2C.4 Citizen of United States and resident of Iowa.

The citizens' aide shall be a citizen of the United States and a resident of the state of Iowa, and shall be qualified to analyze problems of law, administration and public policy.

[C73, 75, 77, 79, 81, §601G.4]

C93, §2C.4

Section transferred from §601G.4



### 2C.5 Term — removal.

The citizens' aide shall hold office for four years from the first day in July of the year of approval by the senate and the house of representatives, and until a successor is appointed by the legislative council, unless the citizens' aide can no longer perform the official duties, or is removed from office. The citizens' aide may at any time be removed from office by constitutional majority vote of the two houses of the general assembly or as provided by chapter 66. If a vacancy occurs in the office of citizens' aide, the deputy citizens' aide shall act as citizens' aide until the vacancy is filled by the legislative council.

[C73, 75, 77, 79, 81, §601G.5]  
C93, §2C.5

Section transferred from §601G.5

### 2C.6 Deputy — assistant for penal agencies.

The citizens' aide shall designate one of the members of the staff as the deputy citizens' aide, with authority to act as citizens' aide when the citizens' aide is absent from the state or becomes disabled. The citizens' aide may delegate to members of the staff any of the citizens' aide's authority or duties except the duty of formally making recommendations to agencies or reports to the governor or the general assembly.

The citizens' aide shall appoint an assistant who shall be primarily responsible for investigating complaints relating to penal or correctional agencies.

[C73, 75, 77, 79, 81, §601G.6]  
84 Acts, ch 1046, §1  
C93, §2C.6

### 2C.7 Prohibited activities.

Neither the citizens' aide nor any member of the staff shall:

1. Hold another public office of trust or profit under the laws of this state other than the office of notary public.

2. Engage in other employment for remuneration with an agency against which a complaint may be filed under this chapter or that could create a conflict of interest or interfere in the performance of the person's duties under this chapter.

3. Knowingly engage in or maintain any business transactions with persons employed by agencies against whom complaints may be made under the provisions of this chapter.

4. Be actively involved in partisan affairs.

[C73, 75, 77, 79, 81, §601G.7]  
84 Acts, ch 1046, §2  
C93, §2C.7

### 2C.8 Closed files.

The citizens' aide may maintain secrecy in respect to all matters including the identities of the complainants or witnesses coming before the citizens' aide, except that the general assembly, any standing

committee of the general assembly or the governor may require disclosure of any matter and shall have complete access to the records and files of the citizens' aide. The citizens' aide may conduct private hearings.

[C73, 75, 77, 79, 81, §601G.8]  
C93, §2C.8

### 2C.9 Powers.

The citizens' aide may:

1. Investigate, on complaint or on the citizens' aide's own motion, any administrative action of any agency, without regard to the finality of the administrative action, except that the citizens' aide shall not investigate the complaint of an employee of an agency in regard to that employee's employment relationship with the agency. A communication or receipt of information made pursuant to the powers prescribed in this chapter shall not be considered an ex parte communication as described in the provisions of section 17A.17.

2. Prescribe the methods by which complaints are to be made, received, and acted upon; determine the scope and manner of investigations to be made; and, subject to the requirements of this chapter, determine the form, frequency, and distribution of the conclusions and recommendations of the citizens' aide.

3. Request and receive from each agency assistance and information as necessary in the performance of the duties of the office. Notwithstanding section 22.7, pursuant to an investigation the citizens' aide may examine any and all records and documents of any agency unless its custodian demonstrates that the examination would violate federal law or result in the denial of federal funds to the agency. Confidential documents provided to the citizens' aide by other agencies shall continue to maintain their confidential status. The citizens' aide is subject to the same policies and penalties regarding the confidentiality of the document as an employee of the agency. The citizens' aide may enter and inspect premises within any agency's control and may observe proceedings and attend hearings, with the consent of the interested party, including those held under a provision of confidentiality, conducted by any agency unless the agency demonstrates that the attendance or observation would violate federal law or result in the denial of federal funds to that agency. This subsection does not permit the examination of records or access to hearings and proceedings which are the work product of an attorney under section 22.7, subsection 4, or which are privileged communications under section 622.10.

4. Issue a subpoena to compel any person to appear, give sworn testimony, or produce documentary or other evidence relevant to a matter under inquiry. The citizens' aide, deputies, and assistants of the citizens' aide may administer oaths to persons giving



testimony before them. If a witness either fails or refuses to obey a subpoena issued by the citizens' aide, the citizens' aide may petition the district court having jurisdiction for an order directing obedience to the subpoena. If the court finds that the subpoena should be obeyed, it shall enter an order requiring obedience to the subpoena, and refusal to obey the court order is subject to punishment for contempt.

5. Establish rules relating to the operation, organization, and procedure of the office of the citizens' aide. The rules are exempt from chapter 17A and shall be published in the Iowa administrative code. [C73, 75, 77, 79, 81, §601G.9; 82 Acts, ch 1026, §1] 88 Acts, ch 1247, §1; 89 Acts, ch 296, §78 C93, §2C.9

Section transferred from §601G.9

#### 2C.10 No charge for services.

No monetary or other charge shall be levied upon any person as a prerequisite to presentation of a complaint to the citizens' aide.

[C73, 75, 77, 79, 81, §601G.10] C93, §2C.10

Section transferred from §601G.10

#### 2C.11 Subjects for investigations.

An appropriate subject for investigation by the office of the citizens' aide is an administrative action that might be:

1. Contrary to law or regulation.
2. Unreasonable, unfair, oppressive, or inconsistent with the general course of an agency's functioning, even though in accordance with law.
3. Based on a mistake of law or arbitrary in ascertainties of fact.
4. Based on improper motivation or irrelevant consideration.
5. Unaccompanied by an adequate statement of reasons. The citizens' aide may also be concerned with strengthening procedures and practices which lessen the risk that objectionable administrative actions will occur.

[C73, 75, 77, 79, 81, §601G.11] C93, §2C.11

Section transferred from §601G.11

#### 2C.12 Complaints investigated.

The citizens' aide may receive a complaint from any source concerning an administrative action. The citizens' aide shall conduct a suitable investigation into the administrative actions complained of unless the citizens' aide finds substantiating facts that:

1. The complainant has available another remedy or channel of complaint which the complainant could reasonably be expected to use.
2. The grievance pertains to a matter outside the citizens' aide power.
3. The complainant has no substantive or procedural interest which is directly affected by the matter complained about.

4. The complaint is trivial, frivolous, vexatious, or not made in good faith.

5. Other complaints are more worthy of attention.

6. The citizens' aide resources are insufficient for adequate investigation.

7. The complaint has been delayed too long to justify present examination of its merit.

The citizens' aide may decline to investigate a complaint, but shall not be prohibited from inquiring into the matter complained about or into related problems at some future time.

[C73, 75, 77, 79, 81, §601G.12] C93, §2C.12

Section transferred from §601G.12

#### 2C.13 No investigation — notice to complainant.

If the citizens' aide decides not to investigate, the complainant shall be informed of the reasons for the decision. If the citizens' aide decides to investigate, the complainant and the agency shall be notified of the decision. After completing consideration of a complaint, whether or not it has been investigated, the citizens' aide shall without delay inform the complainant of the fact, and if appropriate, shall inform the administrative agency involved. The citizens' aide shall on request of the complainant, and as appropriate, report the status of the investigation to the complainant.

[C73, 75, 77, 79, 81, §601G.13; 82 Acts, ch 1026, §2] C93, §2C.13

Section transferred from §601G.13

#### 2C.14 Institutionalized complainants.

A letter to the citizens' aide from a person in a correctional institution, a hospital, or other institution under the control of an administrative agency shall be immediately forwarded, unopened to the citizens' aide by the institution where the writer of the letter is a resident. A letter from the citizens' aide to such a person shall be immediately delivered, unopened to the person.

[C73, 75, 77, 79, 81, §601G.14] C93, §2C.14

Section transferred from §601G.14

#### 2C.15 Reports critical of agency or officer.

Before announcing a conclusion or recommendation that criticizes an agency or any officer or employee, the citizens' aide shall consult with that agency, officer or employee, and shall attach to every report sent or made under the provisions of this chapter a copy of any unedited comments made by or on behalf of the officer, employee, or agency.

[C73, 75, 77, 79, 81, §601G.15] C93, §2C.15

Section transferred from §601G.15



### **2C.16 Recommendations to agency.**

If, having considered a complaint and whatever material the citizens' aide deems pertinent, the citizens' aide finds substantiating facts that:

1. A matter should be further considered by the agency;
2. An administrative action should be modified or canceled;
3. A rule on which an administrative action is based should be altered;
4. Reasons should be given for an administrative action: or

5. Any other action should be taken by the agency, the citizens' aide shall state the recommendations to the agency. If the citizens' aide requests, the agency shall, within twenty working days notify the citizens' aide of any action taken on the recommendations or the reasons for not complying with them.

If the citizens' aide believes that an administrative action has occurred because of laws of which results are unfair or otherwise objectionable, the citizens' aide shall notify the general assembly concerning desirable statutory change.

[C73, 75, 77, 79, 81, §601G.16]  
C93, §2C.16

Section transferred from §601G.16

### **2C.17 Publication of conclusions.**

The citizens' aide may publish the conclusions, recommendations, and suggestions and transmit them to the governor, the general assembly or any of its committees. When publishing an opinion adverse to an administrative agency or official the citizens' aide shall, unless excused by the agency or official affected, include with the opinion any unedited reply made by the agency.

Any conclusions, recommendations, and suggestions so published may at the same time be made available to the news media or others who may be concerned.

[C73, 75, 77, 79, 81, §601G.17]  
C93, §2C.17

Section transferred from §601G.17

### **2C.18 Report to general assembly.**

The citizens' aide shall by April 1 of each year submit an economically designed and reproduced report to the general assembly and to the governor concerning the exercise of the citizens' aide functions during the preceding calendar year. In discussing matters with which the citizens' aide has been concerned, the citizens' aide shall not identify specific persons if to do so would cause needless hardship. If the annual report criticizes a named agency or official, it shall also include unedited replies made by the agency or official to the criticism, unless excused by the agency or official affected.

[C73, 75, 77, 79, 81, §601G.18; 82 Acts, ch 1026, §3]  
C93, §2C.18

Section transferred from §601G.18

### **2C.19 Disciplinary action recommended.**

If the citizens' aide believes that any public official, employee or other person has acted in a manner warranting criminal or disciplinary proceedings, the citizens' aide shall refer the matter to the appropriate authorities.

[C73, 75, 77, 79, 81, §601G.19]  
C93, §2C.19

Section transferred from §601G.19

### **2C.20 Immunities.**

No civil action, except removal from office as provided in chapter 66, or proceeding shall be commenced against the citizens' aide or any member of the staff for any act or omission performed pursuant to the provisions of this chapter unless the act or omission is actuated by malice or is grossly negligent, nor shall the citizens' aide or any member of the staff be compelled to testify in any court with respect to any matter involving the exercise of the citizens' aide's official duties except as may be necessary to enforce the provisions of this chapter.

[C73, 75, 77, 79, 81, §601G.20]  
C93, §2C.20

Section transferred from §601G.20

### **2C.21 Witnesses.**

A person required by the citizens' aide to provide information shall be paid the same fees and travel allowances as are extended to witnesses whose attendance has been required in the district courts of this state. Officers and employees of an agency shall not be entitled to such fees and allowances. A person who, with or without service of compulsory process, provides oral or documentary information requested by the citizens' aide shall be accorded the same privileges and immunities as are extended to witnesses in the courts of this state, and shall also be entitled to be accompanied and advised by counsel while being questioned.

[C73, 75, 77, 79, 81, §601G.21]  
C93, §2C.21

Section transferred from §601G.21

### **2C.22 Penalties.**

A person who willfully obstructs or hinders the lawful actions of the citizens' aide or the citizens' aide's staff, or who willfully misleads or attempts to mislead the citizens' aide in the citizens' aide's inquiries, shall be guilty of a simple misdemeanor.

[C73, 75, 77, 79, 81, §601G.22]  
C93, §2C.22

Section transferred from §601G.22

### **2C.23 Citation.**

This chapter shall be known and may be cited as the "Iowa Citizens' Aide Act".

[C73, 75, 77, 79, 81, §601G.23]  
C93, §2C.23

Section transferred from §601G.23



