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## BILL ANALYSIS



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Senate Bill 493 (as introduced 9-13-23)  
Sponsor: Senator Sylvia Santana  
Committee: Oversight

Date Completed: 10-16-23

**CONTENT**

**The bill would amend Public Act 46 of 1975, which established the Office of the Legislative Corrections Ombudsman, to do the following:**

- **Rename the Office of the Legislative Corrections Ombudsman and Legislative Corrections Ombudsman (LCO) to the Office of the Legislative Corrections Ombudsperson and Ombudsperson, respectively.**
- **Expand the list of individuals allowed to make a complaint to the LCO to include a family member, prisoner advocate, employee, or contractor, and afford these individuals certain protections afforded to current complainants under the Act.**
- **Require the LCO to create a standardized complaint form and make that form available.**
- **Allow the LCO to consult or contract with qualified experts for assistance with the work of the Office of the LCO.**
- **Prescribe specific timelines regarding the release of a recommendation by the LCO that criticized a person or the Michigan Department of Corrections (MDOC) and the notification by the MDOC of any action taken on those recommendations.**
- **Require the annual report on the conduct of the LCO to be made available on the Office of the LCO's website.**
- **Require the annual report to contain certain information regarding complaints and investigation of those complaints, among other things.**
- **Require the LCO to make monthly reports concerning complaint information available on the LCO's website.**

Because of the renaming proposed by the bill, the acronym "LCO" is used interchangeably to refer to the Legislative Corrections Ombudsman (in provisions concerning current law) and the Legislative Corrections Ombudsperson (in provisions modified or proposed by the bill).

**Investigation by LCO**

Under the Act, the LCO may begin an investigation upon the following: 1) receipt of a complaint from a prisoner or legislator or on the LCO's own initiative concerning an administrative act that is alleged to be contrary to law or contrary to departmental policy; and 2) the LCO's own initiative for significant prisoner health and safety issues, correctional facility security, and public safety or other issues for which there is no effective administrative remedy.

Under the bill, the LCO also could commence an investigation on the LCO's own initiative for concerns described above for which an administrative remedy had not been followed or had failed. In addition, the bill would specify that a complaint could be made by a complainant.

Currently, "complainant" means a prisoner or legislator who files a complaint. Under the bill, the term would mean a prisoner, legislator, family member, prisoner advocate, employee, or contractor who files a complaint.

"Contractor" would mean an individual, organization, or company that currently provides or formerly provided a contractual service for the MDOC. "Employee" would mean a current or former employee of the MDOC. "Family member" would mean a family member of a prisoner who advocates on behalf of that prisoner. "Prisoner advocate" would mean an individual or organization who advocates on behalf of a prisoner or prisoners.

Within 120 days of the bill's effective date, the LCO would have to create a standardized complaint form that a complainant could use and make the form available in the following ways:

- Electronically on the LCO's website.
- In a hard copy in all correctional facility law libraries and other locations within correctional facilities as requested by the LCO.

The LCO would have to notify a complainant that the complaint was received.

Under the bill, the LCO could consult or contract with qualified experts for assistance with investigations, inspections, hearings, or other work of the LCO. The qualified expert would have to be permitted to enter correctional facilities with the LCO and bring necessary equipment into the facilities. The LCO or qualified expert could bring photographic equipment into correctional facilities to take pictures, if necessary, as long as the taking of the pictures did not compromise correctional facility security. "Qualified expert" would mean a professional with substantial experience in a field, including environmental, medical, or mental health professionals.

#### Recommendation by the LCO

Before announcing a conclusion or recommendation that criticizes a person or the MDOC, the LCO must consult with that person or the MDOC.

When publishing an opinion adverse to the MDOC or any person, the LCO must include a statement made to LCO by the MDOC or person in defense or mitigation of the action if that statement is provided within a reasonable time as determined by the Legislative Council. The LCO may request to be notified by the MDOC within a specified time of any action taken on any recommendation presented. The LCO must notify the complainant of the actions taken by the Office of the LCO and the MDOC.

Instead, when publishing an opinion adverse to the MDOC or any person, the LCO would have to include a statement made to the LCO by the MDOC or person in defense or mitigation of the action if that statement were provided within 14 business days after the consultation with the MDOC or the person. The MDOC would have to notify the LCO within 30 business days after any action was taken on any recommendation presented. The LCO would have to notify the complainant of the actions taken by the Office and the MDOC within 45 business days after the action was taken.

#### Report

Currently, the LCO must submit an annual report on the conduct of the Office to the Legislature. The bill would require the LCO to make the report available on the LCO's website.

The report would have to include all the following information for complaints:

- The total number of complaints that were received, investigated, denied, resolved, unsubstantiated, or undecided.
- The number of complaints received concerning each correctional facility.
- The number of complaints filed, broken down by subject matter, including racial discrimination and medical treatment issues.

Additionally, the report would have to include the following:

- Significant issues that were investigated.
- Each recommendation made to the MDOC.
- The MDOC's responses to each recommendation.

The LCO would have to make monthly reports available on the LCO's website that included for each month the information required in the annual report for complaints.

MCL 4.351 et al.

Legislative Analyst: Eleni Lionas

### **FISCAL IMPACT**

The bill would have no fiscal impact on the State or local governments. Any costs associated with consulting or contracting with qualified experts for assistance with investigations, inspections, hearings, or other work of the LCO should be absorbable within the Offices' annual appropriations.

Fiscal Analyst: Joe Carrasco, Jr.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.