

SENATE BILL NO. 493

September 13, 2023, Introduced by Senators SANTANA, MCMORROW, IRWIN, WOJNO, POLEHANKI, GEISS, BAYER, CHANG and MCBROOM and referred to the Committee on Oversight.

A bill to amend 1975 PA 46, entitled

"An act to create the office of the legislative corrections ombudsman; to prescribe the powers and duties of the office, the ombudsman, the legislative council, and the department of corrections; and to provide remedies from administrative acts,"

by amending the title and sections 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 (MCL 4.351, 4.352, 4.354, 4.355, 4.356, 4.357, 4.358, 4.359, 4.360, 4.361, 4.362, 4.363, and 4.364), sections 1, 6, 7, and 10 as amended by 1998 PA 318, sections 4, 5, 8, 9, and 13 as amended by 2018 PA 571, section 11 as amended by 1995 PA 197,

and section 12 as amended by 1982 PA 170.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE

2 An act to create the office of the legislative corrections
3 ~~ombudsman; ombudsperson~~; to prescribe the powers and duties of the
4 office, the ~~ombudsman; ombudsperson~~, the legislative council, and
5 the department of corrections; and to provide remedies from
6 administrative acts.

7 Sec. 1. As used in this act:

8 (a) "Administrative act" includes an action, omission,
9 decision, recommendation, practice, or other procedure of the
10 department.

11 (b) "Complainant" means a prisoner, ~~or~~ legislator, **family**
12 **member, prisoner advocate, employee, or contractor** who files a
13 complaint under section 4.

14 (c) "Contractor" means an individual, organization, or company
15 that currently provides or formerly provided a contractual service
16 for the department.

17 (d) ~~(e)~~—"Council" means the legislative council established
18 under section 15 of article IV of the state constitution of 1963.

19 (e) ~~(d)~~—"Department" means the department of corrections.

20 (f) "Employee" means a current or former employee of the
21 department.

22 (g) "Family member" means a family member of a prisoner who
23 advocates on behalf of that prisoner.

24 (h) ~~(e)~~—"Legislator" means a member of the senate or the house
25 of representatives of this state.

26 (i) ~~(f)~~—"Office" means the office of the legislative
27 corrections ~~ombudsman; ombudsperson~~ created under this act.

1 (j) "Official" means an official or employee of the
2 department.

3 (k) ~~(g) "Ombudsman"~~ "Ombudsperson" means the office of
4 legislative corrections ~~ombudsman.~~ **ombudsperson.**

5 (l) ~~(h) "Prisoner"~~ means ~~a person~~ **an individual** committed to or
6 under the jurisdiction of the department.

7 ~~(i) "Official" means an official or employee of the department~~
8 ~~of corrections.~~

9 (m) "Prisoner advocate" means an individual or organization
10 who advocates on behalf of a prisoner or prisoners.

11 (n) "Qualified expert" means a professional with substantial
12 experience in a field, including, but not limited to,
13 environmental, medical, or mental health professionals.

14 Sec. 2. (1) The office of the legislative corrections
15 ~~ombudsman~~ **ombudsperson** is created within the legislative council.

16 (2) The principal executive officer of the office of the
17 legislative corrections ~~ombudsman~~ **ombudsperson** is the legislative
18 corrections ~~ombudsman~~ **ombudsperson** who shall be ~~is~~ appointed by and
19 ~~serve~~ **serves** at the pleasure of the council.

20 Sec. 4. (1) The ~~ombudsman~~ **ombudsperson** may commence an
21 investigation upon ~~either~~ **any** of the following:

22 (a) Receipt of a complaint from a ~~prisoner, a legislator,~~
23 **complainant** or on the ~~ombudsman's~~ **ombudsperson's** own initiative,
24 concerning an administrative act that is alleged to be contrary to
25 law or contrary to departmental policy.

26 (b) The ~~ombudsman's~~ **ombudsperson's** own initiative for
27 significant prisoner health and safety issues, correctional
28 facility security, and public safety, and other matters for which
29 there is no effective administrative remedy **or when an**

1 administrative remedy has not been followed or has failed.

2 (2) By not later than 120 business days after the effective
3 date of the amendatory act that added this subsection, the
4 ombudsperson shall create a standardized complaint form that a
5 complainant may use, and make the standardized complaint form
6 available in both of the following ways:

7 (a) Electronically on the ombudsperson's website.

8 (b) In hard copy in all correctional facility law libraries
9 and other locations within correctional facilities as requested by
10 the ombudsperson.

11 (3) On receiving a complaint from a complainant, the
12 ombudsperson shall notify the complainant that the complaint was
13 received.

14 (4) ~~(2)~~ Subject to approval of the council, the ~~ombudsman~~
15 **ombudsperson** shall establish procedures for receiving and
16 processing complaints, conducting investigations, holding hearings,
17 and reporting the findings resulting from the investigations.

18 Sec. 5. (1) Upon request and without the requirement of any
19 release, the ~~ombudsman~~**ombudsperson** shall be given access to and
20 physical or electronic copies of all information, records, and
21 documents in the possession of the department that the ~~ombudsman~~
22 **ombudsperson** considers necessary in an investigation, including,
23 but not limited to, prisoner medical health records, prisoner
24 mental health records, and prisoner mortality and morbidity
25 records. Upon request, the ~~ombudsman~~**ombudsperson** may interview any
26 of the following individuals whom the ~~ombudsman~~**ombudsperson**
27 considers necessary in an investigation:

28 (a) An individual employed by or retained under contract by
29 the department.

1 (b) An individual employed by or retained under contract by a
 2 private contractor that operates a facility or institution that
 3 houses prisoners under the jurisdiction of the department.

4 (2) **The ombudsperson may consult or contract with qualified**
 5 **experts for assistance with investigations, inspections, hearings,**
 6 **or other work of the ombudsperson. The qualified expert must be**
 7 **permitted to enter facilities with the ombudsperson and bring any**
 8 **necessary testing equipment into correctional facilities. The**
 9 **ombudsperson or qualified expert may bring photographic equipment**
 10 **into correctional facilities to take pictures that the ombudsperson**
 11 **or qualified expert determines to be necessary, if taking those**
 12 **pictures does not compromise correctional facility security.**

13 (3) ~~(2)~~ Upon request and without notice, the ~~ombudsman~~
 14 **ombudsperson** must be granted entrance to inspect at any time any
 15 premises under the control of the department. One ~~ombudsman~~
 16 **ombudsperson** staff ~~person-member~~ must also be granted entry into a
 17 correctional facility or the department's "think tank" or "command
 18 center" during emergency situations including, but not limited to,
 19 correctional facility disturbances, riots, and hostage incidents,
 20 and must be provided with updates regarding the status of the
 21 emergent situation as well as the department's efforts to address
 22 the situation. The ~~ombudsman-ombudsperson~~ staff ~~person-member~~
 23 granted entry for an emergency situation under this subsection is
 24 present for observation and to report on the emergency situation.

25 (4) ~~(3)~~ The ~~ombudsman-ombudsperson~~ may hold informal hearings
 26 and may request that any person appear before the ~~ombudsman,~~
 27 **ombudsperson**, or at a hearing, and give testimony or produce
 28 documentary or other evidence that the ~~ombudsman-ombudsperson~~
 29 considers relevant to a matter under investigation.

1 (5) ~~(4)~~ The ~~ombudsman~~**ombudsperson** shall arrange an interview
2 under subsection (1) in cooperation with the department at a time
3 and location that does not interfere with the operation of a
4 correctional facility.

5 Sec. 6. (1) The ~~ombudsman~~**ombudsperson** shall advise a
6 complainant to pursue all administrative remedies open to the
7 complainant. The ~~ombudsman~~**ombudsperson** may request and shall
8 receive from the department a progress report concerning the
9 administrative processing of a complaint. After administrative
10 action on a complaint, the ~~ombudsman~~**ombudsperson** may conduct
11 further investigation on the request of a complainant or on ~~his or~~
12 ~~her~~**the ombudsperson's** own initiative.

13 (2) The ~~ombudsman~~**ombudsperson** need not conduct an
14 investigation on a complaint brought before the ~~ombudsman~~
15 **ombudsperson**. A person is not entitled as a right to be heard by
16 the ~~ombudsman~~**ombudsperson**.

17 Sec. 7. Upon receiving a complaint from a ~~legislator or a~~
18 ~~prisoner~~**complainant** under section 4 and deciding to investigate
19 the complaint, the ~~ombudsman~~**ombudsperson** shall notify the
20 complainant, the prisoner or prisoners affected, and the
21 department. If the ~~ombudsman~~**ombudsperson** declines to investigate,
22 the ~~ombudsman~~**ombudsperson** shall notify the complainant, in
23 writing, and inform the prisoner or prisoners affected of the
24 reasons for the ~~ombudsman's~~**ombudsperson's** decision.

25 Sec. 8. Upon request of the ~~ombudsman~~**ombudsperson**, the
26 council may hold a hearing. The council may administer oaths,
27 subpoena witnesses, and examine the books and records of the
28 department or of a person, partnership, or corporation involved, in
29 accordance with section 104 of the legislative council act, 1986 PA

1 268, MCL 4.1104, in a matter that is or was a proper subject of
2 investigation by the ~~ombudsman~~**ombudsperson** under this act.

3 Sec. 9. (1) Correspondence between the ~~ombudsman~~**ombudsperson**
4 and a prisoner, **a prisoner advocate, a family member, an employee,**
5 **or a contractor** is confidential and must be processed as privileged
6 correspondence in the same manner as letters between prisoners and
7 courts, attorneys, or public officials.

8 (2) The ~~ombudsman~~**ombudsperson** shall maintain secrecy with
9 respect to all matters and the identities of the complainants or
10 persons from whom information is acquired, except so far as
11 disclosures may be necessary to enable the ~~ombudsman~~**ombudsperson**
12 to perform the duties of the office and to support any
13 recommendations resulting from an investigation. A record of or
14 information obtained or created by the ~~ombudsman~~**ombudsperson** is
15 confidential, is considered privileged, must only be used for
16 purposes set forth in this act, is not subject to court subpoena,
17 and is not discoverable in a legal proceeding. A record of or
18 information obtained by the ~~ombudsman~~**ombudsperson** that is
19 otherwise available from other sources is not exempt from court
20 subpoena or discovery from other sources solely because it was
21 presented to or reviewed by the ~~ombudsman~~**ombudsperson**.

22 (3) All of the following are exempt from disclosure under the
23 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246:

24 (a) A record of the ~~ombudsman~~**ombudsperson**.

25 (b) A report or recommendations made by the ~~ombudsman~~
26 **ombudsperson** and submitted to the council under section 10.

27 (c) Information obtained or created by the
28 ~~ombudsman~~**ombudsperson**.

29 Sec. 10. (1) The ~~ombudsman~~**ombudsperson** shall prepare and

1 submit a report of the findings of an investigation and make
2 recommendations to the council within 30 days after completing the
3 investigation if the ~~ombudsman~~**ombudsperson** finds any of the
4 following:

- 5 (a) A matter that should be considered by the department.
- 6 (b) An administrative act that should be modified or canceled.
- 7 (c) A statute or rule that should be altered.
- 8 (d) Administrative acts for which justification is necessary.
- 9 (e) Significant prisoner health and safety issues as
10 determined by the council.
- 11 (f) Any other significant concerns as determined by the
12 council.

13 (2) Subject to section 11, the council may forward the report
14 prepared and submitted under this section to the department, the
15 prisoner or prisoners affected, or the complainant who requested
16 the report.

17 Sec. 11. Before announcing a conclusion or recommendation that
18 expressly or by implication criticizes a person or the department,
19 the ~~ombudsman~~**ombudsperson** shall consult with that person or the
20 department. When publishing an opinion adverse to the department,
21 or any person, the ~~ombudsman~~**ombudsperson** shall include in that
22 publication a statement of reasonable length made to ~~him or her~~**the**
23 **ombudsperson** by the department or person in defense or mitigation
24 of the action if that statement is provided within ~~a reasonable~~
25 ~~period of time as determined by the council.~~ ~~The ombudsman may~~
26 ~~request to be notified by the department, within a specified time,~~
27 ~~of~~**14 business days after the consultation with the department or**
28 **person. The department shall notify the ombudsperson within 30**
29 **business days after** any action **is** taken on any recommendation

1 presented. The ~~ombudsman~~**ombudsperson** shall notify the complainant
2 of the actions taken by the office and by the department **within 45**
3 **business days after the action is taken.**

4 Sec. 12. (1) The ~~ombudsman~~**ombudsperson** shall submit to the
5 council and the legislature an annual report on the conduct of the
6 office **and make the report available on the ombudsperson's website.**
7 **The annual report must include all of the following:**

8 (a) All of the following information for complaints:

9 (i) The total number of complaints that were received,
10 investigated, denied, resolved, unsubstantiated, or undecided.

11 (ii) The number of complaints received concerning each
12 correctional facility.

13 (iii) The number of complaints filed, broken down by subject
14 matter, including, but not limited to, racial discrimination and
15 medical treatment issues.

16 (b) Significant issues that were investigated.

17 (c) Each recommendation made to the department.

18 (d) The department's response to each recommendation.

19 (2) The ombudsperson shall make monthly reports available on
20 the ombudsperson's website that include for each month the
21 information described in subsection (1) (a).

22 Sec. 13. (1) A prisoner, **prisoner advocate, family member,**
23 **employee, or contractor** must not be penalized in any way by an
24 official or the department as a result of filing a complaint,
25 complaining to a legislator, or cooperating with the ~~ombudsman~~
26 **ombudsperson** in investigating a complaint.

27 (2) A person or the department shall not hinder the lawful
28 actions of the ~~ombudsman~~**ombudsperson** or employees of the office,
29 or willfully refuse to comply with lawful demands of the office.

1 (3) The department shall not take disciplinary action against
2 an employee for communicating with the ~~ombudsman~~**ombudsperson**.

3 Sec. 14. The authority granted the ~~ombudsman~~**ombudsperson** is
4 in addition to the authority granted under the provisions of any
5 other act or rule under which the remedy or right of appeal or
6 objection is provided for a person, or any procedure provided for
7 the inquiry into or investigation of any matter. The authority
8 granted the ~~ombudsman shall~~**ombudsperson must** not be construed to
9 limit or affect the remedy or right of appeal or objection and
10 ~~shall~~**must** not be ~~deemed~~**considered** part of an exclusionary
11 process.