

LEGISLATIVE CORRECTIONS OMBUDSMAN Act 46 of 1975

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.

History: 1975, Act 46, Imd. Eff. May 16, 1975.

The People of the State of Michigan enact:

4.351 Definitions.

Sec. 1. As used in this act:

- (a) "Administrative act" includes an action, omission, decision, recommendation, practice, or other procedure of the department.
- (b) "Complainant" means a prisoner or legislator who files a complaint under section 4.
- (c) "Council" means the legislative council established under section 15 of article IV of the state constitution of 1963.
- (d) "Department" means the department of corrections.
- (e) "Legislator" means a member of the senate or the house of representatives of this state.
- (f) "Office" means the office of the legislative corrections ombudsman created under this act.
- (g) "Ombudsman" means the office of legislative corrections ombudsman.
- (h) "Prisoner" means a person committed to or under the jurisdiction of the department.
- (i) "Official" means an official or employee of the department of corrections.

History: 1975, Act 46, Imd. Eff. May 16, 1975;—Am. 1995, Act 197, Imd. Eff. Nov. 29, 1995;—Am. 1998, Act 318, Eff. Mar. 23, 1999.

4.352 Office of legislative corrections ombudsman; creation; legislative corrections ombudsman as principal executive officer; appointment; term.

Sec. 2. (1) The office of the legislative corrections ombudsman is created within the legislative council.

(2) The principal executive officer of the office of the legislative corrections ombudsman is the legislative corrections ombudsman who shall be appointed by and serve at the pleasure of the council.

History: 1975, Act 46, Imd. Eff. May 16, 1975.

4.353 Procedures as to budget, expenditures, and personnel.

Sec. 3. The council shall establish procedures for approving the budget of the office, for expending funds thereof, and for the employment of personnel for the office.

History: 1975, Act 46, Imd. Eff. May 16, 1975.

4.354 Commencement of investigation; procedures as to complaints, investigations, hearings, and reports.

Sec. 4. (1) The ombudsman may commence an investigation upon either of the following:

- (a) Receipt of a complaint from a prisoner, a legislator, or on the ombudsman's own initiative, concerning an administrative act which is alleged by a prisoner to be contrary to law or contrary to departmental policy.
- (b) The ombudsman's own initiative for significant prisoner health and safety issues and other matters for which there is no effective administrative remedy.

(2) Subject to approval of the council, the ombudsman shall establish procedures for receiving and processing complaints, conducting investigations, holding hearings, and reporting the findings resulting from the investigations.

History: 1975, Act 46, Imd. Eff. May 16, 1975;—Am. 1995, Act 197, Imd. Eff. Nov. 29, 1995;—Am. 1998, Act 318, Eff. Mar. 23, 1999.

4.355 Access to information, records, and documents; inspection of premises; informal hearings; appearance; evidence.

Sec. 5. (1) Upon request and without the requirement of any release, the ombudsman shall be given access to all information, records, and documents in the possession of the department which the ombudsman deems necessary in an investigation, including, but not limited to, prisoner medical health records, prisoner mental health records, and prisoner mortality and morbidity records.

(2) Upon request and without notice, the ombudsman shall be granted entrance to inspect at any time any

premises under the control of the department.

(3) The ombudsman may hold informal hearings and may request that any person appear before the ombudsman, or at a hearing, and give testimony or produce documentary or other evidence which the ombudsman deems relevant to a matter under investigation.

History: 1975, Act 46, Imd. Eff. May 16, 1975;—Am. 2010, Act 287, Imd. Eff. Dec. 16, 2010.

4.356 Administrative process; investigation or hearing discretionary.

Sec. 6. (1) The ombudsman shall advise a complainant to pursue all administrative remedies open to the complainant. The ombudsman may request and shall receive from the department a progress report concerning the administrative processing of a complaint. After administrative action on a complaint, the ombudsman may conduct further investigation on the request of a complainant or on his or her own initiative.

(2) The ombudsman need not conduct an investigation on a complaint brought before the ombudsman. A person is not entitled as a right to be heard by the ombudsman.

History: 1975, Act 46, Imd. Eff. May 16, 1975;—Am. 1995, Act 197, Imd. Eff. Nov. 29, 1995;—Am. 1998, Act 318, Eff. Mar. 23, 1999.

4.357 Notice of investigation; notice when investigation declined.

Sec. 7. Upon receiving a complaint from a legislator or a prisoner under section 4 and deciding to investigate the complaint, the ombudsman shall notify the complainant, the prisoner or prisoners affected, and the department. If the ombudsman declines to investigate, the ombudsman shall notify the complainant, in writing, and inform the prisoner or prisoners affected of the reasons for the ombudsman's decision.

History: 1975, Act 46, Imd. Eff. May 16, 1975;—Am. 1995, Act 197, Imd. Eff. Nov. 29, 1995;—Am. 1998, Act 318, Eff. Mar. 23, 1999.

4.358 Legislative council; hearing; administration of oaths, subpoena of witness, and examination of books and records.

Sec. 8. Upon request of the ombudsman, the council may hold a hearing. The council may administer oaths, subpoena witnesses, and examine the books and records of the department or of a person, partnership, or corporation involved, in accordance with section 4 of Act No. 412 of the Public Acts of 1965, being section 4.314 of the Michigan Compiled Laws, in a matter which is or was a proper subject of investigation by the ombudsman under this act.

History: 1975, Act 46, Imd. Eff. May 16, 1975.

4.359 Correspondence between ombudsman and prisoner as confidential and privileged; secrecy; disclosures; exemption.

Sec. 9. (1) Correspondence between the ombudsman and a prisoner is confidential and shall be processed as privileged correspondence in the same manner as letters between prisoners and courts, attorneys, or public officials.

(2) The ombudsman shall maintain secrecy with respect to all matters and the identities of the complainants or persons from whom information is acquired, except so far as disclosures may be necessary to enable the ombudsman to perform the duties of the office and to support any recommendations resulting from an investigation.

(3) A report prepared and recommendations made by the ombudsman and submitted to the council under section 10 are exempt from disclosure under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

History: 1975, Act 46, Imd. Eff. May 16, 1975;—Am. 1995, Act 197, Imd. Eff. Nov. 29, 1995.

4.360 Report of investigative findings; recommendations; forwarding report.

Sec. 10. (1) The ombudsman shall prepare and submit a report of the findings of an investigation and make recommendations to the council within 30 days after completing the investigation if the ombudsman finds any of the following:

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

(2) Subject to section 11, the council may forward the report prepared and submitted under this section to

the department, the prisoner or prisoners affected, or the complainant who requested the report.

History: 1975, Act 46, Imd. Eff. May 16, 1975;—Am. 1995, Act 197, Imd. Eff. Nov. 29, 1995;—Am. 1998, Act 318, Eff. Mar. 23, 1999.

4.361 Announcing critical conclusion or recommendation; publishing adverse opinions; publishing statement in defense or mitigation of action; notice of action on recommendation.

Sec. 11. Before announcing a conclusion or recommendation that expressly or by implication criticizes a person or the department, the ombudsman shall consult with that person or the department. When publishing an opinion adverse to the department, or any person, the ombudsman shall include in that publication a statement of reasonable length made to him or her by the department or person in defense or mitigation of the action if that statement is provided within a reasonable period of time as determined by the council. The ombudsman may request to be notified by the department, within a specified time, of any action taken on any recommendation presented. The ombudsman shall notify the complainant of the actions taken by the office and by the department.

History: 1975, Act 46, Imd. Eff. May 16, 1975;—Am. 1995, Act 197, Imd. Eff. Nov. 29, 1995.

4.362 Annual report.

Sec. 12. The ombudsman shall submit to the council and the legislature an annual report on the conduct of the office.

History: 1975, Act 46, Imd. Eff. May 16, 1975;—Am. 1982, Act 170, Imd. Eff. June 1, 1982.

4.363 Prisoner not to be penalized for complaint or cooperation; prohibitions.

Sec. 13. (1) A prisoner shall not be penalized in any way by an official or the department as a result of filing a complaint, complaining to a legislator, or cooperating with the ombudsman in investigating a complaint.

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

History: 1975, Act 46, Imd. Eff. May 16, 1975;—Am. 1995, Act 197, Imd. Eff. Nov. 29, 1995;—Am. 1998, Act 318, Eff. Mar. 23, 1999.

4.364 Authority of ombudsman.

Sec. 14. The authority granted the ombudsman is in addition to the authority granted under the provisions of any other act or rule under which the remedy or right of appeal or objection is provided for a person, or any procedure provided for the inquiry into or investigation of any matter. The authority granted the ombudsman shall not be construed to limit or affect the remedy or right of appeal or objection and shall not be deemed part of an exclusionary process.

History: 1975, Act 46, Imd. Eff. May 16, 1975.