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Senate Bill 493 (Substitute S-1 as passed by the Senate)  
Sponsor: Senator Sylvia Santana  
Committee: Oversight

Date Completed: 7-25-24

## **RATIONALE**

According to testimony before the Senate Committee on Oversight, the State paid \$42.0 million in lawsuits in 2021, with half of the money going to 100 cases paid through the Michigan Department of Corrections (MDOC) for judgements. Members of the Legislature are tasked with overseeing departments and have cited that certain data is often not available to them. Some believe there are systematic issues within corrections facilities in the State. Accordingly, it has been suggested that reporting requirements be increased to promote transparency and accountability within the Legislative Corrections Ombudsman's office.

## **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 to the Office of the Legislative Corrections Ombudsperson and Ombudsperson (LCO), respectively.**
- **Expand the list of individuals allowed to make a complaint to the LCO to include a family member or prisoner advocate 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.**
- **Require the LCO to provide a correctional facility with a 72-hour notice prior to taking an expert into a facility and require the LCO to provide the facility with specific information about the expert.**
- **Prescribe specific timelines regarding the release of a recommendation by the LCO that criticized a person or the 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 investigations 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.

The bill would allow a complaint to be made by a complainant. Currently, "complainant" means a prisoner or legislator who files a complaint. Under the bill, the term also would include a family member or prisoner advocate who filed a complaint.

Within 120 days after 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.

The bill would require the LCO to give the MDOC 72-hour advance notice when the LCO determined it necessary to take an expert into a correctional facility. The LCO would have to provide the MDOC with the following:

- The name of the expert.
- A completed law enforcement information network form concerning that expert to allow the MDOC to conduct a background check.
- The expert's credentials.
- Any licensing information in the expert's area of expertise, if applicable.
- A description of any testing equipment the expert could need.

The bill would allow the MDOC to search any testing equipment for contraband that was brought into a correctional facility by an expert or the LCO. An expert would have to adhere to State or national standards developed for the expert's area of expertise. Additionally, the MDOC could ask the LCO to reconsider taking testing equipment into a correctional facility if the MDOC determined that the equipment could interfere with the facility's operations. The MDOC would have to provide the LCO with a written statement explaining the specific impact testing equipment would have on the operations of the correctional facility for the LCO to consider. Additionally, the MDOC would have to notify the LCO if a requested testing procedure were under litigation and the LCO would have to delay that testing until the litigation were complete.

## 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 (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, under the bill, 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 30 business days after the consultation with the MDOC or the person. The bill would allow the MDOC to request one extension of 14 business days to provide the statement. The LCO would have to report a failure to provide a response within the time limit to the Council.

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 or 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.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Requiring the LCO to report certain information would increase transparency and accountability. Currently, the LCO releases an annual report to the Legislature that is included

as a part of the Legislative Council Agency Report. Reporting monthly, and publishing reports on the LCO's website, would provide transparency and ease of access to information. Some believe that accountability created through the transparency of reporting would decrease litigation against the MDOC. Reports help governing bodies and prison facilities understand where to focus attention for improvement and maintenance. Additionally, the Legislature could use those reports when considering legislation on corrections reform to address systematic complaints, which could resolve complaints before they escalate to lawsuits.

Some believe there is abuse of power and regulation within the prison system that causes poor conditions and harm to incarcerated individuals. According to testimony before the Senate Committee on Oversight, requiring the LCO to report on the total number of complaints investigated, the facility for which complaints were made, the status of those reports, and recommendations made to resolve significant issues improves accountability. Testimony also indicates that reporting on complaints of safety, mental health issues, and prison conditions would create solutions to those issues and reduce a "self-imposed" prison justice system in which corrections officers face potential violence as retaliation for such conditions.

### **Supporting Argument**

Creating a uniform complaint process and expanding the range of people who may file complaints would encourage participation in and make more navigable a currently difficult reporting system. Additionally, standardizing procedures would provide predictability with reporting and the dissemination of information. According to testimony before the Senate Committee on Oversight, many incarcerated individuals and family members of incarcerated individuals have limited knowledge of the prison system, and the complaint form is the best way for those individuals to know their complaints will be accepted. Departmental data also shows that 50% of prisoners who enter the MDOC lack a high school diploma or General Education Diploma and have a median reading level between the fourth and sixth grade.<sup>1</sup> The bill's uniform complaint process would ensure that all individuals are able to file a complaint.

### **Supporting Argument**

Allowing expert consultation would create more accurate and informed reporting. Using data collected and recommendations made by experts, the Legislature would receive more accurate information when considering corrections issues and potential reforms. According to testimony before the Senate Committee on Oversight, the LCO currently receives complaints that require expert consultation during an investigation. Testimony also indicates that the use of expert consultation is standard practice among other ombuds offices, with the New Jersey Ombudsman receiving a \$75,000 annual appropriation to hire experts and the Indiana Ombudsman relying on interagency cooperation as expert consultation when possible.

**Response** According to testimony before the Senate Committee on Oversight, the MDOC currently uses expert consultation during testing, such as sending water quality reports to the Department of Environment, Great Lakes, and Energy. Any data found in the course of that reporting would already be available to the LCO. The State should not incur the time and cost for redundant work.

### **Opposing Argument**

The bill does not go far enough and should include MDOC employees as complainants. Employees should be able to escalate a complaint that they feel has not been properly addressed within the MDOC. Some believe it is a deterrent to reporting when an individual must report through the channels that hire, pay, and make career decisions for that employee.

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<sup>1</sup> "MDOC Correctional Education and Workforce Development".

[https://www.house.mi.gov/hfa/PDF/Corrections/Corrections\\_Subcmte\\_Testimony\\_Education\\_WkForce\\_Develop\\_Presentation021319.pdf](https://www.house.mi.gov/hfa/PDF/Corrections/Corrections_Subcmte_Testimony_Education_WkForce_Develop_Presentation021319.pdf). Retrieved July 2, 2024.

According to testimony before the Senate Committee on Oversight, former employees have reached out with complaints but felt that they would have been retaliated against for doing so while employed. Third-party reporting is an effective strategy to facilitate employee complaints and the bill should afford employees the opportunity via the complaint process.

**Response** Employee complaints and protections should be addressed in the Whistleblower Protection Act. The Michigan Civil Service Commission offers certain protections for whistleblowers, including protections against an appointing authority engaging in reprisal against an employee that reported a violation of a State or Federal law or a lawful regulation or rule.<sup>2</sup> According to testimony before the Senate Committee on Oversight, MDOC employees are executive branch employees who have an obligation to report issues, violations of work rules, or other concerns through established reporting structures.

### **Opposing Argument**

The bill's language allowing the MDOC to delay an expert access to a facility for 72 hours to complete a background check is not clear enough. The bill could allow a facility to deny a repeat visit of an expert by claiming the background check should be run each time that expert requests access. The timeline for vetting an expert should not be used as an excuse to delay entry. According to testimony before the Senate Committee on Oversight, it is standard practice for a background check to be valid for one year, but the bill would not specifically require any standard practice.

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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<sup>2</sup> Michigan Civil Service Commission R 2-10.

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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.