

**SUBSTITUTE FOR
SENATE BILL NO. 493**

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

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

5 Sec. 1. As used in this act:

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

9 (b) "Complainant" means a prisoner, ~~or~~ legislator, **family**
 10 **member, or prisoner advocate** who files a complaint under section 4.

11 (c) "Council" means the legislative council established under
 12 section 15 of article IV of the state constitution of 1963.

13 (d) "Department" means the department of corrections.

14 (e) "**Family member**" means a **family member of a prisoner who**
 15 **advocates on behalf of that prisoner.**

16 (f) ~~(e)~~—"Legislator" means a member of the senate or the house
 17 of representatives of this state.

18 (g) ~~(f)~~—"Office" means the office of the legislative
 19 corrections ~~ombudsman; ombudsperson~~ created under this act.

20 (h) "**Official**" means an **official or employee of the**
 21 **department.**

22 (i) ~~(g)~~—"Ombudsman"—"**Ombudsperson**" means the office of
 23 legislative corrections ~~ombudsman; ombudsperson~~.

24 (j) ~~(h)~~—"Prisoner" means a ~~person~~ **an individual** committed to
 25 or under the jurisdiction of the department.

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

28 (k) "**Prisoner advocate**" means an **individual or organization**
 29 **who advocates on behalf of a prisoner or prisoners.**

1 (l) "Qualified expert" means a professional with substantial
2 experience in a field, including, but not limited to,
3 environmental, medical, or mental health professionals.

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

6 (2) The principal executive officer of the office of the
7 legislative corrections ~~ombudsman~~**ombudsperson** is the legislative
8 corrections ~~ombudsman~~**ombudsperson** who ~~shall be~~**is** appointed by and
9 ~~serve~~**serves** at the pleasure of the council.

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

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

16 (b) The ~~ombudsman's~~**ombudsperson's** own initiative for
17 significant prisoner health and safety issues, correctional
18 facility security, and public safety, and other matters for which
19 there is no effective administrative remedy.

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

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

26 (b) In hard copy in all correctional facility law libraries
27 and other locations within correctional facilities as requested by
28 the ombudsperson.

29 (3) On receiving a complaint from a complainant, the

1 **ombudsperson shall notify the complainant that the complaint was**
2 **received.**

3 **(4)** ~~(2)~~ Subject to approval of the council, the ~~ombudsman~~
4 **ombudsperson** shall establish procedures for receiving and
5 processing complaints, conducting investigations, holding hearings,
6 and reporting the findings resulting from the investigations.

7 Sec. 5. (1) Upon request and without the requirement of any
8 release, the ~~ombudsman~~**ombudsperson** shall be given access to and
9 physical or electronic copies of all information, records, and
10 documents in the possession of the department that the ~~ombudsman~~
11 **ombudsperson** considers necessary in an investigation, including,
12 but not limited to, prisoner medical health records, prisoner
13 mental health records, and prisoner mortality and morbidity
14 records. Upon request, the ~~ombudsman~~**ombudsperson** may interview any
15 of the following individuals whom the ~~ombudsman~~**ombudsperson**
16 considers necessary in an investigation:

17 (a) An individual employed by or retained under contract by
18 the department.

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

22 **(2) The ombudsperson may consult or contract with qualified**
23 **experts for assistance with investigations, inspections, hearings,**
24 **or other work of the ombudsperson. Subject to this subsection, the**
25 **qualified expert must be permitted to enter facilities with the**
26 **ombudsperson and bring any necessary testing equipment into**
27 **correctional facilities. The ombudsperson or qualified expert may**
28 **bring photographic equipment into correctional facilities to take**
29 **pictures that the ombudsperson or qualified expert determines to be**

1 necessary, if taking those pictures does not compromise
2 correctional facility security. The ombudsperson shall give the
3 department 72 hours advance notice when the ombudsperson considers
4 it necessary to take an expert into a correctional facility. The
5 ombudsperson shall provide the department with the name of the
6 expert, a completed law enforcement information network form
7 concerning that expert to allow the department to conduct a
8 background check on that expert, the expert's credentials,
9 including any licensing information in the expert's area of
10 expertise if applicable, and a description of any testing equipment
11 the expert may need. The department may search any testing
12 equipment for contraband that is brought into a correctional
13 facility by an expert or ombudsperson. An expert must adhere to
14 state or national standards developed for the expert's area of
15 expertise. The department may ask the ombudsperson to reconsider
16 taking testing equipment into a correctional facility if the
17 department determines that the testing equipment may interfere with
18 the operations of the correctional facility. The department shall
19 provide the ombudsperson with a written statement explaining the
20 specific impact testing equipment will have on the operations of
21 the correctional facility for the ombudsperson to consider. The
22 department shall notify the ombudsperson if a requested testing
23 procedure is under litigation, and the ombudsperson must delay that
24 testing until the litigation has been completed.

25 (3) ~~(2)~~ Upon request and without notice, the ~~ombudsman~~
26 **ombudsperson** must be granted entrance to inspect at any time any
27 premises under the control of the department. One ~~ombudsman~~
28 **ombudsperson** staff ~~person-member~~ must also be granted entry into a
29 correctional facility or the department's "think tank" or "command

1 center" during emergency situations including, but not limited to,
 2 correctional facility disturbances, riots, and hostage incidents,
 3 and must be provided with updates regarding the status of the
 4 emergent situation as well as the department's efforts to address
 5 the situation. The ~~ombudsman~~**ombudsperson** staff ~~person~~**member**
 6 granted entry for an emergency situation under this subsection is
 7 present for observation and to report on the emergency situation.

8 (4) ~~(3)~~The ~~ombudsman~~**ombudsperson** may hold informal hearings
 9 and may request that any person appear before the ~~ombudsman~~,
 10 **ombudsperson**, or at a hearing, and give testimony or produce
 11 documentary or other evidence that the ~~ombudsman~~**ombudsperson**
 12 considers relevant to a matter under investigation.

13 (5) ~~(4)~~The ~~ombudsman~~**ombudsperson** shall arrange an interview
 14 under subsection (1) in cooperation with the department at a time
 15 and location that does not interfere with the operation of a
 16 correctional facility.

17 Sec. 6. (1) The ~~ombudsman~~**ombudsperson** shall advise a
 18 complainant to pursue all administrative remedies open to the
 19 complainant. The ~~ombudsman~~**ombudsperson** may request and shall
 20 receive from the department a progress report concerning the
 21 administrative processing of a complaint. After administrative
 22 action on a complaint, the ~~ombudsman~~**ombudsperson** may conduct
 23 further investigation on the request of a complainant or on ~~his or~~
 24 ~~her~~**the ombudsperson's** own initiative.

25 (2) The ~~ombudsman~~**ombudsperson** need not conduct an
 26 investigation on a complaint brought before the ~~ombudsman~~.
 27 **ombudsperson**. A person is not entitled as a right to be heard by
 28 the ~~ombudsman~~**ombudsperson**.

29 Sec. 7. Upon receiving a complaint from a ~~legislator or a~~

1 ~~prisoner-complainant~~ under section 4 and deciding to investigate
2 the complaint, the ~~ombudsman-ombudsperson~~ shall notify the
3 complainant, the prisoner or prisoners affected, and the
4 department. If the ~~ombudsman-ombudsperson~~ declines to investigate,
5 the ~~ombudsman-ombudsperson~~ shall notify the complainant, in
6 writing, and inform the prisoner or prisoners affected of the
7 reasons for the ~~ombudsman's-ombudsperson's~~ decision.

8 Sec. 8. Upon request of the ~~ombudsman, ombudsperson~~, the
9 council may hold a hearing. The council may administer oaths,
10 subpoena witnesses, and examine the books and records of the
11 department or of a person, partnership, or corporation involved, in
12 accordance with section 104 of the legislative council act, 1986 PA
13 268, MCL 4.1104, in a matter that is or was a proper subject of
14 investigation by the ~~ombudsman-ombudsperson~~ under this act.

15 Sec. 9. (1) Correspondence between the ~~ombudsman-ombudsperson~~
16 and a prisoner is confidential and must be processed as privileged
17 correspondence in the same manner as letters between prisoners and
18 courts, attorneys, or public officials.

19 (2) The ~~ombudsman-ombudsperson~~ shall maintain secrecy with
20 respect to all matters and the identities of the complainants or
21 persons from whom information is acquired, except so far as
22 disclosures may be necessary to enable the ~~ombudsman-ombudsperson~~
23 to perform the duties of the office and to support any
24 recommendations resulting from an investigation. A record of or
25 information obtained or created by the ~~ombudsman-ombudsperson~~ is
26 confidential, is considered privileged, must only be used for
27 purposes set forth in this act, is not subject to court subpoena,
28 and is not discoverable in a legal proceeding. A record of or
29 information obtained by the ~~ombudsman-ombudsperson~~ that is

1 otherwise available from other sources is not exempt from court
2 subpoena or discovery from other sources solely because it was
3 presented to or reviewed by the ~~ombudsman~~-**ombudsperson**.

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

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

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

9 (c) Information obtained or created by the
10 ~~ombudsman~~-**ombudsperson**.

11 Sec. 10. (1) The ~~ombudsman~~-**ombudsperson** shall prepare and
12 submit a report of the findings of an investigation and make
13 recommendations to the council within 30 days after completing the
14 investigation if the ~~ombudsman~~-**ombudsperson** finds any of the
15 following:

16 (a) A matter that should be considered by the department.

17 (b) An administrative act that should be modified or canceled.

18 (c) A statute or rule that should be altered.

19 (d) Administrative acts for which justification is necessary.

20 (e) Significant prisoner health and safety issues as
21 determined by the council.

22 (f) Any other significant concerns as determined by the
23 council.

24 (2) Subject to section 11, the council may forward the report
25 prepared and submitted under this section to the department, the
26 prisoner or prisoners affected, or the complainant who requested
27 the report.

28 Sec. 11. Before announcing a conclusion or recommendation that
29 expressly or by implication criticizes a person or the department,

1 the ~~ombudsman~~**ombudsperson** shall consult with that person or the
 2 department. When publishing an opinion adverse to the department,
 3 or any person, the ~~ombudsman~~**ombudsperson** shall include in that
 4 publication a statement of reasonable length made to ~~him or her~~**the**
 5 **ombudsperson** by the department or person in defense or mitigation
 6 of the action if that statement is provided within a ~~reasonable~~
 7 ~~period of time as determined by the council. The ombudsman may~~
 8 ~~request to be notified by the department, within a specified time,~~
 9 ~~of~~**30 business days after the consultation with the department or**
 10 **person. The department may request 1 extension of 14 business days**
 11 **to provide the statement. The ombudsperson shall report to the**
 12 **council if the department fails to provide a response within the**
 13 **time limit provided under this section. The department shall notify**
 14 **the ombudsperson within 30 business days after** any action is taken
 15 on any recommendation presented. The ~~ombudsman~~**ombudsperson** shall
 16 notify the complainant of the actions taken by the office and by
 17 the department **within 45 business days after the action is taken.**

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

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

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

25 (ii) The number of complaints received concerning each
 26 correctional facility.

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

- 1 **(b) Significant issues that were investigated.**
 2 **(c) Each recommendation made to the department.**
 3 **(d) The department's response to each recommendation.**
 4 **(2) The ombudsperson shall make monthly reports available on**
 5 **the ombudsperson's website that include for each month the**
 6 **information described in subsection (1) (a).**

7 Sec. 13. (1) A prisoner, **prisoner advocate, or family member**
 8 must not be penalized in any way by an official or the department
 9 as a result of filing a complaint, complaining to a legislator, or
 10 cooperating with the ~~ombudsman~~**ombudsperson** in investigating a
 11 complaint.

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

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

17 Sec. 14. The authority granted the ~~ombudsman~~**ombudsperson** is
 18 in addition to the authority granted under the provisions of any
 19 other act or rule under which the remedy or right of appeal or
 20 objection is provided for a person, or any procedure provided for
 21 the inquiry into or investigation of any matter. The authority
 22 granted the ~~ombudsman shall~~**ombudsperson must** not be construed to
 23 limit or affect the remedy or right of appeal or objection and
 24 ~~shall must~~ not be ~~deemed~~**considered** part of an exclusionary
 25 process.