

SENATE BILL 87

P1, E5
SB 512/22 – JPR

(PRE-FILED)

3lr0893
CF HB 64

By: **Senators Hettleman and West**

Requested: November 18, 2022

Introduced and read first time: January 11, 2023

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Office of the Attorney General – Correctional Ombudsman**

3 FOR the purpose of establishing the Correctional Ombudsman in the Office of the Attorney
4 General; requiring the Ombudsman to conduct investigations, reviews, and
5 assessments of administrative acts taken by the Department of Public Safety and
6 Correctional Services or in relation to individuals confined by the Department;
7 requiring the Ombudsman to refer certain matters for criminal charges or
8 disciplinary proceedings; providing for the confidentiality of certain communications
9 with the Ombudsman; establishing the Correctional Ombudsman Advisory Board;
10 prohibiting a person from obstructing the lawful exercise of the Ombudsman's
11 powers; requiring the Ombudsman to conduct certain activities; and generally
12 relating to the Correctional Ombudsman.

13 BY repealing and reenacting, with amendments,
14 Article – Correctional Services
15 Section 8–114 and 8–117
16 Annotated Code of Maryland
17 (2017 Replacement Volume and 2022 Supplement)

18 BY adding to
19 Article – State Government
20 Section 6–701 through 6–708 to be under the new subtitle “Subtitle 7. Correctional
21 Ombudsman”
22 Annotated Code of Maryland
23 (2021 Replacement Volume and 2022 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
25 That the Laws of Maryland read as follows:

26 **Article – Correctional Services**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 8–114.

2 (a) (1) If the Commission determines that a correctional facility is in violation
3 of the minimum mandatory standards, the Commission shall send a compliance plan to the
4 correctional facility.

5 (2) The compliance plan shall state:

6 (i) which minimum mandatory standards the correctional facility
7 has violated;

8 (ii) the time, to be determined by the Commission, that the
9 correctional facility has to address the violations; and

10 (iii) the date that the Commission shall reinspect the correctional
11 facility to determine if the correctional facility has complied with the minimum mandatory
12 standards.

13 (3) The Commission shall send a copy of the compliance plan to:

14 (I) the executive and legislative body responsible for the correctional
15 facility; **AND**

16 (II) **THE CORRECTIONAL OMBUDSMAN.**

17 (b) (1) If, after sending a compliance plan and reinspecting a correctional
18 facility under subsection (a) of this section, the Commission determines that the
19 correctional facility is in violation of the minimum mandatory standards, the Commission
20 shall send a letter of reprimand to the correctional facility.

21 (2) The letter of reprimand shall state:

22 (i) which minimum standards the correctional facility has violated;

23 (ii) the time, to be determined by the Commission but not to exceed
24 60 days, that the correctional facility has to address the violations; and

25 (iii) the date that the Commission will reinspect the correctional
26 facility to determine if the correctional facility has complied with the minimum mandatory
27 standards.

28 (3) The Commission shall send a copy of the letter of reprimand to:

29 (I) the executive and legislative body responsible for the correctional
30 facility; **AND**

1 **(II) THE CORRECTIONAL OMBUDSMAN.**

2 (c) (1) If, after the Commission has sent a letter of reprimand to a correctional
3 facility under subsection (b) of this section and reinspected the facility, the Commission
4 determines that the correctional facility is in violation of the minimum mandatory
5 standards, the Commission shall:

6 (i) conduct a full standards and performance audit of the
7 correctional facility; or

8 (ii) periodically inspect the correctional facility until compliance is
9 attained and send a report of each inspection to the executive and legislative bodies
10 responsible for the correctional facility.

11 (2) When conducting a full standards and performance audit of a
12 correctional facility, the Commission shall examine:

13 (i) the physical condition of the correctional facility;

14 (ii) the safety and treatment of inmates at the correctional facility;

15 (iii) whether the correctional facility has policies and procedures in
16 place as required by the minimum mandatory standards; and

17 (iv) whether the correctional facility is following the required policies
18 and procedures.

19 (3) When conducting a full standards and performance audit, the
20 Commission shall have unrestricted access to the personnel and records of the correctional
21 facility.

22 (4) (i) If the Commission lacks the expertise necessary to perform a part
23 of the full standards and performance audit, the Commission may obtain assistance from
24 sources with expertise in the specific standard.

25 (ii) If the Commission needs to obtain assistance, the correctional
26 facility that is being audited shall reimburse the Commission for any cost incurred.

27 (5) (i) After completing a full standards and performance audit, the
28 Commission shall send a letter to the correctional facility.

29 (ii) The letter shall contain:

30 1. a copy of the audit findings, including details on all areas
31 where the correctional facility fails to comply with the minimum mandatory standards;

1 (I) A JUDGE, AS DEFINED BY § 1-101 OF THE COURTS ARTICLE;

2 (II) THE GENERAL ASSEMBLY OR ANY MEMBER, EMPLOYEE, OR
3 COMMITTEE OF THE GENERAL ASSEMBLY; OR

4 (III) THE GOVERNOR OR THE GOVERNOR'S PERSONAL STAFF.

5 (D) "OMBUDSMAN" MEANS THE CORRECTIONAL OMBUDSMAN.

6 (E) "RECORDS" MEANS ALL MATERIALS, REGARDLESS OF PHYSICAL FORM
7 OR CHARACTERISTICS, CREATED, GENERATED, RECORDED, RECEIVED, POSSESSED,
8 OR CONTROLLED BY OR ON BEHALF OF ANY AGENCY.

9 **6-702.**

10 THERE IS A CORRECTIONAL OMBUDSMAN IN THE OFFICE OF THE ATTORNEY
11 GENERAL.

12 **6-703.**

13 (A) (1) THE ATTORNEY GENERAL SHALL APPOINT THE OMBUDSMAN
14 WITH THE ADVICE AND CONSENT OF THE SENATE.

15 (2) THE OMBUDSMAN SHALL SERVE FOR A TERM OF 5 YEARS.

16 (3) AT THE END OF A TERM, THE OMBUDSMAN CONTINUES TO SERVE
17 UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

18 (4) THE ATTORNEY GENERAL OR THE GENERAL ASSEMBLY, WITH
19 THE VOTE OF A TWO-THIRDS MAJORITY OF EACH CHAMBER, MAY REMOVE THE
20 OMBUDSMAN ONLY FOR:

21 (I) MISCONDUCT IN OFFICE;

22 (II) A FELONY CONVICTION; OR

23 (III) A PERSISTENT FAILURE BY THE OMBUDSMAN TO PERFORM
24 THE DUTIES OF THE OFFICE.

25 (B) THE OMBUDSMAN SHALL BE AN INDIVIDUAL:

26 (1) WITH RECOGNIZED JUDGMENT AND OBJECTIVITY;

1 **(2) WHO HAS DEMONSTRATED INTEREST AND EXPERIENCE IN ISSUES**
2 **RELATED TO CORRECTIONS;**

3 **(3) WHO POSSESSES SKILL IN ANALYZING LAW, ADMINISTRATION,**
4 **AND PUBLIC POLICY; AND**

5 **(4) WITH EXPERIENCE IN AT LEAST ONE OF THE FOLLOWING AREAS:**

6 **(I) LAW;**

7 **(II) AUDITING;**

8 **(III) GOVERNMENT OPERATIONS;**

9 **(IV) INVESTIGATIONS;**

10 **(V) SOCIAL WORK; OR**

11 **(VI) CONFLICT RESOLUTION.**

12 **(C) WHILE SERVING AS OMBUDSMAN, AN INDIVIDUAL MAY NOT:**

13 **(1) BE ACTIVELY INVOLVED WITH ANY POLITICAL ACTIVITIES;**

14 **(2) PUBLICLY ENDORSE, SOLICIT FUNDS FOR, OR MAKE**
15 **CONTRIBUTIONS TO A POLITICAL PARTY OR CANDIDATE FOR ELECTIVE OFFICE;**

16 **(3) BE A CANDIDATE FOR OR HOLD ANY ELECTIVE OR APPOINTED**
17 **OFFICE; OR**

18 **(4) ENGAGE IN ANY OTHER OCCUPATION, BUSINESS, OR PROFESSION**
19 **LIKELY TO:**

20 **(I) DETRACT FROM THE FULL-TIME PERFORMANCE OF THE**
21 **OMBUDSMAN’S DUTIES;**

22 **(II) RESULT IN A CONFLICT OF INTEREST; OR**

23 **(III) RESULT IN THE APPEARANCE OF IMPROPRIETY.**

24 **(D) (1) THE SALARY OF THE OMBUDSMAN IS EQUAL TO THE SALARY OF A**
25 **DISTRICT COURT JUDGE.**

1 **(2) THE SALARY OF THE OMBUDSMAN MAY NOT BE DIMINISHED**
2 **DURING THE OMBUDSMAN'S TERM OF OFFICE.**

3 **6-704.**

4 **(A) THE OMBUDSMAN, IN RESPONSE TO A COMPLAINT OR ON THE**
5 **OMBUDSMAN'S INITIATIVE, SHALL:**

6 **(1) INVESTIGATE ANY ADMINISTRATIVE ACT THAT THE OMBUDSMAN**
7 **DETERMINES MAY BE:**

8 **(I) CONTRARY TO LAW OR REGULATION;**

9 **(II) BASED ON A MISTAKE OF FACT;**

10 **(III) UNSUPPORTED BY SUFFICIENT EVIDENCE;**

11 **(IV) PERFORMED IN AN INEFFICIENT MANNER;**

12 **(V) UNREASONABLE UNDER THE TOTALITY OF THE**
13 **CIRCUMSTANCES; OR**

14 **(VI) OTHERWISE ERRONEOUS;**

15 **(2) CONDUCT INDEPENDENT REVIEWS AND ASSESSMENTS OF:**

16 **(I) HEALTH SERVICES PROVIDED TO INDIVIDUALS CONFINED**
17 **BY ANY AGENCY;**

18 **(II) MENTAL HEALTH SERVICES PROVIDED TO INDIVIDUALS**
19 **CONFINED BY ANY AGENCY;**

20 **(III) PLANS BY AGENCIES TO EXPAND, RENOVATE, OR CLOSE**
21 **FACILITIES;**

22 **(IV) EDUCATIONAL AND VOCATIONAL PROGRAMS FOR**
23 **INDIVIDUALS CONFINED BY ANY AGENCY; AND**

24 **(V) AGENCY POLICIES ON RESTRICTIVE OR PROTECTIVE**
25 **HOUSING;**

26 **(3) COOPERATE WITH ANY AGENCY IN EFFORTS TO IMPROVE THE**
27 **FUNCTIONING OF ANY AGENCY OR PREVENT ABUSES BY AGENCIES;**

1 (4) INSPECT ANY FACILITIES OWNED OR CONTROLLED BY ANY
2 AGENCY TO MONITOR CONDITIONS IN THE FACILITIES;

3 (5) SEEK TO RESOLVE COMPLAINTS AGAINST AN AGENCY THROUGH
4 MEDIATION OR OTHER CONFLICT RESOLUTION METHODS;

5 (6) MAINTAIN A WEBSITE THAT:

6 (I) SUBJECT TO THE REQUIREMENTS OF SUBSECTION (E) OF
7 THIS SECTION, MAKES CURRENT AND PAST REPORTS AVAILABLE TO THE PUBLIC;
8 AND

9 (II) PROVIDES CONTACT INFORMATION FOR THE OFFICE OF
10 THE CORRECTIONAL OMBUDSMAN; AND

11 (7) ADOPT REGULATIONS NECESSARY TO CARRY OUT THE
12 REQUIREMENTS OF THIS SUBTITLE.

13 (B) (1) THE OMBUDSMAN SHALL INVESTIGATE EACH COMPLAINT ABOUT
14 AN ADMINISTRATIVE ACT, UNLESS THE OMBUDSMAN DETERMINES THAT:

15 (I) THE COMPLAINT COULD BE ADDRESSED THROUGH
16 ANOTHER PROCESS;

17 (II) THE COMPLAINT IS TRIVIAL, FRIVOLOUS, VEXATIOUS, OR
18 NOT MADE IN GOOD FAITH;

19 (III) THE COMPLAINANT UNREASONABLY DELAYED IN BRINGING
20 THE COMPLAINT;

21 (IV) THE COMPLAINANT IS NOT PERSONALLY AFFECTED BY THE
22 ADMINISTRATIVE ACT; OR

23 (V) THE OMBUDSMAN LACKS SUFFICIENT RESOURCES TO
24 INVESTIGATE THE COMPLAINT.

25 (2) THE OMBUDSMAN SHALL INFORM A COMPLAINANT OF A
26 DECISION NOT TO INVESTIGATE A COMPLAINT.

27 (3) ON REQUEST, THE OMBUDSMAN SHALL INFORM A COMPLAINANT
28 OF THE STATUS OF AN INVESTIGATION.

1 **(4) ON THE COMPLETION OF AN INVESTIGATION BASED ON A**
2 **COMPLAINT, THE OMBUDSMAN SHALL INFORM THE COMPLAINANT OF ANY**
3 **CONCLUSIONS, RECOMMENDATIONS, AND ACTIONS TAKEN IN RESPONSE TO THE**
4 **COMPLAINT.**

5 **(C) IF THE OMBUDSMAN DETERMINES THAT AN EMPLOYEE OR AGENT OF AN**
6 **AGENCY ACTED IN A MANNER WARRANTING CRIMINAL CHARGES OR DISCIPLINARY**
7 **PROCEEDINGS, THE OMBUDSMAN SHALL REFER THE MATTER TO APPROPRIATE**
8 **AUTHORITIES.**

9 **(D) AN AGENCY MAY NOT:**

10 **(1) RESTRICT THE OMBUDSMAN'S ABILITY TO:**

11 **(I) INTERVIEW AGENCY PERSONNEL OR ANY INDIVIDUAL**
12 **CONFINED BY AN AGENCY;**

13 **(II) ACCESS ANY RECORDS MAINTAINED BY THE AGENCY; OR**

14 **(III) ACCESS ANY FACILITIES OWNED OR CONTROLLED BY THE**
15 **AGENCY;**

16 **(2) OPEN ANY CORRESPONDENCE SENT:**

17 **(I) TO THE OMBUDSMAN BY A PERSON BEING CONFINED BY**
18 **THE AGENCY; OR**

19 **(II) BY THE OMBUDSMAN TO A PERSON BEING CONFINED BY**
20 **THE AGENCY; OR**

21 **(3) INTERFERE WITH, DELAY, OR MONITOR ANY COMMUNICATION**
22 **BETWEEN THE OMBUDSMAN AND A PERSON BEING CONFINED BY THE AGENCY.**

23 **(E) IN PERFORMING THE DUTIES ASSIGNED UNDER THIS SUBTITLE, THE**
24 **OMBUDSMAN SHALL TREAT ALL COMMUNICATIONS AS CONFIDENTIAL AND MAY**
25 **REVEAL THE DETAILS OF ANY COMMUNICATION ONLY IF IT IS:**

26 **(1) NECESSARY TO CARRY OUT THE OMBUDSMAN'S DUTIES; AND**

27 **(2) DONE IN ACCORDANCE WITH APPLICABLE STATE AND FEDERAL**
28 **LAW.**

1 **(F) THE OMBUDSMAN MAY SUBPOENA ANY INDIVIDUAL TO APPEAR TO GIVE**
2 **SWORN TESTIMONY OR PRODUCE DOCUMENTARY EVIDENCE THAT IS REASONABLY**
3 **NECESSARY TO CARRY OUT THE OMBUDSMAN'S DUTIES.**

4 **(G) THE OMBUDSMAN MAY BRING AN ACTION IN THE CIRCUIT COURT TO**
5 **ENFORCE THE PROVISIONS OF THIS SUBTITLE.**

6 **6-705.**

7 **(A) WITHIN 30 DAYS AFTER COMPLETING AN INVESTIGATION, THE**
8 **OMBUDSMAN SHALL SUBMIT TO AN AGENCY A REPORT CONTAINING ANY**
9 **CONCLUSIONS, RECOMMENDATIONS, AND REQUESTS FOR A RESPONSE FROM THE**
10 **AGENCY.**

11 **(B) IF THE REPORT SUBMITTED TO AN AGENCY UNDER THIS SECTION**
12 **CONTAINS A REQUEST FOR A RESPONSE FROM THE AGENCY, THE AGENCY SHALL**
13 **PROVIDE A WRITTEN RESPONSE WITHIN 30 DAYS AFTER RECEIPT OF THE REPORT.**

14 **(C) THE OMBUDSMAN MAY PROVIDE THE REPORT REQUIRED BY THIS**
15 **SECTION, AS WELL AS ANY RESPONSES BY THE AGENCY, TO THE GOVERNOR OR, IN**
16 **ACCORDANCE WITH § 2-1257 OF THIS ARTICLE, THE GENERAL ASSEMBLY.**

17 **6-706.**

18 **(A) ON OR BEFORE DECEMBER 31 EACH YEAR, THE OMBUDSMAN SHALL**
19 **REPORT TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1257 OF THIS ARTICLE,**
20 **THE GENERAL ASSEMBLY ON:**

21 **(1) INVESTIGATIONS CONDUCTED BY THE OMBUDSMAN;**

22 **(2) ANY ACTIONS TAKEN BY AN AGENCY AS A RESULT OF THE**
23 **CONCLUSIONS OR RECOMMENDATIONS OF THE OMBUDSMAN; AND**

24 **(3) ANY INSTANCE WHERE AN AGENCY REJECTS A RECOMMENDATION**
25 **OR CONCLUSION OF THE OMBUDSMAN.**

26 **(B) IN ADDITION TO THE REPORT REQUIRED BY SUBSECTION (A) OF THIS**
27 **SECTION, THE OMBUDSMAN SHALL PROVIDE TO THE GOVERNOR AND, IN**
28 **ACCORDANCE WITH § 2-1257 OF THIS ARTICLE, THE GENERAL ASSEMBLY ANY**
29 **OTHER REPORTS THAT THE GOVERNOR OR THE GENERAL ASSEMBLY MAY REQUIRE.**

30 **(C) A REPORT PREPARED UNDER THIS SECTION SHALL BE PUBLISHED ON**
31 **THE OMBUDSMAN'S WEBSITE.**

1 **6-707.**

2 (A) IN THIS SECTION, "BOARD" MEANS THE CORRECTIONAL OMBUDSMAN
3 ADVISORY BOARD.

4 (B) THERE IS A CORRECTIONAL OMBUDSMAN ADVISORY BOARD.

5 (C) THE PURPOSE OF THE BOARD IS TO PROVIDE INFORMATION TO THE
6 OMBUDSMAN AND ASSIST THE OMBUDSMAN IN IDENTIFYING APPROPRIATE
7 MATTERS TO INVESTIGATE.

8 (D) THE BOARD SHALL CONSIST OF 10 MEMBERS APPOINTED BY THE
9 ATTORNEY GENERAL.

10 (E) TO THE EXTENT PRACTICABLE, THE ATTORNEY GENERAL SHALL
11 ENSURE THAT THE MEMBERSHIP OF THE BOARD INCLUDES REPRESENTATIVES OF:

12 (1) FAMILY MEMBERS OF CONFINED INDIVIDUALS;

13 (2) RETURNING CITIZENS;

14 (3) NONSUPERVISORY CORRECTIONAL OFFICERS;

15 (4) MEMBERS OF THE PUBLIC WITH A DEMONSTRATED INTEREST IN
16 CORRECTIONS; AND

17 (5) INDIVIDUALS WITH BACKGROUNDS IN HEALTH CARE AND SOCIAL
18 WORK.

19 (F) THE OFFICE OF THE CORRECTIONAL OMBUDSMAN SHALL PROVIDE
20 STAFF FOR THE BOARD.

21 **6-708.**

22 (A) A PERSON MAY NOT, BY THREAT, FORCE, OR CORRUPT MEANS,
23 OBSTRUCT, IMPEDE, OR TRY TO OBSTRUCT THE LAWFUL EXERCISE OF THE
24 OMBUDSMAN'S POWERS.

25 (B) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR
26 AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A
27 FINE NOT EXCEEDING \$10,000 OR BOTH.

1 SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the General
2 Assembly that the Governor shall include in the State budget for fiscal year 2024 and each
3 subsequent fiscal year an appropriation in an amount sufficient to fund the provisions of
4 this Act and to provide for at least two staff members of the Office of the Correctional
5 Ombudsman in 2024 and at least seven staff members of the Office in 2025 and each
6 subsequent fiscal year.

7 SECTION 3. AND BE IT FURTHER ENACTED, That on or before December 31,
8 2023, the Correctional Ombudsman and the Commission on Correctional Standards shall
9 submit a joint report to the Governor and, in accordance with § 2–1257 of the State
10 Government Article, the General Assembly detailing how the Office of the Correctional
11 Ombudsman and the Commission will coordinate in order to avoid overlap in their duties.

12 SECTION 4. AND BE IT FURTHER ENACTED, That on or before December 31,
13 2023, the Mediation and Conflict Resolution Office shall report to the Correctional
14 Ombudsman, the Governor, and, in accordance with § 2–1257 of the State Government
15 Article, the General Assembly on best practices for mediating grievances in the corrections
16 system.

17 SECTION 5. AND BE IT FURTHER ENACTED, That it is the intent of the General
18 Assembly that, in its first year of operation, the Office of the Correctional Ombudsman
19 focus its activities primarily on those State correctional facilities located in the area of
20 Jessup, Maryland.

21 SECTION 6. AND BE IT FURTHER ENACTED, That it is the intent of the General
22 Assembly that, in its first year of operation, the Office of the Correctional Ombudsman
23 conduct an audit of programming and services provided by the Division of Corrections since
24 fiscal year 2019. This audit shall include, among other things, an examination of:

- 25 (1) inmates' rates of participation in:
- 26 (i) educational and vocational training;
- 27 (ii) evidence-based behavioral health and substance abuse
28 counseling; and
- 29 (iii) mentoring and reentry programs; and
- 30 (2) any obstacles to inmates' participation in programs provided by the
31 Division.

32 SECTION 7. AND BE IT FURTHER ENACTED, That this Act shall take effect July
33 1, 2023.