

LEGISLATIVE CORRECTIONS OMBUDSPERSON

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Senate Bill 493 (S-1) as passed by the Senate
Sponsor: Sen. Sylvia A. Santana
House Committee: Government Operations
Senate Committee: Oversight
Complete to 12-3-24

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

Senate Bill 493 would amend 1975 PA 46, which creates the Office of the Legislative Corrections Ombudsman in the Legislative Council.¹ The ombudsman is a nonpartisan agency primarily charged with investigating actions of the Michigan Department of Corrections (DOC) that are alleged to be unlawful or contrary to policy. If at the end of an investigation there are recommendations or concerns, the ombudsman must make a report of them to the Legislative Council. The bill would do all of the following:

- Change the word *ombudsman* to *ombudsperson* in the names of both the office and the position of ombudsman.²
- Specifically allow complaints to be submitted to the ombudsperson by family members or individuals or organizations that advocate on behalf of prisoners or parolees.
- Require the ombudsperson to create and make available a standardized complaint form.
- Require the ombudsperson to let a person submitting a complaint know that their complaint was received.
- Specifically allow the ombudsperson to use qualified experts for assistance in its work.
- Provide time frames for making certain statements and notifications.
- Require that certain information be included in the ombudsperson's annual report.
- Require the ombudsperson to post monthly reports about complaints it has received.

Complaints

The act now authorizes the ombudsman to begin an investigation upon receiving a complaint from a prisoner or parolee or a legislator about an action, omission, decision, recommendation, practice, or procedure of the Department of Corrections that is alleged to be against the law or against departmental policy. The bill would specifically add that *family members* and *prisoner advocates* also can make complaints to the ombudsperson that can become the basis of an investigation.

Family member would mean a family member of a prisoner or parolee who advocates on behalf of that prisoner or parolee.

Prisoner advocate would mean an individual or organization that advocates on behalf of a prisoner or parolee or on behalf of prisoners or parolees.

¹ The Legislative Council consists of twelve members, six representatives and six senators, who are respectively appointed by the Speaker of the House and the Senate Majority Leader. Each group of six must include at least two members from the respective chamber's minority party.

² The legislative corrections ombudsman (as now called) is the head of the office. The act, the bill, and this document generally use *ombudsman* or *ombudsperson* to refer to the office, not the position.

By not later than 120 business days (about five and a half to six months) after the bill takes effect, the ombudsperson would have to create and make available a standardized complaint form that can be used to submit a complaint by a person described above. The form would have to be available on the ombudsperson's website, with printed copies available in all correctional facility (prison) law libraries and other locations in correctional facilities as requested by the ombudsperson.

The bill also would require the ombudsperson to notify a person who submits a complaint that their complaint was received.

Qualified experts and testing equipment

The bill would allow the ombudsperson to consult or contract with *qualified experts* for assistance with investigations, inspections, hearings, or other work. The qualified expert would have to be allowed to enter correctional facilities with the ombudsperson and to bring any necessary testing equipment. As long as it does not compromise security, the ombudsperson or qualified expert could bring photographic equipment into correctional facilities to take pictures the ombudsperson or qualified expert determines necessary.

Qualified expert would mean a professional with substantial experience in a field, such as environmental, medical, or mental health professionals.

At least 72 hours before taking an expert into a correctional facility, the ombudsperson would have to give DOC advance notice and provide all of the following:

- The expert's name.
- A completed Law Enforcement Information Network (LEIN) form to allow DOC to conduct a background check on the expert.
- The expert's credentials, including any licensure information in their area of expertise.
- A description of any testing equipment the expert may need.

A qualified expert would have to adhere to state or national standards for their area of expertise. DOC could ask the ombudsperson to reconsider taking testing equipment into a correctional facility if it determines that the equipment may interfere with the facility's operations and provides the ombudsperson with a written statement explaining that specific impact. DOC would have to notify the ombudsperson if a requested testing procedure is under litigation, in which case the ombudsperson would have to delay that testing until the litigation is completed. DOC could search any testing equipment brought into a correctional facility for contraband.

Time frames for response and notifications

Under current law, the ombudsman must consult with a person (including DOC) before it announces a conclusion or recommendation that is critical of that person. When publishing an opinion adverse to a person (including DOC), the ombudsman must include a statement from that person in response, if the statement is of reasonable length and *submitted in a reasonable period of time as determined by the Legislative Council*. In addition, the ombudsman can request to be notified by DOC, *within a specified time*, of action taken on a recommendation.

The bill would retain the provisions described above, but would change the italicized time frames and add new provisions. Under the bill, the ombudsperson would have to include the response statement in its publication as long as the statement is of reasonable length and

provided within 30 business days after the ombudsman's consultation with the person. DOC could request one 14-business-day extension to this time limit. The ombudsperson would have to report to the Legislative Council if DOC fails to provide a response statement within the time limit. In addition, under the bill, DOC would have to notify the ombudsperson *within 30 business days* after an action is taken on a recommendation.

As under current law, the ombudsperson would have to notify the person who submitted the complaint of any actions taken by the ombudsperson and DOC—but the bill would newly require the ombudsperson to do so within 45 business days after the action is taken.

Annual report

The ombudsman is currently required to submit an annual report on the conduct of the office to the legislature and the Legislative Council. The bill would require the report to also be made available on the ombudsperson's website. In addition, the bill would require the annual report to include all of the following:

- The total number of complaints that were received, investigated, denied, resolved, unsubstantiated, or undecided.
- The number of complaints received, broken down by correctional facility.
- The number of complaints received, broken down by subject matter (including at least racial discrimination and medical treatment issues).
- Significant issues that were investigated.
- Each recommendation made to DOC.
- DOC's response to each recommendation.

Monthly reports

The bill would require the ombudsperson to make monthly reports available on its website that include the following information for each month:

- The total number of complaints that were received, investigated, denied, resolved, unsubstantiated, or undecided.
- The number of complaints received, broken down by correctional facility.
- The number of complaints received, broken down by subject matter (including at least racial discrimination and medical treatment issues).

MCL 4.351 et seq.

FISCAL IMPACT:

Senate Bill 493 would have an indeterminate fiscal impact on the Department of Corrections. Revising the definition of complainant to include family members or prisoner advocates most likely would result in additional complaints being filed which would result in additional investigations being conducted. The ombudsperson would be authorized to contract with qualified experts for assistance with investigations and the experts would be authorized to take testing equipment into correctional facilities. The department would have to conduct additional background checks and would have to search all equipment brought in by experts for contraband. These activities would require an indeterminate amount of additional staff time and resources. Because there is no way to determine the number of additional background checks or searches of equipment, there is no practical way to project additional costs to the state.

Senate Bill 493 would have no fiscal impact on the legislative corrections ombudsman. Any additional costs incurred from consulting or contracting with experts for assistance with investigations, inspections, or hearings would be able to be supported through ongoing annual appropriations.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.