

SUBSTITUTE FOR
HOUSE BILL NO. 6397

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 sections 4, 5, 8, 9, and 13 (MCL 4.354, 4.355, 4.358, 4.359, and 4.363), sections 4 and 13 as amended by 1998 PA 318, section 5 as amended by 2010 PA 287, and section 9 as amended by 1995 PA 197.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

3 (a) Receipt of a complaint from a prisoner, a legislator, or
4 on the ombudsman's own initiative, concerning an administrative act
5 ~~which~~ **THAT** is alleged ~~by a prisoner~~ to be contrary to law or

1 contrary to departmental policy.

2 (b) The ombudsman's own initiative for significant prisoner
3 health and safety issues, **CORRECTIONAL FACILITY SECURITY, AND**
4 **PUBLIC SAFETY**, and other matters for which there is no effective
5 administrative remedy.

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

10 Sec. 5. (1) Upon request and without the requirement of any
11 release, the ombudsman shall be given access to **AND PHYSICAL OR**
12 **ELECTRONIC COPIES OF** all information, records, and documents in the
13 possession of the department ~~which~~ **THAT** the ombudsman ~~deems~~
14 **CONSIDERS** necessary in an investigation, including, but not limited
15 to, prisoner medical health records, prisoner mental health
16 records, and prisoner mortality and morbidity records. **UPON**
17 **REQUEST, THE OMBUDSMAN MAY INTERVIEW ANY OF THE FOLLOWING**
18 **INDIVIDUALS WHOM THE OMBUDSMAN CONSIDERS NECESSARY IN AN**
19 **INVESTIGATION:**

20 (A) **AN INDIVIDUAL EMPLOYED BY OR RETAINED UNDER CONTRACT BY**
21 **THE DEPARTMENT.**

22 (B) **AN INDIVIDUAL EMPLOYED BY OR RETAINED UNDER CONTRACT BY A**
23 **PRIVATE CONTRACTOR THAT OPERATES A FACILITY OR INSTITUTION THAT**
24 **HOUSES PRISONERS UNDER THE JURISDICTION OF THE DEPARTMENT.**

25 (2) Upon request and without notice, the ombudsman ~~shall~~ **MUST**
26 be granted entrance to inspect at any time any premises under the
27 control of the department. **ONE OMBUDSMAN STAFF PERSON MUST ALSO BE**

1 GRANTED ENTRY INTO A CORRECTIONAL FACILITY OR THE DEPARTMENT'S
2 "THINK TANK" OR "COMMAND CENTER" DURING EMERGENCY SITUATIONS
3 INCLUDING, BUT NOT LIMITED TO, CORRECTIONAL FACILITY DISTURBANCES,
4 RIOTS, AND HOSTAGE INCIDENTS, AND MUST BE PROVIDED WITH UPDATES
5 REGARDING THE STATUS OF THE EMERGENT SITUATION AS WELL AS THE
6 DEPARTMENT'S EFFORTS TO ADDRESS THE SITUATION. THE OMBUDSMAN STAFF
7 PERSON GRANTED ENTRY FOR AN EMERGENCY SITUATION UNDER THIS
8 SUBSECTION IS PRESENT FOR OBSERVATION AND TO REPORT ON THE
9 EMERGENCY SITUATION.

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

15 (4) **THE OMBUDSMAN SHALL ARRANGE AN INTERVIEW UNDER SUBSECTION**
16 **(1) IN COOPERATION WITH THE DEPARTMENT AT A TIME AND LOCATION THAT**
17 **DOES NOT INTERFERE WITH THE OPERATION OF A CORRECTIONAL FACILITY.**

18 Sec. 8. Upon request of the ombudsman, the council may hold a
19 hearing. The council may administer oaths, subpoena witnesses, and
20 examine the books and records of the department or of a person,
21 partnership, or corporation involved, in accordance with section 4
22 ~~of Act No. 412 of the Public Acts of 1965, being section 4.314 of~~
23 ~~the Michigan Compiled Laws,~~ **104 OF THE LEGISLATIVE COUNCIL ACT,**
24 **1986 PA 268, MCL 4.1104,** in a matter ~~which~~**THAT** is or was a proper
25 subject of investigation by the ombudsman under this act.

26 Sec. 9. (1) Correspondence between the ombudsman and a
27 prisoner is confidential and ~~shall~~**MUST** be processed as privileged

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1 correspondence in the same manner as letters between prisoners and
2 courts, attorneys, or public officials.

3 (2) The ombudsman shall maintain secrecy with respect to all
4 matters and the identities of the complainants or persons from whom
5 information is acquired, except so far as disclosures may be
6 necessary to enable the ombudsman to perform the duties of the
7 office and to support any recommendations resulting from an
8 investigation. **A RECORD OF OR INFORMATION OBTAINED OR CREATED BY
9 THE OMBUDSMAN IS CONFIDENTIAL, IS CONSIDERED PRIVILEGED, MUST ONLY
10 BE USED FOR PURPOSES SET FORTH IN THIS ACT, IS NOT SUBJECT TO COURT
11 SUBPOENA, AND IS NOT DISCOVERABLE IN A LEGAL PROCEEDING. A RECORD
12 OF OR INFORMATION OBTAINED BY THE OMBUDSMAN THAT IS OTHERWISE
13 AVAILABLE FROM OTHER SOURCES IS NOT EXEMPT FROM COURT SUBPOENA OR
14 DISCOVERY FROM OTHER SOURCES SOLELY BECAUSE IT WAS PRESENTED TO OR
15 REVIEWED BY THE OMBUDSMAN.**

16 (3) ~~A report prepared and recommendations made by the~~
17 ~~ombudsman and submitted to the council under section 10 are exempt~~
18 ~~from disclosure under the freedom of information act, Act No. 442~~
19 ~~of the Public Acts of 1976, being sections 15.231 to 15.246 of the~~
20 ~~Michigan Compiled Laws.~~ **ALL OF THE FOLLOWING ARE EXEMPT FROM
21 DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL
22 15.231 TO 15.246:**

23 (A) A RECORD OF THE OMBUDSMAN.

24 (B) A REPORT OR RECOMMENDATIONS MADE BY THE OMBUDSMAN AND
25 SUBMITTED TO THE COUNCIL UNDER SECTION 10.

26 (C) INFORMATION OBTAINED OR CREATED BY THE OMBUDSMAN.

27 Sec. 13. (1) A prisoner shall-<< >> MUST

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1 not be penalized in any way by an official or the department as a
2 result of filing a complaint, complaining to a legislator, or
3 cooperating with the ombudsman in investigating a complaint.

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

**<<(3) THE DEPARTMENT SHALL NOT TAKE DISCIPLINARY ACTION AGAINST AN
EMPLOYEE FOR COMMUNICATING WITH THE OMBUDSMAN.>>**