

HOUSE BILL No. 6397

September 26, 2018, Introduced by Reps. Bizon, Kesto, Lucido, Theis, Chang, Gay-Dagnogo and Howrylak and referred to the Committee on Law and Justice.

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, and 9 (MCL 4.354, 4.355, 4.358, and 4.359), section 4 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

1 ~~which~~ **THAT** is alleged ~~by a prisoner~~ to be contrary to law or
2 contrary to departmental policy.

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

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

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

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

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

26 (2) Upon request and without notice, the ombudsman shall be
27 granted entrance to inspect at any time any premises under the

1 control of the department. **THE OMBUDSMAN SHALL BE GRANTED ENTRY**
2 **INTO A CORRECTIONAL FACILITY OR THE DEPARTMENT'S "THINK TANK" OR**
3 **"COMMAND CENTER" DURING EMERGENCY SITUATIONS INCLUDING, BUT NOT**
4 **LIMITED TO, CORRECTIONAL FACILITY DISTURBANCES, RIOTS, AND HOSTAGE**
5 **INCIDENTS, AND SHALL BE PROVIDED WITH UPDATES REGARDING THE STATUS**
6 **OF THE EMERGENT SITUATION AS WELL AS THE DEPARTMENT'S EFFORTS TO**
7 **ADDRESS THE SITUATION.**

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

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

21 Sec. 9. (1) Correspondence between the ombudsman and a
22 prisoner is confidential and ~~shall~~ **MUST** be processed as privileged
23 correspondence in the same manner as letters between prisoners and
24 courts, attorneys, or public officials.

25 (2) The ombudsman shall maintain secrecy with respect to all
26 matters and the identities of the complainants or persons from whom
27 information is acquired, except so far as disclosures may be

1 necessary to enable the ombudsman to perform the duties of the
2 office and to support any recommendations resulting from an
3 investigation. **A RECORD OF OR INFORMATION OBTAINED OR CREATED BY
4 THE OMBUDSMAN IS CONFIDENTIAL, IS CONSIDERED PRIVILEGED, MUST ONLY
5 BE USED FOR PURPOSES SET FORTH IN THIS ACT, IS NOT SUBJECT TO COURT
6 SUBPOENA, AND IS NOT DISCOVERABLE IN A LEGAL PROCEEDING. A RECORD
7 OF OR INFORMATION OBTAINED BY THE OMBUDSMAN THAT IS OTHERWISE
8 AVAILABLE FROM OTHER SOURCES IS NOT EXEMPT FROM COURT SUBPOENA OR
9 DISCOVERY FROM OTHER SOURCES SOLELY BECAUSE IT WAS PRESENTED TO OR
10 REVIEWED BY THE OMBUDSMAN.**

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

18 **(A) A RECORD OF THE OMBUDSMAN.**

19 **(B) A REPORT OR RECOMMENDATIONS MADE BY THE OMBUDSMAN AND
20 SUBMITTED TO THE COUNCIL UNDER SECTION 10.**

21 **(C) INFORMATION OBTAINED OR CREATED BY THE OMBUDSMAN.**