

Legislative Analysis



PRISONERS' HEALTH-RELATED RECORDS: ALLOW ACCESS BY CORRECTIONS OMBUDSMAN

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House Bill 5958 as introduced
Sponsor: Rep. Alma Wheeler Smith

House Bill 5959 with House committee amendment
Sponsor: Rep. Rebekah Warren
Committee: Judiciary

First Analysis (4-9-10)

BRIEF SUMMARY: Taken together, the bills would enable the Legislative Corrections Ombudsman to have access to various health-related records of prisoners under the jurisdiction of the Department of Corrections without having to first obtain a release from a prisoner or the prisoner's representative.

FISCAL IMPACT: The bill would have no fiscal impact on the State or on local units of government.

THE APPARENT PROBLEM:

The Office of the Legislative Corrections Ombudsman was created by the Legislature in the mid-1970s as a nonpartisan agency to investigate issues that affect the Michigan Department of Corrections (MDOC), prisoners and parolees, and MDOC employees. The Ombudsman has authority to investigate actions of the MDOC that may be unlawful or that do not adhere to departmental policy. Anyone may submit a complaint, but in general, complaints are initiated by members of the Legislature, prisoners and parolees, and the friends or families of prisoners and parolees. The Ombudsman has discretion as to the complaints accepted for investigation, meaning that not every complaint submitted to the office is investigated.

As part of the investigation process, the Ombudsman needs access to certain types of information held by the MDOC. In particular, since many complaints center on issues surrounding prisoners' medical care, treatment for mental illnesses, or access to medications, it is very important that the Ombudsman be able to quickly access the medical files in determining whether a complaint has merit and how it should be resolved.

Though the Ombudsman has the legal authority to access these types of information, the statute has been interpreted as requiring – in the case of health-related information – a prisoner or a legal representative to sign a release-of-information form. Reportedly, even in an ongoing investigation, the Ombudsman must obtain a new release form each time the prisoner or parolee receives additional medical attention. Requiring a release form for each new medical service greatly slows down the investigation and resolution

process, increases the cost to resolve a case, and – if Corrections employees are used to take the forms to prisoners for signing – raises questions of confidentiality and fear of reprisals for submitting a complaint. If a prisoner dies, it can be very difficult or impossible to locate next of kin or an executor in order to get a lawfully signed release form enabling the Ombudsman to obtain the prisoner's records and conduct an investigation into the death. Therefore, amendments have been requested that would allow the Ombudsman to access health-related and prisoner mortality and morbidity records in the same manner as other information necessary to complete an investigation.

THE CONTENT OF THE BILLS:

House Bills 5958 and 5959 are tie-barred to each other, meaning that neither bill could take effect unless both are enacted.

House Bill 5959 would amend the law that created the Office of the Legislative Corrections Ombudsman and that prescribes the powers and duties of the Ombudsman, Public Act 46 of 1975 (MCL 4.355). Currently, the act requires that upon his or her request, the Ombudsman be given access to all information, records, and documents in the possession of the Department of Corrections that the Ombudsman deems necessary in an investigation.

The bill would amend the above provision to specify that:

- (1) The Ombudsman could request the information without first having to obtain a release; and,
- (2) The information, records, and documents would include, but not be limited to, prisoner medical health records, prisoner mental health records, and prisoner mortality and morbidity records.

A provision would be eliminated that requires the department to assist the Ombudsman in obtaining the necessary release of those documents specifically restricted or privileged for use by the Ombudsman.

House Bill 5958 would amend Public Act 270 of 1967 (MCL 331.532). Under the act, review entities are authorized to collect data relating to the physical or psychological condition of a person, the health care rendered to the person, and the qualifications of the health care provider. The release or publication of a report, finding, or conclusion by a review entity is strictly regulated by statute; generally speaking, the information is released only to state departments and approved health-related associations and organizations.

The bill would specifically require that the review entity responsible for mortality and morbidity records, reports, findings, and conclusions about prisoners under the jurisdiction of the DOC release that information to the Legislative Ombudsman to the

extent required under Section 5 of Public Act 46 of 1975 (which would be amended by House Bill 5959, as described above).

ARGUMENTS:

For:

Under current law, the MDOC is required to give access to information contained in the records of prisoners and parolees if requested by the Corrections Ombudsman in order to conduct an investigation. The current interpretation of the law, however, is to require the Ombudsman to obtain a signed consent form from a prisoner or parolee filing a complaint before the MDOC releases health-related information. Thus, the bills will amend the law to remove this obstacle and treat access to health-related records in the same manner as other information in a prisoner's or parolee's record. The bills are not viewed as impinging on any confidentiality requirements.

This is important for several reasons. First, the Ombudsman's office is located in Lansing and travel to the prisons, especially those in the Upper Peninsula, in order to obtain a prisoner's signature is costly and time-consuming. If corrections staff are used to take the forms to the prisoners to get the signatures, prisoners may be reluctant to submit a complaint for fear of reprisals or pressure to disclose the nature of the complaint. Many prisoners distrust prison staff, and having MDOC staff involved destroys the confidentiality built into the Ombudsman's program. Plus, if the prisoner has an urgent medical need, the process of getting signed consent forms can delay necessary treatment, which could result in higher treatment costs later if the prisoner's health worsens.

Many prisoners, especially those incarcerated for long periods, are estranged from family and friends, or have outlived their relatives. This makes it difficult for the Ombudsman to investigate deaths of prisoners when a living relative cannot be found or when an executor for the prisoner's estate was not named.

House Bill 5959 would treat the request for help from the Ombudsman as implied consent for all records relevant to the investigation, speed up investigations, cut administrative costs related to obtaining the signed consent forms, and reduce more costs if information in the records were transmitted electronically. House Bill 5958 would enable the Ombudsman to have timely access to reports relating to prisoner's deaths and illnesses (referred to as mortality and morbidity records) released by review entities. In short, the bills will allow the Ombudsman to fulfill his or her mandated duties more effectively, efficiently, and economically.

POSITIONS:

The Legislative Corrections Ombudsman testified in support of the bills. (3-31-10)

The Michigan Department of Corrections indicated support for the bills. (3-31-10)

Partners in Crisis Public Policy Committee indicated support for the bills. (3-31-10)

The Mental Health Association in Michigan indicated support for the bills. (3-31-10)

The Michigan Association for Children with Emotional Disorders indicated support for the bills. (3-31-10)

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