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BILL



ANALYSIS

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House Bills 5958 and 5959 (as reported without amendment)

Sponsor: Representative Alma Wheeler Smith (H.B. 5958)

Representative Rebekah Warren (H.B. 5959)

House Committee: Judiciary

Senate Committee: Judiciary

Date Completed: 10-8-10

RATIONALE

Public Act 46 of 1975 provides for the Office of the Legislative Corrections Ombudsman in the Legislative Council, and authorizes the Ombudsman to conduct investigations regarding prisoners under the jurisdiction of, or committed to, the Department of Corrections (DOC). The Ombudsman may begin an investigation upon receiving a complaint from a prisoner or a legislator, or on the Ombudsman's own initiative, concerning an administrative act that a prisoner claims is in violation of the law or DOC policy. The Ombudsman also may initiate an investigation of significant prisoner health and safety issues and other matters for which there is no effective administrative remedy. The DOC is required to give the Ombudsman, upon request, access to documents that he or she considers necessary to an investigation. The DOC also must help the Ombudsman in obtaining releases of documents that are restricted or confidential. Evidently, many complaints involve medical issues and the Ombudsman frequently needs access to medical records. In such a case, the Ombudsman must contact the prisoner or his or her legal representative, and request him or her to sign a release. Alternatively, the Ombudsman must enlist the help of the DOC in getting a release. It has been suggested that both the Ombudsman and the Department would save time and resources if the Ombudsman could obtain prisoners' medical records without a release.

In addition, because some complaints involve prisoners who have died, it has been pointed out that access to prisoner mortality and morbidity records would be helpful to

the Ombudsman. These records are maintained by the Mortality Review Committee within the DOC's Bureau of Health Care Services. That Committee prepares peer review reports dealing with the medical aspects of the death of prisoners. It is subject to Public Act 270 of 1967, which permits the release of medical information by review entities, such as the DOC Committee, only for specific purposes and functions. According to a 1992 Opinion of the Attorney General (No. 6735), the Committee's reports may not be made available to the Office of Legislative Corrections Ombudsman because that Office is not an entity authorized to perform any of the functions described in Public Act 270.

CONTENT

The bills would amend separate statutes to provide for the release of prisoner health and mortality records to the Legislative Corrections Ombudsman.

The bills are tie-barred to each other.

House Bill 5959

Public Act 46 of 1975 provides that, upon request, the Ombudsman must be given access to all information, records, and documents in the possession of the Department of Corrections that he or she considers necessary in an investigation. Under the bill, these items would include prisoner medical records, prisoner mental health records, and prisoner mortality and morbidity records. Also, the Ombudsman

would have to be given access to DOC information, records, and documents without the requirement of any release.

The Act requires the DOC to assist the Ombudsman in obtaining the necessary releases of documents that are specifically restricted or privileged for his or her use. The bill would delete this language.

House Bill 5958

Public Act 270 of 1967 allows a person to give a review entity information relating to the physical or psychological condition of a person, the necessity, appropriateness, or quality of health care rendered to an individual, or the qualifications, competence, or performance of a health care provider. A "review entity" includes, among others, a duly appointed peer review committee of the State, a professional standards review organization, and a State department or agency whose jurisdiction encompasses the information that may be provided to a review entity.

A record of a review entity's proceedings, and its reports, findings, and conclusions, may be released or published only for specified purposes, which include advancing health care research or education, maintaining the standards of health care professions, providing evidence relating to the ethics or discipline of a health care provider, reviewing the qualifications of a health care professional, and complying with a requirement of the Public Health Code that a health facility or agency maintain a record for each patient. Under the bill, this would apply except as provided below.

The bill would require the review entity responsible for mortality and morbidity records, reports, findings, and conclusions regarding prisoners under the jurisdiction of the DOC to release those records, reports, findings, and conclusions to the Legislative Corrections Ombudsman to the extent required under Section 5 of Public Act 46 of 1975 (the section that Senate Bill 1223 would amend).

MCL 333.532 (H.B. 5958)
4.355 (H.B. 5959)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate

Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

House Bill 5959 would eliminate the need for the Legislative Corrections Ombudsman to obtain a prisoner's release when medical records are necessary for an investigation. If an inmate has a complaint regarding his or her health care, medical treatment, or mental health treatment, it is in the prisoner's interest for the Ombudsman to have access to the relevant medical records. It is the Department's practice, however, not to release these records without a signed release from the prisoner or his or her legal representative, even when the prisoner is the person making the complaint. This means that either someone from the Office of Legislative Corrections Ombudsman, or a member of the DOC staff, must go to the trouble of contacting the prisoner or a legal representative for a signature on a form. Obtaining a release can be even more time-consuming and difficult if the prisoner has died and his or her personal representative must be located.

The bill would streamline the process by clearly requiring the DOC, upon request, to give the Ombudsman access to medical records, mental health records, and prisoner morbidity and mortality records, without the need for a release. This not only would save staff time for both the Department and the Ombudsman, but also would speed up the Ombudsman's ability to review the records, proceed with an investigation, and resolve a complaint.

In addition, giving the Ombudsman access to prisoners' medical records without a release would be a step toward enabling the Ombudsman to review the documents electronically and print only those that were relevant, instead of receiving and searching through volumes of written documents. If implemented, electronic access also would save the Ombudsman and the DOC time and resources.

Supporting Argument

The DOC's Mortality Review Committee is a review entity for purposes of Public Act 270 of 1967, making it subject to that statute's limitation on the release of information. Although the Committee's mortality and morbidity records might be relevant to an investigation by the Legislative Corrections Ombudsman, the Act does not allow the

Committee to share its records with the Ombudsman. Under Public Act 370, a review entity's reports and data are confidential, subject to an exception that allows disclosure for only certain purposes and functions. According to the 1992 Opinion of the Attorney General cited above, release to the Ombudsman is not covered by that exception. Under House Bill 5958, however, this DOC review entity would have to release prisoner mortality and morbidity records to the Ombudsman to the extent necessary to comply with the requirements of House Bill 5959.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Joe Carrasco

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.