Legislative Analysis

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LEGISLATIVE CORRECTIONS OMBUDSMAN

House Bill 6397 as introduced
Sponsor: Rep. John Bizon, M.D.
Committee: Law and Justice
Complete to 10-1-18

SUMMARY:

House Bill 6397 would clarify and, in some instances, expand the ability of the Legislative Corrections Ombudsman to initiate investigations, interview individuals in connection with an investigation, and access certain portions of a prison during an emergent event, such as a riot, and would strengthen FOIA protections. The bill would amend Public Act 46 of 1975, which created the Office of the Legislative Corrections Ombudsman within the Legislative Council and prescribes the powers and duties of the Ombudsman.

Commencing an investigation

Currently, the Ombudsman may commence an investigation upon either of the following:

- Receipt of a complaint from a prisoner, a legislator, or the Ombudsman's own initiative concerning an administrative act alleged by a prisoner to be contrary to law or contrary to the Michigan Department of Correction's policy.

  The bill would delete the underlined text, thus eliminating the restriction that the allegation be made by the prisoner. Under the bill, the allegation could arise from a prisoner, a legislator, or the Ombudsman.

- The Ombudsman's own initiative for significant prisoner health and safety issues and other matters for which there is no effective administrative remedy.

  The bill would allow the Ombudsman to also initiate an investigation regarding correctional facility security and public safety.

Access to information

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 DOC that the Ombudsman deems necessary in an investigation. This includes such things as prisoner medical health records, mental health records, and mortality and morbidity records.

The bill would add to this that, upon request, the Ombudsman could interview any of the following he or she considered as necessary in an investigation:

- A DOC employee or an individual retained under contract by the DOC.
- An employee of, or individual retained under contract by, a private contractor operating a facility or institution housing prisoners who are under the jurisdiction of the DOC.

Access to prisons

Currently, the Ombudsman may—upon request and without notice—enter and inspect at any time any premises (e.g., prison or a reception center) under DOC control.

The bill would expand this provision to specifically include entry to a correctional facility or the DOC's "think tank" or "command center" during emergency situations that would include, but not be limited to, correctional facility disturbances, riots, and hostage incidents. The Ombudsman would also have to be provided with status updates on the emergency situation as well as the DOC's efforts to address the situation.

Confidentiality of records

Currently, correspondence between the Ombudsman and a prisoner is confidential and is processed in the same manner as letters between prisoners and courts, attorneys, or public officials. In addition, the Ombudsman must maintain secrecy with respect to all matters and the identities of the complainants or persons from whom information is acquired (an exception is made for a disclosure necessary for the Ombudsman to perform his or her duties).

Under the bill, all of the following would also apply to a record of, or information obtained or created by, the Ombudsman:

- It would be confidential.
- It would be considered privileged.
- It would only be used for purposes set forth in the act.
- It would not be subject to court subpoena.
- It would not be discoverable in a legal proceeding.

However, a record of, or information obtained by, the Ombudsman that is otherwise available from other sources would not be exempt from court subpoena or discovery from other sources solely because it was presented to or reviewed by the Ombudsman.

Further, a provision that exempts from disclosure under the Freedom of Information Act (FOIA) a report prepared and recommendations by the Ombudsman and submitted to the Legislative Council under requirements in Section 10 of the act would be eliminated. Instead, under the bill, all of the following would be exempt from disclosure under FOIA:

- A record of the Ombudsman.
- A report or recommendations made by the Ombudsman and submitted to the Legislative Council under Section 10.
- Information obtained or created by the Ombudsman.

MCL 4.354 et al.

FISCAL IMPACT:

The bill would have no direct fiscal impact on state or local government. If it were determined that the expanded investigatory abilities of the Legislative Corrections Ombudsman authorized under the bill resulted in additional investigations that increased Legislative Corrections Ombudsman costs beyond current appropriation levels, any additional funding would be subject to legislative appropriation.

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