

Act No. 197
Public Acts of 1995
Approved by the Governor
November 29, 1995
Filed with the Secretary of State
November 29, 1995

**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1995**

Introduced by Senators Steil, Gast, Dunaskiss, Rogers, Gougeon, Carl, Stille, Cisky and North

ENROLLED SENATE BILL No. 501

AN ACT to amend sections 1, 4, 6, 7, 9, 10, 11, and 13 of Act No. 46 of the Public Acts of 1975, 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," being sections 4.351, 4.354, 4.356, 4.357, 4.359, 4.360, 4.361, and 4.363 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 1, 4, 6, 7, 9, 10, 11, and 13 of Act No. 46 of the Public Acts of 1975, being sections 4.351, 4.354, 4.356, 4.357, 4.359, 4.360, 4.361, and 4.363 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 1. As used in this act:

- (a) "Administrative act" includes an action, omission, decision, recommendation, practice, or other procedure of the department.
- (b) "Council" means the legislative council established under section 15 of article IV of the state constitution of 1963.
- (c) "Department" means the department of corrections.
- (d) "Legislator" means a member of the Senate or the House of Representatives of this state.
- (e) "Office" means the office of the legislative corrections ombudsman created under this act.
- (f) "Ombudsman" means the office of legislative corrections ombudsman.
- (g) "Prisoner" means a person committed to or under the jurisdiction of the department.
- (h) "Official" means an official or employee of the department of corrections.

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

- (a) Receipt of a complaint from a legislator concerning an administrative act which is alleged by a prisoner to be contrary to law or contrary to departmental policy.
 - (b) The ombudsman's own initiative for significant prisoner health and safety issues and other matters for which there is no effective administrative remedy, all as determined by the council.
- (2) Subject to approval of the council, the ombudsman shall establish procedures for receiving and processing complaints, conducting investigations, holding hearings, and reporting the findings resulting from the investigations.

Sec. 6. The ombudsman need not hold an investigation on a complaint brought before the ombudsman. A person is not entitled as a right to be heard by the ombudsman.

Sec. 7. Upon the receipt of a complaint from a legislator and upon deciding to investigate that complaint, the ombudsman shall notify the legislator who filed the complaint, the prisoner or prisoners affected, and the department. If the ombudsman declines to investigate, the ombudsman shall notify the legislator who filed the complaint, in writing, and inform the prisoner or prisoners affected of the reasons for the ombudsman's decision.

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

(2) The ombudsman shall maintain secrecy with respect to all matters and the identities of the complainants or persons from whom information is acquired, except so far as disclosures may be necessary to enable the ombudsman to perform the duties of the office and to support any recommendations resulting from an investigation.

(3) A report prepared and recommendations made by the ombudsman and submitted to the council under section 10 are exempt from disclosure under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

Sec. 10. (1) The ombudsman shall prepare and submit a report of the findings of an investigation and make recommendations to the council within 30 days of completing the investigation when the ombudsman finds any of the following:

- (a) A matter that should be considered by the department.
- (b) An administrative act that should be modified or canceled.
- (c) A statute or rule that should be altered.
- (d) Administrative acts for which justification is necessary.
- (e) Significant prisoner health and safety issues as determined by the council.
- (f) Any other significant concerns as determined by the council.

(2) Subject to section 11, the council may forward the report prepared and submitted under this section to the department, the prisoner or prisoners affected, or the legislator who requested the report.

Sec. 11. Before announcing a conclusion or recommendation that expressly or by implication criticizes a person or the department, the ombudsman shall consult with that person or the department. When publishing an opinion adverse to the department, or any person, the ombudsman shall include in that publication a statement of reasonable length made to him or her by the department or person in defense or mitigation of the action if that statement is provided within a reasonable period of time as determined by the council. The ombudsman may request to be notified by the department, within a specified time, of any action taken on any recommendation presented. The ombudsman shall notify the complainant of the actions taken by the office and by the department.

Sec. 13. (1) A prisoner shall not be penalized in any way by an official or the department as a result of complaining to a legislator or cooperating with the ombudsman in investigating a complaint.

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

This act is ordered to take immediate effect.

Secretary of the Senate.

Clerk of the House of Representatives.

Approved -----

Governor.