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LEGISLATIVE CORRECTIONS OMBUDSMAN

**House Bill 5876 as enrolled
Public Act 318 of 1998
Second Analysis (8-11-98)**

**Sponsor: Rep. Michael Hanley
House Committee: Corrections
Senate Committee: Government Operations
(discharged)**

THE APPARENT PROBLEM:

The Office of the Legislative Corrections Ombudsman was created by Public Act 46 of 1975 as an independent fact-finder under the Legislative Council. The office has a staff of four, including the ombudsman, two investigators, and a secretary. (See *BACKGROUND INFORMATION* for further information about this 23-year-old legislative staff.)

Public Act 197 of 1995 changed the way the Office of the Legislative Corrections Ombudsman receives inquiries and complaints for investigation. Since enactment of that law, as described in the office's 1995 report, prisoners and others must contact their home district state legislator directly, and ask the legislator to refer the complaint to the Office of the Legislative Corrections Ombudsman. (Home district is defined to be that area where the prisoner lived at the time he or she was charged with the offense for which he or she is serving.) Referral of a matter to the ombudsman is at the discretion of the legislator.

As a result of the change in law, there has been a significant reduction in the number of complaints filed

and investigated: In 1993, the ombudsman opened 5,792 new cases; in 1994, 5,930 new cases; and, in 1995 after the law was changed, 1,607 new cases. Because of the reduced caseload, staffing in the office was reduced by 4.5 FTE positions, or 56 percent.

The change in law followed a review and assessment of the Legislative Council's staff operations, including the ombudsman's office, in a study undertaken by the Legislative Council during 1994, through the services of the National Conference of State Legislatures (NCSL). Although the NCSL report concluded that "the Office of Ombudsman was a cost-efficient response to problems within the prison system, where

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House Bill 5876 (8-11-98)

administrative resolution of complaints was likely to be far less costly than litigation," the council conceived a new course for complaint handling, bringing Michigan legislators directly into the process. The revised procedure required all people to gain legislative referral of their complaint to the ombudsman. Previously, the ombudsman could initiate an investigation upon receipt of a complaint or on the ombudsman's own initiative.

Some have argued, in the context of sentencing reform, that the office of the ombudsman should once again be able to investigate health and safety issues, and also matters for which there is no administrative remedy available, as problems become apparent and at the ombudsman's own initiative. Further, they argue that the ombudsman should be able to conduct investigations after receiving complaints brought to the ombudsman's attention by others, including legislators and prisoners. They also argue the ombudsman should be required to advise a complainant to pursue all administrative remedies open to him or her; and that the Department of Corrections should be required to send the ombudsman a progress report concerning the administrative processing of a complaint when requested to do so.

THE CONTENT OF THE BILL:

House Bill 5876 would amend the Office of the Legislative Corrections Ombudsman act to require the ombudsman to advise a complainant to pursue all administrative remedies open to the complainant. The bill also would require the Department of Corrections to provide a progress report concerning the administrative processing of a complaint, if the ombudsman made such a request. Following

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administrative action on a complaint, House Bill 5876 also would allow the ombudsman to conduct further investigation, upon the request of a complainant or upon his or her own initiative. Under the bill, a new definition would define "complainant" to mean a prisoner or legislator who files a complaint.

the Corrections Ombudsman observes that reliance on accurate, factual information is essential to the fulfillment of its mission, and to that end the office has statutory access to all prisons, prisoners, staff, and documentation within the corrections system. As a fact-finding agency, the office is able to present a concise investigative report for the Department of Corrections' response when its findings lead to a conclusion that departmental action is warranted. In addition, the office provides continuous oversight of corrections' administrative programs, and when necessary, reports to the Legislative Council

Under current law, the Office of the Legislative Corrections Ombudsman is created within the Legislative Council. The principal executive officer of the office is the ombudsman who is appointed by and serves at the pleasure of the council. Currently, in order for the ombudsman to begin an investigation, a complaint must be referred by a legislator, and upon receiving a complaint, the ombudsman must notify the legislator in writing when he or she decides to investigate the complaint, or if he or she declines to investigate. House Bill 5876 also would require that the complainant be given notice; under the bill, a complainant would be either a legislator filing a complaint, or a prisoner who files a complaint.

The bill is tie-barred to Senate Bill 826 (truth-in-sentencing, disciplinary time and parole), House Bill 4065 (date rape), House Bills 4444 through 4446 (felony thresholds), House Bill 4515 (GED requirements for prisoners), House Bill 5419 (sentencing guidelines), and House Bill 5398 (truth-in-sentencing, disciplinary time).

MCL 4.351 et al.

BACKGROUND INFORMATION:

According to the Office of the Legislative Corrections Ombudsman's 1997 Legislative Handbook, the mission of the office is to provide, through receiving, analyzing, and investigating complaints, a means of protecting against error or unreasonable acts by the Michigan Department of Corrections. The Office of

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Administrator and the Legislative Council on concerns or questions involving departmental programs.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the fiscal year 1998-99 general government appropriations bill contains a \$337,000 line-item for the Legislative Corrections Ombudsman's Office, a \$12,000 increase over last year. (5-26-98)

ARGUMENTS:

For:

The bill allows a legislator to refer complaints to the corrections ombudsman, but does not require that *all* complaints be referred through a legislator's office. In effect, this legislation allows the corrections ombudsman's office to revert to the complaint investigation practices it followed before 1995. In 1995, the first year after the legislature changed the complaint procedure to require direct legislative referral, the number of complaints investigated by the ombudsman declined by more than 4,300. It seems reasonable to conclude that some important inquiries failed to proceed under the new system, and that justice and fairness were denied to some prisoners or their families.

For:

This legislation expands the authority of the corrections ombudsman, and likely will result in an increased number of complaint investigations in the Department of Corrections. A more rigorous investigation process will allow resolution of many complaints before litigation ensues. Equally important, more investigative discretion and authority for the ombudsman is especially important during this time when the prison system's internal disciplinary policy is being shifted

from one in which good behavior is rewarded, to an alternative approach in which bad behavior is punished. With an investigating ombudsman on the legislative staff, legislators can learn information firsthand from its fact-finders about the implementation effects of truth-in-sentencing policies.

Against:

If the ombudsman's office investigates more complaints, this legislation could well increase the legislature's budget, eventually perhaps as much as

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\$150,000 annually. When the Legislative Council reduced the corrections ombudsman's purview and staff in 1995, the fiscal year 1995-96 general government appropriations bill was reduced \$148,000 from the previous year (for a total line-item of \$325,000), according to the Senate Fiscal Agency analysis dated 6-15-95. The ombudsman's budget is expected to be \$337,000 for fiscal year 1999, a \$12,000 increase over last year.

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Analyst: J. Hunault

■ 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.

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