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BILL ANALYSIS



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Senate Bill 831 (as introduced 3-12-20)
Sponsor: Senator Erika Geiss
Committee: Judiciary and Public Safety

Date Completed: 9-28-20

CONTENT

The bill would amend Public Act 46 of 1975, which 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 Michigan Department of Corrections (MDOC), to do the following:

- **Create the Women's Prison Oversight Advisory Committee within the Office of the Legislative Corrections Ombudsman, and prescribe the membership and duties of the Advisory Committee.**
- **Require the Advisory Committee to monitor certain areas affecting female prisoners, including conditions of confinement, and report any issues to the Ombudsman.**
- **Require the Advisory Committee to advise the Ombudsman on best practices for the MDOC to implement confinement conditions and issues affecting female prisoners in correctional facilities.**
- **Require the Legislature to appropriate to the Office sufficient funds necessary to implement the bill.**
- **Require the MDOC to grant a member of the Advisory Committee entrance to inspect a correctional facility that housed female prisoners.**

Women's Prison Oversight Advisory Committee

Membership. The Advisory Committee would consist of the following 11 members appointed by the Ombudsman:

- One physician who specialized in high-risk pregnancies.
- One physician who was board-certified as an obstetrician-gynecologist.
- One nutritionist.
- One licensed and practicing midwife.
- One practicing doula.
- One individual who was formerly incarcerated in a correctional facility that housed women.
- One individual who had trauma-specific and gender-specific expertise.
- One individual who was a licensed bachelor's social worker, licensed master's social worker, or possessed a doctor of philosophy degree in social work who had expertise in reentry services for prisoners.
- One individual who was a teacher or an education academic or professional who had expertise in adolescent development.
- One individual who was accredited by a national corrections institute.

- One individual who had expertise in sanitation and environmental services.

The members first appointed to the Advisory Committee would have to be appointed within 90 days after the bill's effective date. Members would serve for four-year terms or until a successor was appointed, whichever was later, except that of the members first appointed, three would serve for one year, four would serve for two years, and four would serve for three years. If a vacancy occurred on the Advisory Committee, the Ombudsman would have to make an appointment for the unexpired term in the same manner as the original appointment.

Members of the Advisory Committee would serve without compensation; however, they could be reimbursed from the budget of the Office for their actual and necessary expenses incurred in the performance of their official duties as members of the Advisory Committee.

Duties & Responsibilities. The Advisory Committee would have to meet at least quarterly.

The Advisory Committee would have to monitor the following areas affecting female prisoners and report any issues to the Ombudsman:

- Mental and physical health.
- Nutritional needs and resources.
- Conditions of confinement.

The Advisory Committee also would have to advise the Ombudsman on best practices for the MDOC to implement regarding confinement conditions and issues affecting female prisoners in correctional facilities, including issues regarding the following:

- Access to nutritious and quality food.
- Access to sufficient toilet paper and sanitary products, including products for postpartum bleeding.

Additionally, subject to final approval from the Ombudsman, the Advisory Committee would have to adopt policies and procedures for the Advisory Committee to follow.

Confidentiality. Members of the Advisory Committee would be subject to the confidentiality and secrecy requirements under Section 9 of the Act. (Under that section, correspondence between the Ombudsman and a prisoner is confidential and must be processed as privileged correspondence in the same manner as letters between prisoners and courts, attorneys, or public officials. The Ombudsman must 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. A record of or information obtained or created by the Ombudsman is confidential, is considered privileged, must be used only for purposes set forth in the Act, is not subject to court subpoena, and is not discoverable in a legal proceeding. A record of or information obtained by the Ombudsman that is otherwise available from other sources is not exempt from court subpoena or discovery from other sources solely because it was presented to or reviewed by the Ombudsman. A record of the Ombudsman, a report of recommendations made by the Ombudsman and submitted to the Council, and information obtained or created by the Ombudsman are exempt from disclosure under the Freedom of Information Act.)

Ombudsman & Legislative Council Oversight. The Ombudsman would have to call the first meeting of the Advisory Committee. The Ombudsman also would have to do all of the following in providing oversight of the Advisory Committee:

- Investigate the qualifications of individuals who could serve as a member, including an individual's ability to maintain the bill's confidentiality and secrecy requirements.
- Recruit members.
- Suspend a member and revoke any privilege available to a member under the Act, in consultation with the Council Administrator.
- Recommend policies and procedures for the Advisory Committee to follow, in consultation with the Advisory Committee.
- Approve or deny any changes requested by the Advisory Committee to the recommended policies and procedures.
- Present the recommended policies and procedures at the Advisory Committee's first meeting and every four years after that.
- Establish procedures for a member of the Advisory Committee to inspect a correctional facility.

If a member of the Advisory Committee were suspended, the Legislative Council could remove that member for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

Correctional Facility Inspection

Under the bill, upon request and without notice, the MDOC would have to grant a member of the Advisory Committee entrance to inspect a correctional facility that housed female prisoners.

MCL 4.351 et al.

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on the Office of the Legislative Corrections Ombudsman; however, the bill would require the Legislature to appropriate the necessary funding to implement the proposed changes. The bill would create the Women's Prison Oversight Advisory Committee within the Office. Committee members would not receive a salary but would be eligible for reimbursement for necessary expenses incurred in the performance of their duties as members.

The bill does not specify what would be required of the Legislative Corrections Ombudsman regarding clerking duties for the Committee. Based on fiscal year 2019-20 data, the current estimated average annual cost for 1.0 FTE for a classified State employee is \$123,000 gross, \$62,600 General Fund/General Purpose for salary and benefits. This estimate could be higher or lower depending on the classification level of the FTEs hired. The cost (based on other similar commissions and committees) for member reimbursements for necessary expenses incurred averages less than \$50,000 annually.

Fiscal Analyst: Joe Carrasco

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