

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1188 (Delegate Barron)
 Judiciary and Health and Government
 Operations

Office of the Attorney General – Correctional Ombudsman

This bill establishes (1) a Correctional Ombudsman in the Office of the Attorney General (OAG) and specifies the Correctional Ombudsman’s appointment process, term limit, required qualifications, salary, and duties; (2) a Correctional Ombudsman Advisory Board; (3) various reporting requirements; and (4) prohibitions and penalties for related violations. In addition, the bill states the intent of the General Assembly regarding funding for the office and the focus of the activities of the office in its first year of operation. **The bill takes effect July 1, 2021.**

Fiscal Summary

State Effect: General fund expenditures increase by at least \$503,700 in FY 2022; future years reflect annualization and ongoing costs. Potential minimal increase in general fund revenues and expenditures due to the bill’s penalty provision.

| (in dollars) | FY 2022 | FY 2023 | FY 2024 | FY 2025 | FY 2026 |
|----------------|-------------|-------------|-------------|-------------|-------------|
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| GF Expenditure | 503,700 | 613,900 | 624,800 | 638,900 | 653,300 |
| Net Effect | (\$503,700) | (\$613,900) | (\$624,800) | (\$638,900) | (\$653,300) |

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Potential minimal increase in local revenues and expenditures due to the bill’s penalty provision.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Correctional Ombudsman – Appointment and Duties

Appointment: Subject to the advice and consent of the Senate, the Attorney General must appoint the ombudsman for a five-year term. At the end of the term, the ombudsman must continue to serve until a successor is appointed and qualifies. The Attorney General or the General Assembly, as specified, may remove the ombudsman only for misconduct in office, a felony conviction, or a persistent failure by the ombudsman to perform the duties of the office. The salary, which may not be diminished during the ombudsman's term of office, is equal to the salary of a District Court Judge. (Pursuant to Joint Resolution 3 of 2018, judicial salaries have been set in statute for District Court Judges only through fiscal 2022. The fiscal 2022 salary is set at \$161,333.)

The ombudsman must (1) have recognized judgment and objectivity; (2) have demonstrated interest and experience in issues related to corrections; (3) possess skill in analyzing law, administration, and public policy; and (4) have experience in at least one of several specified areas.

Duties: The ombudsman, in response to a complaint or on the ombudsman's initiative, must:

- investigate any administrative act that the ombudsman determines may be contrary to law or regulation, based on a mistake of fact, unsupported by sufficient evidence, performed in an inefficient manner, unreasonable under the totality of the circumstances, or otherwise erroneous;
- conduct independent reviews and assessments relating to (1) specified health services; (2) plans for the expansion, renovation, or closure of facilities; (3) educational and vocational programs; and (4) policies on restrictive and protective housing;
- cooperate with any agency in efforts to improve the functioning of any agency or prevent abuses by agencies;
- inspect any facilities owned or controlled by any agency to monitor conditions in the facility;
- seek to resolve complaints against an agency through mediation or other conflict resolution methods;
- maintain a website to provide specified information; and
- adopt regulations necessary to carry out the bill's requirements.

In addition, the ombudsman must:

- unless the ombudsman makes a determination otherwise, as specified, investigate each complaint;
- inform a complainant of a decision not to investigate a complaint;
- on request, inform a complainant of the status of an investigation;
- on the completion of an investigation, inform the complainant of any conclusions, recommendations, and actions taken in response to the complaint;
- within 30 days after completing an investigation, submit to an agency a report containing any conclusions, recommendations, and requests for a response from the agency (which must be provided in writing within 30 days after receipt of the report); and
- treat all communications as confidential and reveal details of any communications only as specified.

The ombudsman may (1) subpoena any individual to appear to give sworn testimony or produce documentary evidence that is reasonably necessary to carry out the ombudsman's duties and (2) bring an action in the circuit court to enforce the bill's provisions.

It is the intent of the General Assembly that, in its first year of operation, the Office of the Correctional Ombudsman focus its activities primarily on those State correctional facilities located in the area of Jessup, Maryland.

If the ombudsman determines that an employee or agent of an agency acted in a manner warranting criminal charges or disciplinary proceedings, the ombudsman must refer the matter to appropriate authorities.

Miscellaneous Provisions and Reporting Requirements

Receipt and Sharing of Information: The Commission on Correctional Standards must receive from and share with the ombudsman information related to any condition that may endanger the lives or health of any person in a correctional facility.

Prohibitions: A person may not, by threat, force, or corrupt means, obstruct, impede, or try to obstruct the lawful exercise of the ombudsman's powers. A person who violates this provision is guilty of a misdemeanor and on conviction subject to maximum penalties of one year imprisonment and/or a \$10,000 fine.

An agency may not restrict the ombudsman's ability to (1) interview agency personnel or any individual confined by an agency; (2) access any records maintained by the agency; or (3) access any facilities owned or controlled by the agency. An agency is also prohibited

from opening specified correspondence and interfering with, delaying, or monitoring any communication between the ombudsman and a person being confined by the agency.

Budget: It is the intent of the General Assembly that the Governor must include in the State budget, for fiscal 2023 and each subsequent fiscal year, an appropriation in an amount sufficient to fund the bill's provisions.

Reporting Requirements: By December 31 each year, the ombudsman must report to the Governor and the General Assembly specified information regarding investigations conducted by the ombudsman and specified actions taken or rejected by an agency.

By December 31, 2021, the Correctional Ombudsman and the Commission on Correctional Standards must submit a joint report to the Governor and the General Assembly detailing how the office and the commission will coordinate in order to avoid overlap in their duties.

By December 31, 2021, the Mediation and Conflict Resolution Office must report to the ombudsman, the Governor, and the General Assembly on best practices for mediating grievances in the corrections system.

The Commission of Correctional Standards must send the following to the ombudsman:

- a copy of a compliance plan submitted by the commission to a correctional facility that the commission determines is in violation of the minimum mandatory standards;
- a copy of a letter of reprimand sent to a correctional facility if, after sending a compliance plan and reinspection of the facility, the commission determines that the facility continues to be in violation of minimum mandatory standards; and
- a copy of a letter with specified audit findings and actions for compliance after the commission conducts a full standards and performance audit of a correctional facility. On request by the commission, the ombudsman must conduct an unannounced inspection to verify that a correctional facility has complied with the audit findings.

Correctional Ombudsman Advisory Board

The purpose of the Correctional Ombudsman Advisory Board is to provide information to the ombudsman and assist the ombudsman in identifying appropriate matter to investigate. The board's members are appointed by the Attorney General, and the Office of the Correctional Ombudsman must provide staff for the board.

Current Law: The Maryland Commission on Correctional Standards is an existing entity within the Department of Public Safety and Correctional Services (DPSCS) that includes
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the Attorney General, the Secretary of General Services, and the Secretary of Budget and Management. With the advice of the Commission on Correctional Standards, the Secretary of Public Safety and Correctional Services has set, by regulation, minimum mandatory standards applicable to security and inmate control, inmate safety, inmate food services, inmate housing and sanitation, inmate rights, classification, hearings, and administrative record keeping. Such standards apply to all State and local correctional facilities. In addition, the Secretary of Public Safety and Correctional Services, with the advice of the commission, has adopted regulations that establish approved standards applicable to personnel, training, administration, management, planning and coordination, research and evaluation, physical plant, special management inmates, rules and discipline, mail and visiting, reception and orientation, property control, work programs, educational and vocational training, library services, religious services, recreational activities, counseling, release preparation, and volunteers. These standards apply to all State facilities and may be adopted, in whole or in part, by a local correctional facility. All mandatory minimum standards and approved standards adopted must be consistent with State and federal law.

If the commission determines that a correctional facility is in violation of the minimum mandatory standards, the commission must send a compliance plan, with specified information, to the correctional facility. If, after sending a compliance plan and reinspecting a correctional facility, the commission determines that the correctional facility is in violation of the minimum standards, the commission must send a letter of reprimand, with specified information, to the correctional facility. If, after sending a letter of reprimand and reinspecting a correctional facility, the commission determines that the correctional facility is in violation of the minimum mandatory standards, the commission must (1) conduct a full standards and performance audit of the correctional facility or periodically inspect the correctional facility until compliance is attained and (2) send a report of each inspection to the executive and legislative bodies responsible for the correctional facility. As part of a full standards and performance audit, the commission must examine (1) the physical condition of the correctional facility; (2) the safety and treatment of inmates at the correctional facility; (3) whether the correctional facility has policies and procedures in place as required; and (4) whether the correctional facility is following the required policies and procedures. When conducting the full standards and performance audit, the commission must have unrestricted access to the personnel and records of the correctional facility. After completion of a full standards and performance audit, the commission must send a letter with specified information to the correctional facility.

State Expenditures: General fund expenditures increase by at least \$503,655 in fiscal 2022 for OAG and DPSCS to implement the bill's requirements. Although the bill states that it is the intent of the General Assembly that the Governor must include in the State budget, for fiscal 2023 and each subsequent fiscal year, an appropriation in an amount

sufficient to fund the bill’s provisions, this analysis assumes that the Office of the Correctional Ombudsman is established in fiscal 2022 due to the bill’s July 1, 2021 effective date.

Office of the Attorney General

General fund expenditures for OAG increase by at least \$454,975 in fiscal 2022, which accounts for a 90-day start-up delay. This estimate reflects the cost of hiring the ombudsman, one assistant attorney general, two investigators, and one administrative aide to establish and carry out the duties of the Office of the Correctional Ombudsman and provide staff support to the Correctional Ombudsman Advisory Board. It includes salaries, fringe benefits, one-time start-up costs, contractual services, and ongoing operating expenses.

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| Positions | 5.0 |
| Salaries and Fringe Benefits | \$404,569 |
| Contractual Services (Experts) | 22,500 |
| Other Operating Expenses | <u>27,906</u> |
| Minimum FY 2022 OAG Expenditures | \$454,975 |

Future year expenditures reflect full salaries with annual increases, as appropriate, and employee turnover and ongoing operating expenses. It also includes ongoing contractual services for the assistance of experts in carrying out the duties of the office. Because the salary of a District Court judge (and, consequently, the ombudsman) after fiscal 2022 depends on recommendations of the Judicial Compensation Commission and subsequent action by the General Assembly, any further salary increases for the ombudsman are not reflected in the future year estimates.

The Department of Legislative Services (DLS) notes that the above estimates are preliminary only, as an accurate determination of the expenditures associated with creating the office cannot be reliably determined before the function commences, particularly when expenditures depend in large part on the scope of the activities undertaken by the office and the number of complaints that are received. However, DLS also advises that the matters subject to the purview of the new office are extensive. Accordingly, even though the expenditures above represent only a preliminary estimate, DLS advises that the establishment of the office has a significant impact on State expenditures.

Department of Public Safety and Correctional Services

General fund expenditures for DPSCS increase by \$48,680 in fiscal 2022, which accounts for a 90-day start-up delay. This estimate reflects the cost of hiring one part-time assistant attorney general to review documents and provide legal assistance to staff in meeting the

requirements of the bill while also maintaining required confidentiality of records, including inmate medical records. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

| | |
|---|-----------------|
| Position | 0.5 |
| Salary and Fringe Benefits | \$43,344 |
| Operating Expenses | <u>5,336</u> |
| Total FY 2022 DPSCS Expenditures | \$48,680 |

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses.

Judiciary

The Judiciary notes that the bill's requirements may lead to an increase in court filings, which will have an operational impact on the courts. In addition, the Mediation and Conflict Resolution Office may need to convene a small work group to research and evaluate best practices and to assist with completion of the required report. However, any potential minimal increase in expenditures due to additional clerical and court time, as well as costs associated with producing the required report, are not anticipated to materially affect the finances of the Judiciary and the circuit courts.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 809 (Senator Hettleman) - Judicial Proceedings.

Information Source(s): Baltimore, Charles, Frederick, and Montgomery counties; Office of the Attorney General; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Budget and Management; Department of Public Safety and Correctional Services; Department of Legislative Services

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