

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 87

(Senators Hettleman and West)

Judicial Proceedings

Rules and Executive Nominations

Office of the Attorney General - Correctional Ombudsman Unit

This bill establishes (1) a Correctional Ombudsman Unit in the Office of the Attorney General (OAG) and specifies staffing and duties for the unit; (2) a Correctional Ombudsman Advisory Board; and (3) various reporting requirements. In addition, the bill states the intent of the General Assembly regarding funding for the unit and the focus of the activities of the unit in its first year of operation. **The bill takes effect July 1, 2023.**

Fiscal Summary

State Effect: General fund expenditures increase by at least \$477,800 in FY 2024; future years reflect annualization, ongoing costs, and additional staff in FY 2025. Revenues are not affected.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	477,800	766,700	786,000	819,600	861,500
Net Effect	(\$477,800)	(\$766,700)	(\$786,000)	(\$819,600)	(\$861,500)

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

Local Effect: The bill is not anticipated to materially affect local finances and operations.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Correctional Ombudsman Unit – Appointment and Duties

Appointment of Correctional Ombudsman: With 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. Salaries of the ombudsman and staff and expenses for rent, equipment, supplies, and general operating expenses necessary for the work of the unit must be as provided in the State budget. In cooperation with the Secretary of Budget and Management, the Attorney General must set minimum salaries, qualifications, and standards of training and experience for positions with the unit.

Duties: The unit, 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) health services, as specified; (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 facilities;
- 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 unit must:

- unless the unit 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 the agency must provide 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.

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

If the unit determines that an employee or agent of an agency acted in a manner warranting criminal charges or disciplinary proceedings, the unit 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 unit information related to any condition that may endanger the life or health of any person in a correctional facility.

The unit may (1) interview agency personnel or any individual confined by an agency; (2) access any records maintained by the agency; (3) access any facilities owned or controlled by the agency; (4) open specified correspondence; and (5) review all reports of disciplinary actions, grievances, and grievance dispositions by the agency.

Budget: It is the intent of the General Assembly that the Governor must include in the State budget, for fiscal 2024 and each subsequent fiscal year, an appropriation in an amount sufficient to fund the bill's provisions and to provide for at least two staff members for the unit in 2024 and at least seven staff members for the unit in 2025 and each subsequent fiscal year.

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

By December 31, 2023, the unit and the Commission on Correctional Standards must submit a joint report to the Governor and the General Assembly detailing how the unit and the commission will coordinate in order to avoid overlap in their duties.

By December 31, 2023, the Mediation and Conflict Resolution Office must report to the unit, the Governor, and the General Assembly on best practices for mediating grievances in the corrections system.

The unit must also provide to the Governor and the General Assembly any other reports that the Governor or the General Assembly may require.

Specified reports must be published on the unit's website.

The Commission on Correctional Standards must send the following to the unit:

- 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 unit must conduct an unannounced inspection to verify that a correctional facility has complied with the audit findings.

Audit: The bill states the intent of the General Assembly that, in its first year of operation, the Correctional Ombudsman Unit conduct an audit of programming and services provided by the Division of Correction (DOC) since fiscal 2019. The audit must include, among other things, an examination of (1) inmates' rates of participation in specified programs and (2) any obstacles to inmates' participation in programs provided by DOC.

Correctional Ombudsman Advisory Board

The purpose of the Correctional Ombudsman Advisory Board is to provide information to the unit and assist the unit in identifying appropriate matters to investigate. The board's members are appointed by the Attorney General, and the unit 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 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 recordkeeping. 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 (2) periodically inspect the correctional facility until compliance is attained and 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 \$477,845 in fiscal 2024 for OAG to implement the bill's requirements. The bill expresses legislative intent that funding for the Correctional Ombudsman Unit begin in fiscal 2024. In addition, the bill takes effect July 1, 2023. Thus, this analysis assumes that the Correctional Ombudsman Unit is established in fiscal 2024.

Office of the Attorney General

General fund expenditures for OAG increase by at least \$477,845 in fiscal 2024, which accounts for a 90-day start-up delay. This estimate reflects the cost of hiring the correctional ombudsman, one assistant Attorney General, two investigators, and one administrative aide to establish and carry out the duties of the Correctional Ombudsman Unit 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.

Positions	5.0
Salaries and Fringe Benefits	\$418,300
Contractual Services (Experts)	22,500
Other Operating Expenses	<u>37,045</u>
Minimum FY 2024 OAG Expenditures	\$477,845

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. Future year expenditures also reflect the hiring of two additional staff in fiscal 2025, consistent with the legislative intent expressed in the bill. In addition, it includes ongoing contractual services for the assistance of experts in carrying out the duties of the unit.

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

Department of Public Safety and Correctional Services

DPSCS advises that overtime costs for staff are likely in order to meet the bill's requirements; however, without actual experience under the bill, it is not possible to reliably estimate the fiscal impact.

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: Similar legislation has been introduced within the last three years. See SB 512 and HB 604 of 2022 and SB 809 and HB 1188 of 2021.

Designated Cross File: HB 64 (Delegate Davis) - Judiciary and Health and Government Operations.

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

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