

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Matthew J. Fader
Chief Justice

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 87
Office of the Attorney General – Correctional Ombudsman
DATE: January 18, 2023
(2/8)
POSITION: Oppose, as drafted

The Maryland Judiciary opposes Senate Bill 87, as drafted. This bill establishes the Correctional Ombudsman in the Office of the Attorney General.

It is unclear whether this bill is intended to cover Judiciary employees, as outlined below, but raises separation of power concerns if so. The first area that causes concern in this bill comes at page 5 under the definition of agency in Proposed State Government Article 6-701(c)(iii) and (iv):

iii: Any person providing services under a contract with the Department of Public Safety and Correctional Services to Individuals who are confined by or under the supervision of the department or

iv: Any officer, employee, or administrative hearing examiner of the state or a unit of local government who is acting or purporting to act in relation to individuals confined by or under the supervision of the Department of Public Safety and Correctional services.

Judges are expressly excluded from the definition of “agency,” so the issue is whether a Judiciary employee would fall under c(iii) or (iv) above.

“Unit” is only used for local government entities, so the determination here is whether or not a Judiciary employee acting in the capacity above is “of the state.” Absent any other language, given that the Judiciary has state-compensated employees, this would likely apply to Judiciary employees engaged in referenced acts (likely programs and problem solving courts staff). Subsection (iii) is more problematic if the Judiciary has employees who perform services under Memorandum of Understandings (MOUs) with the Department as there is no specific state employee requirement.

Further, and also troublesome for statutory interpretation, is subsection (2) which states that “agency” does not include:

- (i) A Judge as defined by 1-101 of the Courts Article;
- (ii) The General Assembly or any member, employee, or committee of the General Assembly;
- (iii) The Governor or the Governor’s personal staff.

Here, the executive and legislative branch personnel have specific carve outs for staff and employees, so the absence of the same for Judiciary employees suggests that they are intended to be included.

Further, section 6-704 may limit investigations generally to “administrative acts” of agencies but the definition of “administrative act” is extremely broad, especially given the vague definition of “agency.” The bill defines administrative act as any action decision, adjudication, failure to act, omission, rule or regulation, interpretation, recommendation, policy, practice or procedure of an agency. For example, if it applies to Judiciary employees and a defendant complains about conditions in a courthouse lockup, the bill appears to allow the ombudsman to “access any records maintained by the” Judiciary. It could even be as broad to include responses to letters from inmates making random requests. Given the vague definition of agency, plus broad investigative authority of the ombudsman, this bill is highly problematic.

cc. Hon. Shelly Hettleman
Judicial Council
Legislative Committee
Kelley O’Connor