

HOUSE BILL 1188

P1, E4

11r2433
CF SB 809

By: **Delegate Barron**

Introduced and read first time: February 8, 2021

Assigned to: Judiciary and Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Office of the Attorney General – Correctional Ombudsman**

3 FOR the purpose of establishing the Correctional Ombudsman in the Office of the Attorney
4 General; providing for the appointment, qualifications, term, salary, and removal of
5 the Ombudsman; establishing the powers and duties of the Ombudsman; requiring
6 the Ombudsman to conduct certain investigations, conduct certain reviews and
7 assessments, cooperate with a certain agency for a certain purpose, inspect certain
8 facilities, seek to resolve certain complaints through certain methods, maintain a
9 certain website, and adopt certain regulations; requiring the Ombudsman to provide
10 certain information to a certain complainant; requiring the Ombudsman to refer
11 certain matters for criminal charges or disciplinary proceedings; prohibiting a
12 certain agency from restricting the Ombudsman’s ability to conduct certain
13 interviews or access certain records or certain facilities; prohibiting a certain agency
14 from opening certain correspondence or interfering with certain communications;
15 requiring the Ombudsman to treat certain communications as confidential under
16 certain circumstances, subject to certain exceptions; authorizing the Ombudsman to
17 subpoena individuals for a certain purpose under certain circumstances and bring
18 certain actions; requiring the Ombudsman to submit certain reports to certain
19 persons within certain periods of time under certain circumstances; requiring an
20 agency to provide a certain written response to a certain report within a certain time
21 period under certain circumstances; establishing the Correctional Ombudsman
22 Advisory Board; establishing the purpose, membership, and staffing of the Board;
23 prohibiting a person from obstructing the lawful exercise of the Ombudsman’s
24 powers; establishing a certain penalty for a certain violation; requiring certain
25 materials to be provided to the Ombudsman; requiring the Ombudsman to conduct
26 a certain inspection; stating the intent of the General Assembly that the Governor
27 include in the State budget an appropriation to carry out this Act; requiring the
28 Ombudsman and the Commission on Correctional Standards to submit a certain
29 report on or before a certain date; requiring the Mediation and Conflict Resolution
30 Office to submit a certain report on or before a certain date; stating the intent of the
31 General Assembly that, in its first year, the Office of the Correctional Ombudsman

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 focus its activities on a certain area; defining certain terms; and generally relating
2 to the Correctional Ombudsman.

3 BY repealing and reenacting, with amendments,
4 Article – Correctional Services
5 Section 8–114 and 8–117
6 Annotated Code of Maryland
7 (2017 Replacement Volume and 2020 Supplement)

8 BY adding to
9 Article – State Government
10 Section 6–601 through 6–608 to be under the new subtitle “Subtitle 6. Correctional
11 Ombudsman”
12 Annotated Code of Maryland
13 (2014 Replacement Volume and 2020 Supplement)

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
15 That the Laws of Maryland read as follows:

16 **Article – Correctional Services**

17 8–114.

18 (a) (1) If the Commission determines that a correctional facility is in violation
19 of the minimum mandatory standards, the Commission shall send a compliance plan to the
20 correctional facility.

21 (2) The compliance plan shall state:

22 (i) which minimum mandatory standards the correctional facility
23 has violated;

24 (ii) the time, to be determined by the Commission, that the
25 correctional facility has to address the violations; and

26 (iii) the date that the Commission shall reinspect the correctional
27 facility to determine if the correctional facility has complied with the minimum mandatory
28 standards.

29 (3) The Commission shall send a copy of the compliance plan to:

30 (I) the executive and legislative body responsible for the correctional
31 facility; AND

32 (II) THE CORRECTIONAL OMBUDSMAN.

1 (b) (1) If, after sending a compliance plan and reinspecting a correctional
2 facility under subsection (a) of this section, the Commission determines that the
3 correctional facility is in violation of the minimum mandatory standards, the Commission
4 shall send a letter of reprimand to the correctional facility.

5 (2) The letter of reprimand shall state:

6 (i) which minimum standards the correctional facility has violated;

7 (ii) the time, to be determined by the Commission but not to exceed
8 60 days, that the correctional facility has to address the violations; and

9 (iii) the date that the Commission will reinspect the correctional
10 facility to determine if the correctional facility has complied with the minimum mandatory
11 standards.

12 (3) The Commission shall send a copy of the letter of reprimand to:

13 (I) the executive and legislative body responsible for the correctional
14 facility; **AND**

15 (II) **THE CORRECTIONAL OMBUDSMAN.**

16 (c) (1) If, after the Commission has sent a letter of reprimand to a correctional
17 facility under subsection (b) of this section and reinspected the facility, the Commission
18 determines that the correctional facility is in violation of the minimum mandatory
19 standards, the Commission shall:

20 (i) conduct a full standards and performance audit of the
21 correctional facility; or

22 (ii) periodically inspect the correctional facility until compliance is
23 attained and send a report of each inspection to the executive and legislative bodies
24 responsible for the correctional facility.

25 (2) When conducting a full standards and performance audit of a
26 correctional facility, the Commission shall examine:

27 (i) the physical condition of the correctional facility;

28 (ii) the safety and treatment of inmates at the correctional facility;

29 (iii) whether the correctional facility has policies and procedures in
30 place as required by the minimum mandatory standards; and

1 (iv) whether the correctional facility is following the required policies
2 and procedures.

3 (3) When conducting a full standards and performance audit, the
4 Commission shall have unrestricted access to the personnel and records of the correctional
5 facility.

6 (4) (i) If the Commission lacks the expertise necessary to perform a part
7 of the full standards and performance audit, the Commission may obtain assistance from
8 sources with expertise in the specific standard.

9 (ii) If the Commission needs to obtain assistance, the correctional
10 facility that is being audited shall reimburse the Commission for any cost incurred.

11 (5) (i) After completing a full standards and performance audit, the
12 Commission shall send a letter to the correctional facility.

13 (ii) The letter shall contain:

14 1. a copy of the audit findings, including details on all areas
15 where the correctional facility fails to comply with the minimum mandatory standards;

16 2. a statement of what actions the correctional facility must
17 take in order to comply with the audit findings;

18 3. a date when the correctional facility must comply with the
19 audit findings; and

20 4. a statement that the Commission will conduct an
21 unannounced inspection of the correctional facility within a reasonable amount of time
22 after the date specified for compliance and that if the correctional facility fails to comply,
23 the Commission may seek a court order requiring compliance or order all or part of the
24 correctional facility to cease operations.

25 (iii) The Commission shall send a copy of the letter to:

26 1. the executive and legislative bodies responsible for the
27 correctional facility; **AND**

28 2. **THE CORRECTIONAL OMBUDSMAN.**

29 (6) (I) Within a reasonable time after the date specified for compliance,
30 the Commission shall conduct an unannounced inspection to verify that the correctional
31 facility has complied with the audit findings.

1 **(II) ON REQUEST BY THE COMMISSION, THE CORRECTIONAL**
2 **OMBUDSMAN SHALL CONDUCT AN UNANNOUNCED INSPECTION TO VERIFY THAT**
3 **THE CORRECTIONAL FACILITY HAS COMPLIED WITH THE AUDIT FINDINGS.**

4 (d) (1) If, after performing an audit and unannounced inspection under
5 subsection (c) of this section and holding a hearing on the issue, the Commission determines
6 that a correctional facility has not complied with the audit findings, the Commission shall:

7 (i) petition a circuit court with venue over the proceeding for a court
8 order requiring the correctional facility to comply with the audit findings; or

9 (ii) issue an order to cease operation of the correctional facility or
10 any of its correctional elements, procedures, or functions.

11 (2) The Commission shall provide to a correctional facility reasonable
12 notice of a hearing under paragraph (1) of this subsection.

13 (3) The Commission may subpoena witnesses and hold public hearings in
14 accordance with Title 10, Subtitle 2 of the State Government Article before making a final
15 decision on whether to seek a court order or close a correctional facility or any of its
16 correctional elements, procedures, or functions.

17 8–117.

18 **(A)** The Commission may perform any acts necessary and appropriate to carry out
19 the powers and duties set forth in this subtitle.

20 **(B) THE COMMISSION SHALL RECEIVE FROM AND SHARE WITH THE**
21 **CORRECTIONAL OMBUDSMAN INFORMATION RELATED TO ANY CONDITION THAT**
22 **MAY ENDANGER THE LIVES OR HEALTH OF ANY PERSON IN A CORRECTIONAL**
23 **FACILITY.**

24 Article – State Government

25 SUBTITLE 6. CORRECTIONAL OMBUDSMAN.

26 **6–601.**

27 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
28 **INDICATED.**

29 **(B) “ADMINISTRATIVE ACT” MEANS ANY ACTION, DECISION,**
30 **ADJUDICATION, FAILURE TO ACT, OMISSION, RULE OR REGULATION,**
31 **INTERPRETATION, RECOMMENDATION, POLICY, PRACTICE, OR PROCEDURE OF AN**
32 **AGENCY.**

1 (C) (1) "AGENCY" MEANS:

2 (I) THE DEPARTMENT OF PUBLIC SAFETY AND
3 CORRECTIONAL SERVICES;

4 (II) ANY OFFICER OR EMPLOYEE OF THE DEPARTMENT OF
5 PUBLIC SAFETY AND CORRECTIONAL SERVICES;

6 (III) ANY PERSON PROVIDING SERVICES UNDER A CONTRACT
7 WITH THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES TO
8 INDIVIDUALS WHO ARE CONFINED BY OR UNDER THE SUPERVISION OF THE
9 DEPARTMENT; OR

10 (IV) ANY OFFICER, EMPLOYEE, OR ADMINISTRATIVE HEARING
11 EXAMINER OF THE STATE OR A UNIT OF LOCAL GOVERNMENT WHO IS ACTING OR
12 PURPORTING TO ACT IN RELATION TO INDIVIDUALS CONFINED BY OR UNDER THE
13 SUPERVISION OF THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL
14 SERVICES.

15 (2) "AGENCY" DOES NOT INCLUDE:

16 (I) A JUDGE, AS DEFINED BY § 1-101 OF THE COURTS ARTICLE;

17 (II) THE GENERAL ASSEMBLY, OR ANY MEMBER, EMPLOYEE, OR
18 COMMITTEE OF THE GENERAL ASSEMBLY; OR

19 (III) THE GOVERNOR OR THE GOVERNOR'S PERSONAL STAFF.

20 (D) "OMBUDSMAN" MEANS THE CORRECTIONAL OMBUDSMAN.

21 (E) "RECORDS" MEANS ALL MATERIALS, REGARDLESS OF PHYSICAL FORM
22 OR CHARACTERISTICS, CREATED, GENERATED, RECORDED, RECEIVED, POSSESSED,
23 OR CONTROLLED BY OR ON BEHALF OF ANY AGENCY.

24 6-602.

25 THERE IS A CORRECTIONAL OMBUDSMAN IN THE OFFICE OF THE ATTORNEY
26 GENERAL.

27 6-603.

1 (C) WHILE SERVING AS OMBUDSMAN, AN INDIVIDUAL MAY NOT:

2 (1) BE ACTIVELY INVOLVED WITH ANY POLITICAL ACTIVITIES;

3 (2) PUBLICLY ENDORSE, SOLICIT FUNDS FOR, OR MAKE
4 CONTRIBUTIONS TO A POLITICAL PARTY OR CANDIDATE FOR ELECTIVE OFFICE;

5 (3) BE A CANDIDATE FOR OR HOLD ANY ELECTIVE OR APPOINTED
6 OFFICE; OR

7 (4) ENGAGE IN ANY OTHER OCCUPATION, BUSINESS, OR PROFESSION
8 LIKELY TO:

9 (I) DETRACT FROM THE FULL-TIME PERFORMANCE OF THE
10 OMBUDSMAN'S DUTIES;

11 (II) RESULT IN A CONFLICT OF INTEREST; OR

12 (III) RESULT IN THE APPEARANCE OF IMPROPRIETY.

13 (D) (1) THE SALARY OF THE OMBUDSMAN IS EQUAL TO THE SALARY OF A
14 DISTRICT COURT JUDGE.

15 (2) THE SALARY OF THE OMBUDSMAN MAY NOT BE DIMINISHED
16 DURING THE OMBUDSMAN'S TERM OF OFFICE.

17 6-604.

18 (A) THE OMBUDSMAN, IN RESPONSE TO A COMPLAINT OR ON THE
19 OMBUDSMAN'S INITIATIVE, SHALL:

20 (1) INVESTIGATE ANY ADMINISTRATIVE ACT THAT THE OMBUDSMAN
21 DETERMINES MAY BE:

22 (I) CONTRARY TO LAW OR REGULATION;

23 (II) BASED ON A MISTAKE OF FACT;

24 (III) UNSUPPORTED BY SUFFICIENT EVIDENCE;

25 (IV) PERFORMED IN AN INEFFICIENT MANNER;

1 (V) UNREASONABLE UNDER THE TOTALITY OF THE
2 CIRCUMSTANCES; OR

3 (VI) OTHERWISE ERRONEOUS;

4 (2) CONDUCT INDEPENDENT REVIEWS AND ASSESSMENTS OF:

5 (I) HEALTH SERVICES PROVIDED TO INDIVIDUALS CONFINED
6 BY ANY AGENCY;

7 (II) MENTAL HEALTH SERVICES PROVIDED TO INDIVIDUALS
8 CONFINED BY ANY AGENCY;

9 (III) PLANS BY AGENCIES TO EXPAND, RENOVATE, OR CLOSE
10 FACILITIES;

11 (IV) EDUCATIONAL AND VOCATIONAL PROGRAMS FOR
12 INDIVIDUALS CONFINED BY ANY AGENCY; AND

13 (V) AGENCY POLICIES ON RESTRICTIVE OR PROTECTIVE
14 HOUSING;

15 (3) COOPERATE WITH ANY AGENCY IN EFFORTS TO IMPROVE THE
16 FUNCTIONING OF ANY AGENCY OR PREVENT ABUSES BY AGENCIES;

17 (4) INSPECT ANY FACILITIES OWNED OR CONTROLLED BY ANY
18 AGENCY TO MONITOR CONDITIONS IN THE FACILITY;

19 (5) SEEK TO RESOLVE COMPLAINTS AGAINST AN AGENCY THROUGH
20 MEDIATION OR OTHER CONFLICT RESOLUTION METHODS;

21 (6) MAINTAIN A WEBSITE THAT:

22 (I) SUBJECT TO THE REQUIREMENTS OF SUBSECTION (E) OF
23 THIS SECTION, MAKES CURRENT AND PAST REPORTS AVAILABLE TO THE PUBLIC;
24 AND

25 (II) PROVIDES CONTACT INFORMATION FOR THE OFFICE OF
26 THE CORRECTIONAL OMBUDSMAN; AND

27 (7) ADOPT REGULATIONS NECESSARY TO CARRY OUT THE
28 REQUIREMENTS OF THIS SUBTITLE.

1 **(B) (1) THE OMBUDSMAN SHALL INVESTIGATE EACH COMPLAINT ABOUT**
2 **AN ADMINISTRATIVE ACT, UNLESS THE OMBUDSMAN DETERMINES THAT:**

3 **(I) THE COMPLAINT COULD BE ADDRESSED THROUGH**
4 **ANOTHER PROCESS;**

5 **(II) THE COMPLAINT IS TRIVIAL, FRIVOLOUS, VEXATIOUS, OR**
6 **NOT MADE IN GOOD FAITH;**

7 **(III) THE COMPLAINANT UNREASONABLY DELAYED IN BRINGING**
8 **THE COMPLAINT;**

9 **(IV) THE COMPLAINANT IS NOT PERSONALLY AFFECTED BY THE**
10 **ADMINISTRATIVE ACT; OR**

11 **(V) THE OMBUDSMAN LACKS SUFFICIENT RESOURCES TO**
12 **INVESTIGATE THE COMPLAINT.**

13 **(2) THE OMBUDSMAN SHALL INFORM A COMPLAINANT OF A**
14 **DECISION NOT TO INVESTIGATE A COMPLAINT.**

15 **(3) ON REQUEST, THE OMBUDSMAN SHALL INFORM A COMPLAINANT**
16 **OF THE STATUS OF AN INVESTIGATION.**

17 **(4) ON THE COMPLETION OF AN INVESTIGATION BASED ON A**
18 **COMPLAINT, THE OMBUDSMAN SHALL INFORM THE COMPLAINANT OF ANY**
19 **CONCLUSIONS, RECOMMENDATIONS, AND ACTIONS TAKEN IN RESPONSE TO THE**
20 **COMPLAINT.**

21 **(C) IF THE OMBUDSMAN DETERMINES THAT AN EMPLOYEE OR AGENT OF AN**
22 **AGENCY ACTED IN A MANNER WARRANTING CRIMINAL CHARGES OR DISCIPLINARY**
23 **PROCEEDINGS, THE OMBUDSMAN SHALL REFER THE MATTER TO APPROPRIATE**
24 **AUTHORITIES.**

25 **(D) AN AGENCY MAY NOT:**

26 **(1) RESTRICT THE OMBUDSMAN'S ABILITY TO:**

27 **(I) INTERVIEW AGENCY PERSONNEL OR ANY INDIVIDUAL**
28 **CONFINED BY AN AGENCY;**

29 **(II) ACCESS ANY RECORDS MAINTAINED BY THE AGENCY; OR**

1 (III) ACCESS ANY FACILITIES OWNED OR CONTROLLED BY THE
2 AGENCY;

3 (2) OPEN ANY CORRESPONDENCE SENT:

4 (I) TO THE OMBUDSMAN BY A PERSON BEING CONFINED BY
5 THE AGENCY; OR

6 (II) BY THE OMBUDSMAN TO A PERSON BEING CONFINED BY
7 THE AGENCY; OR

8 (3) INTERFERE WITH, DELAY, OR MONITOR ANY COMMUNICATION
9 BETWEEN THE OMBUDSMAN AND A PERSON BEING CONFINED BY THE AGENCY.

10 (E) IN PERFORMING THE DUTIES ASSIGNED UNDER THIS SUBTITLE, THE
11 OMBUDSMAN SHALL TREAT ALL COMMUNICATIONS AS CONFIDENTIAL AND MAY
12 REVEAL THE DETAILS OF ANY COMMUNICATION ONLY IF IT IS:

13 (1) NECESSARY TO CARRY OUT THE OMBUDSMAN'S DUTIES; AND

14 (2) DONE IN ACCORDANCE WITH APPLICABLE STATE AND FEDERAL
15 LAW.

16 (F) THE OMBUDSMAN MAY SUBPOENA ANY INDIVIDUAL TO APPEAR TO GIVE
17 SWORN TESTIMONY OR PRODUCE DOCUMENTARY EVIDENCE THAT IS REASONABLY
18 NECESSARY TO CARRY OUT THE OMBUDSMAN'S DUTIES.

19 (G) THE OMBUDSMAN MAY BRING AN ACTION IN THE CIRCUIT COURT TO
20 ENFORCE THE PROVISIONS OF THIS SUBTITLE.

21 **6-605.**

22 (A) WITHIN 30 DAYS AFTER COMPLETING AN INVESTIGATION, THE
23 OMBUDSMAN SHALL SUBMIT TO AN AGENCY A REPORT CONTAINING ANY
24 CONCLUSIONS, RECOMMENDATIONS, AND REQUESTS FOR A RESPONSE FROM THE
25 AGENCY.

26 (B) IF THE REPORT SUBMITTED TO AN AGENCY UNDER THIS SECTION
27 CONTAINS A REQUEST FOR A RESPONSE FROM THE AGENCY, THE AGENCY SHALL
28 PROVIDE A WRITTEN RESPONSE WITHIN 30 DAYS AFTER RECEIPT OF THE REPORT.

1 (C) THE OMBUDSMAN MAY PROVIDE THE REPORT REQUIRED BY THIS
2 SECTION, AS WELL AS ANY RESPONSES BY THE AGENCY, TO THE GOVERNOR OR, IN
3 ACCORDANCE WITH § 2-1257 OF THIS ARTICLE, THE GENERAL ASSEMBLY.

4 **6-606.**

5 ON OR BEFORE DECEMBER 31 EACH YEAR, THE OMBUDSMAN SHALL REPORT
6 TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1257 OF THIS ARTICLE, THE
7 GENERAL ASSEMBLY ON:

8 (1) INVESTIGATIONS CONDUCTED BY THE OMBUDSMAN;

9 (2) ANY ACTIONS TAKEN BY AN AGENCY AS A RESULT OF THE
10 CONCLUSIONS OR RECOMMENDATIONS OF THE OMBUDSMAN; AND

11 (3) ANY INSTANCE WHERE AN AGENCY REJECTS A RECOMMENDATION
12 OR CONCLUSION OF THE OMBUDSMAN.

13 **6-607.**

14 (A) IN THIS SECTION, "BOARD" MEANS THE CORRECTIONAL OMBUDSMAN
15 ADVISORY BOARD.

16 (B) THERE IS A CORRECTIONAL OMBUDSMAN ADVISORY BOARD.

17 (C) THE PURPOSE OF THE BOARD IS TO PROVIDE INFORMATION TO THE
18 OMBUDSMAN AND ASSIST THE OMBUDSMAN IN IDENTIFYING APPROPRIATE
19 MATTERS TO INVESTIGATE.

20 (D) THE BOARD SHALL CONSIST OF 10 MEMBERS APPOINTED BY THE
21 ATTORNEY GENERAL.

22 (E) TO THE EXTENT PRACTICABLE, THE ATTORNEY GENERAL SHALL
23 ENSURE THAT THE MEMBERSHIP OF THE BOARD INCLUDES REPRESENTATIVES OF:

24 (1) FAMILY MEMBERS OF CONFINED INDIVIDUALS;

25 (2) RETURNING CITIZENS;

26 (3) NONSUPERVISORY CORRECTIONAL OFFICERS;

27 (4) MEMBERS OF THE PUBLIC WITH A DEMONSTRATED INTEREST IN
28 CORRECTIONS; AND

1 **(5) INDIVIDUALS WITH BACKGROUNDS IN HEALTH CARE AND SOCIAL**
2 **WORK.**

3 **(F) THE OFFICE OF THE CORRECTIONAL OMBUDSMAN SHALL PROVIDE**
4 **STAFF FOR THE BOARD.**

5 **6-608.**

6 **(A) A PERSON MAY NOT, BY THREAT, FORCE, OR CORRUPT MEANS,**
7 **OBSTRUCT, IMPEDE, OR TRY TO OBSTRUCT THE LAWFUL EXERCISE OF THE**
8 **OMBUDSMAN'S POWERS.**

9 **(B) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR**
10 **AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A**
11 **FINE NOT EXCEEDING \$10,000 OR BOTH.**

12 SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the General
13 Assembly that the Governor shall include in the State budget for fiscal year 2023 and each
14 subsequent fiscal year an appropriation in an amount sufficient to fund the provisions of
15 this Act.

16 SECTION 3. AND BE IT FURTHER ENACTED, That on or before December 31,
17 2021, the Correctional Ombudsman and the Commission on Correctional Standards shall
18 submit a joint report to the Governor and, in accordance with § 2-1257 of the State
19 Government Article, the General Assembly detailing how the Office of the Correctional
20 Ombudsman and the Commission will coordinate in order to avoid overlap in their duties.

21 SECTION 4. AND BE IT FURTHER ENACTED, That on or before December 31,
22 2021, the Mediation and Conflict Resolution Office shall report to the Correctional
23 Ombudsman, the Governor, and, in accordance with § 2-1257 of the State Government
24 Article, the General Assembly on best practices for mediating grievances in the corrections
25 system.

26 SECTION 5. AND BE IT FURTHER ENACTED, That it is the intent of the General
27 Assembly that, in its first year of operation, the Office of the Correctional Ombudsman
28 focus its activities primarily on those State correctional facilities located in the area of
29 Jessup, Maryland.

30 SECTION 6. AND BE IT FURTHER ENACTED, That this Act shall take effect July
31 1, 2021.