

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 134

(Senator Hettleman, *et al.*)

Judicial Proceedings

Judiciary and Health and Government
 Operations

Office of the Correctional Ombudsman - Establishment and Funding

This bill establishes (1) the Office of the Correctional Ombudsman (OCO) as an independent unit of State government and specifies staffing and duties for the office; (2) a Correctional Ombudsman Advisory Board; and (3) various reporting requirements. In addition, the bill (1) transfers the Juvenile Justice Monitoring Unit (JJMU) from the Office of the Attorney General (OAG) to OCO, including positions and funding; (2) states the intent of the General Assembly regarding funding for OCO and the focus of the activities of the office in its first year of operation; (3) requires OCO to review potential federal funding sources, as specified, and authorizes OCO to apply for relevant funding sources; and (4) for fiscal 2025 only, authorizes the distribution of a portion of the annual savings from the implementation of the recommendations of the Justice Reinvestment Coordinating Council (JRCC) to OCO. **The bill takes effect July 1, 2024.**

Fiscal Summary

State Effect: Special fund expenditures increase by \$1.0 million in FY 2025, reflecting contingent funding provided in the FY 2025 budget as passed by the General Assembly; future years assume general fund expenditures and reflect annualization and ongoing costs. (This does not reflect funding transferred from OAG to OCO, as discussed below.) General fund expenditures could increase further (not reflected below) for the Department of Public Safety and Correctional Services (DPSCS). *Potential* increase in federal fund grant revenues (and corresponding federal fund expenditures).

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
FF Revenue	-	-	-	-	-
GF Expenditure	\$0	\$836,800	\$861,800	\$887,300	\$914,000
SF Expenditure	\$1,000,000	\$0	\$0	\$0	\$0
FF Expenditure	-	-	-	-	-
Net Effect	(\$1,000,000)	(\$836,800)	(\$861,800)	(\$887,300)	(\$914,000)

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:

Staffing and Funding for the Office of the Correctional Ombudsman

OCO must include a full-time correctional ombudsman, staff as provided in the State budget, and JJMU. It is the intent of the General Assembly that the Governor must include in the State budget, for fiscal 2025 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 OCO in 2025 and at least seven staff members for the office in 2026 and each subsequent fiscal year. In addition, the Governor must transfer four positions and \$603,067 in general funds for JJMU as of July 1, 2024, from OAG to OCO.

OCO must review potential federal funding sources, including grants offered under the Justice Reinvestment Initiative and the Second Chance Act. OCO is also authorized to apply for relevant funding sources. Finally, for fiscal 2025 only, the Justice Reinvestment Oversight Board (JROB) is authorized to recommend that a portion of the savings from the implementation of the recommendations of JRCC be distributed to OCO.

Appointment of Ombudsman and Duties of Office

Appointment of Correctional Ombudsman: With the advice and consent of the Senate, the Governor 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 OCO must be as provided in the State budget.

Duties: OCO, 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 and mental health services provided to individuals confined by any agency, as specified; (2) agency plans for the expansion, renovation, or closure of facilities;

- (3) educational and vocational programs for individuals confined by any agency; and (4) agency 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, OCO must:

- unless OCO makes a determination otherwise, as specified, investigate each complaint;
- promptly inform a complainant of a decision not to investigate a complaint;
- on request, promptly inform a complainant of the status of an investigation;
- on the completion of an investigation, promptly 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 45 days after receipt of the report); and
- treat all communications as confidential and reveal details of any communications only as specified.

OCO may also:

- interview agency personnel or any individual confined by an agency;
- access any records maintained by an agency;
- perform unannounced site visits and on-site inspections of facilities maintained by an agency;
- receive and respond to complaints without interception, review, or interference by an agency;
- review all reports of disciplinary actions, grievances, and grievance dispositions by the agency; and
- collaborate with any agency or any unit of State government to investigate complaints or any alleged injury, neglect, or death of an individual confined by or under the supervision of an agency.

OCO and JJMU may subpoena any individual to appear to give sworn testimony or produce documentary evidence that is reasonably necessary to carry out the office's or unit's duties. If an individual fails or refuses to comply with a subpoena issued by the office or unit, a court of competent jurisdiction, on the application of the office or unit, may issue an attachment for the individual and compel the individual to comply with the subpoena, appear before the office or unit, and produce documentary evidence for examination and give testimony. If an individual disobeys a subpoena or refuses to testify, the court may punish the individual for contempt.

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

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

“Agency” means (1) DPSCS; (2) any officer or employee of DPSCS; (3) any person providing services under a contract with DPSCS to individuals who are confined by or under the supervision of DPSCS; or (4) 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 DPSCS. “Agency” does not include (1) a judge, as specified; (2) the General Assembly or any member, employee, or committee of the General Assembly; or (3) the Governor or the Governor's personal staff.

Miscellaneous Provisions and Reporting Requirements

Personnel Action: A supervisor, appointing authority, or the head of a principal unit may not take or refuse to take any personnel action as a reprisal against an employee of DPSCS who discloses information to OCO relating to the office's duties under the bill.

Reporting Requirements: By December 31 each year, OCO must report to the Governor and the General Assembly specified information regarding investigations conducted by OCO, specified actions taken or rejected by an agency, and information on any death of an individual confined by or under the care of an agency.

By December 31, 2024, OCO 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, 2024, the Mediation and Conflict Resolution Office must report to OCO, the Governor, and the General Assembly on best practices for mediating grievances in the corrections system.

OCO 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 OCO's website.

Audit: The bill states the intent of the General Assembly that, in its first year of operation, OCO 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) rates of participation by incarcerated individuals in specified programs and (2) any obstacles to participation by incarcerated individuals in programs provided by DOC.

Correctional Ombudsman Advisory Board

The purposes of the Correctional Ombudsman Advisory Board are to (1) provide information to OCO and (2) assist the office in identifying appropriate matters to investigate and developing processes by which complaints are submitted, reviewed, investigated, and resolved. The board's members are appointed by the Governor, and OCO must provide staff for the board.

Current Law:

The Maryland Commission on Correctional Standards

The Maryland Commission on Correctional Standards is an existing entity within 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 incarcerated individual control, incarcerated individual safety, incarcerated individual food services, incarcerated individual housing and sanitation, incarcerated individual 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 incarcerated individuals, 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 incarcerated individuals 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.

The Juvenile Justice Monitoring Unit

The function of JJMU, within OAG, is to investigate and determine whether the needs of the children under the jurisdiction of the Department of Juvenile Services (DJS) are being met in compliance with State law, their rights are being upheld, and they are not being abused. JJMU's duties include (1) evaluating the child advocacy grievance process, the DJS monitoring process, the treatment of and services to youth, the facility's physical conditions, and the adequacy of staffing at each facility owned or operated by DJS; (2) reviewing all reports of disciplinary actions, grievances, and grievance dispositions received from each facility and alterations in the status or placement of a child that result in more security, additional obligations, or less personal freedom; (3) performing unannounced site visits and on-site inspections of facilities; (4) receiving and reviewing all incident reports submitted to DJS from facilities; and (5) receiving reports of the findings of child protective services investigations of allegations of abuse or neglect of a child in facilities.

Justice Reinvestment Act

Chapter 42 of 2015 established JRCC within the Governor's Office of Crime Prevention and Policy. JRCC was required to use a data-driven approach to develop a statewide policy framework for sentencing and corrections policies to further reduce the State's incarcerated population, reduce spending on corrections, and reinvest in strategies to increase public safety and reduce recidivism. The council and its subcommittees met numerous times in 2015 to analyze criminal justice data and review relevant research. Based on its findings, JRCC developed a comprehensive set of recommendations intended to focus prison resources on serious and violent offenders, strengthen community supervision efforts, improve and enhance release and reentry practices, support local corrections systems, and ensure oversight and accountability.

Chapter 515 of 2016, the Justice Reinvestment Act, generally implemented many of the recommendations of JRCC by altering provisions relating to sentencing, corrections, parole, and offender supervision. In addition, the Justice Reinvestment Act, among other things, provided for the reinvestment of savings from changes in incarceration policies. Chapter 515 also established the Performance Incentive Grant Fund, a special fund intended to make use of the savings from the implementation of the Justice Reinvestment Act to provide grants for specified programs and services, including providing for pretrial risk assessments, services to reduce pretrial detention, specialty courts, and ensuring that the rights of crime victims are protected and enhanced.

State Fiscal Effect: The fiscal 2025 budget as passed by the General Assembly includes \$1.0 million in special funds from the Performance Incentive Grant Fund for OCO contingent on the enactment of this bill or its cross file (House Bill 297). As the bill effectuates the contingent appropriation, special fund expenditures increase by \$1.0 million in fiscal 2025. Future year estimates reflect the use of general funds and are annualized, adjusted for inflation, and reflect minimum ongoing costs. General fund expenditures could also increase for DPSCS, as discussed below.

The bill expresses legislative intent that funding for OCO begin in fiscal 2025, in an amount sufficient to fund the provisions of the bill and provide for at least two staff members in fiscal 2025 and at least seven staff members in fiscal 2026 and annually thereafter. As shown below, the aforementioned funding included in the fiscal 2025 budget as passed by the General Assembly is sufficient to facilitate the hiring of seven staff members in fiscal 2025. The bill *also* requires the transfer of four positions and specified general funds from OAG to OCO; these positions (and related funding) are associated with existing/continuing responsibilities and are not assumed to satisfy the legislative intent expressed in the bill.

Office of the Correctional Ombudsman

Special fund expenditures for OCO increase by \$1.0 million in fiscal 2025, which reflects the contingent funding in the fiscal 2025 budget as passed by the General Assembly; this estimate assumes a July 1, 2024 start date for the correctional ombudsman and a 60-day start-up delay for remaining staff assumed to be hired in fiscal 2025. The estimate reflects the cost of hiring the correctional ombudsman, one assistant Attorney General, four investigators, and one administrative aide to establish and carry out the duties of OCO and provide staff support to the Correctional Ombudsman Advisory Board. It includes salaries, fringe benefits, one-time start-up costs, contractual services, and standard ongoing operating expenses (including rental space), with additional budgeted funding available to generally effectuate the purpose of the bill.

Positions	7.0
Salaries and Fringe Benefits	\$677,110
Contractual Services (Experts)	30,000
Rental Space	32,670
Other Standard Operating Expenses	51,580
Additional Budgeted Funding for Expenses	<u>208,640</u>
Budgeted FY 2025 OCO Expenditures	\$1,000,000

The above estimate reflects only *new* State expenditures for OCO that are assumed in this analysis. Under the bill, effective July 1, 2024, the entire JJMU is *transferred* from OAG to OCO, including \$603,067 in general funds and four permanent positions. As this represents budgeted funding that otherwise would have been expended by a different agency, it is not included above.

Future year expenditures reflect full salaries for all staff with annual increases and employee turnover as well as annual increases in ongoing operating expenses, including rent. Future year expenditures also include ongoing contractual services for the assistance of experts in carrying out the duties of OCO.

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 OCO 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 OCO are extensive. Accordingly, even though the expenditures above represent only a preliminary estimate, DLS advises that the establishment of OCO has a significant impact on State expenditures.

Furthermore, although this analysis assumes that special funds are used for implementation in the first year, consistent with the funding provided in the fiscal 2025 budget as passed by the General Assembly, and that general funds are required in the out-years, the bill authorizes (1) OCO to apply for relevant funding sources (and requires the review of potential federal funding sources) and (2) for fiscal 2025 only, JROB to distribute a portion of the annual savings from the implementation of the recommendations of JRCC to OCO. Should any federal grant revenues be awarded to the State, the need for general funds in the out-years likely decreases (with a corresponding increase in federal fund expenditures). Because OCO is already funded with special funds from the Performance Incentive Grant Fund in fiscal 2025, this analysis assumes that JROB does not distribute any additional savings to OCO in fiscal 2025.

Department of Public Safety and Correctional Services

DPSCS advises that in order to meet the bill's requirements, additional permanent staff (one part-time attorney general, one paralegal, and two administrative officers, with estimated costs of approximately \$370,000 annually) are needed; overtime costs may also be incurred. However, without actual experience under the bill, it is not possible to reliably estimate the number of times that a complaint will be filed with OCO, the extent of any investigations, or the number of hours of overtime needed for DPSCS staff. Thus, while the need for additional staff may occur and overtime costs may be incurred, any such impact cannot be reliably estimated at this time. To the extent that additional staffing resources are required, DPSCS may request them through the annual budget process.

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 workgroup 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

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 87 and HB 64 of 2023; SB 512 and HB 604 of 2022; and SB 809 and HB 1188 of 2021.

Designated Cross File: HB 297 (Delegate Davis, *et al.*) - Judiciary and Health and Government Operations.

Information Source(s): Office of the Attorney General; Judiciary (Administrative Office of the Courts); Governor's Office of Crime Prevention and Policy; Department of Budget and Management; Department of Public Safety and Correctional Services; Moody's Analytics; Department of Legislative Services

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