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March 4, 2024

The Honorable Luke Clippinger
Chair, Judiciary Committee
101 House Office Building
6 Bladen Street
Annapolis, MD 21401

Re: HB 297 – Office of the Attorney General - Correctional Ombudsman Unit

Dear Chair Clippinger:

The Office of the Attorney General (“OAG”) supports House Bill 297 (“HB297”) with amendments.

HB297 seeks to establish independent oversight of Maryland’s correctional system to ensure the safety and humane treatment of those incarcerated or under the supervision of the Maryland Department of Public Safety and Correctional Services (DPSCS). The need for increased transparency and accountability within the closed correctional environment is both urgent and well-established. Unfortunately, as currently drafted, HB297 places this oversight body within the OAG, which serves as legal counsel to DPSCS and any State official and correctional employee who is sued by prisoners for acts arising within the course and scope of their duties.¹ This professional responsibility to our agency clients would significantly undermine OAG’s ability to investigate individual complaints challenging the legality or sufficiency of DPSCS actions. As a result, I urge the Committee to favorably report HB297, only as amended, to establish a truly

¹ In addition to the Assistant Attorneys General who advise DPSCS staff, OAG also has a Correctional Litigation Division which defends correctional officers and officials in civil lawsuits brought in state and federal court.

independent correctional ombudsman office, detached from the OAG, consistent with every other jurisdiction that has created similar oversight mechanisms in recent years.

Nationwide, over 1.2 million individuals are incarcerated in state and federal facilities. The vast majority—1,039,500—are under the jurisdiction of state correctional authorities.² In Maryland, more than 15,000 individuals are currently incarcerated in DPSCS facilities, which exert total authority not just over their conditions of confinement, but also their access to health care, programming, personal items, and telephone, mail and other forms of communication. Not surprisingly then, the complaints raised by incarcerated individuals are often quite complex, involving multiple allegations of agency inaction or misconduct and numerous agency personnel.³ HB297 would require OAG to investigate and determine the legality of any DPSCS “action, decision, adjudication, failure to act, omission, rule or regulation, interpretation, recommendation, policy, practice, or procedure” that is the subject of a complaint, even as we advise and defend DPSCS against those same charges. While it is possible to erect ethical walls to address conflicts of interest on a case-by-case basis, the broad scope of HB297’s mandate would render such an effort nearly impossible and severely damage our attorney-client relationship.

According to surveys by the Brennan Center and the National Resource Center for Correctional Oversight, at least 20 jurisdictions have created correctional oversight entities.⁴ Based on our review, only one is connected to its state’s Attorney General, and in that case, solely for administrative purposes.⁵ Much more common, particularly in recent years, is the creation of correctional oversight entities as independent state agencies or units that operate separately from the department of corrections and their legal counsel.⁶ They include, for example, the Washington Office of the Corrections Ombuds (2018); the Minnesota Office of the Ombuds for Corrections (2019); the New Jersey Office of the Corrections Ombudsperson⁷ (2020); the Connecticut Office of the Corrections Ombudsman (2022); and the Virginia Department of Corrections Ombudsman (2023).⁸ Some states have placed the independent corrections ombuds in the equivalent of Maryland’s Department of Legislative Services.⁹

² https://bjs.ojp.gov/document/p22st_sum.pdf

³ See attached examples of complaints sent to OAG from incarcerated individuals over the past 6 months.

⁴ See <https://www.brennancenter.org/our-work/research-reports/landscape-recent-state-and-county-correctional-oversight-efforts> and <https://prisonoversight.org/oversight-bodies/prison-oversight/>.

⁵ The Hawaii Correctional System Oversight Commission is an independent commission attached to the state’s Office of the Attorney General for administrative purposes only. The OAG has no authority to appoint any member of the Commission or direct its activities. See <https://hcsoc.hawaii.gov/wp-content/uploads/2022/09/Act-179-HB1552.pdf>. (“There is established within the department of the attorney general for administrative purposes only a Hawaii correctional system oversight commission consisting of five members who shall be residents of this State and appointed as follows...”)

⁶ Interestingly, at least one correctional oversight unit has been placed in its office of the public defender. See, e.g., the Vermont Prisoner’s Rights Office which is charged with, among other things, investigating and informally resolving complaints and concerns of incarcerated people. <https://defgen.vermont.gov/staff/central/prisoners-rights>

⁷ Although the New Jersey Office of the Corrections Ombudsman had existed for nearly 50 prior to 2020, the New Jersey legislature passed [AB 3979](#) in 2019, which was signed by the governor in 2020 and significantly expanded the authority of the Office of the Corrections Ombudsperson to investigate complaints and inspect facilities.

⁸ <https://prisonoversight.org/oversight-bodies/prison-oversight/>

⁹ There are three jurisdictions who have oversight bodies that are either (a) housed within the state legislature, or (b) are independent bodies of the state legislature: Iowa, Michigan, and Ohio. Iowa’s Office of the Ombudsman is an agency attached to the State Legislature. See the FY 2023 Annual Report: <https://ombudsman.iowa.gov/reports/filters/1d9557929def4221a3ff989a59035448>.

The ombudsman offices established in Washington, New Jersey, and Minnesota are particularly instructive. Similar to Maryland, the Washington correctional system consists of 12 detention centers and houses approximately 13,000 individuals.¹⁰ In addition, the duties of the Washington Office of the Corrections Ombuds (WOCO) are nearly identical to those proposed in HB297. WOCO is charged with receiving, investigating, and resolving complaints and monitoring departmental compliance with applicable federal, state, and local laws, rules, regulations, and policies as related to the health, safety, welfare, and rehabilitation of inmates. It must make its recommendations publicly available and report its investigative findings annually to the Governor and state legislature.¹¹ To accomplish its duties, WOCO currently employs 15 staff including a director, two senior corrections ombudsman, intake officers, investigators, and training, community relations, and records specialists.¹² In its 2023 annual report, WOCO reported opening 3,657 cases which represented complaints from approximately 1,779 incarcerated individuals.¹³

The New Jersey Office of the Corrections Ombudsperson (NJOCO) similarly serves approximately 12,000 incarcerated individuals in 11 facilities.¹⁴ NJOCO's duties, expanded by statute in 2020, also track those enumerated in HB297 which include investigating complaints, inspecting prison facilities and operations, identifying systemic issues, and issuing annual reports on their findings and recommendations.¹⁵ Before the New Jersey legislature expanded its authority consistent with those in HB297, NJOCO consisted of 8 staff, and reported challenges to effectively receiving and responding to complaints.¹⁶ Between 2022 and 2023, NJOCO's staff grew to 21 to better handle the more than 10,000 unique requests for assistance it receives each year.¹⁷ In his written testimony before the Judicial Proceedings Committee last session, New Jersey Ombudsman Terry Schuster stated that this staffing level allowed NJOCO to "have people on-site in nine prisons, inspecting facilities, surveying incarcerated people, answering hotline calls,

Michigan has a Legislative Corrections Ombudsman that is nonpartisan but not independent from the state legislature. See Public Act 46: [https://legislature.mi.gov/\(S\(lfganqmdm03kqae5ntvpjr5\)\)/documents/mcl/pdf/mcl-act-46-of-1975.pdf](https://legislature.mi.gov/(S(lfganqmdm03kqae5ntvpjr5))/documents/mcl/pdf/mcl-act-46-of-1975.pdf). In Ohio, the Correctional Institution Inspection Committee (CIIC) is a bipartisan, bicameral subcommittee of the Legislative Service Commission. The CIIC is comprised of state legislators working with professional staff who oversee Ohio's Department of Rehabilitation and Correction (ODRC). See: <https://prisonoversight.org/oversight-bodies/prison-oversight/ohio/>.

¹⁰ https://oco.wa.gov/sites/default/files/Office_of_%20the_%20Corrections_%20Ombuds_FY2023_%20AnnualReport.pdf; <https://www.doc.wa.gov/corrections/incarceration/prisons/default.htm>; <https://ofm.wa.gov/washington-data-research/statewide-data/washington-trends/budget-drivers/prison-inmate-population>

¹¹ <https://oco.wa.gov/about-us/legislation>

¹² <https://oco.wa.gov/about-us/our-staff>. At its inception, WOCO sought to hire 6 full time staff. It also dedicated funding to setting up a website and developing a complaint intake database. See <https://oco.wa.gov/sites/default/files/documents/Annual%20Report%202018.pdf>

¹³ WOCO's FY23 budget to support these expenditures was \$1.5 million and \$2.6 million for FY24.

https://oco.wa.gov/sites/default/files/Office_of_%20the_%20Corrections_%20Ombuds_FY2023_%20AnnualReport.pdf

¹⁴ <https://www.nj.gov/correctionsombudsperson/documents/annual-reports/2023AnnualReport.pdf>

¹⁵ <https://law.justia.com/codes/new-jersey/2021/title-52/section-52-27ee-28/>

¹⁶ <https://www.nj.gov/correctionsombudsperson/documents/annual-reports/Annual%20Report%2011-16-20.pdf>

¹⁷ <https://www.nj.gov/correctionsombudsperson/documents/annual-reports/2023AnnualReport.pdf> NJOCO's budget for FY23 was approximately \$2.1 million. NJOCO reports that the most common concerns reported related to property (2,016 contacts), health care (1,948 contacts), housing and classification (1,618 contacts), telephone, mail, and electronic communication with people on the outside (1,055), personal safety (840 contacts), discipline and behavior management (764 contacts), conditions of confinement (684 contacts), and legal access or records (659 contacts). These are similar to the issues raised in complaints to OAG regarding DPSCS facilities.

gathering data, and holding community meetings.”¹⁸ NJOCO also credits the development of its electronic complaint system for enabling it to efficiently receive and respond to complaints.¹⁹

Minnesota’s correctional system is comprised of 11 prisons with an adult population of approximately 8,000 individuals.²⁰ Like its counterparts in Washington and New Jersey, the Minnesota Office of the Ombuds for Corrections (MOBFC) has the authority to investigate complaints, inspect prison facilities and operations, identify systemic issues, and issue annual reports on their findings and recommendations.²¹ In its first year of operation, MOBFC reported using funds to hire five staff, secure permanent office space with furniture and IT systems, create a website, and procure a customized comprehensive case-management software application.²² Currently, MOBFC operates with seven full time staff and reported receiving 514 complaints in 2023. They also “conducted several systemic investigations; worked with [their] stakeholder advisory group; completed a collaborative pilot project with the Department of Corrections to better communicate and support loved ones of incarcerated people, and developed an extensive report related to communication costs in facilities.”²³

Each of these offices reflects the best practice of establishing correctional oversight entities as independent agencies detached from correctional agencies or a state office of the attorney general. They also demonstrate that regardless of where such an office resides, its success will require significant investment by the state. Although it is impossible to accurately predict the volume of complaints that Maryland’s correctional ombudsman will receive—as demonstrated above, states with similar incarcerated populations have received a wide range of requests for assistance—we must equip that office with the resources necessary to make measurable progress towards its statutory mandate and its overarching goal of promoting justice in our correctional system.

For these reasons, I urge the Committee to adopt the attached amendments establishing an independent correctional ombudsman office. I also urge the Committee to require immediate funding for a minimum of five staff and the development of a complaint tracking system.²⁴ As an independent agency, additional funding for office space, equipment, and other organizational costs may also be necessary. But these additional funding requirements exist regardless of where the independent agency is placed within the organization of State Government. The State should revisit this funding level each year to evaluate its continued sufficiency.

¹⁸ https://mgaleg.maryland.gov/cmte_testimony/2023/jpr/1ddZEdDgz9uKXzjRTrJEJ1GrwWch9MDKe.pdf

¹⁹ <https://www.nj.gov/correctionsombudsperson/documents/annual-reports/Annual%20Report%2011-16-20.pdf>

²⁰ https://mn.gov/doc/assets/Adult%20Prison%20Population%20Summary%201-1-2023_tcm1089-561955.pdf

²¹ <https://www.revisor.mn.gov/statutes/cite/241.93>

²²

https://mn.gov/obfc/assets/Ombuds%20for%20Corrections%20Annual%20Report%202020%20without%20Appendices_tcm1157-470277.pdf

²³ MOBFC’s budget for FY23 was \$753,000 and \$ 1.1 million for FY24.

https://mn.gov/obfc/assets/Ombuds%20for%20Corrections%20Annual%20Report%202023%20FINAL%20_tcm1157-608078.pdf

²⁴ We imagine that a truly independent correctional ombudsman office will operate like that of the Office of the People’s Counsel, which assists residential customers of natural gas, electric, private water, and telecommunications utilities. See <https://opc.maryland.gov/>.

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It cannot be overstated: mass incarceration is one of this country's most destructive consequences of systemic racism. Of the 15,000 individuals currently incarcerated in DPSCS facilities, nearly 73% are Black—even though Black people make up only 31.7% of the State's population. Black men in particular are serving the longest sentences, making up nearly 8 in 10 Marylanders who are imprisoned ten years or more.²⁵ These disparities point to systemic issues within the criminal justice system that demand comprehensive reform of our state correctional system. It is my commitment to developing well-researched, comprehensive, and consensus strategies for eliminating mass incarceration that prompted me to create the Maryland Equitable Justice Collaborative (MEJC), in partnership with the Public Defender of Maryland, academic partners from the University of Maryland system, and representatives from over 40 community organizations and government agencies, including impacted individuals. In planning for MEJC's launch, the Public Defender and I met with numerous impacted individuals and advocates whose shared their concerns about the widespread lack of programming, poor health care, and deteriorating conditions existing in correctional facilities.²⁶

Learning from these experiences, we can achieve a correctional system that more closely mirrors our Maryland values of fairness, equity, and justice for all. The establishment of a truly independent and well-resourced Correctional Ombudsman Office will be a crucial step to improving transparency and accountability and ensuring the safety and security of our correctional system.

Sincerely,



Anthony G. Brown

²⁵ https://justicepolicy.org/wp-content/uploads/2022/02/Rethinking_Approaches_to_Over_Incarceration_MD.pdf

²⁶ MEJC members, through the Prison, Jail, and Detention Facility Reform Work Group, are currently working to examine and recommend strategies for promoting more humane and healthy conditions for incarcerated persons, more effective rehabilitative services, more seamless reentry, and reduced recidivism to benefit incarcerated persons, their families and communities, as well as prison staff. We expect to issue our recommendations in January of 2025.