

HOUSE BILL 297

P1, E5
HB 64/23 – JUD & HGO

4lr1316
CF SB 134

By: **Delegates Davis, Bartlett, Crutchfield, and J. Long**

Introduced and read first time: January 15, 2024

Assigned to: Judiciary and Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

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

3 FOR the purpose of establishing the Correctional Ombudsman Unit in the Office of the
4 Attorney General; requiring the Unit to conduct investigations, reviews, and
5 assessments of administrative acts taken by the Department of Public Safety and
6 Correctional Services or in relation to individuals confined by the Department;
7 requiring the Unit to refer certain matters for criminal charges or disciplinary
8 proceedings; providing for the confidentiality of certain communications with the
9 Ombudsman; establishing the Correctional Ombudsman Advisory Board;
10 prohibiting certain reprisals against employees of the Department who provide
11 certain information to the Unit; requiring the Unit to conduct certain activities; and
12 generally relating to the Correctional Ombudsman Unit.

13 BY adding to

14 Article – State Government
15 Section 6–901 through 6–907 to be under the new subtitle “Subtitle 9. Correctional
16 Ombudsman Unit”
17 Annotated Code of Maryland
18 (2021 Replacement Volume and 2023 Supplement)

19 BY repealing and reenacting, with amendments,

20 Article – State Personnel and Pensions
21 Section 5–305
22 Annotated Code of Maryland
23 (2015 Replacement Volume and 2023 Supplement)

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

26 **Article – State Government**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



SUBTITLE 9. CORRECTIONAL OMBUDSMAN UNIT.

6-901.

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

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

(C) (1) “AGENCY” MEANS:

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

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

(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.

(2) “AGENCY” DOES NOT INCLUDE:

(I) A JUDGE, AS DEFINED IN § 1-101 OF THE COURTS ARTICLE, OR ANY OTHER EMPLOYEE OF THE JUDICIARY;

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

(III) THE GOVERNOR OR THE GOVERNOR’S PERSONAL STAFF.

(D) (1) “COMPLAINT” MEANS ANY COMMUNICATION:

(I) FROM OR ON BEHALF OF AN INDIVIDUAL CONFINED BY OR

1 UNDER THE SUPERVISION OF AN AGENCY; AND

2 (II) ALLEGING A VIOLATION OF THE INDIVIDUAL'S RIGHTS OR
3 ANY APPLICABLE LAW, REGULATION, OR STANDARD:

4 1. BY THE AGENCY; AND

5 2. THAT IMPACTED THE INDIVIDUAL.

6 (2) "COMPLAINT" DOES NOT INCLUDE A DISCIPLINARY PROCEEDING
7 OF AN INCARCERATED INDIVIDUAL.

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

11 (F) "UNIT" MEANS THE CORRECTIONAL OMBUDSMAN UNIT IN THE OFFICE
12 OF THE ATTORNEY GENERAL.

13 6-902.

14 THERE IS A CORRECTIONAL OMBUDSMAN UNIT IN THE OFFICE OF THE
15 ATTORNEY GENERAL.

16 6-903.

17 (A) THE UNIT SHALL INCLUDE:

18 (1) A FULL-TIME CORRECTIONAL OMBUDSMAN; AND

19 (2) STAFF AS PROVIDED IN THE STATE BUDGET.

20 (B) (1) THE ATTORNEY GENERAL SHALL APPOINT THE CORRECTIONAL
21 OMBUDSMAN WITH THE ADVICE AND CONSENT OF THE SENATE.

22 (2) THE CORRECTIONAL OMBUDSMAN SHALL SERVE FOR A TERM OF
23 5 YEARS.

24 (3) AT THE END OF A TERM, THE CORRECTIONAL OMBUDSMAN
25 CONTINUES TO SERVE UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

26 (C) SALARIES OF THE OMBUDSMAN AND STAFF AND EXPENSES FOR RENT,
27 EQUIPMENT, SUPPLIES, AND GENERAL OPERATING EXPENSES NECESSARY FOR THE
28 WORK OF THE UNIT SHALL BE AS PROVIDED IN THE STATE BUDGET.

(D) IN COOPERATION WITH THE SECRETARY OF BUDGET AND MANAGEMENT, THE ATTORNEY GENERAL SHALL SET MINIMUM SALARIES, QUALIFICATIONS, AND STANDARDS OF TRAINING AND EXPERIENCE FOR POSITIONS WITH THE UNIT.

6-904.

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

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

(I) CONTRARY TO LAW OR REGULATION;

(II) BASED ON A MISTAKE OF FACT;

(III) UNSUPPORTED BY SUFFICIENT EVIDENCE;

(IV) PERFORMED IN AN INEFFICIENT MANNER;

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

(VI) OTHERWISE ERRONEOUS;

(2) CONDUCT INDEPENDENT REVIEWS AND ASSESSMENTS OF:

(I) HEALTH SERVICES, INCLUDING SUBSTANCE ABUSE ASSESSMENTS AND TREATMENT PROVIDED TO INDIVIDUALS CONFINED BY ANY AGENCY;

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

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

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

(V) AGENCY POLICIES ON RESTRICTIVE OR PROTECTIVE HOUSING;

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

3 **(4) INSPECT ANY FACILITIES OWNED OR CONTROLLED BY ANY**
4 **AGENCY TO MONITOR CONDITIONS IN THE FACILITIES;**

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

7 **(6) MAINTAIN A WEBSITE THAT:**

8 **(I) SUBJECT TO THE REQUIREMENTS OF SUBSECTION (E) OF**
9 **THIS SECTION, MAKES CURRENT AND PAST REPORTS AVAILABLE TO THE PUBLIC;**
10 **AND**

11 **(II) PROVIDES CONTACT INFORMATION FOR THE UNIT; AND**

12 **(7) ADOPT REGULATIONS NECESSARY TO CARRY OUT THE**
13 **REQUIREMENTS OF THIS SUBTITLE.**

14 **(B) (1) THE UNIT SHALL INVESTIGATE EACH COMPLAINT ABOUT AN**
15 **ADMINISTRATIVE ACT, UNLESS THE UNIT DETERMINES THAT:**

16 **(I) THE COMPLAINT COULD BE ADDRESSED THROUGH**
17 **ANOTHER PROCESS;**

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

20 **(III) THE COMPLAINANT UNREASONABLY DELAYED IN BRINGING**
21 **THE COMPLAINT;**

22 **(IV) THE COMPLAINANT IS NOT PERSONALLY AFFECTED BY THE**
23 **ADMINISTRATIVE ACT; OR**

24 **(V) THE UNIT LACKS SUFFICIENT RESOURCES TO INVESTIGATE**
25 **THE COMPLAINT.**

26 **(2) THE UNIT SHALL INFORM A COMPLAINANT OF A DECISION NOT TO**
27 **INVESTIGATE A COMPLAINT.**

28 **(3) ON REQUEST, THE UNIT SHALL INFORM A COMPLAINANT OF THE**
29 **STATUS OF AN INVESTIGATION.**

1 **(4) ON THE COMPLETION OF AN INVESTIGATION BASED ON A**
2 **COMPLAINT, THE UNIT SHALL INFORM THE COMPLAINANT OF ANY CONCLUSIONS,**
3 **RECOMMENDATIONS, AND ACTIONS TAKEN IN RESPONSE TO THE COMPLAINT.**

4 **(C) (1) IF THE UNIT DETERMINES THAT AN EMPLOYEE OR AGENT OF AN**
5 **AGENCY ACTED IN A MANNER WARRANTING CRIMINAL CHARGES OR DISCIPLINARY**
6 **PROCEEDINGS, THE UNIT SHALL REFER THE MATTER TO APPROPRIATE**
7 **AUTHORITIES.**

8 **(2) IF THE UNIT REFERS THE MATTER TO THE OFFICE OF THE**
9 **ATTORNEY GENERAL, A SPECIAL ASSISTANT SHALL BE APPOINTED TO REVIEW THE**
10 **MATTER.**

11 **(D) THE UNIT MAY:**

12 **(1) INTERVIEW AGENCY PERSONNEL OR ANY INDIVIDUAL CONFINED**
13 **BY AN AGENCY;**

14 **(2) ACCESS ANY RECORDS MAINTAINED BY AN AGENCY;**

15 **(3) PERFORM UNANNOUNCED SITE VISITS AND ON-SITE INSPECTIONS**
16 **OF FACILITIES MAINTAINED BY AN AGENCY;**

17 **(4) RECEIVE AND RESPOND TO COMPLAINTS WITHOUT**
18 **INTERCEPTION, REVIEW, OR INTERFERENCE BY AN AGENCY;**

19 **(5) SUBPOENA ANY INDIVIDUAL TO APPEAR TO GIVE SWORN**
20 **TESTIMONY OR PRODUCE DOCUMENTARY EVIDENCE THAT IS REASONABLY**
21 **NECESSARY TO CARRY OUT THE UNIT'S DUTIES;**

22 **(6) REVIEW ALL REPORTS OF DISCIPLINARY ACTIONS, GRIEVANCES,**
23 **AND GRIEVANCE DISPOSITIONS BY THE AGENCY; AND**

24 **(7) COLLABORATE WITH ANY AGENCY OR ANY UNIT OF STATE**
25 **GOVERNMENT TO INVESTIGATE COMPLAINTS OR ANY ALLEGED INJURY, NEGLECT,**
26 **OR DEATH OF AN INDIVIDUAL CONFINED BY OR UNDER THE SUPERVISION OF AN**
27 **AGENCY.**

28 **(E) IN PERFORMING THE DUTIES ASSIGNED UNDER THIS SUBTITLE, THE**
29 **UNIT AND THE OFFICE OF THE ATTORNEY GENERAL SHALL TREAT ALL**
30 **COMPLAINTS AS CONFIDENTIAL AND MAY REVEAL THE DETAILS OF ANY**
31 **COMPLAINTS ONLY IF IT IS:**

32 **(1) NECESSARY TO CARRY OUT THE UNIT'S DUTIES; AND**

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

6-905.

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

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

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

6-906.

(A) ON OR BEFORE DECEMBER 31 EACH YEAR, THE UNIT SHALL REPORT TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1257 OF THIS ARTICLE, THE GENERAL ASSEMBLY ON:

(1) INVESTIGATIONS CONDUCTED BY THE UNIT;

(2) ANY ACTIONS TAKEN BY AN AGENCY AS A RESULT OF THE CONCLUSIONS OR RECOMMENDATIONS OF THE UNIT;

(3) ANY INSTANCE WHERE AN AGENCY REJECTS A RECOMMENDATION OR CONCLUSION OF THE UNIT; AND

(4) INFORMATION ON ANY DEATH OF AN INDIVIDUAL CONFINED BY OR UNDER THE CARE OF AN AGENCY.

(B) IN ADDITION TO THE REPORT REQUIRED BY SUBSECTION (A) OF THIS SECTION, THE UNIT SHALL PROVIDE TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1257 OF THIS ARTICLE, THE GENERAL ASSEMBLY ANY OTHER REPORTS THAT THE GOVERNOR OR THE GENERAL ASSEMBLY MAY REQUIRE.

(C) A REPORT PREPARED UNDER THIS SECTION SHALL BE PUBLISHED ON THE UNIT'S WEBSITE.

6-907.

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

(B) THERE IS A CORRECTIONAL OMBUDSMAN ADVISORY BOARD.

(C) THE PURPOSE OF THE BOARD IS TO PROVIDE INFORMATION TO THE UNIT AND ASSIST THE UNIT IN IDENTIFYING APPROPRIATE MATTERS TO INVESTIGATE.

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

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

(1) FAMILY MEMBERS OF CONFINED INDIVIDUALS;

(2) RETURNING CITIZENS;

(3) NONSUPERVISORY CORRECTIONAL OFFICERS;

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

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

(F) THE UNIT SHALL PROVIDE STAFF FOR THE BOARD.

Article – State Personnel and Pensions

5–305.

Subject to the limitations of § 5–306 of this subtitle, 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:

(1) an employee who discloses information that the employee reasonably believes evidences:

(i) an abuse of authority, gross mismanagement, or gross waste of money;

(ii) a substantial and specific danger to public health or safety; or

(iii) a violation of law;

(2) an employee of the Department of Juvenile Services who discloses information to the Director of Juvenile Justice Monitoring or staff of the Juvenile Justice Monitoring Unit relating to the Unit's duties under § 6-404(1) of the State Government Article; [or]

(3) AN EMPLOYEE OF THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES WHO DISCLOSES INFORMATION TO THE CORRECTIONAL OMBUDSMAN OR STAFF OF THE CORRECTIONAL OMBUDSMAN UNIT RELATING TO THE UNIT'S DUTIES UNDER § 6-904 OF THE STATE GOVERNMENT ARTICLE; OR

~~[(3)]~~ (4) an employee who, following a disclosure under item ~~[(1) or]~~ (1), (2), **OR (3)** of this section, seeks a remedy provided under this subtitle or any other law or policy governing the employee's unit.

SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that the Governor shall include in the State budget for fiscal year 2025 and each subsequent fiscal year an appropriation in an amount sufficient to fund the provisions of this Act and to provide for at least two staff members of the Correctional Ombudsman Unit in 2025 and at least seven staff members of the Unit in 2026 and each subsequent fiscal year.

SECTION 3. AND BE IT FURTHER ENACTED, That on or before December 31, 2024, the Correctional Ombudsman Unit and the Commission on Correctional Standards shall submit a joint report to the Governor and, in accordance with § 2-1257 of the State Government Article, the General Assembly detailing how the Correctional Ombudsman Unit and the Commission will coordinate in order to avoid overlap in their duties.

SECTION 4. AND BE IT FURTHER ENACTED, That on or before December 31, 2024, the Mediation and Conflict Resolution Office shall report to the Correctional Ombudsman Unit, the Governor, and, in accordance with § 2-1257 of the State Government Article, the General Assembly on best practices for mediating grievances in the corrections system.

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

SECTION 6. AND BE IT FURTHER ENACTED, That it is 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 Corrections since fiscal year 2019. This audit shall include, among other things, an examination of:

- 1 (1) rates of participation by incarcerated individuals in:
- 2 (i) educational and vocational training;
- 3 (ii) evidence-based behavioral health and substance abuse
- 4 counseling; and
- 5 (iii) mentoring and reentry programs; and
- 6 (2) any obstacles to participation by incarcerated individuals in programs
- 7 provided by the Division.

8 SECTION 7. AND BE IT FURTHER ENACTED, That this Act shall take effect July

9 1, 2024.