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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 1038

02/11/2019 Authored by Considine
The bill was read for the first time and referred to the Committee on Ways and Means

1.1 A bill for an act
1.2 relating to corrections; establishing an Office of Ombudsman for Mental Health
1.3 Services in Correctional or Detention Facilities; amending Minnesota Statutes
1.4 2018, section 243.48, subdivision 1; proposing coding for new law in Minnesota
1.5 Statutes, chapters 13; 241.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. [13.856] OMBUDSMAN FOR MENTAL HEALTH SERVICES IN
1.8 CORRECTIONAL OR DETENTION FACILITIES.

1.9 Subd. 1. Private data. The following data maintained by the ombudsman for mental
1.10 health services in correctional or detention facilities under sections 241.691 to 241.696 are
1.11 private data on individuals:

1.12 (1) data related to contacts made by clients seeking the assistance of the ombudsman,
1.13 except as provided in subdivisions 2 and 3;

1.14 (2) data recorded from personal and phone conversations and in correspondence between
1.15 ombudsman's staff and any person interviewed during the course of an investigation;

1.16 (3) client index cards;

1.17 (4) case assignment data; and

1.18 (5) monthly closeout data.

1.19 Subd. 2. Confidential data. The written summary of the investigation maintained by
1.20 the ombudsman, to the extent it identifies individuals, is confidential data on individuals.

1.21 Subd. 3. Public data. Client name, client location, and the inmate identification number
1.22 assigned by the Department of Corrections maintained by the ombudsman are public.

2.1 Subd. 4. **Access to data.** The ombudsman for corrections has access to corrections and  
 2.2 detention data and medical data as provided under section 241.695.

2.3 Sec. 2. **[241.691] OFFICE OF OMBUDSMAN; CREATION; QUALIFICATIONS;**  
 2.4 **FUNCTION.**

2.5 The Office of Ombudsman for Mental Health Services in Correctional or Detention  
 2.6 Facilities shall promote the highest standards for treatment, competency, efficiency, and  
 2.7 justice with regard to persons in custody who have mental illnesses. The ombudsman is  
 2.8 appointed by the governor, serves in the unclassified service, is selected without regard to  
 2.9 political affiliation, and is a person highly competent and qualified to analyze questions of  
 2.10 mental health, law, administration, and public policy. The ombudsman may only be removed  
 2.11 for just cause. No person may serve as ombudsman while holding any other public office.  
 2.12 The ombudsman has the authority to investigate decisions, acts, and other matters of the  
 2.13 Department of Corrections and regional or local corrections or detention facilities licensed  
 2.14 or inspected by the commissioner of corrections.

2.15 Sec. 3. **[241.692] DEFINITIONS.**

2.16 Subdivision 1. **Applicability.** For the purposes of sections 241.691 to 241.696, the  
 2.17 following terms have the meanings given.

2.18 Subd. 2. **Administrative agency or agency.** "Administrative agency" or "agency" means  
 2.19 any division, official, or employee of the Department of Corrections, the commissioner of  
 2.20 corrections, the Board of Pardons, and any regional or local correctional facility licensed  
 2.21 or inspected by the commissioner of corrections, whether public or private, established and  
 2.22 operated for the detention and confinement of adults or juveniles including, but not limited  
 2.23 to, programs or facilities operating under chapter 401, adult halfway homes, secure juvenile  
 2.24 detention facilities, juvenile residential facilities, municipal holding facilities, juvenile  
 2.25 temporary holdover facilities, regional or local jails, lockups, work houses, work farms, and  
 2.26 detention and treatment facilities, but does not include:

2.27 (1) any court or judge;

2.28 (2) any member of the senate or the house of representatives;

2.29 (3) the governor or the governor's personal staff;

2.30 (4) any instrumentality of the federal government; or

2.31 (5) any interstate compact.

3.1 Subd. 3. **Ombudsman.** "Ombudsman" means the ombudsman for mental health services  
 3.2 in correctional or detention facilities.

3.3 **Sec. 4. [241.693] ORGANIZATION OF OFFICE OF OMBUDSMAN.**

3.4 Subdivision 1. **Employee selection.** The ombudsman may select, appoint, and compensate  
 3.5 out of available funds assistants and employees considered necessary to discharge the  
 3.6 responsibilities of the office. The ombudsman and full-time staff are members of the  
 3.7 Minnesota State Retirement System.

3.8 Subd. 2. **Delegation of duties.** The ombudsman may delegate to staff members any of  
 3.9 the ombudsman's authority or duties except the duty of making formal recommendations  
 3.10 to an administrative agency or reports to the governor or the legislature.

3.11 **Sec. 5. [241.694] POWERS OF OMBUDSMAN; INVESTIGATIONS; ACTIONS**  
 3.12 **ON COMPLAINTS; RECOMMENDATIONS.**

3.13 Subdivision 1. **Powers.** The ombudsman may:

3.14 (1) prescribe the methods by which complaints are made, reviewed, and acted upon;  
 3.15 except the ombudsman may not levy a complaint fee;

3.16 (2) determine the scope and manner of investigations;

3.17 (3) except as otherwise provided, determine the form, frequency, and distribution of  
 3.18 conclusions, recommendations, and proposals; provided, however, that the governor or a  
 3.19 representative may, at any time the governor considers it necessary, request and receive  
 3.20 information from the ombudsman. Neither the ombudsman nor any member of the  
 3.21 ombudsman's staff shall be compelled to testify or to produce evidence in any judicial or  
 3.22 administrative proceeding with respect to any matter involving the exercise of the  
 3.23 ombudsman's official duties except as may be necessary to enforce the provisions of sections  
 3.24 241.691 to 241.696;

3.25 (4) investigate, upon a complaint or personal initiative, any action of an administrative  
 3.26 agency;

3.27 (5) request, and be given access to, information in the possession of an administrative  
 3.28 agency that is necessary for the discharge of responsibilities;

3.29 (6) examine the records and documents of an administrative agency;

3.30 (7) enter and inspect, at any time, premises within the control of an administrative agency;

4.1 (8) subpoena any person to appear, give testimony, or produce documentary or other  
4.2 evidence which the ombudsman considers relevant to a matter under inquiry, and petition  
4.3 the appropriate state court to seek enforcement with the subpoena; provided, however, that  
4.4 any witness at a hearing or before an investigation as herein provided, shall possess the  
4.5 same privileges reserved to a witness in the courts or under the laws of this state;

4.6 (9) bring an action in an appropriate state court to provide the operation of the powers  
4.7 provided in this subdivision. The ombudsman may use the services of legal assistance to  
4.8 Minnesota prisoners for legal counsel. The provisions of sections 241.691 to 241.696 are  
4.9 in addition to other provisions of law under which any remedy or right of appeal or objection  
4.10 is provided for any person, or any procedure provided for inquiry or investigation concerning  
4.11 any matter. Nothing in sections 241.691 to 241.696 shall be construed to limit or affect any  
4.12 other remedy or right of appeal or objection nor shall it be deemed part of an exclusionary  
4.13 process; and

4.14 (10) be present at commissioner of corrections parole and parole revocation hearings  
4.15 and deliberations.

4.16 Subd. 2. **Actions against ombudsman.** No proceeding or civil action except removal  
4.17 from office or a proceeding brought pursuant to chapter 13 shall be commenced against the  
4.18 ombudsman for actions taken pursuant to the provisions of sections 241.691 to 241.696,  
4.19 unless the act or omission is actuated by malice or is grossly negligent.

4.20 Subd. 3. **Matters appropriate for investigation.** (a) In selecting matters for attention,  
4.21 the ombudsman shall address specifically the actions of an administrative agency which  
4.22 may be:

4.23 (1) contrary to law or rule;

4.24 (2) unreasonable, unfair, oppressive, or inconsistent with any policy or judgment of an  
4.25 administrative agency;

4.26 (3) mistaken in law or arbitrary in the ascertainment of facts;

4.27 (4) unclear or inadequately explained when reasons should have been revealed; or

4.28 (5) inefficiently performed; and may result in medical neglect or deteriorating mental  
4.29 health.

4.30 (b) The ombudsman may also be concerned with strengthening procedures and practices  
4.31 that lessen the risk that objectionable actions of the administrative agency will occur.

5.1 Subd. 4. **Complaints.** (a) The ombudsman may receive a complaint from any source  
5.2 concerning an action of an administrative agency. The ombudsman may, on personal motion  
5.3 or at the request of another, investigate any action of an administrative agency.

5.4 (b) The ombudsman may exercise powers without regard to the finality of any action of  
5.5 an administrative agency; however, the ombudsman may require a complainant to pursue  
5.6 other remedies or channels of complaint open to the complainant before accepting or  
5.7 investigating the complaint.

5.8 (c) After completing investigation of a complaint, the ombudsman shall inform the  
5.9 complainant, the administrative agency, and the official or employee of the action taken.

5.10 (d) A letter to the ombudsman from a person in an institution under the control of an  
5.11 administrative agency shall be immediately forwarded, unopened, to the ombudsman's  
5.12 office. A reply from the ombudsman to the person shall be delivered unopened to the person,  
5.13 promptly after its receipt by the institution.

5.14 (e) No complainant shall be punished nor shall the general condition of the complainant's  
5.15 confinement or treatment be unfavorably altered as a result of the complainant having made  
5.16 a complaint to the ombudsman.

5.17 Subd. 5. **Investigation of adult local jails and detention facilities.** Either the  
5.18 ombudsman or the Department of Corrections jail inspection unit may investigate complaints  
5.19 involving local adult jails and detention facilities. The ombudsman and Department of  
5.20 Corrections must enter into an arrangement to ensure that services are not duplicated.

5.21 Subd. 6. **Recommendations.** (a) If, after duly considering a complaint and any material  
5.22 the ombudsman deems pertinent, the ombudsman is of the opinion that the complaint is  
5.23 valid, the ombudsman may recommend that an administrative agency:

5.24 (1) consider the matter further;

5.25 (2) modify or cancel its actions;

5.26 (3) alter a ruling;

5.27 (4) explain more fully the action in question; or

5.28 (5) take any other step which the ombudsman recommends to the administrative agency  
5.29 involved. If the ombudsman so requests, the agency shall within the time the ombudsman  
5.30 specifies inform the ombudsman about the action taken on the ombudsman's recommendation  
5.31 or the reasons for not complying with it.

6.1 (b) If the ombudsman has reason to believe that any public official or employee has  
 6.2 acted in a manner warranting criminal or disciplinary proceedings, the ombudsman may  
 6.3 refer the matter to the appropriate authorities.

6.4 (c) If the ombudsman believes that an action upon which a valid complaint is founded  
 6.5 has been dictated by statute, and that the statute produces results or effects which are unfair  
 6.6 or otherwise objectionable, the ombudsman shall bring to the attention of the governor and  
 6.7 the legislature the ombudsman's views concerning desirable statutory change.

6.8 Subd. 7. **Grants.** The ombudsman may apply for and receive grants from public and  
 6.9 private entities for purposes of carrying out the ombudsman's powers and duties under  
 6.10 sections 241.691 to 241.696.

6.11 Sec. 6. **[241.695] OMBUDSMAN ACCESS TO DATA.**

6.12 Notwithstanding section 13.384 or 13.85, the ombudsman has access to corrections and  
 6.13 detention data and medical data maintained by an agency and classified as private data on  
 6.14 individuals or confidential data on individuals when access to the data is necessary for the  
 6.15 ombudsman to perform the powers under section 241.694.

6.16 Sec. 7. **[241.696] PUBLICATION OF RECOMMENDATIONS; REPORTS.**

6.17 Subdivision 1. **Publication.** The ombudsman may publish conclusions and suggestions  
 6.18 by transmitting them to the governor. Before announcing a conclusion or recommendation  
 6.19 that expressly or impliedly criticizes an administrative agency, or any person, the ombudsman  
 6.20 shall consult with that agency or person. When publishing an opinion adverse to an  
 6.21 administrative agency or to any persons, the ombudsman shall include in the publication  
 6.22 any statement of reasonable length made to the ombudsman by that agency or person in  
 6.23 defense or mitigation of the action.

6.24 Subd. 2. **Annual reports.** In addition to any reports the ombudsman may make on an  
 6.25 ad hoc basis, the ombudsman shall, at the end of each year, report to the governor concerning  
 6.26 the exercise of the ombudsman's functions during the preceding year.

6.27 Sec. 8. Minnesota Statutes 2018, section 243.48, subdivision 1, is amended to read:

6.28 Subdivision 1. **General searches.** The commissioner of corrections, ~~the~~ governor,  
 6.29 lieutenant governor, members of the legislature, ombudsman for mental health services in  
 6.30 correctional or detention facilities, and state officers may visit the inmates at pleasure, but  
 6.31 no other persons without permission of the chief executive officer of the facility, under rules  
 6.32 prescribed by the commissioner. A moderate fee may be required of visitors, other than

- 7.1 those allowed to visit at pleasure. All fees so collected shall be reported and remitted to the
- 7.2 commissioner of management and budget under rules as the commissioner may deem proper,
- 7.3 and when so remitted shall be placed to the credit of the general fund.