

MICHIGAN DEPARTMENT OF CORRECTIONS <b>POLICY DIRECTIVE</b>	EFFECTIVE DATE	NUMBER
	05/10/2021	03.02.135
SUBJECT	SUPERSEDES	
OFFICE OF THE LEGISLATIVE CORRECTIONS OMBUDSMAN AND DISABILITY RIGHTS MICHIGAN (DRM)	03.02.135 (01/17/2011)	
	AUTHORITY	
	MCL 4.351, et seq. as amended by 2010 PA 287; 791.203; 2010 PA 286	
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**POLICY STATEMENT:**

The Department maintains a cooperative working relationship with the Office of the Legislative Corrections Ombudsman and Disability Rights Michigan (DRM), including neither hindering their lawful actions nor willfully refusing to comply with their lawful demands.

**POLICY:**

GENERAL INFORMATION

- A. For the purposes of this policy directive, Ombudsman refers to the Office of the Legislative Corrections Ombudsman.
- B. The Ombudsman is authorized by law to investigate the following:
  - 1. Upon receipt of a complaint from a prisoner or parolee under the jurisdiction of the Department, from a state legislator, or on the Ombudsman's own initiative, an administrative act by the Department or its employees which is alleged by a prisoner or parolee to be contrary to law or applicable Department policy.
  - 2. Upon the Ombudsman's own initiative, significant health and safety issues, correctional security, public safety, and other matters for which there is no effective administrative remedy.
- C. DRM is authorized by state and federal law to investigate situations in which an individual with a mental illness, developmental disability, or other disability has been or may have been subjected to abuse and/or neglect, including to access facilities and records (42 USC 15043; 42 USC 10801, 10805, and 10806(b)(3); MCL 330.1931(1); 29 USC 794e; 42 CFR 51.41(c); and 45 CFR 1326.25 and 1386.22(f).
- D. To preserve the integrity of the grievance process and avoid duplicate and possibly conflicting attempts by the Department and the Ombudsman or DRM to resolve a problem simultaneously. It is recommended offenders pursue all administrative remedies, including the grievance process, prior to contacting the Ombudsman or DRM. Prisoners are strongly encouraged to notify appropriate Department staff of any urgent health or safety issue. The Department shall provide the Ombudsman or DRM information and access to grievance information and documents upon request as set forth in this policy, however, even if administrative remedies have not been exhausted.
- E. Offenders shall not be penalized in any way for initiating a complaint with a state legislator, the Ombudsman, or DRM or for cooperating in an investigation conducted by the Ombudsman or DRM.
- F. Each Warden shall designate a staff person to serve as liaison between their facilities and the Ombudsman and DRM. The Deputy Director of Field Operations Administration (FOA) shall designate staff to serve as liaison for programs under FOA. The Legislative Liaison or designee shall serve as liaison to the Ombudsman, and the Office of Legal Affairs (OLA)

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Administrator or designee shall serve as liaison to DRM on Department-wide matters. CFA and FOA liaisons shall consult with the aforementioned Department-wide liaison on issues that may affect other areas of the Department and on sensitive or questionable matters prior to communicating with the Ombudsman or DRM, respectively. The CFA and FOA liaisons shall copy the OLA Administrator or designee on all final responses to DRM.

- G. Information prepared by and pertaining to the Ombudsman shall be posted upon request of the Ombudsman (or of DRM inf approved by OLA) in each housing unit in each Department facility and in FOA field offices.

#### ACCESS TO INFORMATION

- H. Upon request and without the requirement of any release, the Ombudsman or DRM shall be given access to all information, records, and documents in the possession of the Department, including electronic copies of records, that they deem necessary in an investigation, including, but not limited to, prisoner medical health records, prisoner mental health records, and prisoner mortality and morbidity records. A signed release is not required in order to provide this information.
- I. The facility liaison and, for Central Office, the Legislative Liaison or designee, shall assist in the review of information requested by the Ombudsman; the OLA Administrator or designee shall assist in the review of information requested by DRM. All requests for information or documents pertaining to matters in litigation, under criminal investigation, under review by the Department of Attorney General (AG), or any other sensitive matter shall be referred to the OLA Administrator or designee for response. Requests by the Ombudsman or DRM for photocopies of any other materials shall be provided within a reasonable period of time.
- J. The Ombudsman shall be provided access to the Department's Document Access System (DAS) and the Offender Management Network Information (OMNI).
- K. Upon request, the Ombudsman (or DRM with an appropriate request to OLA) may interview an employee or contractor of the Michigan Department of Corrections (MDOC). Interviews with MDOC staff shall be arranged with the Administrative Assistant of the facility or the Health Unit Manager in the case of Health Care staff or contractors so as to not interfere with Departmental operations. Staff shall provide relevant, accurate, and factual information when participating in an interview with the Ombudsman or DRM and shall refer the Ombudsman (or DRM with notice to the OLA Administrator or designee) to appropriate staff if a question is asked that relates to a matter outside of their job responsibilities.

#### ACCESS TO FACILITIES

- L. Except during a disturbance, individuals representing the Ombudsman shall be allowed unrestricted access to a facility under the control of the Department. The individuals representing the Ombudsman shall be subject to search in the same manner as an employee, as set forth in PD 04.04.110 "Search and Arrest in Correctional Facilities." During a disturbance, one person from the Ombudsman's office may be present in the think tank as an observer. Access to other areas in the facility during a disturbance shall be at the discretion of the Warden.
- M. Individuals representing the Ombudsman or DRM shall be required to produce appropriate identification and to register into and out of facilities in the same manner as Central Office staff. Volunteers and student interns assigned to the Ombudsman or DRM must be accompanied by a full-time paid employee of the Ombudsman or DRM. The Ombudsman must immediately notify the Legislative Liaison or designee of any new employees, student interns, or volunteers assigned to the Ombudsman. The Legislative Liaison or designee shall forward this information to each Warden and FOA field office Supervisor. DRM

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representatives must send notification to the OLA Administrator or designee as far in advance as possible but no less than two business days prior to visiting any MDOC facility. The two-day notice requirement may be waived under exigent circumstances.

#### Visits

- N- Individuals representing the Ombudsman or DRM may meet with any offender or Department employee pursuant to Paragraph K to obtain information or documentary or other evidence that the Ombudsman or DRM deems relevant to a matter under investigation. Each Warden shall ensure adequate space is available in their facility in which the Ombudsman or DRM representative may meet in private with employees and offenders housed in that facility. The Ombudsman or DRM representative may meet with offenders outside of standard visiting hours with prior approval of the Warden or designee.
- O. Individuals representing the Ombudsman or DRM shall be allowed to visit any prisoner upon request, even if the prisoner's visits have been restricted. The Ombudsman or DRM representative is not required to be on the prisoner's approved visitors list; and such visits shall not be counted as one of the prisoner's regular visits. Visits with a prisoner also shall not be counted toward out-of-cell movement when there is a limit on the amount of such movement (e.g., STG designation). Prisoners shall be paid for work and shall receive a school stipend for absences from their assignments for a call-out to meet with the Ombudsman or DRM representative. This does not apply to an absence from a public works assignment. Contact visits shall be permitted with a prisoner upon request of the Ombudsman and generally upon the request of a DRM representative absent extenuating circumstances. Before a facility denies DRM's request for a contact visit, the Warden or designee shall contact the OLA Administrator or designee.

#### MAIL BETWEEN OMBUDSMAN OR DRM AND OFFENDERS

- P. Mail between an offender in a Department facility and the Ombudsman or DRM shall be processed in accordance with Administrative Rule 791.6603 and PD 05.03.118 "Prisoner Mail." All mail between an offender and the Ombudsman or DRM is confidential and shall be handled the same as legal mail. Incoming mail from the Ombudsman or DRM shall receive special handling as set forth in PD 05.03.118 even if the prisoner did not request special handling. Offenders may use Department of Technology, Management, and Budget (DTMB) interdepartmental mail runs, in facilities where such service is available, to send postage-free mail to the Ombudsman. Outgoing offender mail to the Ombudsman or DRM shall be handled the same as mail to a state public official.

#### TELEPHONE CALLS BETWEEN OMBUDSMAN OR DRM AND OFFENDERS

- Q. Telephone calls shall be permitted between the Ombudsman or DRM and an offender in a facility upon request of the Ombudsman or DRM. Calls between the Ombudsman or DRM and an offender shall not be monitored by staff.

#### OMBUDSMAN REPORTS

- R. Before announcing a conclusion or recommendation that expressly or implicitly criticizes an individual or the Department, the Ombudsman is required to consult with that individual or the Department. As determined by the Director, the Department may prepare a statement in defense or in mitigation of the action to submit to the Ombudsman. The statement shall be included in publication of any opinion adverse to the Department or its employees.
- S. The Department shall notify the Ombudsman, upon request, of any action taken on any recommendation made by the Ombudsman.

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- T. Information obtained by the Ombudsman or a report prepared and recommendations made by the Ombudsman and submitted to the Legislative Council pursuant to an investigation are exempt from disclosure under the Freedom of Information Act (FOIA) and are not subject to court subpoena or discoverable in a legal proceeding.

PROCEDURES

- U. Operating procedures are not required for this policy directive.

AUDIT ELEMENTS

- V. A Primary Audit Elements List has been developed and is available on the Department's Document Access System to assist with self-audit of this policy pursuant to PD 01.05.100 "Self-Audits and Performance Audits."

APPROVED: HEW 03/25/2021