

SENATE NO. 1012

AN ACT TO PROMOTE ACCOUNTABILITY AND PUBLIC CONFIDENCE IN THE MASSACHUSETTS JUDICIAL SYSTEM

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

1 SECTION 1. This Act may be cited as the “Judicial Ombudsman Act.”

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3 Section 2: The General Laws shall be amended by adding after Chapter 211F the following

4 Chapter:

5 “Chapter 211G. Judicial Ombudsman.

6 Section 1. There shall be a judicial ombudsman. The ombudsman shall be appointed by the

7 governor. The ombudsman shall not be a member of the bar; however, the ombudsman shall be

8 assisted by a member of the bar who shall serve as legal counsel to the ombudsman. The

9 ombudsman shall serve a term not to exceed three years, and shall be ineligible for re-

10 appointment. The legal counsel to the ombudsman shall not engage in the practice of law during

11 the term of office. The Ombudsman may appoint employees or appointees necessary to perform

12 the duties of the office. For the purposes of this Act, unless otherwise noted, the word

13 “Ombudsman” shall be interpreted to include any staff member of the Ombudsman’s office.

14 Section 2. As part of the Ombudsman's oath of office, the Ombudsman shall swear to faithfully
15 and impartially exercise the powers and perform the duties of the office, and to not divulge any
16 information received as a consequence of the duties of the office. The Ombudsman shall
17 maintain confidentiality in respect of all matters arising from the performance of his duties
18 under this Act. An investigation under this Act shall be conducted in private unless the
19 Ombudsman considers that there are special circumstances in which public knowledge is
20 essential in order to further the investigation. In such instances, the ombudsman shall be
21 empowered to hold public hearings at the conclusion of which findings may be made public.
22 The Ombudsman or a person holding an office or appointment under the Ombudsman shall not
23 give or be compelled to give evidence in a court or in proceedings of a judicial nature in respect
24 of anything coming to his or her knowledge in the exercise of duties under this Act, except

- 25 a) where the Ombudsman is accused of divulging confidential information in violation
26 of Section 2, and must divulge information necessary to refute such accusation,
27 wherein the Ombudsman may only reveal such information as is absolutely
28 necessary to refute such accusation; or
- 29 b) with respect to a trial of a person for perjury.

30 Section 3. The Ombudsman, on a complaint or on the Ombudsman's own initiative, may
31 investigate

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- 33 a) a decision or recommendation made,
- 34 b) an act done or committed (which shall include the use of excessive force), or
- 35 c) a procedure used (which shall include procedures that do not appropriately account
36 for mental health issues)

37 by an authority that aggrieves or may aggrieve a person. For the purposes of this Act,
38 “authority” shall mean any state or local employee whose job is concerned with the facilitation
39 of the judicial system. Such employees may include, but are not limited to, clerks, bailiffs,
40 parole officers, probation officers, but shall not include judges. To the extent that an
41 investigation by the Ombudsman discovers evidence of improper conduct by a judge, the
42 Ombudsman shall immediately refer such evidence to the Commission on Judicial Conduct. The
43 Ombudsman’s duty of confidentiality shall not be interpreted to limit or constrain such referral.
44 Section 4. Any person defined as an authority under Section Three of this Act shall have a duty
45 of compliance with the Ombudsman. Any authority shall comply with any request for an
46 interview or document production except where the request for information or interview is
47 manifestly unreasonable.

48 Section 5. In the event that an investigation by the Ombudsman uncovers evidence of improper
49 or illegal conduct on the part of any authority, the Ombudsman shall refer the evidence to the
50 appropriate governing authority. Improper conduct by a probation officer shall be referred to the
51 Commissioner of Probation. Improper conduct by a clerk shall be referred to the appropriate
52 Clerk of Courts. In the event that the ombudsman discovers criminal action by a correctional
53 officer, police officer, or attorney, the ombudsman shall refer the findings and evidence of such
54 criminal action to the appropriate prosecutor.

55 Section 6. The Ombudsman shall not be empowered to investigate a decision, act, or omission
56 in respect of which there is under an enactment a right of appeal or objection or a right to apply
57 for a review on the merits of the case to a court, until after that right of appeal, objection or
58 application has been exercised or until after the time limit for the exercise of that right has

59 expired. The Ombudsman may investigate conduct occurring before the commencement of this
60 Act.

61 Section 7. A complaint under this Act may be made by a person or group of persons. A
62 complaint must be in writing. If a communication written by or on behalf of a person confined
63 in a correctional institution or to a hospital or facility operated by or under the direction of an
64 authority, or by a person in the custody of another person for any reason, is addressed to the
65 Ombudsman the person in charge of the institution, hospital or facility in which the writer is
66 confined or the person having custody of the writer must immediately, mail or forward the
67 communication, unopened, to the Ombudsman. A communication from the Ombudsman to a
68 person confined or in custody as described in this section shall be forwarded to that person in a
69 similar manner.

70 Section 8. The Ombudsman may refuse to investigate or cease investigating a complaint if, in
71 the opinion of the Ombudsman, any of the following apply:

72 (a) the complainant or person aggrieved knew or ought to have known of the decision,
73 recommendation, act or omission to which the complaint refers more than one year before
74 the complaint was received by the Ombudsman;

75 (b) the subject matter of the complaint primarily affects a person other than the complainant
76 and the complainant does not have sufficient personal interest in it;

77 (c) the law or existing administrative procedure provides a remedy adequate in the
78 circumstances for the person aggrieved, and, if the person aggrieved has not availed himself
79 or herself of the remedy, there is no reasonable justification for the failure to do so;

80 (d) the complaint is frivolous, vexatious, not made in good faith or concerns a trivial matter;

81 (e) having regard to all the circumstances, further investigation is not necessary in order to
82 consider the complaint;

83 (f) in the circumstances, investigation would not benefit the complainant or person
84 aggrieved;

85 (g) the complainant has abandoned the complaint

86 (i) by failing to advise the Ombudsman of a current address or telephone number at which
87 the Ombudsman can contact him or her, or

88 (ii) by failing to respond after a reasonable number of attempts by the Ombudsman to
89 contact him or her in writing or verbally;

90 (h) the complaint is withdrawn by the complainant by written notice to the Ombudsman.

91 Section 9. Proceedings of the Ombudsman shall not be challenged, reviewed or influenced by a
92 court, except on the ground of lack or excess of subject-matter jurisdiction.

93 Section 10. Proceedings do not lie against the Ombudsman or against a person acting under the
94 authority of the Ombudsman for anything done in good faith, reported or said in the course of
95 the exercise or purported exercise of duties under this Act.

96 Section 11. The Ombudsman shall report at least annually, but as often as the Ombudsman
97 believes is in the public interest, on the affairs of the Ombudsman's office to the Secretary of
98 Administration and Finance, the House and Senate Clerks, the Chief Justice of the Supreme

99 Judicial Court, the Chief Justice for Administration and Management of the Trial Court, and the
100 Chief Justice of the Appeals Court.
101 Section 12. The Ombudsman is hereby authorized to hold public educational forums in the
102 Commonwealth to inform citizens of their rights and the rules of court.