AN ACT

RELATING TO CORRECTIONS; ENACTING THE CORRECTIONS OMBUDSMAN ACT; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Corrections Ombudsman Act".

SECTION 2. [NEW MATERIAL] LEGISLATIVE INTENT.--The legislature intends to create an independent and impartial office of the corrections ombudsman to assist in strengthening procedures and practices that lessen the possibility of actions occurring within the corrections department that may adversely impact the health, safety, welfare and rehabilitation of offenders and that will effectively reduce the exposure of the department to litigation.

SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the
Corrections Ombudsman Act:

A. "abuse" means any act or failure to act by a department employee, subcontractor or volunteer that was performed or that was failed to be performed, knowingly, recklessly or intentionally, and that caused or may have caused harm, injury or death to an inmate, probationer or parolee;

B. "corrections ombudsman" means the corrections ombudsman, staff of the corrections ombudsman and volunteers within the office;

C. "department" means the corrections department;

D. "inmate" means an individual committed to the physical custody of the department, including individuals residing in a correctional institution or facility and individuals received from another state agency, county or state or the federal government;

E. "neglect" means a negligent act or omission by a department employee, subcontractor of the department or volunteer with the department that caused or may have caused harm, injury or death to an inmate, probationer or parolee;

F. "office" means the office of the corrections ombudsman;

G. "parolee" means a person who has been convicted of a crime and who has been released on parole pursuant to the Probation and Parole Act;

H. "probationer" means a person who has been
convicted of a crime and who has been released on probation pursuant to the Probation and Parole Act; and

I. "secretary" means the secretary of corrections.

SECTION 4. [NEW MATERIAL] OFFICE CREATED--PURPOSE.--

A. The "office of the corrections ombudsman" is created within the legislative finance committee for the purposes of:

(1) ensuring compliance with relevant statutes, rules and policies pertaining to corrections facilities, services and treatment of inmates, probationers and parolees within the jurisdiction of the department;

(2) identifying systemic issues and responses for the governor and the legislature to act upon;

(3) providing information to inmates, probationers and parolees and their families; and

(4) promoting public awareness and understanding of the rights and responsibilities of inmates, probationers and parolees.

B. The corrections ombudsman shall report directly to the director of the legislative finance committee and shall exercise the powers and duties of the corrections ombudsman independently of the secretary.

SECTION 5. [NEW MATERIAL] APPOINTMENT--TERM--EMPLOYEES.--

A. The New Mexico legislative council shall appoint a corrections ombudsman, who shall be a person of recognized
judgment, independence, objectivity and integrity. Prior to
the appointment, the New Mexico legislative council shall
consult with and may receive recommendations from appropriate
committees of the legislature and other relevant stakeholders
regarding the appointment of the corrections ombudsman.

B. The person appointed corrections ombudsman shall
hold office for a term of three years and shall continue to
hold office until reappointed or until a successor is
appointed. The New Mexico legislative council may remove the
corrections ombudsman only for neglect of duty, misconduct or
an inability to perform duties. A vacancy shall be filled by
similar appointment for the remainder of an unexpired term.

C. The corrections ombudsman may employ technical
experts and other employees to fulfill the duties of the
Corrections Ombudsman Act, including experts and legal staff to
investigate and litigate issues identified through the office.

SECTION 6. [NEW MATERIAL] DUTIES--INVESTIGATIONS--
COMPLAINTS.--

A. The corrections ombudsman shall:

(1) establish priorities for use of the
limited resources available to the corrections ombudsman;

(2) maintain a statewide toll-free telephone
number, a collect telephone number, a website and a mailing
address for the receipt of complaints and inquiries;

(3) provide information, as appropriate, to
inmates, probationers and parolees, family members of inmates, 
probationers and parolees, representatives of inmates, 
probationers and parolees, department employees and others 
regarding rights of inmates, probationers and parolees;

(4) provide technical assistance to support 
inmate, probationer and parolee participation in self-advocacy;

(5) monitor department compliance with 
applicable federal, state and local laws, rules, regulations 
and policies as related to the health, safety, welfare and 
rehabilitation of inmates, probationers and parolees;

(6) monitor and participate in legislative and 
policy development affecting correctional facilities;

(7) establish a statewide uniform reporting 
system to collect and analyze data related to complaints 
received by the corrections ombudsman regarding the department;

(8) establish procedures to receive, 
investigate and resolve complaints, including facilitating 
inmate, probationer, parolee and department employee 
confidential communication with the corrections ombudsman;

(9) establish procedures to gather stakeholder 
input into the corrections ombudsman's activities and 
priorities, which shall include at a minimum quarterly public 
meetings and the formation of an advisory committee;

(10) submit by September 30 of each year to 
the appropriate interim committees of the legislature and to .218141.6
the governor a report that includes at least the following:

(a) the budget and expenditures of the office;

(b) the number of complaints received and resolved by the corrections ombudsman;

(c) a description of significant systemic or individual investigations or outcomes achieved by the corrections ombudsman during the prior fiscal year;

(d) outstanding or unresolved concerns or recommendations of the corrections ombudsman; and

(e) input and comments from stakeholders and an advisory committee regarding the corrections ombudsman's activities during the prior fiscal year;

(11) audit the financial expenditures of the department;

(12) report to the appropriate law enforcement agency any activity that the corrections ombudsman believes may be criminal in nature;

(13) monitor employment levels at the department, including employee overtime and fatigue;

(14) monitor the enforcement of the Restricted Housing Act and its reporting requirements;

(15) monitor the training and certification of corrections officers;

(16) compile data regarding anything that
becomes a concern of the corrections ombudsman;

(17) work in conjunction with the office of
the state auditor and the staff of the legislative finance
committee in fulfilling the corrections ombudsman's
responsibilities pursuant to the Corrections Ombudsman Act;

(18) promulgate and comply with rules,
policies and procedures necessary to implement the Corrections
Ombudsman Act; and

(19) monitor adequate staffing and training,
appropriate classification procedures, pre-release preparation,
utilization of community corrections and equal protection of
female prisoners.

B. The corrections ombudsman shall eliminate
corruption, such as overuse of solitary confinement, overuse of
overtime, overuse of force, embezzlement of public funds or
property, sexual exploitation, theft of inmate property,
unlawful and unnecessary contracting, substandard medical care
and waste of taxpayer resources.

C. The corrections ombudsman shall initiate and
attempt to resolve an investigation upon the corrections
ombudsman's own initiative or upon receipt of a complaint from
an inmate, probationer or parolee, a family member of an
inmate, probationer or parolee, a representative of an inmate,
probationer or parolee, a department employee or others
regarding any of the following that may adversely affect the
health, safety, welfare and rights of inmates, probationers and parolees:

    (1) abuse or neglect by department employees, subcontractors or volunteers;
    (2) department decisions or administrative actions;
    (3) inactions or omissions by department employees, subcontractors or volunteers;
    (4) policies, rules or procedures of the department; and
    (5) alleged violations of law by the department.

D. The corrections ombudsman shall attempt to resolve an investigation upon receipt of a complaint from a department employee regarding any of the following:

    (1) abuse or neglect by department employees, subcontractors or volunteers;
    (2) department decisions or administrative actions;
    (3) inactions or omissions by department employees, subcontractors or volunteers;
    (4) policies, rules or procedures of the department; and
    (5) alleged violations of law by the department.
E. Prior to filing a complaint with the corrections ombudsman pursuant to Subsection D of this section, a department employee need not have pursued resolution of the complaint through internal grievance, administrative or appellate procedures or other administrative remedies within the department.

F. The corrections ombudsman may decline to investigate a complaint as provided by rules promulgated pursuant to the Corrections Ombudsman Act.

G. If the corrections ombudsman does not investigate a complaint, the corrections ombudsman shall notify the complainant of the decision not to investigate and the reasons for the decision.

H. The corrections ombudsman shall not investigate any complaint relating to an inmate's, probationer's or parolee's underlying criminal conviction or sentence.

I. The corrections ombudsman shall attempt to resolve any complaint at the lowest possible level.

J. The corrections ombudsman may refer complainants and others to appropriate resources, agencies or departments.

K. The corrections ombudsman shall not levy fees for the submission or investigation of complaints.

L. The corrections ombudsman shall remain neutral and impartial and shall not act as an advocate for the complainant or for the department.
M. At the conclusion of an investigation of a complaint, the corrections ombudsman shall render a public decision on the merits of each complaint, except that the documents supporting the decision are subject to the confidentiality provisions of the Inspection of Public Records Act. The corrections ombudsman shall communicate the decision to the inmate, probationer or parolee, if any, and to the department. The corrections ombudsman shall state the corrections ombudsman's recommendations and reasoning if, in the corrections ombudsman's opinion, the department should:

1. consider the matter further;
2. modify or cancel any action;
3. alter a rule, practice or ruling;
4. explain in detail the administrative action in question; or
5. rectify an omission.

N. If the corrections ombudsman so requests, the department shall within the time specified inform the corrections ombudsman about an action taken on the recommendations of the corrections ombudsman or the reasons for not complying with the recommendations.

O. If the corrections ombudsman believes, based on the investigation, that there has been or continues to be a significant inmate, probationer or parolee health, safety, welfare, corruption or rehabilitation issue, the corrections

.218141.6

- 10 -
ombudsman shall report the findings to the governor and the
appropriate interim committees of the legislature.

P. Before announcing a conclusion or recommendation
that expressly, or by implication, criticizes a person or the
department, the corrections ombudsman shall consult with that
person or the department. The corrections ombudsman may
request to be notified by the department, within a specified
time, of any action taken on any recommendation presented by
the corrections ombudsman. The corrections ombudsman shall
notify the inmate, probationer or parolee, if any, of the
actions taken by the department in response to the corrections
ombudsman's recommendations.

Q. The Corrections Ombudsman Act does not require
an inmate, probationer or parolee to file a complaint with the
corrections ombudsman in order to exhaust available
administrative remedies for purposes of the federal Prison

SECTION 7. [NEW MATERIAL] ACCESS TO FACILITIES--INMATES--
RECORDS.--

A. The corrections ombudsman shall be given
reasonable access to correctional facilities at all times
necessary to conduct a full investigation of an incident of
abuse or neglect. Such access includes the opportunity to
interview any inmate, department employee or other person,
including the person thought to be the victim of such abuse or
neglect, who might be reasonably believed by the facility or
the corrections ombudsman to have knowledge of the incident
under investigation. Such access shall be afforded, upon
request by the corrections ombudsman, when:

(1) an incident is reported or a complaint is
made to the office;

(2) the corrections ombudsman determines that
there is probable cause to believe an incident has or may have
occurred; or

(3) the corrections ombudsman determines that
there is or may be imminent danger of serious abuse or neglect
of an inmate.

B. The corrections ombudsman staff shall be given
reasonable access to department facilities, including all areas
that are used by inmates and all areas that are accessible to
inmates, and to programs for inmates at reasonable times, which
at a minimum must include normal working hours and visiting
hours. Such access is for the purpose of:

(1) providing information about individual
rights and the services available from the office, including
the name, address and telephone number of the office;

(2) monitoring compliance with respect to the
rights and safety of inmates; and

(3) inspecting, viewing, photographing and
video recording all areas of the facility that are used by
inmates or are accessible to inmates.

C. Access to inmates includes the opportunity to meet and communicate privately and confidentially with individuals regularly, both formally and informally, by telephone, mail and in person.

D. The corrections ombudsman shall have the right to access, inspect and copy all relevant information, records or documents in the possession or control of the department that the corrections ombudsman considers necessary in an investigation of a complaint filed pursuant to the Corrections Ombudsman Act, and the department shall assist the corrections ombudsman in obtaining the necessary releases for those documents that are specifically restricted or privileged for use by the corrections ombudsman.

E. Following notification from the corrections ombudsman with a written demand for access to agency records, the delegated department staff shall provide the corrections ombudsman with access to the requested documentation not later than twenty business days after the corrections ombudsman's written request for the records. When the records requested by the corrections ombudsman pertain to an inmate, probationer or parolee death, threats of bodily harm, including sexual or physical assaults, or the denial of necessary medical treatment, the records shall be provided within five days unless the corrections ombudsman consents to an extension of .218141.6
that time frame.

F. Upon notice and a request by the corrections ombudsman, a state or local government agency or entity that has records that are relevant to a complaint or an investigation conducted by the corrections ombudsman shall provide the corrections ombudsman with access to those records.

G. The corrections ombudsman shall work with the department to minimize disruption to the operations of the department due to the corrections ombudsman's activities and shall comply with the department's security clearance processes; provided that those processes do not impede the activities provided for in this section.

H. The department shall prominently display at every departmental facility at which inmates, probationers or parolees may be present information regarding the purpose and availability of the corrections ombudsman, and the department shall include such information in any inmate handbook.

I. The department shall give the office access to department personnel and documents as requested by the corrections ombudsman.

SECTION 8. [NEW MATERIAL] CIVIL IMMUNITY--RETAIATORY ACTIONS.--

A. A civil action shall not be brought against any employee of the office for good-faith performance of responsibilities pursuant to the Corrections Ombudsman Act.
B. Discriminatory, disciplinary and retaliatory actions shall not be taken against a department employee, subcontractor or volunteer, an inmate, probationer or parolee, a family member of an inmate, probationer or parolee or representative of an inmate, probationer or parolee for any communication made, or information given or disclosed, to aid the office in carrying out its responsibilities.

C. This section is not intended to infringe on the rights of an employer to supervise, discipline or terminate an employee for other reasons.

SECTION 9. APPROPRIATION.--Two hundred fifty thousand dollars ($250,000) is appropriated from the general fund to the legislative finance committee for expenditure in fiscal year 2022 for the office of the corrections ombudsman to implement the provisions of the Corrections Ombudsman Act. Any unexpended or unencumbered balance remaining at the end of fiscal year 2022 shall revert to the general fund.

SECTION 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2021.