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FISCAL IMPACT REPORT

SPONSOR <u>HJC</u>	LAST UPDATED <u>3/9/2023</u>
SHORT TITLE <u>Corrections Advisory Board Act</u>	ORIGINAL DATE <u>2/27/2023</u>
	BILL NUMBER <u>CS/House Bill 297/HJCS/aHAFC</u>
	ANALYST <u>Rabin</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Cost to DFA	No fiscal impact	\$200.0	\$200.0	\$400.0	Recurring	General Fund
Costs to NMCD	No fiscal impact	\$420.0	\$420.0	\$840.0	Recurring	General Fund
Total	No fiscal impact	\$620.0	\$620.0	\$1,240.0	Recurring	General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses to Substitute Bill and Amended Bill Received From
 Administrative Office of the Courts (AOC)
 Sentencing Commission (NMSC)

Responses to Introduced Bill Received From
 Corrections Department (NMCD)

No Response Received From
 Department of Finance and Administration (DFA)

SUMMARY

Synopsis of HAFC Amendment to the HJC Substitute for House Bill 297

The House Appropriations and Finance Committee amendment to the House Judiciary Committee substitute for House Bill 297 strikes the bill’s \$200 thousand appropriation.

Synopsis of HJC Substitute for House Bill 297

The House Judiciary Committee substitute for House Bill 297 enacts the Corrections Advisory Board Act (hereafter, “the act”), which creates the Corrections Advisory Board (CAB). The board is tasked with evaluating compliance with relevant statutes, rules, policies, and procedures pertaining to the Corrections Department (NMCD) and with hiring and overseeing the

Corrections Ombudsperson. The board must also provide a yearly report to the Legislature, including recommendations of specific administrative and statutory changes.

CAB comprises 11 members, who are determined as follows:

- Four members appointed by the Legislative Council, including two formerly incarcerated individuals, one medical professional, and one behavioral health professional;
- One member appointed by the Sentencing Commission (NMSC) who is a staff member or commission member focused on correctional research and policy;
- Two members appointed by the governor, including one formerly incarcerated individual and one former corrections administrator at least two years removed from that position;
- One member appointed by the Administrative Office of the Courts (AOC) who is an individual who has been impacted by a crime;
- One member appointed by the Public Defender Department (PDD) who is a staff member of that department; and
- Two members appointed by the labor union representing the largest number of security staff employed by NMCD, at least one of whom has corrections security experience and is at least two years removed from that position.

The bill further specifies terms of the appointments and requires the appointing authorities coordinate to ensure geographic, gender, sexual orientation, ethnic, and racial diversity among the appointed members. Neither board members nor the Corrections Ombudsperson may be:

- A person with a family member currently under NMCD supervision;
- A current NMCD employee or contractor;
- A person with a family member currently employed or contracted by NMCD; or
- A person or a family member of a person directly impacted by a crime committed by someone currently under NMCD supervision.

The bill requires the Corrections Ombudsperson to maintain a website outlining the duties of the board and ombudsperson, establish procedures for complaints, report criminal activity to law enforcements, and investigate complaints at the ombudsperson's discretion. The bill requires NMCD to set up free and confidential telephone and mail communications between inmates and the ombudsperson and to give the ombudsperson reasonable access to correctional facilities, individuals, and records for conducting investigations.

HB297 requires the ombudsperson to report findings and recommendations to the board and the secretary or secretary's designee, if, based on the findings of the investigation, it is found there is or continues to be an imminent threat to inmate, probationer, parolee, or employee health, safety, or welfare. In other circumstances, the ombudsperson is required only to communicate the findings to the complainant and share them with NMCD only if requested or consented to by the complainant or if the ombudsperson removes all identifying information. The bill prohibits any retaliation for submission of a complaint or participation in the investigation of a complaint.

HB297 further provides for civil immunity for an employee of CAB for good-faith performance of responsibilities pursuant to the act and prohibits any discriminatory, disciplinary, or retaliatory actions from being taken against NMCD employees, contractors, volunteers, or individuals under NMCD control for any communication made, or information given or disclosed, to aid the

ombudsperson in carrying out the ombudsperson’s responsibilities.

The bill amends relevant statutes related to the adoption of rules to align with this bill and to remove exceptions for inmates of correctional facilities from the definition of “rule.”

HB297 appropriates \$200 thousand from the general fund to DFA for the purpose of implementing the provisions of the act.

The effective date of this bill is July 1, 2023.

FISCAL IMPLICATIONS

The HAFC amendment removed a \$200 thousand nonrecurring appropriation from the general fund for FY24. It is assumed DFA will still incur these costs, which are now reflected as an additional operating budget impact for FY24. Because the board will continue to exist and operate after FY24, DFA will continue implementing the provisions of the act and will require recurring funding. These ongoing costs are noted as additional operating budget impacts in FY25 and future fiscal years.

In its analysis of the introduced bill, NMCD stated it would require additional staff to comply with the requirements of the bill, estimating a need for 6 FTE at a cost of \$420 thousand annually. The substitute does not appear to make changes that would substantively alter this, but NMCD had not submitted analysis of the substitute at the time of this writing.

SIGNIFICANT ISSUES

An independent oversight body would provide an additional resource to monitor NMCD’s performance, review the efficacy of its programming, and help ensure institutional accountability. However, HB297 does not impose any consequences upon NMCD for failure to comply with its requirements.

NMCD indicates a number of states have had the equivalent of a corrections ombudsman going back to the 1970s, and creation of such a position has been recommended by advocates and scholars for decades. NMCD notes Washington recently passed a law creating an ombudsman position, and New Jersey passed a law to expand powers of the ombudsman to include facility inspection and confidential interviews with inmates. The National Conference of State Legislatures (NCSL) finds that similar ombudsman offices have also recently been established in Alaska and Michigan.

NMCD expresses numerous concerns regarding the introduced bill, some of which appear to be addressed in the substitute, but the agency had not submitted analysis of the substitute at the time of this writing. The following concerns may still apply to the substitute bill:

- The bill impedes executive authority by creating an oversight body with only two executive appointments for an executive agency;
- The bill interferes with existing collective bargaining agreements;
- The bill disregards the discovery process for litigation;
- The bill does not specify qualifications for board members, the ombudsperson, or their

staff or volunteers;

- The bill does not require the board, ombudsperson, or their staff to inform NMCD of complaints, concerns, or recommendations unless directed to do so by the complainant, which the agency contends does not comply with existing best practices; and
- The work of the ombudsperson and their staff and volunteers may cause disruption in services and agency functions.

TECHNICAL ISSUES

AOC writes:

It appears that as the ombudsman is to report findings and recommendations to the department or to the board and the secretary of secretary's designee, if, based on the findings of the investigation, it is found that there is or continues to be an imminent threat to inmate, probationer, parolee or employee health, safety or welfare, and not authorized to penalize or to take final administrative action, that no appeal will issue from the findings and recommendations of the ombudsperson, pursuant to Section 39-3-1.1 NMSA 1978 or otherwise.

ALTERNATIVES

According to a report from NCSL to the Criminal Justice Reform Subcommittee of the legislative Courts, Corrections and Justice Committee in 2020, several states use models other than an ombudsperson to provide corrections oversight, including legislative committees with inspection responsibilities, general government auditing bodies, governmental agencies or commissions, inspectors general, advocacy groups with formal rights of access, citizens' boards or advisory committees, and protection and advocacy organizations focused on prison issues. According to a 2010 article in the Pace Law Review,¹ ombudspersons' offices and general government auditing bodies were the most common models of formal, external prison oversight used by states, while governmental agencies or commissions and legislative committees with inspection responsibilities were significantly less common.

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¹ <https://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1764&context=plr>