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HOUSE BILL

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO CORRECTIONS; ENACTING THE CORRECTIONS OMBUDSMAN
ACT.

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
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1 Corrections Ombudsman Act:

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

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

10 C. "department" means the corrections department;

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

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

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

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

25 H. "probationer" means a person who has been

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1 convicted of a crime and who has been released on probation
2 pursuant to the Probation and Parole Act; and

3 I. "secretary" means the secretary of corrections.

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

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

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

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

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

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

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

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

24 A. The New Mexico legislative council shall appoint
25 a corrections ombudsman, who shall be a person of recognized

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1 judgment, independence, objectivity and integrity. Prior to
2 the appointment, the New Mexico legislative council shall
3 consult with and may receive recommendations from appropriate
4 committees of the legislature and other relevant stakeholders
5 regarding the appointment of the corrections ombudsman.

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

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

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

19 A. The corrections ombudsman shall:

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

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

25 (3) provide information, as appropriate, to

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1 inmates, probationers and parolees, family members of inmates,
2 probationers and parolees, representatives of inmates,
3 probationers and parolees, department employees and others
4 regarding rights of inmates, probationers and parolees;

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

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

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

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

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

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

24 (10) submit by September 30 of each year to
25 the appropriate interim committees of the legislature and to

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1 the governor a report that includes at least the following:

2 (a) the budget and expenditures of the
3 office;

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

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

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

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

14 (11) audit the financial expenditures of the
15 department;

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

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

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

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

25 (16) compile data regarding anything that

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1 becomes a concern of the corrections ombudsman;

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

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

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

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

19 C. The corrections ombudsman shall initiate and
20 attempt to resolve an investigation upon the corrections
21 ombudsman's own initiative or upon receipt of a complaint from
22 an inmate, probationer or parolee, a family member of an
23 inmate, probationer or parolee, a representative of an inmate,
24 probationer or parolee, a department employee or others
25 regarding any of the following that may adversely affect the

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1 health, safety, welfare and rights of inmates, probationers and
2 parolees:

3 (1) abuse or neglect by department employees,
4 subcontractors or volunteers;

5 (2) department decisions or administrative
6 actions;

7 (3) inactions or omissions by department
8 employees, subcontractors or volunteers;

9 (4) policies, rules or procedures of the
10 department; and

11 (5) alleged violations of law by the
12 department.

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

16 (1) abuse or neglect by department employees,
17 subcontractors or volunteers;

18 (2) department decisions or administrative
19 actions;

20 (3) inactions or omissions by department
21 employees, subcontractors or volunteers;

22 (4) policies, rules or procedures of the
23 department; and

24 (5) alleged violations of law by the
25 department.

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1 E. Prior to filing a complaint with the corrections
2 ombudsman pursuant to Subsection D of this section, a
3 department employee need not have pursued resolution of the
4 complaint through internal grievance, administrative or
5 appellate procedures or other administrative remedies within
6 the department.

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

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

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

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

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

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

23 L. The corrections ombudsman shall remain neutral
24 and impartial and shall not act as an advocate for the
25 complainant or for the department.

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1 M. At the conclusion of an investigation of a
2 complaint, the corrections ombudsman shall render a public
3 decision on the merits of each complaint, except that the
4 documents supporting the decision are subject to the
5 confidentiality provisions of the Inspection of Public Records
6 Act. The corrections ombudsman shall communicate the decision
7 to the inmate, probationer or parolee, if any, and to the
8 department. The corrections ombudsman shall state the
9 corrections ombudsman's recommendations and reasoning if, in
10 the corrections ombudsman's opinion, the department should:

- 11 (1) consider the matter further;
- 12 (2) modify or cancel any action;
- 13 (3) alter a rule, practice or ruling;
- 14 (4) explain in detail the administrative
15 action in question; or
- 16 (5) rectify an omission.

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

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

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1 ombudsman shall report the findings to the governor and the
2 appropriate interim committees of the legislature.

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

13 Q. The Corrections Ombudsman Act does not require
14 an inmate, probationer or parolee to file a complaint with the
15 corrections ombudsman in order to exhaust available
16 administrative remedies for purposes of the federal Prison
17 Litigation Reform Act of 1995.

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

20 A. The corrections ombudsman shall be given
21 reasonable access to correctional facilities at all times
22 necessary to conduct a full investigation of an incident of
23 abuse or neglect. Such access includes the opportunity to
24 interview any inmate, department employee or other person,
25 including the person thought to be the victim of such abuse or

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1 neglect, who might be reasonably believed by the facility or
2 the corrections ombudsman to have knowledge of the incident
3 under investigation. Such access shall be afforded, upon
4 request by the corrections ombudsman, when:

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

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

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

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

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

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

24 (3) inspecting, viewing, photographing and
25 video recording all areas of the facility that are used by

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1 inmates or are accessible to inmates.

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

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

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

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1 that time frame.

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

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

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

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

21 SECTION 8. [NEW MATERIAL] CIVIL IMMUNITY--RETALIATORY
22 ACTIONS.--

23 A. A civil action shall not be brought against any
24 employee of the office for good-faith performance of
25 responsibilities pursuant to the Corrections Ombudsman Act.

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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. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2022.