

HOUSE BILL 191

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

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This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO CORRECTIONS; ENACTING THE CORRECTIONS OMBUDSMAN ACT

HAFC →; ~~MAKING AN APPROPRIATION~~ ← HAFC .

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

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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

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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.

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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.--

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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

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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 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;

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(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.

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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

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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.

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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

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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 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 Litigation Reform Act of 1995.

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

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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:

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(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

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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 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

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department personnel and documents as requested by the corrections ombudsman.

SECTION 8. [NEW MATERIAL] CIVIL IMMUNITY--RETALIATORY 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.

HAFC → ~~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.~~ ← HAFC

SECTION 10. EFFECTIVE DATE.--The effective date of the

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provisions of this act is July 1, 2021.

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