

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 297

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

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 ADVISORY BOARD ACT; REQUIRING THE PUBLIC POSTING OF PROPOSED RULE CHANGES HAFC→; ~~MAKING AN APPROPRIATION~~←HAFC .

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 7 of this act may be cited as the "Corrections Advisory Board Act".

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SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Corrections Advisory Board 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. "board" means the corrections advisory board;

C. "corrections ombudsperson" means the corrections ombudsperson and staff of the corrections ombudsperson;

D. "department" means the corrections department, including any entity contracted to perform the duties of the corrections department;

E. "family member" means a spouse, former spouse, parent, present or former stepparent, present or former parent-in-law, child, stepchild, sibling, stepsibling, grandparent, grandparent-in-law, co-parent of a child or person with whom a person has a continuing personal, dating or intimate relationship;

F. "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, municipality, county or state or the federal government;

G. "neglect" means a negligent act or omission by a

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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;

H. "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;

I. "probationer" means a person who has been convicted of a crime or received a conditional discharge or deferred sentence and who has been released on probation pursuant to the Probation and Parole Act; and

J. "secretary" means the secretary of corrections.

SECTION 3. [NEW MATERIAL] CORRECTIONS ADVISORY BOARD CREATED--CORRECTIONS OMBUDSPERSON.--

A. The "corrections advisory board" is created and shall have the following responsibilities:

- (1) evaluating compliance with relevant statutes, rules, policies and procedures pertaining to the department;
- (2) objectively reviewing the efficacy of operational services and rehabilitative programming within the department;
- (3) identifying systemic issues and isolated incidents within the department that have or may lead to neglect or abuse of an inmate, probationer or parolee;
- (4) identifying systemic issues and isolated

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incidents within the department that impact the health, safety, well-being and working conditions of department employees and persons contracted to perform duties for the department; and

(5) hiring and overseeing the corrections ombudsperson.

B. The corrections ombudsperson shall report directly to the board and shall exercise the powers and duties of the corrections ombudsperson independently of the secretary.

SECTION 4. [NEW MATERIAL] CORRECTIONS ADVISORY BOARD-- APPOINTMENT--CORRECTIONS OMBUDSPERSON DUTIES--PROVIDING RECOMMENDATIONS--REPORTING REQUIRED.--

A. The board shall consist of eleven members who each serve staggered four-year terms and shall be appointed as follows:

(1) the New Mexico legislative council shall appoint four members, of which two shall be formerly incarcerated persons no longer under supervision, one shall be a medical professional who has served in a corrections setting and one shall be a behavioral health professional who has served in a corrections setting. The majority party and minority party of the New Mexico legislative council shall each appoint two of the members;

(2) the New Mexico sentencing commission shall appoint one member who is a staff member or member of the New Mexico sentencing commission focused on correctional research

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and policy;

(3) the governor shall appoint two members, of which one shall be a formerly incarcerated person and one shall be a former corrections administrator who is at least two years removed from the correctional administrator position;

(4) the administrative office of the courts shall appoint one member who shall be an individual who has been impacted by a crime; provided that the person or persons convicted of said crime are not under the supervision of the department;

(5) the public defender department shall appoint one member who is a staff member of the public defender department; and

(6) the labor union representing the largest number of security staff of the department shall appoint two members, at least one of whom shall have corrections security experience and is at least two years removed from the position.

B. The appointing authorities shall consider geographic, gender, sexual orientation, ethnic and racial diversity among the appointed members. Members appointed to the board shall not include:

(1) a person with a family member who is currently under the supervision of the department;

(2) a current employee or contractor of the department;

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(3) a person with a family member who is a current employee or contractor of the department; or

(4) a person or a family member of a person directly impacted by a crime committed by someone currently under the supervision of the department.

C. Members shall serve for no more than two terms after the effective date of this 2023 act. A partial term shall be counted as one full term.

D. When a member dies, resigns or no longer meets the qualifications required for the member's original selection, that position on the board becomes vacant. The original appointing authority for the vacant position shall appoint a successor for the remainder of the term in the same manner as the original selection for that position was made.

E. A member shall not be removed except for incompetence, neglect of duty or malfeasance in office; provided, however, that no removal shall be made without notice of hearing and an opportunity to be heard having first been given to the member, and a removal shall be made only upon a majority vote of the board.

F. The board shall elect a chair and may elect officers as it deems necessary to carry out its duties.

G. A majority of appointed members constitutes a quorum for the transaction of business. The vote of a majority of appointed members is required for adoption of any action by

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the board.

H. The board shall hire a corrections ombudsperson for a term of six years through a competitive selection process. The board may terminate the corrections ombudsperson for cause. The corrections ombudsperson shall employ subject matter experts and other employees to fulfill the duties of the Corrections Advisory Board Act. The corrections ombudsperson and staff shall not be:

- (1) a person with a family member who is currently under the supervision of the department;
- (2) a current employee or contractor of the department;
- (3) a person with a family member who is a current employee or contractor of the department; or
- (4) a person or a family member of a person directly impacted by a crime committed by someone currently under the supervision of the department.

I. The board shall meet monthly to conduct its duties.

J. The board shall publish an annual report of its key findings to be delivered to the governor, the New Mexico legislative council, the other appointing authorities of the board and the appropriate legislative interim committees responsible for conducting hearings related to courts, corrections and justice by November 15 of each year. The

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report shall include the following:

- (1) the budget and expenditures of the board;
- (2) the number and types of complaints received by the corrections ombudsperson; and
- (3) recommendations of specific administrative and statutory changes, if any.

K. Members of the board are entitled to compensation pursuant to the provisions of the Per Diem and Mileage Act and shall receive no other perquisite, compensation or allowance.

L. All members shall be subject to the Gift Act and the Governmental Conduct Act.

SECTION 5. [NEW MATERIAL] DUTIES--INVESTIGATIONS--COMPLAINTS.--

A. The corrections ombudsperson shall:

- (1) maintain a website outlining the duties of the board and the corrections ombudsperson;
- (2) establish procedures to receive and investigate complaints, including facilitating inmate, probationer, parolee and department employee confidential communication with the corrections ombudsperson; and
- (3) report to the appropriate law enforcement agency any activity that may be criminal in nature.

B. Prior to filing a complaint with the corrections ombudsperson pursuant to this section, an individual under the

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supervision of the department or 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.

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

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

E. The corrections ombudsperson shall not levy fees for the submission or investigation of complaints.

F. The corrections ombudsperson shall remain neutral and impartial and shall not act as an advocate for the complainant or for the department.

G. At the conclusion of an investigation of a complaint, the corrections ombudsperson shall document the findings on the merits of each complaint. The corrections ombudsperson shall communicate the findings, if any, to the complainant. Upon request or affirmative written consent by the complainant, the corrections ombudsperson shall share with the department the investigation's findings and related recommendations, if any. If written consent is not given, the

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corrections ombudsperson shall share with the department a summary of the findings of the investigation with all identifying information redacted.

H. 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, the corrections ombudsperson shall report the findings to the board and the secretary or secretary's designee.

I. The provisions of the Corrections Advisory Board Act function independently of any grievance process or administrative remedies required by the department.

J. There shall be no retaliatory action taken for submission of a complaint or participation in investigation of a complaint. Evidence of such retaliatory action shall be immediately submitted to the secretary.

SECTION 6. [NEW MATERIAL] ACCESS TO CORRECTIONS

OMBUDSPERSON--ACCESS TO FACILITIES--INMATES--RECORDS.--

A. The department shall establish mechanisms to provide for free and confidential telephone and mail communications between inmates and the corrections ombudsperson.

B. The corrections ombudsperson shall be given reasonable access to correctional facilities whenever necessary to conduct a full investigation. Such access includes the opportunity to interview any individual under the supervision

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of the department, department employees and persons contracted to perform duties of the department. Such access shall be afforded, upon request by the corrections ombudsperson, when:

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

(2) the corrections ombudsperson determines that an investigation is warranted based on media reports or other information.

C. The corrections ombudsperson shall be given access to department facilities, including all areas that are accessible to people under the supervision of the department, department employees and persons contracted to perform duties of the department. Access includes inspecting, viewing, photographing, video recording and reviewing video footage and recordings from facility cameras, as needed.

D. The corrections ombudsperson shall have the right to access, inspect and copy all information, records or documents in the possession or control of the department that the corrections ombudsperson considers necessary in an investigation pursuant to the Corrections Advisory Board Act. The corrections ombudsperson shall only access restricted, privileged or protected records after obtaining necessary written releases from an individual under the supervision of the department.

E. Following written notification from the

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corrections ombudsperson for access to agency records and receipt of necessary written releases for protected information, the department shall provide the corrections ombudsperson with access to the requested documentation no later than fifteen business days after the written request for the records. When the records requested by the corrections ombudsperson pertain to an inmate, probationer, parolee or staff member 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 information requested is part of an ongoing criminal investigation or the corrections ombudsperson consents to an extension of that time frame.

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

G. The corrections ombudsperson shall work with the department to minimize disruption to the operations of the department related to the corrections ombudsperson's investigation and activities and shall comply with the department's security processes; provided that those processes do not impede the activities provided for in the Corrections

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Advisory Board Act.

H. The department shall prominently display at every departmental facility at which inmates, probationers or parolees may be present information regarding the purpose of and contact information for the corrections advisory board and corrections ombudsperson, and the department shall include such information in all inmate and employee handbooks.

SECTION 7. [NEW MATERIAL] CIVIL IMMUNITY--RETALIATORY ACTIONS.--

A. A civil action shall not be brought against any employee of the board for good-faith performance of responsibilities pursuant to the Corrections Advisory Board 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 corrections ombudsperson in carrying out the correction ombudsperson's responsibilities.

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

SECTION 8. Section 12-8-2 NMSA 1978 (being Laws 1969,

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Chapter 252, Section 2) is amended to read:

"12-8-2. DEFINITIONS.--As used in the Administrative Procedures Act:

A. "agency" means any state board, commission, department or officer that is authorized by law to make rules, conduct adjudicatory proceedings, make determinations, grant licenses, impose sanctions, grant or withhold relief or perform other actions or duties delegated by law and ~~[which]~~ that is specifically placed by law under the Administrative Procedures Act;

B. "adjudicatory proceeding" means a proceeding before an agency, including but not limited to ratemaking and licensing, in which legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for a trial-type hearing; but does not include a mere rulemaking proceeding as provided in Section ~~[3 of the Administrative Procedures Act]~~ 12-8-3 NMSA 1978. It also includes the formation and issuance of any order, the imposition or withholding of any sanction and the granting or withholding of any relief, as well as any of the foregoing types of determinations or actions wherein no procedure or hearing provision has been otherwise provided for or required by law;

C. "license" includes the whole or part of any agency permit, certificate, approval, registration, charter,

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membership, statutory exemption or other form of permission required by law;

D. "licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, amendment, limiting, modifying or conditioning of a license;

E. "party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, whether for general or limited purposes;

F. "person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than an agency;

G. "rule" includes the whole or any part of every regulation, standard, statement or other requirement of general or particular application adopted by an agency to implement, interpret or prescribe law or policy enforced or administered by an agency, if the adoption or issuance of such rules is specifically authorized by the law giving the agency jurisdiction over such matters. It also includes any statement of procedure or practice requirements specifically authorized by the Administrative Procedures Act or other law, but it does not include:

(1) advisory rulings issued under Section [9 of the Administrative Procedures Act] 12-8-9 NMSA 1978;

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(2) regulations concerning only the internal management or discipline of the adopting agency or any other agency and not affecting the rights of, or the procedures available to, the public or any person except an agency's members, officers or employees in their capacity as such member, officer or employee;

(3) regulations concerning only the management, confinement, discipline or release of inmates of state ~~[penal, correctional]~~ public health or mental institutions;

(4) regulations relating to the use of highways or streets when the substance of the regulations is indicated to the public by means of signs or signals; or

(5) decisions issued or actions taken or denied in adjudicatory proceedings;

H. "rulemaking" means any agency process for the formation, amendment or repeal of a rule;

I. "order" means the whole or any part of the final or interim disposition, whether affirmative, negative, injunctive or declaratory in form, by an agency in any matter other than rulemaking but including licensing;

J. "sanction" includes the whole or part of any agency:

(1) prohibition, requirement, limitation or other condition affecting the freedom of any person or ~~[his]~~

the person's property;

- (2) withholding of relief;
- (3) imposition of any form of penalty;
- (4) destruction, taking, seizure or

withholding of property;

(5) assessment of damages, reimbursement, restitution, compensation, taxation, costs, charges or fees;

(6) requirement, revocation, amendment, limitation or suspension of a license; or

(7) taking or withholding of other compulsory, restrictive or discretionary action;

K. "relief" includes the whole or part of any agency:

(1) grant of money, assistance, license, authority, exemption, exception, privilege or remedy;

(2) recognition of any claim, right, interest, immunity, privilege, exemption or exception; or

(3) taking of any other action upon the application or petition of, and beneficial to, any person;

L. "agency proceedings" means any agency process in connection with rulemaking, orders, adjudication, licensing, imposition or withholding of sanctions or the granting or withholding of relief; and

M. "agency action" includes the whole or part of every agency rule, order, license, sanction or relief, or the

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equivalent or denial thereof, or failure to act."

SECTION 9. Section 14-4-2 NMSA 1978 (being Laws 1967, Chapter 275, Section 2, as amended) is amended to read:

"14-4-2. DEFINITIONS.--As used in the State Rules Act:

A. "agency" means any agency, board, commission, department, institution or officer of the state government except the judicial and legislative branches of the state government;

B. "person" includes individuals, associations, partnerships, companies, business trusts, political subdivisions and corporations;

C. "proceeding" means a formal agency process or procedure that is commenced or conducted pursuant to the State Rules Act;

D. "proposed rule" means a rule that is provided to the public by an agency for review and public comment prior to its adoption, amendment or repeal, and for which there is specific legal authority authorizing the proposed rule;

E. "provide to the public" means for an agency to distribute rulemaking information by:

- (1) posting it on the agency website, if any;
- (2) posting it on the sunshine portal;
- (3) making it available in the agency's district, field and regional offices, if any;
- (4) sending it by electronic mail to persons

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who have made a written request for notice from the agency of announcements addressing the subject of the rulemaking proceeding and who have provided an electronic mail address to the agency;

(5) sending it by electronic mail to persons who have participated in the rulemaking and who have provided an electronic mail address to the agency;

(6) sending written notice that includes, at a minimum, an internet and street address where the information may be found to persons who provide a postal address; and

(7) providing it to the New Mexico legislative council for distribution to appropriate interim and standing legislative committees;

F. "rule" means any rule, regulation or standard, including those that explicitly or implicitly implement or interpret a federal or state legal mandate or other applicable law and amendments thereto or repeals and renewals thereof, issued or promulgated by any agency and purporting to affect one or more agencies besides the agency issuing the rule or to affect persons not members or employees of the issuing agency, including affecting persons served by the agency. An order or decision or other document issued or promulgated in connection with the disposition of any case or agency decision upon a particular matter as applied to a specific set of facts shall not be deemed such a rule, nor shall it constitute specific

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adoption thereof by the agency. "Rule" does not include rules relating to the management, confinement, discipline or release of ~~[inmates of]~~ any ~~[penal or]~~ individuals housed at any charitable institution ~~[the New Mexico boys' school, the girls' welfare home]~~ or any hospital; rules made relating to the management of any particular educational institution, whether elementary or otherwise; or rules made relating to admissions, discipline, supervision, expulsion or graduation of students from any educational institution; and

G. "rulemaking" means the process for adoption of a new rule or the amendment, readoption or repeal of an existing rule."

SECTION 10. Section 33-2-1 NMSA 1978 (being Laws 1955, Chapter 149, Section 1, as amended) is amended to read:

"33-2-1. ADOPTION OF RULES.--

A. The corrections ~~[division]~~ department shall adopt such rules concerning all ~~[prisoners committed to the penitentiary]~~ inmates, probationers and parolees under the supervision of the corrections department as shall best accomplish their confinement and rehabilitation.

B. Before adoption of such rules, the corrections department shall:

(1) provide forty-five days for public comment. The department shall provide a reminder notice at fifteen days from first notice;

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(2) provide written notification of any proposed rule change to individuals under the department's supervision, including instructions on providing public comment. Each department facility, including probation and parole offices, shall post in a conspicuous manner information regarding the proposed rule change, including instructions on providing public comment; and

(3) publish public comments on the department's website and retained in accordance with Section 14-16-12 NMSA 1978."

SECTION 11. TEMPORARY PROVISION--INITIAL

APPOINTMENTS.--Terms for the initial appointments to the corrections advisory board on the effective date of this act shall be as follows:

A. the New Mexico legislative council's first appointments shall be made of two board members for two-year terms and two board members for four-year terms;

B. the New Mexico sentencing commission's first appointment shall be for a four-year term;

C. the governor's first appointments shall be made of one board member for a two-year term and one board member for a four-year term;

D. the administrative office of the court's first appointment shall be made of one board member for a two-year term;

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E. the public defender department's first appointment shall be for a four-year term; and

F. the labor union's first appointments shall be made of one board member for a two-year term and one board member for a four-year term.

~~HAFC→SECTION 12. APPROPRIATION.--Two hundred thousand dollars (\$200,000) is appropriated from the general fund to the department of finance and administration for expenditure in fiscal year 2024 to establish and implement the provisions of the Corrections Advisory Board Act. Any unexpended or unencumbered balance remaining at the end of fiscal year 2024 shall revert to the general fund.~~←HAFC

SECTION HAFC→13.←HAFC HAFC→12.←HAFC EFFECTIVE DATE.--
The effective date of the provisions of this act is July 1, 2023.

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