

HOUSE BILL 297

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

INTRODUCED BY

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AN ACT

RELATING TO CORRECTIONS; ENACTING THE CORRECTIONS ADVISORY BOARD ACT; REQUIRING THE PUBLIC POSTING OF PROPOSED RULE CHANGES; MAKING AN APPROPRIATION.

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".

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;

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- 1 B. "board" means the corrections advisory board;
- 2 C. "corrections ombudsperson" means the corrections
- 3 ombudsperson, staff of the corrections ombudsperson and
- 4 volunteers;
- 5 D. "department" means the corrections department;
- 6 E. "inmate" means an individual committed to the
- 7 physical custody of the department, including individuals
- 8 residing in a correctional institution or facility and
- 9 individuals received from another state agency, municipality,
- 10 county or state or the federal government;
- 11 F. "neglect" means a negligent act or omission by a
- 12 department employee, subcontractor of the department or
- 13 volunteer with the department that caused or may have caused
- 14 harm, injury or death to an inmate, probationer or parolee;
- 15 G. "parolee" means a person who has been convicted
- 16 of a crime and who has been released on parole pursuant to the
- 17 Probation and Parole Act;
- 18 H. "probationer" means a person who has been
- 19 convicted of a crime and who has been released on probation
- 20 pursuant to the Probation and Parole Act; and
- 21 I. "secretary" means the secretary of corrections.

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

24 A. The "corrections advisory board" is created
25 within the department of finance and administration for the
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1 purposes of:

2 (1) evaluating compliance with relevant
3 statutes, rules, policies and procedures pertaining to the
4 department;

5 (2) objectively reviewing the efficacy of
6 operational services and rehabilitative programming within the
7 department;

8 (3) identifying systemic issues and isolated
9 incidents within the department that have or may lead to
10 neglect or abuse of an inmate, probationer or parolee;

11 (4) identifying systemic issues and isolated
12 incidents within the department that impact the health, safety,
13 well-being and working conditions of department employees and
14 persons contracted to perform duties for the department; and

15 (5) hiring and overseeing the corrections
16 ombudsperson.

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

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

23 A. The board consists of eleven members to serve
24 staggered four-year terms and shall be appointed as follows:

25 (1) the New Mexico legislative council shall

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1 appoint four members;

2 (2) the New Mexico sentencing commission shall
3 appoint one member;

4 (3) the governor shall appoint two members;

5 (4) the administrative office of the courts
6 shall appoint two members; and

7 (5) the labor union representing the largest
8 number of security staff of the department shall appoint two
9 members.

10 B. The appointing authorities shall coordinate to
11 ensure geographic, gender, sexual orientation, ethnic and
12 racial diversity among the appointed members; provided that the
13 New Mexico legislative council's first appointments shall be
14 made of two board members for two-year terms and two board
15 members for four-year terms, the New Mexico sentencing
16 commission's first appointment shall be for a four-year term;
17 the governor's first appointments shall be made of one board
18 member for a two-year term and one board member for a four-year
19 term, the administrative office of the court's first
20 appointments shall be made of one board member for a two-year
21 term and one board member for a four-year term and the labor
22 union's first appointments shall be made of one board member
23 for a two-year term and one board member for a four-year term.
24 The appointments shall include:

25 (1) four members who are formerly incarcerated

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1 individuals who have served a sentence in a municipal, county,
2 state or federal institution; and

3 (2) four distinct and separate members who are
4 various stakeholders, including civil rights advocates,
5 justice-impacted people, behavioral health specialists and
6 medical providers.

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

9 D. A majority of appointed members constitutes a
10 quorum for the transaction of business. The vote of a majority
11 of appointed members is required for adoption of any action by
12 the board.

13 E. The board shall hire a corrections ombudsperson
14 for a term of six years through a competitive selection
15 process. The board may terminate the corrections ombudsperson
16 for cause. The corrections ombudsperson shall employ subject
17 matter experts and other employees to fulfill the duties of the
18 Corrections Advisory Board Act.

19 F. The board shall meet monthly to conduct its
20 duties.

21 G. The board shall publish a yearly report of its
22 key findings to be delivered to the governor, the New Mexico
23 legislative council and the appropriate legislative interim
24 committees responsible for conducting hearings related to
25 courts, corrections and justice by November 15 of each year.

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1 The report shall include the following:

2 (1) the budget and expenditures of the board;

3 (2) the number and types of complaints

4 received by the corrections ombudsperson; and

5 (3) recommendations of specific administrative

6 and statutory changes, if any.

7 H. Members of the board are entitled to

8 compensation pursuant to the provisions of the Per Diem and

9 Mileage Act and shall receive no other perquisite, compensation

10 or allowance.

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

12 COMPLAINTS.--

13 A. The corrections ombudsperson shall:

14 (1) maintain a website outlining the duties of
15 the board and the corrections ombudsperson;

16 (2) establish procedures to receive and

17 investigate complaints, including facilitating inmate,

18 probationer, parolee and department employee confidential

19 communication with the corrections ombudsperson; and

20 (3) report to the appropriate law enforcement

21 agency any activity that may be criminal in nature.

22 B. Prior to filing a complaint with the corrections

23 ombudsperson pursuant to this section, an individual under the

24 supervision of the department or a department employee need not

25 have pursued resolution of the complaint through internal

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1 grievance, administrative or appellate procedures or other
2 administrative remedies within the department.

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

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

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

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

16 G. At the conclusion of an investigation of a
17 complaint, the corrections ombudsperson shall document the
18 findings on the merits of each complaint. The corrections
19 ombudsperson shall communicate the findings, if any, to the
20 complainant. Upon request or affirmative consent by the
21 complainant, the corrections ombudsperson shall share with the
22 department the investigation's findings and related
23 recommendations, if any.

24 H. If, based on the findings of the investigation,
25 it is found that there is or continues to be an imminent threat

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1 to inmate, probationer, parolee or employee health, safety or
2 welfare, the corrections ombudsperson shall report the findings
3 to the board and the secretary or secretary's designee.

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

7 SECTION 6. [NEW MATERIAL] ACCESS TO CORRECTIONS
8 OMBUDSPERSON--ACCESS TO FACILITIES--INMATES--RECORDS.--

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

13 B. The corrections ombudsperson shall be given
14 reasonable access to correctional facilities whenever necessary
15 to conduct a full investigation. Such access includes the
16 opportunity to interview any individual under the supervision
17 of the department. Such access shall be afforded, upon request
18 by the corrections ombudsperson, when:

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

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

24 C. The corrections ombudsperson shall be given
25 access to department facilities, including all areas that are

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1 used by people under the supervision of the department and all
2 areas that are accessible to inmates. Such access is for the
3 purpose of inspecting, viewing, photographing and video
4 recording all areas of the facility that are used by inmates or
5 are accessible to inmates.

6 D. Access to individuals under the supervision of
7 the department includes the opportunity to meet and communicate
8 privately and confidentially with individuals regularly, both
9 formally and informally, by telephone, mail and in person.

10 E. The corrections ombudsperson shall have the
11 right to access, inspect and copy all information, records or
12 documents in the possession or control of the department that
13 the corrections ombudsperson considers necessary in an
14 investigation pursuant to the Corrections Advisory Board Act.
15 The department shall assist the corrections ombudsperson in
16 obtaining the necessary releases for those documents that are
17 specifically restricted or privileged for use by the
18 corrections ombudsperson.

19 F. Following written notification from the
20 corrections ombudsperson for access to agency records, the
21 department shall provide the corrections ombudsperson with
22 access to the requested documentation no later than fifteen
23 business days after the written request for the records. When
24 the records requested by the corrections ombudsperson pertain
25 to an inmate, probationer or parolee death, threats of bodily

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1 harm, including sexual or physical assaults, or the denial of
2 necessary medical treatment, the records shall be provided
3 within five days unless the information requested is part of an
4 ongoing criminal investigation or the corrections ombudsperson
5 consents to an extension of that time frame.

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

12 H. The corrections ombudsperson shall work with the
13 department to minimize disruption to the operations of the
14 department related to the corrections ombudsperson's
15 investigation and activities and shall comply with the
16 department's security processes; provided that those processes
17 do not impede the activities provided for in the Corrections
18 Advisory Board Act.

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

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

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1 ACTIONS.--

2 A. A civil action shall not be brought against any
3 employee of the board for good-faith performance of
4 responsibilities pursuant to the Corrections Advisory Board
5 Act.

6 B. Discriminatory, disciplinary and retaliatory
7 actions shall not be taken against a department employee,
8 subcontractor or volunteer, an inmate, probationer or parolee,
9 a family member of an inmate, probationer or parolee or
10 representative of an inmate, probationer or parolee for any
11 communication made, or information given or disclosed, to aid
12 the corrections ombudsperson in carrying out the correction
13 ombudsperson's responsibilities.

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

17 SECTION 8. Section 12-8-2 NMSA 1978 (being Laws 1969,
18 Chapter 252, Section 2) is amended to read:

19 "12-8-2. DEFINITIONS.--As used in the Administrative
20 Procedures Act:

21 A. "agency" means any state board, commission,
22 department or officer that is authorized by law to make rules,
23 conduct adjudicatory proceedings, make determinations, grant
24 licenses, impose sanctions, grant or withhold relief or perform
25 other actions or duties delegated by law and ~~[which]~~ that is

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1 specifically placed by law under the Administrative Procedures
2 Act;

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

16 C. "license" includes the whole or part of any
17 agency permit, certificate, approval, registration, charter,
18 membership, statutory exemption or other form of permission
19 required by law;

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

24 E. "party" means each person or agency named or
25 admitted as a party or properly seeking and entitled as of

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1 right to be admitted as a party, whether for general or limited
2 purposes;

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

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

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

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

24 (3) regulations concerning only the
25 management, confinement, discipline or release of inmates of

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1 state [~~penal, correctional~~] public health or mental
2 institutions;

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

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

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

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

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

16 (1) prohibition, requirement, limitation or
17 other condition affecting the freedom of any person or [~~his~~]
18 the person's property;

19 (2) withholding of relief;

20 (3) imposition of any form of penalty;

21 (4) destruction, taking, seizure or
22 withholding of property;

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

25 (6) requirement, revocation, amendment,

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1 limitation or suspension of a license; or

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

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

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

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

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

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

16 M. "agency action" includes the whole or part of
17 every agency rule, order, license, sanction or relief, or the
18 equivalent or denial thereof, or failure to act."

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

21 "14-4-2. DEFINITIONS.--As used in the State Rules Act:

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

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

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

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

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

13 (1) posting it on the agency website, if any;

14 (2) posting it on the sunshine portal;

15 (3) making it available in the agency's
16 district, field and regional offices, if any;

17 (4) sending it by electronic mail to persons
18 who have made a written request for notice from the agency of
19 announcements addressing the subject of the rulemaking
20 proceeding and who have provided an electronic mail address to
21 the agency;

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

25 (6) sending written notice that includes, at a

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1 minimum, an internet and street address where the information
2 may be found to persons who provide a postal address; and

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

6 F. "rule" means any rule, regulation or standard,
7 including those that explicitly or implicitly implement or
8 interpret a federal or state legal mandate or other applicable
9 law and amendments thereto or repeals and renewals thereof,
10 issued or promulgated by any agency and purporting to affect
11 one or more agencies besides the agency issuing the rule or to
12 affect persons not members or employees of the issuing agency,
13 including affecting persons served by the agency. An order or
14 decision or other document issued or promulgated in connection
15 with the disposition of any case or agency decision upon a
16 particular matter as applied to a specific set of facts shall
17 not be deemed such a rule, nor shall it constitute specific
18 adoption thereof by the agency. "Rule" does not include rules
19 relating to the management, confinement, discipline or release
20 of ~~[inmates of]~~ any ~~[penal or]~~ individuals housed at any
21 charitable institution ~~[the New Mexico boys' school, the girls'~~
22 ~~welfare home]~~ or any hospital; rules made relating to the
23 management of any particular educational institution, whether
24 elementary or otherwise; or rules made relating to admissions,
25 discipline, supervision, expulsion or graduation of students

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1 from any educational institution; and

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

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

7 "33-2-1. ADOPTION OF RULES.--

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

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

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

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

25 (3) publish public comments on the

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1 department's website and retained in accordance with Section
2 14-16-12 NMSA 1978."

3 SECTION 11. APPROPRIATION.--Five hundred thousand dollars
4 (\$500,000) is appropriated from the general fund to the
5 department of finance and administration for expenditure in
6 fiscal year 2024 to implement the provisions of the Corrections
7 Advisory Board Act. Any unexpended or unencumbered balance
8 remaining at the end of fiscal year 2024 shall revert to the
9 general fund.

10 SECTION 12. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2023.

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