

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 263

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

AN ACT

RELATING TO CORRECTIONS; ENACTING THE CORRECTIONS POPULATION CONTROL ACT; ESTABLISHING THE CORRECTIONS POPULATION CONTROL COMMISSION; PROVIDING FOR THE DUTIES AND AUTHORITY OF THE COMMISSION; PROVIDING MECHANISMS FOR ADDRESSING INMATE OVERCROWDING; ENACTING SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

Section 1. SHORT TITLE. -- This act may be cited as the "Corrections Population Control Act".

Section 2. PURPOSE. -- The purpose of the Corrections Population Control Act is to establish a corrections population control commission that shall operate as an autonomous, nonpartisan body. The commission shall develop and implement mechanisms to prevent the inmate population from

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1 exceeding the rated capacity of correctional facilities and  
2 shall take appropriate action when necessary to effect the  
3 reduction of the inmate population.

4 Section 3. DEFINITIONS.--As used in the Corrections  
5 Population Control Act:

6 A. "commission" means the corrections population  
7 control commission;

8 B. "female correctional facilities" means:

9 (1) the women's correctional facility,  
10 located in Grants; and

11 (2) any other female correctional facility so  
12 designated by the corrections department;

13 C. "male correctional facilities" means:

14 (1) the penitentiary of New Mexico, located  
15 in Santa Fe;

16 (2) the central New Mexico correctional  
17 facility, located in Los Lunas;

18 (3) the southern New Mexico correctional  
19 facility, located in Las Cruces;

20 (4) the western New Mexico correctional  
21 facility, located in Grants;

22 (5) the Roswell correctional facility,  
23 located in Hagerman;

24 (6) the Guadalupe county correctional  
25 facility, located in Santa Rosa;

1 (7) the Lea county correctional facility,  
2 located in Hobbs; and

3 (8) any other male correctional facility so  
4 designated by the corrections department;

5 D. "nonviolent offender" means:

6 (1) a person convicted only of possession of  
7 a controlled substance, pursuant to the provisions of Section  
8 30-31-23 NMSA 1978;

9 (2) a person incarcerated for violating the  
10 conditions of his parole plan due to use or possession of a  
11 controlled substance whose original conviction was for  
12 commission of a nonviolent offense; or

13 (3) an inmate designated by the commission as  
14 a nonviolent offender; and

15 E. "rated capacity" means the actual general  
16 population bed space, including only individual cells and  
17 areas designed for the long-term housing of inmates, available  
18 in female correctional facilities or male correctional  
19 facilities as certified by the secretary of corrections and  
20 subject to applicable state and federal law.

21 Section 4. COMMISSION-- CREATION-- MEMBERSHIP-- TERMS. --

22 A. The "corrections population control commission"  
23 is created.

24 B. The commission shall be composed of seven  
25 members:

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1 (1) the secretary of corrections, who shall  
2 serve as chairman;

3 (2) a public official or private citizen  
4 appointed by the chief justice of the New Mexico supreme  
5 court;

6 (3) a public official or private citizen  
7 appointed by the speaker of the house of representatives;

8 (4) a public official or private citizen  
9 appointed by the president pro tempore of the senate;

10 (5) a public official or private citizen  
11 appointed by the minority leader of the house of  
12 representatives;

13 (6) a public official or private citizen  
14 appointed by the minority leader of the senate; and

15 (7) a public official or private citizen  
16 appointed by the governor.

17 C. A majority of the members of the commission  
18 constitutes a quorum for the transaction of commission  
19 business.

20 D. The appointed members of the commission shall  
21 serve until June 30, 2007. A vacancy on the commission shall  
22 be filled by the individual who made the original appointment.

23 E. Following the initial appointments to the  
24 commission, when a new individual assumes any of the  
25 leadership positions set forth in Paragraphs (2) through (7)

1 of Subsection B of this section, that individual may make his  
2 own appointment to the commission to replace an existing  
3 member.

4 F. The members of the commission shall be paid  
5 pursuant to the provisions of the Per Diem and Mileage Act and  
6 shall receive no other perquisite, compensation or allowance.

7 Section 5. COMMISSION--DUTIES--ANNUAL REPORT.--

8 A. The commission shall study, develop and  
9 recommend policies and mechanisms designed to manage the  
10 growth of the inmate population by:

11 (1) reviewing corrections department models  
12 to forecast projected growth in the inmate population;

13 (2) providing information concerning impacts  
14 on the inmate population caused by changes in sentencing  
15 policies and law enforcement policies;

16 (3) analyzing the need for future  
17 construction of additional correctional facilities;

18 (4) if necessary, preparing proposed  
19 legislation to further implementation of its policy  
20 recommendations; and

21 (5) considering all of its recommendations in  
22 light of public safety concerns.

23 B. The commission shall submit an annual report of  
24 its activities and legislative proposals to the interim  
25 legislative committee with jurisdiction over corrections

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1 issues. The report shall be filed with the interim  
2 legislative committee no later than November 1 of each year.

3 C. The commission staff support shall be provided  
4 by the corrections department.

5 Section 6. OVERCROWDING--POPULATION CONTROL MECHANISM -  
6 PROCEDURES.--When the inmate population of female correctional  
7 facilities or male correctional facilities exceeds one hundred  
8 percent of rated capacity for a period of thirty consecutive  
9 days, the following measures shall be taken to reduce  
10 capacity:

11 A. the corrections department shall engage in all  
12 lawful and professionally appropriate efforts to reduce the  
13 inmate population to one hundred percent of rated capacity;

14 B. if inmate population is still in excess of one  
15 hundred percent of rated capacity after sixty consecutive  
16 days, the secretary of corrections shall notify the  
17 commission. Included in the notification shall be a list of  
18 nonviolent offenders who are within one hundred eighty days of  
19 their projected release date;

20 C. the commission shall convene within ten days to  
21 consider the release of nonviolent offenders. The commission  
22 shall also discuss with the corrections department the impact  
23 on the inmate population of possible changes in the  
24 classification system and expanding incarceration  
25 alternatives;

1           D. for nonviolent offenders approved by the  
2           commission for release, the commission shall grant emergency  
3           release credits in ten-day increments that will be applied to  
4           the sentences being served by the nonviolent offenders. The  
5           commission shall order release of the appropriate number of  
6           nonviolent offenders to reduce the inmate population; and

7           E. notwithstanding any other provisions of this  
8           section, a nonviolent offender shall not be released:

9                   (1) unless the nonviolent offender has a  
10                  parole plan pursuant to applicable parole board regulations;

11                   (2) if the information concerning the  
12                  nonviolent offender is discovered to be materially inaccurate;

13                   (3) if the nonviolent offender committed a  
14                  crime while incarcerated;

15                   (4) if the nonviolent offender fails a drug  
16                  screening test within ten days of his scheduled release; or

17                   (5) if the effect of releasing nonviolent  
18                  offenders will result in the loss of federal funds to any  
19                  agency of the state.

20           Section 7. ADDITIONAL POPULATION CONTROL MECHANISMS.--

21           A. The governor may order the commission to  
22           convene at any time to consider the release of nonviolent  
23           offenders who are within one hundred eighty days of their  
24           projected release date. When the governor orders the  
25           commission to convene, the commission shall comply with the

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1 provisions of Subsections C through E of Section 6 of the  
2 Corrections Population Control Act.

3 B. The commission may order itself to convene at  
4 any time to consider the release of nonviolent offenders who  
5 are within one hundred eighty days of their projected release  
6 date, upon a two-thirds' vote by members who are present.

7 When the commission orders itself to convene, the commission  
8 shall comply with the provisions of Subsection C through E of  
9 Section 6 of the Corrections Population Control Act.

10 Section 8. TERMINATION OF AGENCY LIFE--TRANSFER OF  
11 FUNCTIONS.--The corrections population control commission is  
12 terminated on June 30, 2007. On July 1, 2007, the secretary  
13 of corrections shall assume the duties and responsibilities of  
14 the commission.

15 Section 9. EMERGENCY.--It is necessary for the public  
16 peace, health and safety that this act take effect  
17 immediately.