

HOUSE BILL 636

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Rick Miera

AN ACT

RELATING TO COUNTY CORRECTIONS; CREATING A COUNTY ALTERNATIVE
INCARCERATION PROGRAM; MAKING ESCAPE FROM A COUNTY ALTERNATIVE
INCARCERATION PROGRAM A CRIME; PROVIDING FOR COUNTY JAIL
ADMISSION POLICIES AND CLASSIFICATION POLICIES; ELIMINATING
LOCAL GOVERNING BODIES AS JAIL INSPECTORS; PROVIDING FOR
OPERATING POLICIES AND PROCEDURES SETTING PUNISHMENT FOR
VIOLATION OF JAIL RULES; ENACTING THE COUNTY DETENTION FACILITY
POPULATION CONTROL ACT; PROVIDING FOR THE CREATION OF A COUNTY
DETENTION FACILITY POPULATION CONTROL COMMISSION; AUTHORIZING
THE AWARD OF GOOD TIME CREDIT TO INMATES IN THE EVENT OF
OVERCROWDING IN A COUNTY DETENTION FACILITY; AMENDING,
REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 30-22-8.1 NMSA 1978 (being Laws 1999,

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1 Chapter 118, Section 1) is amended to read:

2 "30-22-8.1. ESCAPE FROM A COMMUNITY CUSTODY RELEASE
3 PROGRAM.--

4 A. Escape from a community custody release program
5 consists of a person, excluding a person on probation or
6 parole, who has been lawfully committed to a judicially
7 approved community custody release program or an alternative
8 incarceration program implemented by a sheriff or a jail
9 administrator, as the term "jail administrator" is defined in
10 Section 4-44-19 NMSA 1978, that has been approved by a board of
11 county commissioners, including a day reporting program, an
12 electronic monitoring program, a day detention program or a
13 community tracking program, escaping or attempting to escape
14 from the community custody release program or an alternative
15 incarceration program.

16 B. Whoever commits escape from a community custody
17 release program, or an alternative incarceration program, when
18 the person was committed to the program for a misdemeanor
19 charge, is guilty of a misdemeanor.

20 C. Whoever commits escape from a community custody
21 release program, or an alternative incarceration program, when
22 the person was committed to the program for a felony charge, is
23 guilty of a felony."

24 Section 2. Section 33-3-3 NMSA 1978 (being Laws 1865-
25 1866, Chapter 19, Section 2, as amended) is amended to read:

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1 "33-3-3. CONFINEMENT OF PRISONERS IN COUNTY WHERE OFFENSE
2 COMMITTED.--

3 A. Except as provided in Section 33-3-23 NMSA 1978,
4 the jail or jails in each county shall be used or be available
5 for the detention of every person who, within the same county,
6 is charged with any crime or properly committed for trial or
7 for the imprisonment of every person who in conformity with
8 sentence, upon conviction of an offense, may have been
9 sentenced, and for the safekeeping of every person who shall be
10 committed by competent authority according to law.

11 B. The sheriff, or a jail administrator as defined
12 in Section 4-44-19 NMSA 1978, shall adopt and implement written
13 policies for the admission and assignment of inmates to the
14 county jail, or an alternative incarceration program in
15 accordance with Section 4 of this 2007 act, and for the
16 classification of inmates in the jail or alternative
17 incarceration program that shall provide for their separation
18 by gender or by other factors that reasonably provide for the
19 safety and well-being of inmates and the community."

20 Section 3. Section 33-3-8 NMSA 1978 (being Laws 1865-
21 1866, Chapter 19, Section 10, as amended) is amended to read:

22 "33-3-8. RULES FOR PUNISHMENT.--The sheriffs, jail
23 administrators as defined in Section 4-44-19 NMSA 1978 or
24 independent contractors in charge of the respective jails shall
25 submit proposed rules [~~and regulations, which shall be~~

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1 ~~effective upon being adopted~~] or operating policies and
2 procedures for approval by the local governing body [~~or bodies~~]
3 responsible for the jail, for the punishment of persons
4 violating the rules of the jail."

5 Section 4. A new section of Chapter 33, Article 3 NMSA
6 1978 is enacted to read:

7 "[NEW MATERIAL] ALTERNATIVE INCARCERATION PROGRAM.--

8 A. The sheriff or jail administrator, as defined in
9 Section 4-44-19 NMSA 1978, of a county may develop and
10 implement an alternative incarceration program, ensuring the
11 public safety and safety of inmates in the program, that may
12 involve housing an inmate in a county jail or in some other
13 location.

14 B. An inmate charged or convicted of a nonviolent
15 offense, as that term is defined in Subsection L of Section
16 33-2-34 NMSA 1978, is eligible to be placed in an alternative
17 incarceration program described in Subsection A of this section
18 unless:

19 (1) information concerning the inmate is
20 discovered to be materially inaccurate;

21 (2) the inmate committed a crime while
22 incarcerated; or

23 (3) the inmate fails a drug screening test
24 within three days of the inmate's scheduled placement in an
25 alternative incarceration program.

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1 C. An inmate charged or convicted of a nonviolent
2 offense who is placed in an alternative incarceration program
3 shall pay the costs associated with that placement according to
4 a sliding fee scale set by the board of county commissioners.

5 D. An inmate in an alternative incarceration
6 program shall undergo substance abuse, educational and life
7 skills counseling as determined by the sheriff or jail
8 administrator.

9 E. The provisions of Section 30-22-8.1 NMSA 1978
10 shall apply to a person who escapes from an alternative
11 incarceration program.

12 F. The time that an inmate serves in an alternative
13 incarceration program shall be credited to the inmate as if the
14 time in that program was served in a county jail."

15 Section 5. [NEW MATERIAL] SHORT TITLE.--Sections 5
16 through 11 of this act may be cited as the "County Detention
17 Facility Population Control Act".

18 Section 6. [NEW MATERIAL] PURPOSE.--The purpose of the
19 County Detention Facility Population Control Act is to
20 establish, develop and implement mechanisms to prevent the
21 inmate population from exceeding the rated capacity of county
22 detention facilities and to provide procedures to be followed
23 to reduce the inmate population if it exceeds one hundred
24 percent of the rated capacity of a county detention facility
25 for a period of ninety consecutive days.

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1 Section 7. [NEW MATERIAL] DEFINITIONS.--As used in the
2 County Detention Facility Population Control Act:

3 A. "commission" means the county detention facility
4 population control commission;

5 B. "nonviolent offender" means:

6 (1) a person convicted only of possession of a
7 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 the person's parole plan due to use or possession
11 of a controlled substance and whose original conviction was for
12 commission of a nonviolent offense; or

13 (3) a person charged or convicted for the
14 commission of a nonviolent offense, as that term is defined in
15 Subsection L of Section 33-2-34 NMSA 1978; and

16 C. "rated capacity" means the actual general
17 population bed space, including only individual cells and areas
18 designed for the housing of inmates as provided for in the
19 county detention facility's design and the available staffing
20 level.

21 Section 8. [NEW MATERIAL] RATED CAPACITY.--The board of
22 county commissioners shall at least annually, by resolution,
23 establish a rated capacity for each county detention facility
24 based on the facility's design and staffing level.

25 Section 9. [NEW MATERIAL] COUNTY DETENTION FACILITY

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1 POPULATION CONTROL COMMISSION--CREATED--MEMBERS.--

2 A. The board of county commissioners may create a
3 "county detention facility population control commission" to
4 address instances of overcrowding in a county detention
5 facility. If created, the commission shall be composed of the
6 following five persons:

7 (1) the jail administrator, as defined in
8 Section 4-44-19 NMSA 1978, or county sheriff who operates the
9 particular county detention facility, who shall serve as chair
10 of the commission;

11 (2) two public officials or private citizens
12 appointed by the board of county commissioners;

13 (3) a public official or private citizen
14 appointed by the chief judge of the district court; and

15 (4) a public official or private citizen
16 appointed by the chief judge of the metropolitan or magistrate
17 court.

18 B. A majority of the members of the commission
19 constitutes a quorum for the transaction of commission
20 business.

21 C. The commission shall convene quarterly to review
22 population data and data regarding the use of alternative
23 incarceration programs and the use or anticipated use of other
24 population control mechanisms.

25 D. The appointed members of the commission shall

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1 serve four-year terms. A vacancy on the commission shall be
2 filled by the individual or board that made the original
3 appointment.

4 E. The members of the commission shall receive
5 reimbursement for expenses pertaining to commission duties
6 pursuant to the provisions of the Per Diem and Mileage Act but
7 shall receive no other perquisite, compensation or allowance
8 for service on the commission.

9 F. The members of the commission shall be immune
10 from liability in civil actions for the performance of their
11 duties pursuant to the County Detention Facility Population
12 Control Act, provided that the members perform their duties in
13 good faith.

14 Section 10. [NEW MATERIAL] OVERCROWDING--POPULATION
15 CONTROL MECHANISM--PROCEDURES.--

16 A. When the inmate population of a county detention
17 facility exceeds one hundred percent of rated capacity for a
18 period of ninety consecutive days, the jail administrator, as
19 defined in Section 4-44-19 NMSA 1978, or county sheriff shall
20 engage in all lawful and professionally appropriate efforts to
21 reduce the inmate population to one hundred percent of rated
22 capacity. Included in these efforts shall be the provision of
23 notice to the corrections department that the county detention
24 facility is in excess of the rated capacity and a list to that
25 department of all convicted felons in the county detention

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1 facility. Within thirty days of this notice, the corrections
2 department shall remove all convicted felons from the county
3 detention facility.

4 B. If the inmate population of a county detention
5 facility is in excess of one hundred percent of rated capacity
6 after one hundred twenty consecutive days, the county sheriff
7 or jail administrator shall notify the commission, the district
8 court, the metropolitan court, the municipal court, the
9 magistrate court, the district attorney, the public defender,
10 the secretary of corrections and local law enforcement
11 agencies. Included in the notification shall be a list of
12 nonviolent offenders.

13 C. The commission shall convene within ten days of
14 receipt of the notice from the county sheriff or jail
15 administrator given pursuant to Subsection B of this section to
16 review the list of nonviolent offenders and the commission
17 shall be permitted, without judicial approval, to award good
18 time credit pursuant to Section 33-3-9 NMSA 1978 and to release
19 nonviolent offenders who, with the good time credit, have
20 completed their sentence; provided that a nonviolent offender
21 shall not be released if:

22 (1) information concerning the nonviolent
23 offender is discovered to be materially inaccurate;

24 (2) the nonviolent offender committed a crime
25 while incarcerated;

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1 (3) the nonviolent offender fails a drug
2 screening test within ten days of the offender's scheduled
3 release; or

4 (4) the effect of releasing nonviolent
5 offenders will result in the loss of federal funds to any
6 agency of the state.

7 Section 11. [NEW MATERIAL] COUNTY SHERIFF OR JAIL
8 ADMINISTRATOR--DUTIES--ANNUAL REPORT.--The jail administrator,
9 as defined in Section 4-44-19 NMSA 1978, or county sheriff
10 shall study, develop and recommend annually no later than
11 August 1 of each year to the commission, the board of county
12 commissioners, the local judiciary and local law enforcement
13 agencies policies and mechanisms designed to manage the growth
14 of the inmate population by:

15 A. reviewing county detention facility models to
16 forecast projected growth in the inmate population;

17 B. providing information concerning impacts on the
18 inmate population caused by changes in sentencing policies and
19 law enforcement policies;

20 C. analyzing the need for future construction of
21 additional county detention facility space;

22 D. if necessary, preparing proposed legislation for
23 further implementation of policy recommendations; and

24 E. considering all policy recommendations in light
25 of public safety concerns.

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1 Section 12. REPEAL.--Section 33-3-4 NMSA 1978 (being Laws
2 1865-1866, Chapter 19, Section 3, as amended) is repealed.

3 Section 13. EFFECTIVE DATE.--The effective date of the
4 provisions of this act is July 1, 2007.

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