

HOUSE BILL 40

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 CORRECTIONAL INSTITUTIONS; ENACTING THE PRIVATE  
DETENTION FACILITY MORATORIUM ACT; REMOVING AUTHORIZATION TO  
ENTER INTO CONTRACTS OR AGREEMENTS WITH HJC→PRIVATE←HJC  
INDEPENDENT CONTRACTORS FOR THE OPERATION OF DETENTION  
FACILITIES; PROVIDING FOR RECOMMENDED TERMINATION OF CONTRACTS  
FOR OPERATION OF JAILS UNDER CERTAIN CIRCUMSTANCES; MAKING THE  
OPERATION OF A PRIVATE DETENTION FACILITY UNLAWFUL; PROHIBITING  
PUBLIC FUNDING OF PRIVATELY OPERATED DETENTION FACILITIES;  
REQUIRING ANNUAL REPORTS; HJC→PROVIDING A PENALTY←HJC

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HJC→CREATING THE DETENTION FACILITY ECONOMIC DEVELOPMENT  
ASSISTANCE FUND AND THE DETENTION FACILITY DISPLACED WORKER  
ASSISTANCE FUND←HJC ; REPEALING SECTIONS 33-1-17 AND 33-3-26  
NMSA 1978 (BEING LAWS 1985, CHAPTER 149, SECTION 1 AND LAWS  
1984, CHAPTER 22, SECTION 17, AS AMENDED); DECLARING AN  
EMERGENCY.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1  
through HJC→3←HJC HJC→4←HJC of this act may be cited as the  
"Private Detention Facility Moratorium Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
Private Detention Facility Moratorium Act:

A. "detention facility" means a facility other than  
a work-release facility in which a person is incarcerated or  
otherwise involuntarily confined for purposes other than  
medical or mental health necessity or addiction therapy;

B. "operate" means to house, protect and discipline  
people involuntarily confined in a detention facility; and

C. "private detention facility" means a detention  
facility that is operated by a nongovernmental entity."

SECTION 3. [NEW MATERIAL] OPERATION OF A PRIVATE  
DETENTION FACILITY PROHIBITED--CERTAIN AGREEMENTS AND  
INCENTIVES PROHIBITED--EXCEPTIONS.--

A. It is unlawful for any person, corporation,

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business or nonprofit entity to operate a private detention facility HJC→except those operating pursuant to a valid agreement entered into prior to the enactment of the Private Detention Facility Moratorium Act, and only for the duration of the current term of the agreement, not to include extensions, renewals or modifications as prohibited by this section←HJC .

B. Neither the state, nor any other governmental entity, county sheriff, or any officer, employee or agent thereof, shall:

(1) enter into, HJC→~~renew or modify in a manner that would increase the capacity of a detention facility to house or detain individuals, an agreement of any kind for the detention of individuals in a detention facility owned, managed~~←HJC HJC→extend, renew or modify, in a manner that would increase the capacity of a private detention facility to house or detain individuals, an agreement of any kind for the detention of individuals in a detention facility managed←HJC or operated, in whole or in part, by a private entity; or

(2) pay, reimburse or subsidize in any way any costs related to the sale, purchase, construction, development, ownership, management or operation of a detention facility that is HJC→owned,←HJC managed or operated, in whole or in part, by a private entity HJC→, with the exception of those operating pursuant to a valid agreement entered into prior to the enactment of the Private Detention Facility Moratorium Act←HJC

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C. This section does not apply to:

(1) a facility whose principal function is to provide:

(a) educational services or rehabilitative, physical, mental or behavioral health services to a juvenile inmate; or

(b) educational, vocational, medical or other services ancillary to detention to an adult or juvenile inmate;

(2) a school facility used for the disciplinary detention of a student;

(3) a facility used to isolate or quarantine a person for public health reasons; HJC→or←HJC

(4) a facility used for the temporary detention of a person detained or arrested by a private security guard or other private person HJC→; or←HJC HJC→.←HJC

HJC→~~(5) a private detention facility that is operating pursuant to a contract effective prior to the enactment of the Private Detention Facility Moratorium Act.~~←HJC

HJC→SECTION 4. [NEW MATERIAL] DETENTION FACILITY ECONOMIC DEVELOPMENT ASSISTANCE FUND--DETENTION FACILITY DISPLACED WORKER ASSISTANCE FUND--COMMUNITY ADVISORY COMMITTEE.--

A. The "detention facility economic development assistance fund" is created in the state treasury. The fund

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shall consist of appropriations, gifts, grants, donations and bequests made to the fund. Income from the fund shall be credited to the fund. Income from the fund shall not revert or be transferred to any other fund at the end of a fiscal year.

B. The economic development department shall administer the detention facility economic development assistance fund, and money in the fund is subject to appropriation by the legislature only to that department to assist in diversifying and promoting the affected community's economy by fostering economic development opportunities unrelated to privately operated detention facilities.

C. The economic development department shall develop an economic diversification and development plan to assist the affected community that shall provide for the disbursement of money in the detention facility economic development assistance fund. In developing the plan, the economic development department shall request recommendations from the affected community's community advisory committee pursuant to Subsection G of this section and establish a public input process in the affected community to inform the use of money in the fund. The economic development department shall engage in consultation with Indian nations, tribes and pueblos in the affected area pursuant to the State-Tribal Collaboration Act. The public input process shall include at least three public meetings in the affected community. Expenditures from the fund

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shall be made pursuant to the plan and as follows:

(1) to an entity approved by the economic development department to receive funds for any program established at the economic development department;

(2) to assist employers to qualify for any tax relief for hiring displaced workers established under state or federal law; and

(3) to a municipality, county, Indian nation, tribe or pueblo or land grant community in New Mexico for programs designed to promote economic development in the affected community.

D. The "detention facility displaced worker assistance fund" is created in the state treasury. The fund shall consist of appropriations, gifts, grants, donations and bequests made to the fund. Income from the fund shall be credited to the fund, and money in the fund shall not revert or be transferred to any other fund at the end of a fiscal year.

E. The workforce solutions department shall administer the detention facility displaced worker assistance fund, and money in the fund is subject to appropriation by the legislature only to that department to assist displaced workers in an affected community.

F. The workforce solutions department shall develop a displaced worker development plan to assist displaced workers in an affected community that shall provide for the

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disbursement of money in the detention facility displaced worker assistance fund. In developing the plan, the workforce solutions department shall request recommendations from the affected community's community advisory committee pursuant to Subsection G of this section and establish a public input process in the affected community to inform the use of money in the detention facility displaced worker assistance fund. The workforce solutions department shall engage in consultation with the Indian nations, tribes and pueblos in the affected area pursuant to the State-Tribal Collaboration Act. The public input process shall include at least three public meetings in the affected community. Expenditures from the detention facility displaced worker assistance fund shall be made pursuant to the plan as follows:

(1) to assist employers of displaced workers to qualify for any tax relief established under state or federal law;

(2) to the workforce solutions department:

(a) to provide assistance to displaced workers using any program established at that department; and

(b) for payment of costs associated with displaced workers enrolling and participating in certified apprenticeship programs in New Mexico; and

(3) to a municipality, county, Indian nation, tribe or pueblo or land grant community in New Mexico for job

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training and apprenticeship programs for displaced workers or for programs designed to promote economic development in the affected community.

G. In each affected community, a community advisory committee shall be convened. All meetings of the community advisory committee shall be held pursuant to the Open Meetings Act. The secretaries of economic development and workforce solutions shall appoint three conveners who reside in the affected community, at least one from each major political party and one representing an Indian nation, tribe or pueblo in the affected community. The conveners shall appoint members of the community advisory committee to include a member from each municipality, county, Indian nation, tribe or pueblo and land grant community, if any, in the affected community, at least four appointees representing diverse economic and cultural perspectives of the affected community and one appointee representing displaced workers in the affected community. Within sixty days of a request by the economic development department pursuant to Subsection C of this section, or the workforce solutions department pursuant to Subsection F of this section, a community advisory committee shall provide recommendations to the requesting department on the use of available funds intended for the affected community.

H. As used in this section:

(1) "affected community" means:

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(a) a county in New Mexico where a privately operated detention facility closes because of the Private Detention Facility Moratorium Act and results in twenty or more displaced workers of the detention facility in that county; or

(b) an adjacent county where twenty or more displaced workers of a closed privately operated detention facility reside; and

(2) "displaced worker" means a New Mexico resident who:

(a) within the previous twelve months, was terminated from employment, or whose contract was terminated, due to the closure of a New Mexico privately operated detention facility that resulted in the displacing of at least forty workers;

(b) had at least seventy-five percent of the resident's net income, as that term is defined in the Income Tax Act, from the employment or contract described in Subparagraph (a) of this paragraph;

(c) has not been able to replace the lost wages described in Subparagraph (b) of this paragraph or whose annual wages are at least twenty-five percent less than when the privately operated detention facility was operating; and

(d) does not qualify to take full benefits pursuant to a pension or retirement plan. ←HJC

SECTION HJC→4.←HJC HJC→5.←HJC Section 31-20-2 NMSA 1978

(being Laws 1963, Chapter 303, Section 29-13, as amended) is amended to read:

"31-20-2. PLACE OF IMPRISONMENT--COMMITMENTS.--

A. Persons sentenced to imprisonment for a term of one year or more shall be imprisoned in a corrections facility designated by the corrections department, unless a new trial is granted or a portion of the sentence is suspended so as to provide for imprisonment for not more than eighteen months; then the imprisonment may be in such place of incarceration, other than a corrections facility under the jurisdiction of the corrections department, as the sentencing judge, in [~~his~~] the judge's discretion, may prescribe; provided that a sentence of imprisonment for one year or more but not more than eighteen months shall be subject to the provisions of Subsections D and E of this section and shall not be imposed unless the requirements set forth in Subsection D of this section are satisfied.

B. All commitments, judgments and orders of the courts of this state for the imprisonment or release of persons in the penitentiary of New Mexico shall run to the corrections department, but nothing contained in this section shall invalidate or impair the validity of any commitment, judgment or order of any court in this state directed to the secretary of corrections, the warden of the penitentiary of New Mexico or

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to the penitentiary of New Mexico, and all such commitments, judgments and orders shall be treated and construed as running to the corrections department.

C. There is created within the corrections department an "intake and classification center". The intake and classification center shall have the following duties:

(1) process all inmates sentenced or committed for purposes of diagnosis to the corrections department;

(2) classify inmates for housing assignments;

(3) develop an individualized plan for participation by each inmate in programs, work assignments and special needs;

(4) monitor each inmate's progress during incarceration and reclassify or modify classification assignments as may be necessary, taking into consideration the overall needs of the inmate population, institutional and facility requirements and the individual inmate's needs;

(5) with the approval of the secretary of corrections, may transfer inmates of the penitentiary of New Mexico to an institution under the control of another state if that state has entered into a corrections control agreement with New Mexico; and

(6) with the approval of the secretary of corrections, may transfer inmates to any facility, including the forensic hospital under the jurisdiction of the department

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of health.

D. A sentence of one year or more but not more than eighteen months and providing for imprisonment in a place of incarceration other than a corrections facility under the jurisdiction of the corrections department pursuant to Subsection A of this section, which shall be known as the local sentencing option, shall not be imposed unless:

(1) the place of incarceration is located within the county in which the crime was committed; and

(2) the governing authority in charge of the place of incarceration has entered into a joint powers agreement with the corrections department setting forth:

(a) the amount of money the corrections department shall pay for offenders sentenced to a term of one year or more but not more than eighteen months and the number of offenders [~~which~~] that may be sentenced to such terms; and

(b) any other provisions deemed appropriate and agreed to by the local governing body and the corrections department.

E. If a judge imposes a sentence of one year or more but not more than eighteen months and provides for imprisonment in a place of incarceration other than a corrections facility under the jurisdiction of the corrections department:

(1) the local governing body or its agent

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shall have the ability to petition that judge when the capacity of the place of incarceration is filled or when any problem develops concerning that offender requesting the judge to issue an order committing the offender to the corrections department for completion of the remainder of ~~his~~ the offender's sentence. A hearing on a petition pursuant to this paragraph shall be held within three days of the filing of the petition. Notwithstanding any other provision of law, the judge shall retain jurisdiction over the offender for the purpose of implementing the local sentencing option; and

(2) the local governing body or its agent shall keep the district judges for the judicial district in which the place of incarceration is located informed as to the capacity for the sentencing of offenders in accordance with the local sentencing option. No judge shall sentence an offender in accordance with the local sentencing option if that sentence will result in exceeding the number of offenders set forth in the joint powers agreement.

F. The corrections department shall file an annual report with the legislature ~~which~~ that shall contain the number of joint powers agreements in operation pursuant to this section, copies of those agreements, the number of offenders currently incarcerated pursuant to those agreements and any other relevant information relating to the implementation of this section.

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G. The corrections department may enter into contracts with public [~~or private~~] detention facilities for the purpose of housing inmates lawfully committed to the corrections department. Any facility with which the department contracts shall meet or exceed corrections department standards prior to the housing of any inmates within the facility and shall meet certification requirements for prisons within eighteen months of entering into such contracts. The contractor shall adhere to all appropriate corrections department policies and procedures and shall agree to have staff trained at the corrections department training academy."

SECTION HJC→5.←HJC HJC→6.←HJC A new section of Chapter 33, Article 3 NMSA 1978 is enacted to read:

"[NEW MATERIAL] DEFINITION--JAIL ADMINISTRATOR.--For the purposes of Chapter 33, Article 3 NMSA 1978, "jail administrator" means HJC→a person hired←HJC HJC→an individual employed←HJC by a county, municipality or a combination of these, who supervises the entire operation of a jail and reports directly to the administrative head of the local governmental entity or local governing body."

SECTION HJC→6.←HJC HJC→7.←HJC Section 33-3-1 NMSA 1978 (being Laws 1865-1866, Chapter 19, Section 1, as amended) is amended to read:

"33-3-1. COMMON JAILS--OPERATION BY SHERIFF, JAIL ADMINISTRATOR OR HJC→PRIVATE←HJC INDEPENDENT CONTRACTOR.--

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A. The common jails shall be under the control of the:

(1) respective sheriffs [~~independent contractors~~] or jail administrators HJC→~~hired~~←HJC HJC→~~employed~~←HJC by the board of county commissioners or other local public body or combination thereof [~~and the same~~]; or

(2) HJC→~~independent contractors with whom those entities have entered into contracts~~←HJC HJC→~~private independent contractors with whom those entities have entered into a valid agreement prior to the enactment of the Private Detention Facility Moratorium Act, and only for the duration of the agreement, not to include extensions, renewals or modifications as prohibited by Section 3 of the Private Detention Facility Moratorium Act~~←HJC .

B. The common jails shall be used as prisons in the respective counties.

~~[B. Contracts between local public bodies and private independent contractors for the operation or provision and operation of a jail are specifically authorized by this section; provided that prior to July 1, 1987, no more than two pilot projects involving private independent contractors are authorized in New Mexico pursuant to Section 33-3-26 NMSA 1978.]~~"

SECTION HJC→~~7.~~←HJC HJC→~~8.~~←HJC Section 33-3-2 NMSA 1978 (being Laws 1972, Chapter 69, Section 1, as amended) is amended

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to read:

"33-3-2. JOINT AGREEMENTS FOR THE CONSTRUCTION,  
MANAGEMENT AND OPERATION OF CORRECTIONAL AND DETENTION  
FACILITIES AND JAILS.--

A. Notwithstanding the provisions of Subsection A  
of Section 33-3-1 NMSA 1978, the board of county commissioners  
of a county may enter into an agreement with other counties and  
municipalities to provide for the construction, maintenance or  
operation of one or more jails or correctional or detention  
facilities for confinement of persons charged with crimes or  
violations of municipal or county ordinances or committed to  
jail.

B. The agreement authorized in Subsection A of this  
section:

(1) may provide for the control of the  
indicated facilities by the sheriff of the county in which the  
facility is located [or], by a jail administrator HJC→ **as**  
**~~defined in Section 4-44-19 NMSA 1978 or by an independent~~**  
**~~contractor with whom the county has entered into a contract~~**←HJC  
HJC→ **or by a private independent contractor if the agreement was**  
**entered into prior to the enactment of the Private Detention**  
**Facility Moratorium Act, and only for the duration of the**  
**agreement, not to include extensions, renewals or modifications**  
**as prohibited by Section 3 of the Private Detention Facility**  
**Moratorium Act**←HJC ; and [the agreement]

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(2) shall state the manner in which the person in control shall be selected if it is other than the sheriff.

C. In a class A county utilizing a joint city and county jail, municipalities shall pay a fee to the board of county commissioners for each prisoner housed in the county jail charged with municipal offenses or arrested by municipal officers. The fee shall be a reasonable fee established by the board of county commissioners and approved by the local government division of the department of finance and administration.

D. [~~No~~] An agreement or [~~an~~] amendment to an agreement authorized by this section is not effective until it is approved by the local government division of the department of finance and administration."

SECTION HJC→8.←HJC HJC→9.←HJC Section 33-3-4 NMSA 1978 (being Laws 2011, Chapter 142, Section 1) is amended to read:

"33-3-4. INSPECTION OF JAILS AND DETENTION

HJC→CENTERS←HJC HJC→FACILITIES←HJC --REPORT.--

A. Each governing body of a county or municipality shall conduct an annual site visit to the jail or detention HJC→center←HJC HJC→facility←HJC under its jurisdiction to inspect the overall conditions at the facility. Following a site visit, an inspection report shall be presented at a regular meeting of the governing body and provided to the HJC→corrections department←HJC HJC→risk management division of

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the general services department, the local government division of the department of finance and administration and the office of the attorney general ←HJC .

B. The HJC → ~~corrections department~~ ←HJC HJC → risk management division, the local government division and the office of the attorney general ←HJC shall review each inspection report for compliance with each HJC → ~~contract with an~~ ←HJC HJC → agreement with a private ←HJC independent contractor entered into pursuant to Chapter 33, Article 3 NMSA 1978. The HJC → ~~corrections department~~ ←HJC HJC → risk management division, the local government division or the office of the attorney general ←HJC shall recommend termination of the HJC → ~~contract~~ ←HJC HJC → agreement ←HJC upon ninety days' notice to the contractor if:

(1) the HJC → private ←HJC independent contractor fails to meet the provisions of the HJC → ~~contract~~ ←HJC HJC → agreement or fails to satisfactorily meet any contractual arrangement pursuant to Section 33-3-27 NMSA 1978 ←HJC ;

(2) the HJC → ~~department~~ ←HJC HJC → risk management division, the local government division or the office of the attorney general ←HJC determines that the failure seriously impairs the availability or operation of the facility; and

(3) the recommended termination is consistent

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with the termination provisions of the HJC→~~contract~~←HJC  
HJC→~~agreement~~←HJC ."

SECTION HJC→~~9.~~←HJC HJC→~~10.~~←HJC Section 33-3-18 NMSA 1978  
(being Laws 1889, Chapter 8, Section 4, as amended) is amended  
to read:

"33-3-18. COUNTIES WITHOUT JAILS--ARRANGEMENTS WITH OTHER  
COUNTIES.--In case any county in this state lacks a jail or  
proper place of confinement for its prisoners, the board of  
county commissioners of that county shall make contractual  
arrangements with other counties or municipalities [~~or~~  
~~independent contractors~~] for the incarceration and care of its  
prisoners [~~and that~~]. The jail [~~so~~] designated by any board of  
county commissioners of any county not having a jail or other  
proper place of confinement shall be the legal place of  
confinement of the prisoners of [~~said~~] the county."

SECTION HJC→~~10.~~←HJC HJC→~~11.~~←HJC Section 33-3-27 NMSA  
1978 (being Laws 1984, Chapter 22, Section 18, as amended) is  
amended to read:

"33-3-27. JAIL AGREEMENTS--APPROVAL--LIABILITY--  
TERMINATION--VENUE.--

A. Agreements with a private independent contractor  
for the operation of a jail or for the incarceration of  
prisoners shall be made for a period of up to five years, but  
those agreements may allow for additional one-year, two-year or  
three-year extensions not to exceed a total of six extensions.

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Agreements binding on future governing bodies for construction, purchase or lease of a jail facility for not more than fifteen years are authorized.

B. All agreements with private independent contractors for the operation or provision and operation of jails shall include a performance bond and be approved in writing, prior to their becoming effective, by the local government division of the department of finance and administration and the office of the attorney general. Disapproval may be based on any reasonable grounds, including adequacy or appropriateness of the proposed plan or standards; suitability or qualifications of the proposed contractor or the contractor's employees; absence of required or desirable contract provisions; unavailability of funds; or any other reasonable grounds. No agreement shall be valid or enforceable without prior approval.

C. All agreements with private independent contractors for the operation or provision and operation of jails shall provide for the HJC→private←HJC independent contractor to provide and pay for training for jailers to meet minimum training standards, which shall be specified in the contract.

D. All agreements with private independent contractors for the operation or provision and operation of jails shall set forth comprehensive standards for conditions of

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incarceration, either by setting them forth in full as part of the contract or by reference to known and respected compilations of those standards.

E. All agreements with private independent contractors for the operation or provision and operation of jails shall be approved in writing, prior to their becoming effective, by the risk management division of the general services department. Approval shall be conditioned upon contractual arrangements satisfactory to the risk management division for:

(1) the contractor's assumption of all liability caused by or arising out of all aspects of the provision and operation of the jail; and

(2) liability insurance covering the contractor and its officers, jailers, employees and agents in an amount sufficient to cover all liability caused by or arising out of all aspects of the provision and operation of the jail. A copy of the proposed insurance policy for the first year shall be submitted for approval with the contract.

F. All agreements with private independent contractors for the operation or provision and operation of jails shall provide for termination for cause by the local public body parties upon ninety days' notice to the HJC→private←HJC independent contractor. A termination shall be allowed for at least the following reasons:

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(1) failure of the HJC→private←HJC independent contractor to meet minimum standards and conditions of incarceration, which standards and conditions shall be specified in the contract; or

(2) failure to meet other contract provisions when the failure seriously affects the operation of the jail.

The reasons for termination set forth in this subsection are not exclusive and may be supplemented by the parties.

G. Venue for the enforcement of any agreement entered into pursuant to the provisions of this section shall be in the district court of the county in which the facility is located or in Santa Fe county.

HJC→H. Any agreement subject to this section shall not be entered into, extended, renewed or modified as prohibited by Section 3 of the Private Detention Facility Moratorium Act.←HJC

HJC→H.←HJC HJC→I.←HJC The provisions of this section apply to agreements specifically authorized pursuant to Section 33-3-1 NMSA 1978."

SECTION HJC→11.←HJC HJC→12.←HJC Section 33-6-4 NMSA 1978 (being Laws 1939, Chapter 75, Section 5) is amended to read:

"33-6-4. COUNTY COMMISSIONERS AUTHORIZED TO ACT.--The boards of county commissioners of the several counties are [hereby] authorized and empowered to enter into any [and all] contracts and to do [and perform] any [and all] things

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necessary and proper to carry into effect the provisions  
[hereof] of Chapter 33, Article 6 NMSA 1978, except that a  
board of county commissioners shall not HJC→~~extend, renew or~~  
~~enter into a contract with an independent contractor for the~~  
~~operation~~←HJC HJC→enter into a contract with a private  
independent contractor for the operation or management←HJC of a  
juvenile detention home."

SECTION HJC→12.←HJC HJC→13.←HJC REPEAL.--Sections  
33-1-17 and 33-3-26 NMSA 1978 (being Laws 1985, Chapter 149,  
Section 1 and Laws 1984, Chapter 22, Section 17, as amended)  
are repealed.

SECTION HJC→13.←HJC HJC→14.←HJC EMERGENCY.--It is  
necessary for the public peace, health and safety that this act  
take effect immediately.