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**HOUSE BILL 302**

**43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998**

**INTRODUCED BY**

**R. DAVID PEDERSON**

**AN ACT**

**RELATING TO CORRECTIONS; REQUIRING INMATES TO EARN MERITORIOUS DEDUCTIONS FROM A TERM OF IMPRISONMENT; ENACTING THE CORRECTIONS POPULATION CONTROL ACT; ESTABLISHING THE CORRECTIONS POPULATION CONTROL COMMISSION; ABOLISHING THE CORRECTIONS COMMISSION; PROVIDING FOR THE DUTIES AND AUTHORITY OF THE COMMISSION; PROVIDING MECHANISMS FOR ADDRESSING INMATE OVERCROWDING; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.**

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

**Section 1. Section 33-1-2 NMSA 1978 (being Laws 1978, Chapter 4, Section 1, as amended) is amended to read:**

**"33-1-2. DEFINITIONS. -- As used in the Corrections Act:**

**A. "division" or "department" means the corrections department;**

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1           B. "director" or "secretary" means the secretary  
2 of corrections;

3           C. "corrections facility" means any facility or  
4 program controlled or operated by the state or any of its  
5 agencies or departments and supported wholly or in part by  
6 state funds for the correctional care of persons, including  
7 but not limited to:

8                   (1) the "penitentiary of New Mexico", which  
9 consists of the penitentiary at Santa Fe and other places in  
10 the state designated by the secretary; and

11                   (2) the state board of probation and parole,  
12 except to the extent delegated to the parole board by the  
13 Parole Board Act; and

14                   ~~D. "commission" means the corrections commission;~~  
15 ~~and~~

16                   ~~E.]~~ D. "warden" or "superintendent" means the  
17 administrative director of a correctional facility."

18           Section 2. Section 33-1-4 NMSA 1978 (being Laws 1969,  
19 Chapter 226, Section 4, as amended) is amended to read:

20                   "33-1-4. CORRECTIONS [ ~~DIVISION~~ ] DEPARTMENT. --

21                   ~~[A. There is created within the criminal justice~~  
22 ~~department the "corrections division".]~~ The [ ~~division~~ ]  
23 department is responsible for all matters pertaining to  
24 corrections as provided in the Corrections Act or other law.

25                   ~~[B. There is created the "corrections commission"~~

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1 ~~consisting of seven members appointed by the governor with the~~  
2 ~~advice and consent of the senate for staggered terms, one~~  
3 ~~ending June 30, 1972 and two ending June 30 of each of the~~  
4 ~~following three years. Thereafter, appointments shall be made~~  
5 ~~for terms of four years or less in a manner that the terms of~~  
6 ~~one or two members expire as the case may be on June 30 each~~  
7 ~~year. Members of the commission shall be reimbursed as~~  
8 ~~provided in the Per Diem and Mileage Act and shall receive no~~  
9 ~~other compensation, perquisite or allowance. Four members of~~  
10 ~~the commission constitute a quorum for the transaction of~~  
11 ~~business. Not more than four members shall be of the same~~  
12 ~~political party. Four of the members shall be persons who~~  
13 ~~have displayed interest in juvenile correction and~~  
14 ~~rehabilitation matters and three shall be persons who have~~  
15 ~~displayed interest in adult correction and rehabilitation~~  
16 ~~matters. Any member who fails to attend any three consecutive~~  
17 ~~meetings of the commission without being excused by the~~  
18 ~~commission shall be automatically removed.~~

19 C. ~~The commission shall advise the director in the~~  
20 ~~management and control of the division.]"~~

21 Section 3. Section 33-2-34 NMSA 1978 (being Laws 1978,  
22 Chapter 40, Section 1, as amended) is repealed and a new  
23 Section 33-2-34 NMSA 1978 is enacted to read:

24 "33-2-34. [NEW MATERIAL] ELIGIBILITY FOR EARNED  
25 MERITORIOUS DEDUCTIONS. --

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1           A. An inmate confined in the penitentiary of New  
2 Mexico or other state correctional facility for committing a  
3 violent offense is eligible to earn meritorious deductions of  
4 up to four days per month upon recommendation of the  
5 classification committee and approval by the warden.

6           B. An inmate confined in the penitentiary of New  
7 Mexico or other state correctional facility for committing a  
8 nonviolent offense is eligible to earn meritorious deductions  
9 of up to thirty days per month upon recommendation of the  
10 classification committee and approval by the warden.

11           C. In order to earn meritorious deductions, an  
12 inmate shall actively participate in a program recommended and  
13 approved for him by the classification committee. The  
14 classification committee may recommend and approve only  
15 education programs, mental health programs, drug or alcohol  
16 treatment programs, drug or alcohol counseling programs or  
17 work programs.

18           D. An inmate whose record of conduct shows that he  
19 has performed exceptionally meritorious service and whose  
20 record of conduct shows that he has otherwise faithfully  
21 observed the rules of the institution may be eligible for a  
22 lump sum meritorious deduction award, not to exceed one year  
23 per award and not to exceed a total of one year for all lump  
24 sum meritorious deduction awards awarded in any consecutive  
25 twelve-month period, which may be deducted from the length of

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1 the sentence then remaining unserved. Exceptionally  
2 meritorious service shall include heroic acts of saving life  
3 or property, but shall not include acts in performance of  
4 normal work duties or program assignments. The classification  
5 committee and the warden may recommend the number of days to  
6 be awarded in each case based upon the particular merits, but  
7 any award shall be determined by the director of adult  
8 institutions. Allowance for exceptionally meritorious service  
9 shall be in addition to the meritorious deductions provided  
10 for in Subsections A and B of this section, and in the event  
11 two or more consecutive sentences are being served, the  
12 aggregate of the several sentences shall be the basis upon  
13 which the deduction shall be computed.

14 E. The meritorious deductions provided for in  
15 Subsections A and B of this section shall pertain to both the  
16 basic sentence to be served and any enhanced term of  
17 imprisonment pursuant to the provisions of the Criminal  
18 Sentencing Act. Meritorious deductions of up to ninety days  
19 per occurrence shall be permanently forfeited upon  
20 recommendation of the classification committee and approval of  
21 the warden if the inmate does not properly maintain the  
22 standard upon which the award was based. For those inmates,  
23 permanent forfeitures in excess of ninety days may be made  
24 upon approval of the director of adult institutions. No  
25 inmate shall forfeit more than fifty percent of his

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1 meritorious deductions accrued during the previous twelve  
2 months; and after forfeiture of any portion of an inmate's  
3 accrued meritorious deductions, the remainder shall vest and  
4 shall not be subject to further forfeiture. Notwithstanding  
5 any other provisions of this act, an inmate may forfeit up to  
6 one hundred percent of all accrued meritorious deductions if  
7 he commits any of the following:

8 (1) an act of actual personal violence, as  
9 defined by the corrections department against:

- 10 (a) another inmate;  
11 (b) corrections department personnel;  
12 (c) an employee of a contractor  
13 operating on behalf of the corrections department; or  
14 (d) any other person lawfully on the  
15 premises of a corrections department facility or other  
16 facility where department inmates are housed;

17 (2) one positive drug test while  
18 incarcerated;

19 (3) escape; or

20 (4) any felonious act.

21 F. An inmate is not eligible to earn meritorious  
22 deductions if he:

23 (1) disobeys an order to perform labor,  
24 pursuant to Section 33-8-4 NMSA 1978;

25 (2) is in disciplinary segregation;

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1 (3) is not actively participating in a  
2 program recommended and approved for him by the classification  
3 committee; or

4 (4) is within the first thirty days' receipt  
5 by the corrections department and his record from the county  
6 jail reflects that he has committed misconduct in the county  
7 jail that in the professional judgment of the corrections  
8 department should result in a delay of thirty days to begin  
9 earning meritorious deductions.

10 G. The provisions of this section shall not be  
11 interpreted as providing eligibility to earn meritorious  
12 deductions to an inmate during the initial thirty years of a  
13 sentence imposed pursuant to the provisions of:

- 14 (1) Subsection A of Section 30-2-1 NMSA 1978;
- 15 (2) Section 31-18-23 NMSA 1978; or
- 16 (3) Section 31-18-25 NMSA 1978.

17 H. The corrections department shall promulgate  
18 rules and regulations to implement the provisions of this  
19 section, and the rules and regulations shall be matters of  
20 public record. A concise summary of the rules and regulations  
21 shall be provided to every inmate and every inmate shall  
22 receive a quarterly statement of the meritorious deductions he  
23 has earned.

24 I. A New Mexico inmate confined in a federal or  
25 out-of-state correctional facility is eligible to earn

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1 meritorious deductions in the same manner as an inmate  
2 imprisoned in a state-run correctional facility on the basis  
3 of his inmate conduct reports furnished by those facilities to  
4 the corrections department, subject to approval by the  
5 corrections department.

6 J. An inmate imprisoned in a correctional facility  
7 that is operated by a public entity or a private company,  
8 pursuant to a contract with the corrections department, is  
9 eligible to earn meritorious deductions in the same manner as  
10 an inmate imprisoned in a state-run correctional facility,  
11 subject to approval by the corrections department.

12 K. As used in this section:

13 (1) "great bodily harm" means an injury to  
14 the person that creates a high probability of death; or that  
15 causes serious disfigurement; or that results in permanent  
16 loss or impairment of the function of any member or organ of  
17 the body;

18 (2) "nonviolent offense" means any felony  
19 offense other than a violent offense or any misdemeanor  
20 offense; and

21 (3) "violent offense" means:

22 (a) second degree murder, as provided  
23 in Section 30-2-1 NMSA 1978;

24 (b) voluntary manslaughter, as provided  
25 in Section 30-2-3 NMSA 1978;

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1 (c) assault with intent to commit a  
2 violent felony, as provided in Section 30-3-3 NMSA 1978, which  
3 results in great bodily harm;

4 (d) criminal sexual penetration, as  
5 provided in Section 30-9-11 NMSA 1978; and

6 (e) robbery, as provided in Section  
7 30-16-2 NMSA 1978, which results in great bodily harm."

8 Section 4. Section 33-2-36 NMSA 1978 (being Laws 1988,  
9 Chapter 78, Section 6) is amended to read:

10 "33-2-36. FORFEITURE OF EARNED MERITORIOUS DEDUCTIONS. --  
11 [~~Any accrued deductions may be forfeited by the convict for~~  
12 ~~any major conduct violation upon the recommendation of the~~  
13 ~~classification committee, approval by the warden and final~~  
14 ~~approval by the secretary of corrections.]~~

15 A. Meritorious deductions earned by an inmate may  
16 be forfeited by that inmate for any major conduct violation  
17 upon the recommendation of the classification committee,  
18 approval by the warden and final approval by the secretary of  
19 corrections.

20 B. The provisions of this section also apply to  
21 forfeiture of earned meritorious deductions for an inmate  
22 imprisoned in a correctional facility operated by a public  
23 entity or a private company, pursuant to a contract with the  
24 corrections department."

25 Section 5. Section 33-2-37 NMSA 1978 (being Laws 1988,

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1 Chapter 78, Section 7) is amended to read:

2 "33-2-37. RESTORATION OF FORFEITED MERITORIOUS  
3 DEDUCTIONS. - -

4 A. Meritorious deductions forfeited under Section  
5 33-2-36 NMSA 1978 may be restored in whole or in part to [ ~~any~~  
6 ~~prisoner~~] an inmate who is exemplary in conduct and work  
7 performance for a period of not less than [ ~~six~~] twelve months  
8 following the date of forfeiture. Meritorious deductions may  
9 be restored upon recommendation of the classification  
10 committee, approval by the warden and final approval by the  
11 secretary of corrections.

12 B. The provisions of this section also apply to  
13 restoration of earned meritorious deductions for an inmate  
14 imprisoned in a correctional facility operated by a public  
15 entity or a private company, pursuant to a contract with the  
16 corrections department. "

17 Section 6. Section 33-2-38 NMSA 1978 (being Laws 1889,  
18 Chapter 76, Section 13, as amended) is amended to read:

19 "33-2-38. COMPUTATION OF TERM. - - [Sec. ~~54. No convict~~] An  
20 inmate shall not be discharged from the penitentiary of New  
21 Mexico or other correctional facility until he has [ ~~remained~~  
22 served the full term for which he was sentenced. [ ~~to be~~] The  
23 term shall be computed from and [including] include the day on  
24 which his sentence took effect and [ ~~excluding~~] shall exclude  
25 any time the [ ~~convict~~] inmate may have been at large by reason

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1 of escape [~~therefrom~~], unless he [~~may be~~] is pardoned or  
2 otherwise released by legal authority. [~~Provided that nothing~~  
3 ~~in~~] The provisions of this section shall [be so construed as]  
4 not be interpreted to deprive [~~any convict~~] an inmate of any  
5 reduction of time to which he may be entitled [~~to under §~~  
6 ~~5070-~~] pursuant to the provisions of Section 33-2-34 NMSA  
7 1978. "

8 Section 7. Section 33-8-2 NMSA 1978 (being Laws 1981,  
9 Chapter 127, Section 2, as amended) is amended to read:

10 "33-8-2. DEFINITIONS. -- As used in the Corrections  
11 Industries Act:

12 A. "commission" means the secretary of corrections  
13 [~~commission~~];

14 B. "department" means the corrections department;

15 C. "enterprise" means a manufacturing,  
16 agricultural or service operation or group of closely related  
17 operations within the bounds of a facility but does not  
18 include standard facility maintenance activities and services;

19 D. "facility" means any place under the  
20 jurisdiction of the department at which individuals are  
21 confined pursuant to court order;

22 E. "fund" means the corrections industries  
23 revolving fund;

24 F. "local public body" means all political  
25 subdivisions of the state and their agencies,

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1 instrumentalities and institutions supported wholly or in part  
2 by funds derived from public taxation; and

3 G. "state agency" means the state or any of its  
4 branches, agencies, departments, boards, instrumentalities or  
5 institutions supported wholly or in part by funds derived from  
6 public taxation. "

7 Section 8. [NEW MATERIAL] SHORT TITLE. -- Sections 8  
8 through 15 of this act may be cited as the "Corrections  
9 Population Control Act".

10 Section 9. [NEW MATERIAL] FINDINGS--PURPOSE. --

11 A. The legislature finds that:

12 (1) for many years, the state of New Mexico  
13 has experienced difficulty in managing the size of its inmate  
14 population. Often, the number of beds has been insufficient  
15 to accommodate the inmate population committed or detained in  
16 correctional facilities;

17 (2) an overcrowded inmate population was a  
18 major cause of the disturbance that erupted at the  
19 penitentiary of New Mexico in 1980. Moreover, problems caused  
20 by overcrowding remain at the center of the ongoing federal  
21 litigation involving the corrections department;

22 (3) a permanent solution to the overcrowded  
23 inmate population must be established to ensure that the  
24 corrections department is able to effectively operate its  
25 facilities, to mitigate public safety concerns and to reduce

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1 the likelihood of future litigation;

2 (4) although the corrections department is  
3 responsible for the operation of correctional facilities, it  
4 cannot resolve the problem of overcrowding by itself. The  
5 department has no control over the admission of inmates into  
6 its facilities and has only limited control over the release  
7 of inmates from its facilities; and

8 (5) a permanent solution to the overcrowded  
9 inmate population requires participation, commitment and  
10 cooperation by the legislative, judicial and executive  
11 branches of government and all criminal justice agencies.

12 B. The purpose of the Corrections Population  
13 Control Act is to establish a corrections population control  
14 commission that shall operate as an autonomous, nonpartisan  
15 body. The commission shall develop and implement mechanisms  
16 to prevent the inmate population from exceeding the capacity  
17 of correctional facilities and shall take appropriate action  
18 when necessary to effect the reduction of the inmate  
19 population.

20 Section 10. [NEW MATERIAL] DEFINITIONS. -- As used in the  
21 Corrections Population Control Act:

22 A. "commission" means the corrections population  
23 control commission;

24 B. "female prison facility" means any female  
25 prison facility so designated by the corrections department;

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C. "male prison facilities" means:

- (1) the penitentiary of New Mexico, located in Santa Fe;
- (2) the central New Mexico correctional facility, located in Los Lunas;
- (3) the Los Lunas correctional facility, located in Los Lunas;
- (4) the southern New Mexico correctional facility, located in Las Cruces;
- (5) the western New Mexico correctional facility, located in Grants;
- (6) the Roswell correctional facility, located in Hagerman; and
- (7) any other male prison facilities so designated by the corrections department;

D. "nonviolent offender" means:

- (1) a person not convicted of the following violent offenses:
  - (a) murder in the first degree or murder in the second degree pursuant to the provisions of Section 30-2-1 NMSA 1978;
  - (b) aggravated assault, pursuant to the provisions of Section 30-3-2 NMSA 1978;
  - (c) aggravated battery, pursuant to the provisions of Subsection C of Section 30-3-5 NMSA 1978;

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- 1 (d) kidnapping, pursuant to the  
2 provisions of Section 30-4-1 NMSA 1978;
- 3 (e) abuse of a child, pursuant to the  
4 provisions of Subsection C of Section 30-6-1 NMSA 1978;
- 5 (f) criminal sexual penetration,  
6 pursuant to the provisions of Section 30-9-11 NMSA 1978;
- 7 (g) robbery while armed with a deadly  
8 weapon, pursuant to the provisions of Section 30-16-2 NMSA  
9 1978;
- 10 (h) use of a firearm during the  
11 commission of a noncapital felony, pursuant to the provisions  
12 of Section 31-18-16 NMSA 1978;
- 13 (i) intentional injury to a person  
14 sixty years of age or older or to a handicapped person during  
15 the commission of a noncapital felony, pursuant to the  
16 provisions of Section 31-18-16.1 NMSA 1978;
- 17 (j) commission of three violent  
18 felonies, pursuant to the provisions of Sections 31-18-23 and  
19 31-18-24 NMSA 1978; or
- 20 (k) commission of two violent sex  
21 offenses, pursuant to the provisions of Sections 31-18-25 and  
22 31-18-26 NMSA 1978;
- 23 (2) a person not convicted of a violent  
24 felony, as enumerated in Paragraph (1) of this subsection,  
25 from another state, federal jurisdiction or foreign country

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1 within the last ten years;

2 (3) a person not serving a sentence of life  
3 imprisonment or a single or combined sentence of more than  
4 twenty years involving physical injury, physical violence or  
5 great bodily harm or a substantial threat or risk of physical  
6 injury, physical violence or great bodily harm to another  
7 person, to be determined by the commission; or

8 (4) a person not classified as a maximum  
9 security inmate;

10 E. "prisoner" refers to non-violent offenders; and

11 F. "rated capacity" means the actual general  
12 population bed space, including only individual cells and  
13 areas designed for the long-term housing of inmates, available  
14 in the female prison facility or male prison facilities as  
15 certified by the secretary of corrections and subject to  
16 applicable state and federal law.

17 Section 11. [NEW MATERIAL] COMMISSION--CREATION--  
18 MEMBERSHIP.--

19 A. There is created the "corrections population  
20 control commission".

21 B. The commission shall be appointed for two-year  
22 terms and shall be composed of:

23 (1) the secretary of the corrections  
24 department, who shall serve as chairman;

25 (2) a member appointed by the New Mexico

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1 supreme court;

2 (3) one representative appointed by the  
3 speaker of the house of representatives;

4 (4) one senator appointed by the president  
5 pro tempore of the senate;

6 (5) one representative and one senator  
7 appointed by the minority leader of the house of  
8 representatives and the senate, respectively; and

9 (6) one member appointed by the governor.

10 C. A majority of the members of the commission  
11 constitutes a quorum for the transaction of commission  
12 business.

13 D. The members of the commission shall be paid  
14 pursuant to the provisions of the Per Diem and Mileage Act and  
15 shall receive no other perquisite, compensation or allowance.

16 Section 12. [NEW MATERIAL] COMMISSION-- DUTIES-- ANNUAL  
17 REPORT. --

18 A. The commission shall study, develop and  
19 recommend policies and mechanisms designed to manage the  
20 growth of the inmate population by:

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

23 (2) providing information concerning impacts  
24 on the inmate population caused by changes in sentencing  
25 policies and law enforcement policies;

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- 1 (3) analyzing the need for future
- 2 construction of additional correctional facilities;
- 3 (4) if necessary, preparing proposed
- 4 legislation to further implementation of its policy
- 5 recommendations; and
- 6 (5) considering all of its recommendations in
- 7 light of public safety concerns.

8 B. The provisions of Subsection A of Section  
9 33-2-34 NMSA 1978 shall take effect upon certification by the  
10 commission that an adequate level of programming is offered by  
11 the corrections department to ensure that all inmates who want  
12 to earn meritorious deductions have an opportunity to do so.  
13 If the commission fails to certify an adequate level of  
14 programming, on a semiannual basis, for any reason, the  
15 provisions of Subsection B of Section 33-2-34 NMSA 1978 will  
16 apply to all inmates.

17 C. The commission shall submit an annual report of  
18 its activities and legislative proposals to the interim  
19 legislative committee with jurisdiction over corrections  
20 issues. The report shall be filed with the interim  
21 legislative committee no later than November 1 of each year.

22 D. The commission staff support shall be provided  
23 by the corrections department.

24 Section 13. [NEW MATERIAL] OVERCROWDING-- POPULATION  
25 CONTROL MECHANISM - PROCEDURES. --

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1           A. When the inmate population of the corrections  
2 department facilities, exclusive of the inmate population  
3 housed in facilities used to relieve interim overcrowding,  
4 exceeds one hundred twelve percent of rated capacity on or  
5 before June 30, 1999 or one hundred percent of rated capacity  
6 after June 30, 1999, for a period of thirty consecutive days,  
7 the following measures shall be taken to reduce capacity:

8                   (1) the corrections department shall engage  
9 in all lawful and professionally appropriate efforts to reduce  
10 the prison population to one hundred twelve percent or one  
11 hundred percent of rated capacity as applicable, including in-  
12 state and out-of-state inmate transfers;

13                   (2) if prison population is still in excess  
14 of one hundred twelve percent or one hundred percent rated  
15 capacity as applicable after sixty consecutive days, the  
16 secretary of corrections shall notify the commission.

17 Included in the notification shall be a list of prisoners who  
18 are within one hundred eighty days of their projected release  
19 date;

20                   (3) the commission shall convene within ten  
21 days to consider the release of prisoners on the list provided  
22 by the corrections department. The commission shall also  
23 discuss with the corrections department the impact on  
24 population of possible changes in the classification system  
25 and expanding incarceration alternatives. Victims of those

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1 prisoners shall receive appropriate notification that the  
2 prisoners may be released before sentence completion. If  
3 requested, the commission shall hear testimony or review the  
4 written statement of a victim or relative of a victim, as well  
5 as any public official who wishes to object to the release of  
6 a particular prisoner. For prisoners as to whom an objection  
7 is made, the commission shall deliberate on the release of the  
8 prisoner individually;

9 (4) for prisoners approved by the commission  
10 for release, the commission shall grant emergency release  
11 credits in ten-day increments that will be applied to the  
12 sentence or sentences being served by the prisoners. The  
13 commission shall order release of the appropriate number of  
14 prisoners to reduce the prison population to the applicable  
15 rated capacity; and

16 (5) notwithstanding any other provisions of  
17 this section, no prisoner shall be released:

18 (a) unless the prisoner has a parole  
19 plan pursuant to applicable parole board regulations;

20 (b) if the information concerning the  
21 prisoner is discovered to be materially inaccurate;

22 (c) if the prisoner commits a crime  
23 while incarcerated or receives a disciplinary infraction;

24 (d) if the prisoner fails a drug  
25 screening test within ten days of the scheduled release; or

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1 (e) if the effect of a prisoner release  
2 will result in the loss of federal funds to any agency of the  
3 state.

4 B. If a bill is introduced during a legislative  
5 session that proposes to create a new criminal offense,  
6 proposes the imposition of mandatory sentencing or proposes an  
7 increase to an existing sentence, the corrections department  
8 shall provide the legislature with:

9 (1) a fiscal impact report for a period five  
10 years into the future; and

11 (2) a report regarding the increased number  
12 of prison beds that will be needed for a period five years  
13 into the future.

14 Section 14. [NEW MATERIAL] TERMINATION OF AGENCY LIFE--  
15 TRANSFER OF FUNCTIONS.--The corrections population control  
16 commission is terminated on June 30, 2003. On July 1, 2003,  
17 the secretary of corrections shall assume the duties and  
18 responsibilities of the commission.

19 Section 15. TEMPORARY PROVISION.--

20 A. Effective immediately, the secretary of  
21 corrections shall implement those provisions of the  
22 Corrections Population Control Act that provide for the  
23 release of nonviolent offender prisoners within one hundred  
24 eighty days of projected release. This release authorization  
25 shall be implemented by the secretary of corrections without

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1 regard to the creation of the corrections population control  
2 commission provided for in the Corrections Population Control  
3 Act and without regard to the procedural time frames provided  
4 for in that act.

5 B. The provisions of this section shall remain in  
6 effect until July 1, 1998.

7 Section 16. REPEAL. --Section 33-8-14 NMSA 1978 (being  
8 Laws 1981, Chapter 127, Section 14) is repealed.

9 Section 17. APPLICABILITY. --The provisions of Sections  
10 33-2-34, 33-2-36 and 33-2-38 NMSA 1978 apply to persons  
11 convicted of a criminal offense committed on or after July 1,  
12 1998. As to persons convicted of a criminal offense committed  
13 prior to July 1, 1998, the laws with respect to the vesting of  
14 meritorious deductions in effect at the time the offense was  
15 committed shall apply.

16 Section 18. EMERGENCY. --It is necessary for the public  
17 peace, health and safety that this act take effect  
18 immediately.

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3 **FORTY-THIRD LEGISLATURE**  
4 **SECOND SESSION, 1998**  
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8 **February 2, 1998**  
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10  
11 **Mr. Speaker:**  
12

13 **Your RULES AND ORDER OF BUSINESS COMMITTEE, to**  
14 **whom has been referred**  
15

16 **HOUSE BILL 302**  
17

18  
19 **has had it under consideration and finds same to be GERMANE**  
20 **in accordance with constitutional provisions.**  
21

22 **Respectfully submitted,**  
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R. David Pederson, Chairman

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 8 For 0 Against

Yes: 8

Excused: Hobbs, Lujan, Nicely, Olguin, Sanchez, Taylor, J.G.,  
Williams, S.M.

Absent: None

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1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

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6 February 11, 1998

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8 Mr. Speaker:

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10 Your JUDICIARY COMMITTEE, to whom has been referred

11  
12 HOUSE BILL 302

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14 has had it under consideration and reports same with  
15 recommendation that it DO NOT PASS, but that

16  
17 HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
18 HOUSE BILL 302

19 DO PASS, and thence referred to the APPROPRIATIONS  
20 AND FINANCE COMMITTEE.

FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

HJCS/H 302

Page 26

Respectfully submitted,

\_\_\_\_\_  
Thomas P. Foy, Chairman

Adopted \_\_\_\_\_

Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 8 For 0 Against

Yes: 8

Excused: Garcia, King, Luna, Mallory, Sanchez

Absent: None

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HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 302

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

AN ACT

RELATING TO CORRECTIONS; REQUIRING INMATES TO EARN MERITORIOUS DEDUCTIONS FROM A TERM OF IMPRISONMENT; ENACTING THE CORRECTIONS POPULATION CONTROL ACT; ESTABLISHING THE CORRECTIONS POPULATION CONTROL COMMISSION; PROVIDING FOR THE DUTIES AND AUTHORITY OF THE POPULATION CONTROL COMMISSION; PROVIDING MECHANISMS FOR ADDRESSING INMATE OVERCROWDING; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

Section 1. Section 31-18-15 NMSA 1978 (being Laws 1977, Chapter 216, Section 4, as amended) is amended to read:

"31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--  
BASIC SENTENCES AND FINES--PAROLE AUTHORITY.--

A. If a person is convicted of a noncapital felony, the basic sentence of imprisonment is as follows:

(1) for a first degree felony, eighteen years imprisonment;

1 (2) for a second degree felony resulting in  
2 the death of a human being, fifteen years imprisonment;

3 (3) for a second degree felony, nine years  
4 imprisonment;

5 (4) for a third degree felony resulting in  
6 the death of a human being, six years imprisonment;

7 (5) for a third degree felony, three years  
8 imprisonment; or

9 (6) for a fourth degree felony, eighteen  
10 months imprisonment.

11 B. When the court imposes a sentence of  
12 imprisonment for a felony offense, the court shall indicate  
13 whether or not the offense is a violent offense, as defined in  
14 Section 33-2-34 NMSA 1978. The court shall inform the  
15 offender that his sentence of imprisonment is subject to the  
16 provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38  
17 NMSA 1978. If the court fails to inform an offender that his  
18 sentence is subject to those provisions or if the court  
19 provides the offender with erroneous information regarding  
20 those provisions, the failure to inform or the error shall not  
21 provide a basis for a writ of habeas corpus.

22 [B-] C. The appropriate basic sentence of  
23 imprisonment shall be imposed upon a person convicted of a  
24 first, second, third or fourth degree felony or a second or  
25 third degree felony resulting in the death of a human being,  
unless the court alters such sentence pursuant to the  
provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-  
18-17 NMSA 1978.

1           ~~[C-]~~ D. The court shall include in the judgment and  
 2 sentence of each person convicted of a first, second, third or  
 3 fourth degree felony or a second or third degree felony resulting  
 4 in the death of a human being and sentenced to imprisonment in a  
 5 corrections facility designated by the corrections department  
 6 authority for a period of parole to be served in accordance with  
 7 the provisions of Section 31-21-10 NMSA 1978 after the completion  
 8 of any actual time of imprisonment and authority to require, as a  
 9 condition of parole, the payment of the costs of parole services  
 10 and reimbursement to a law enforcement agency or local crime  
 11 stopper program in accordance with the provisions of that  
 12 section. The period of parole shall be deemed to be part of the  
 13 sentence of the convicted person in addition to the basic  
 14 sentence imposed pursuant to Subsection A of this section  
 15 together with alterations, if any, pursuant to the provisions of  
 16 Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

15           ~~[D-]~~ E. When a court imposes a sentence of  
 16 imprisonment pursuant to the provisions of Section 31-18-15.1,  
 17 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978 and suspends or defers  
 18 the basic sentence of imprisonment provided pursuant to the  
 19 provisions of Subsection A of this section, the period of parole  
 20 shall be served in accordance with the provisions of Section  
 21 31-21-10 NMSA 1978 for the degree of felony for the basic  
 22 sentence for which the inmate was convicted. For the purpose of  
 23 designating a period of parole, a court shall not consider that  
 24 the basic sentence of imprisonment was suspended or deferred and  
 25 that the inmate served a period of imprisonment pursuant to the  
 provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or

1 31-18-17 NMSA 1978.

2 [E.] F. The court may, in addition to the imposition  
3 of a basic sentence of imprisonment, impose a fine not to exceed:

4 (1) for a first degree felony, fifteen thousand  
5 dollars (\$15,000);

6 (2) for a second degree felony resulting in the  
7 death of a human being, twelve thousand five hundred dollars  
8 (\$12,500);

9 (3) for a second degree felony, ten thousand  
10 dollars (\$10,000);

11 (4) for a third degree felony resulting in the  
12 death of a human being, five thousand dollars (\$5,000); or

13 (5) for a third or fourth degree felony, five  
14 thousand dollars (\$5,000). "

15 Section 2. Section 33-1-2 NMSA 1978 (being Laws 1978,  
16 Chapter 4, Section 1, as amended) is amended to read:

17 "33-1-2. DEFINITIONS.--As used in the Corrections Act:

18 A. "division" or "department" means the corrections  
19 department;

20 B. "director" or "secretary" means the secretary of  
21 corrections;

22 C. "corrections facility" means any facility or  
23 program controlled or operated by the state or any of its  
24 agencies or departments and supported wholly or in part by state  
25 funds for the correctional care of persons, including but not  
limited to:

(1) the "penitentiary of New Mexico", which  
consists of the penitentiary at Santa Fe and other places in the

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1 state designated by the secretary; and

2 (2) the state board of probation and parole,  
3 except to the extent delegated to the parole board by the Parole  
4 Board Act; and

5 ~~[D. "commission" means the corrections commission;~~  
6 and

7 ~~E.]~~ D. "warden" or "superintendent" means the  
8 administrative director of a correctional facility."

9 Section 3. Section 33-1-4 NMSA 1978 (being Laws 1969,  
10 Chapter 226, Section 4, as amended) is amended to read:

11 "33-1-4. CORRECTIONS [~~DIVISION~~] DEPARTMENT. - -

12 ~~[A. There is created within the criminal justice~~  
13 ~~department the "corrections division".] The [division]~~  
14 department is responsible for all matters pertaining to  
15 corrections as provided in the Corrections Act or other law.

16 ~~[B. There is created the "corrections commission"~~  
17 ~~consisting of seven members appointed by the governor with the~~  
18 ~~advice and consent of the senate for staggered terms, one ending~~  
19 ~~June 30, 1972 and two ending June 30 of each of the following~~  
20 ~~three years. Thereafter, appointments shall be made for terms of~~  
21 ~~four years or less in a manner that the terms of one or two~~  
22 ~~members expire as the case may be on June 30 each year. Members~~  
23 ~~of the commission shall be reimbursed as provided in the Per Diem~~  
24 ~~and Mileage Act and shall receive no other compensation,~~  
25 ~~perquisite or allowance. Four members of the commission~~  
~~constitute a quorum for the transaction of business. Not more~~  
~~than four members shall be of the same political party. Four of~~  
~~the members shall be persons who have displayed interest in~~

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1 ~~juvenile correction and rehabilitation matters and three shall be~~  
2 ~~persons who have displayed interest in adult correction and~~  
3 ~~rehabilitation matters. Any member who fails to attend any three~~  
4 ~~consecutive meetings of the commission without being excused by~~  
5 ~~the commission shall be automatically removed.~~

6 C. ~~The commission shall advise the director in the~~  
7 ~~management and control of the division.]"~~

8 Section 4. Section 33-2-34 NMSA 1978 (being Laws 1978,  
9 Chapter 40, Section 1, as amended) is repealed and a new Section  
10 33-2-34 NMSA 1978 is enacted to read:

11 "33-2-34. [NEW MATERIAL] ELIGIBILITY FOR EARNED  
12 MERITORIOUS DEDUCTIONS. --

13 A. An inmate confined in the penitentiary of New  
14 Mexico or other state correctional facility for committing a  
15 violent offense is eligible to earn meritorious deductions of up  
16 to four days per month upon recommendation of the classification  
17 committee and approval by the warden.

18 B. An inmate confined in the penitentiary of New  
19 Mexico or other state correctional facility for committing a  
20 nonviolent offense is eligible to earn meritorious deductions of  
21 up to thirty days per month upon recommendation of the  
22 classification committee and approval by the warden.

23 C. In order to earn meritorious deductions, an inmate  
24 shall actively participate in a program recommended and approved  
25 for him by the classification committee. The classification  
committee may recommend and approve only education programs,  
mental health programs, drug or alcohol treatment programs, drug  
or alcohol counseling programs or work programs.

1           D. An inmate whose record of conduct shows that he  
 2 has performed exceptionally meritorious service and whose record  
 3 of conduct shows that he has otherwise faithfully observed the  
 4 rules of the institution may be eligible for a lump-sum  
 5 meritorious deduction award, not to exceed one year per award and  
 6 not to exceed a total of one year for all lump-sum meritorious  
 7 deduction awards awarded in any consecutive twelve-month period,  
 8 which may be deducted from the length of the sentence then  
 9 remaining unserved. Exceptionally meritorious service shall  
 10 include heroic acts of saving life or property, but shall not  
 11 include acts in performance of normal work duties or program  
 12 assignments. The classification committee and the warden may  
 13 recommend the number of days to be awarded in each case based  
 14 upon the particular merits, but any award shall be determined by  
 15 the director of the adult institutions divisions of the  
 16 corrections department. Allowance for exceptionally meritorious  
 17 service shall be in addition to the meritorious deductions  
 18 provided for in Subsections A and B of this section, and in the  
 19 event two or more consecutive sentences are being served, the  
 20 aggregate of the several sentences shall be the basis upon which  
 21 the deduction shall be computed.

22           E. The meritorious deductions provided for in  
 23 Subsections A and B of this section shall pertain to both the  
 24 basic sentence to be served and any enhanced term of imprisonment  
 25 pursuant to the provisions of the Criminal Sentencing Act.  
 Meritorious deductions of up to ninety days per occurrence shall  
 be permanently forfeited upon recommendation of the  
 classification committee and approval of the warden if the inmate

1 does not properly maintain the standard upon which the award was  
2 based. For those inmates, permanent forfeitures in excess of  
3 ninety days may be made upon approval of the director of the  
4 adult institutions division of the corrections department. No  
5 inmate shall forfeit more than fifty percent of his meritorious  
6 deductions accrued during the previous twelve months; and after  
7 forfeiture of any portion of an inmate's accrued meritorious  
8 deductions, the remainder shall vest and shall not be subject to  
9 further forfeiture. Notwithstanding any other provisions of this  
10 section, an inmate may forfeit up to one hundred percent of all  
11 accrued meritorious deductions if he commits any of the  
12 following:

- 13 (1) an act of actual personal violence, as  
14 defined by the corrections department, against:
  - 15 (a) another inmate;
  - 16 (b) corrections department personnel;
  - 17 (c) an employee of a contractor operating  
18 on behalf of the corrections department; or
  - 19 (d) any other person lawfully on the  
20 premises of a corrections department facility or other facility  
21 where department inmates are housed;
- 22 (2) one positive drug test while incarcerated;
- 23 (3) escape; or
- 24 (4) any felonious act.

25 F. An inmate is not eligible to earn meritorious deductions if he:

- (1) disobeys an order to perform labor,  
pursuant to Section 33-8-4 NMSA 1978;

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(2) is in disciplinary segregation;  
(3) is not actively participating in a program recommended and approved for him by the classification committee;  
or

(4) is within the first thirty days' receipt by the corrections department and his record from the county jail reflects that he has committed misconduct in the county jail that in the professional judgment of the corrections department should result in a delay of thirty days to begin earning meritorious deductions.

G. The provisions of this section shall not be interpreted as providing eligibility to earn meritorious deductions to an inmate during the initial thirty years of a sentence imposed pursuant to the provisions of:

- (1) Subsection A of Section 30-2-1 NMSA 1978;
- (2) Section 31-18-23 NMSA 1978; or
- (3) Section 31-18-25 NMSA 1978.

H. The corrections department shall promulgate rules to implement the provisions of this section, and the rules shall be matters of public record. A concise summary of the rules shall be provided to every inmate, and every inmate shall receive a quarterly statement of the meritorious deductions he has earned.

I. A New Mexico inmate confined in a federal or out-of-state correctional facility is eligible to earn meritorious deductions in the same manner as an inmate imprisoned in a state-run correctional facility on the basis of his inmate conduct reports furnished by those facilities to the corrections

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1 department, subject to approval by the corrections department.

2 J. An inmate imprisoned in a correctional facility in  
3 New Mexico that is operated by a public entity or a private  
4 company, pursuant to a contract with the corrections department,  
5 is eligible to earn meritorious deductions in the same manner as  
6 an inmate imprisoned in a state-run correctional facility,  
7 subject to approval by the corrections department.

8 K. As used in this section:

9 (1) "nonviolent offense" means any felony  
10 offense other than a violent offense; and

11 (2) "violent offense" means:

12 (a) second degree murder, as provided in  
13 Section 30-2-1 NMSA 1978;

14 (b) voluntary manslaughter, as provided in  
15 Section 30-2-3 NMSA 1978;

16 (c) third degree aggravated battery, as  
17 provided in Section 30-3-5 NMSA 1978;

18 (d) first degree kidnapping, as provided  
19 in Section 30-4-1 NMSA 1978;

20 (e) first and second degree criminal  
21 sexual penetration, as provided in Section 30-9-11 NMSA 1978;

22 (f) third degree criminal sexual contact  
23 of a minor, as provided in Section 30-9-13 NMSA 1978;

24 (g) first and second degree robbery, as  
25 provided in Section 30-16-2 NMSA 1978;

(h) second degree aggravated arson, as  
provided in Section 30-17-6 NMSA 1978; and

(i) any of the following offenses, when

1 the nature of the offense and the resulting harm are such that  
 2 the court judges the crime to be a violent offense for the  
 3 purposes of this section: 1) involuntary manslaughter, as  
 4 provided in Section 30-2-3 NMSA 1978; 2) fourth degree aggravated  
 5 assault, as provided in Section 30-3-2 NMSA 1978; 3) third degree  
 6 assault with intent to commit a violent felony, as provided in  
 7 Section 30-3-3 NMSA 1978; 4) third and fourth degree aggravated  
 8 stalking, as provided in Section 30-3A-3.1 NMSA 1978; 5) second  
 9 degree kidnapping, as provided in Section 30-4-1 NMSA 1978; 6)  
 10 second degree abandonment of a child, as provided in Section  
 11 30-6-1 NMSA 1978; 7) first, second and third degree abuse of a  
 12 child, as provided in Section 30-6-1 NMSA 1978; 8) third degree  
 13 dangerous use of explosives, as provided in Section 30-7-5 NMSA  
 14 1978; 9) third and fourth degree criminal sexual penetration, as  
 15 provided in Section 30-9-11 NMSA 1978; 10) fourth degree criminal  
 16 sexual contact of a minor, as provided in Section 30-9-13 NMSA  
 17 1978; 11) third degree robbery, as provided in Section 30-16-2  
 18 NMSA 1978; and 12) third degree homicide by vehicle or great  
 19 bodily injury by vehicle, as provided in Section 66-8-101 NMSA  
 20 1978. "

21 Section 5. Section 33-2-36 NMSA 1978 (being Laws 1988,  
 22 Chapter 78, Section 6) is amended to read:

23 "33-2-36. FORFEITURE OF EARNED MERITORIOUS DEDUCTIONS. --  
 24 [~~Any accrued deductions may be forfeited by the convict for any  
 25 major conduct violation upon the recommendation of the  
 classification committee, approval by the warden and final  
 approval by the secretary of corrections.~~]

A. Meritorious deductions earned by an inmate may be

1 forfeited by that inmate for any major conduct violation upon the  
2 recommendation of the classification committee, approval by the  
3 warden and final approval by the secretary of corrections.

4 B. The provisions of this section also apply to  
5 forfeiture of earned meritorious deductions for an inmate  
6 imprisoned in a:

7 (1) correctional facility in New Mexico  
8 operated by a public entity or a private company, pursuant to a  
9 contract with the corrections department; or

10 (2) federal or out-of-state correctional  
11 facility. "

12 Section 6. Section 33-2-37 NMSA 1978 (being Laws 1988,  
13 Chapter 78, Section 7) is amended to read:

14 "33-2-37. RESTORATION OF FORFEITED MERITORIOUS  
15 DEDUCTIONS. --

16 A. Meritorious deductions forfeited under Section  
17 33-2-36 NMSA 1978 may be restored in whole or in part to [ any  
18 prisoner] an inmate who is exemplary in conduct and work  
19 performance for a period of not less than [ six] twelve months  
20 following the date of forfeiture. Meritorious deductions may be  
21 restored upon recommendation of the classification committee,  
22 approval by the warden and final approval by the secretary of  
23 corrections.

24 B. The provisions of this section also apply to  
25 restoration of earned meritorious deductions for an inmate  
26 imprisoned in a:

27 (1) correctional facility in New Mexico  
28 operated by a public entity or a private company, pursuant to a

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1 contract with the corrections department; or

2 (2) federal or out-of-state correctional  
3 facility. "

4 Section 7. Section 33-2-38 NMSA 1978 (being Laws 1889,  
5 Chapter 76, Section 13, as amended) is amended to read:

6 "33-2-38. COMPUTATION OF TERM. -- ~~[Sec. 54. No convict]~~ An  
7 inmate shall not be discharged from the penitentiary of New  
8 Mexico or other correctional facility until he has ~~[remained]~~  
9 served the full term for which he was sentenced. ~~[to be]~~ The term  
10 shall be computed from and ~~[including]~~ include the day on which  
11 his sentence took effect and ~~[excluding]~~ shall exclude any time  
12 the ~~[convict]~~ inmate may have been at large by reason of escape  
13 ~~[therefrom]~~, unless he ~~[may be]~~ is pardoned or otherwise released  
14 by legal authority. ~~[Provided that nothing in]~~ The provisions of  
15 this section shall ~~[be so construed as]~~ not be interpreted to  
16 deprive ~~[any convict]~~ an inmate of any reduction of time to which  
17 he may be entitled ~~[to under § 5070]~~ pursuant to the provisions  
18 of Section 33-2-34 NMSA 1978. "

19 Section 8. Section 33-8-2 NMSA 1978 (being Laws 1981,  
20 Chapter 127, Section 2, as amended) is amended to read:

21 "33-8-2. DEFINITIONS. -- As used in the Corrections  
22 Industries Act:

- 23 A. "commission" means the secretary of corrections  
24 ~~[commission]~~;
- 25 B. "department" means the corrections department;
- 26 C. "enterprise" means a manufacturing, agricultural  
27 or service operation or group of closely related operations  
28 within the bounds of a facility but does not include standard

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1 facility maintenance activities and services;

2 D. "facility" means any place under the jurisdiction  
3 of the department at which individuals are confined pursuant to  
4 court order;

5 E. "fund" means the corrections industries revolving  
6 fund;

7 F. "local public body" means all political  
8 subdivisions of the state and their agencies, instrumentalities  
9 and institutions supported wholly or in part by funds derived  
10 from public taxation; and

11 G. "state agency" means the state or any of its  
12 branches, agencies, departments, boards, instrumentalities or  
13 institutions supported wholly or in part by funds derived from  
14 public taxation."

15 Section 9. [NEW MATERIAL] SHORT TITLE.--Sections 9 through  
16 15 of this act may be cited as the "Corrections Population  
17 Control Act".

18 Section 10. [NEW MATERIAL] FINDINGS--PURPOSE.--

19 A. The legislature finds that:

20 (1) for many years, the state of New Mexico has  
21 experienced difficulty in managing the size of its inmate  
22 population. Often, the number of beds has been insufficient to  
23 accommodate the inmate population committed or detained in  
24 correctional facilities;

25 (2) an overcrowded inmate population was a  
major cause of the disturbance that erupted at the penitentiary  
of New Mexico in 1980. Moreover, problems caused by overcrowding  
remain at the center of the ongoing federal litigation involving

1 the corrections department;

2 (3) a permanent solution to the overcrowded  
3 inmate population must be established to ensure that the  
4 corrections department is able to effectively operate its  
5 facilities, to mitigate public safety concerns and to reduce the  
6 likelihood of future litigation;

7 (4) although the corrections department is  
8 responsible for the operation of correctional facilities, it  
9 cannot resolve the problem of overcrowding by itself. The  
10 department has no control over the admission of inmates into its  
11 facilities and has only limited control over the release of  
12 inmates from its facilities; and

13 (5) a permanent solution to the overcrowded  
14 inmate population requires participation, commitment and  
15 cooperation by the legislative, judicial and executive branches  
16 of government and all criminal justice agencies.

17 B. The purpose of the Corrections Population Control  
18 Act is to establish a corrections population control commission  
19 that shall operate as an autonomous, nonpartisan body. The  
20 commission shall develop and implement mechanisms to prevent the  
21 inmate population from exceeding the capacity of correctional  
22 facilities and shall take appropriate action when necessary to  
23 effect the reduction of the inmate population.

24 Section 11. [NEW MATERIAL] DEFINITIONS. -- As used in the  
25 Corrections Population Control Act:

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

B. "female prison facility" means any female prison

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1 facility so designated by the corrections department;

2 C. "male prison facilities" means:

3 (1) the penitentiary of New Mexico, located in  
4 Santa Fe;

5 (2) the central New Mexico correctional  
6 facility, located in Los Lunas;

7 (3) the Los Lunas correctional facility,  
8 located in Los Lunas;

9 (4) the southern New Mexico correctional  
10 facility, located in Las Cruces;

11 (5) the western New Mexico correctional  
12 facility, located in Grants;

13 (6) the Roswell correctional facility, located  
14 in Hagerman; and

15 (7) any other male prison facilities so  
16 designated by the corrections department;

17 D. "nonviolent offender" means:

18 (1) a person not convicted of the following  
19 violent offenses:

20 (a) murder in the first degree or murder  
21 in the second degree pursuant to the provisions of Section 30-2-1  
22 NMSA 1978;

23 (b) aggravated assault, pursuant to the  
24 provisions of Section 30-3-2 NMSA 1978;

25 (c) aggravated battery, pursuant to the  
26 provisions of Subsection C of Section 30-3-5 NMSA 1978;

27 (d) kidnapping, pursuant to the provisions  
28 of Section 30-4-1 NMSA 1978;

1 (e) abuse of a child, pursuant to the  
2 provisions of Subsection C of Section 30-6-1 NMSA 1978;

3 (f) criminal sexual penetration, pursuant  
4 to the provisions of Section 30-9-11 NMSA 1978;

5 (g) robbery while armed with a deadly  
6 weapon, pursuant to the provisions of Section 30-16-2 NMSA 1978;

7 (h) use of a firearm during the commission  
8 of a noncapital felony, pursuant to the provisions of Section  
9 31-18-16 NMSA 1978;

10 (i) intentional injury to a person sixty  
11 years of age or older or to a handicapped person during the  
12 commission of a noncapital felony, pursuant to the provisions of  
13 Section 31-18-16.1 NMSA 1978;

14 (j) commission of three violent felonies,  
15 pursuant to the provisions of Sections 31-18-23 and 31-18-24 NMSA  
16 1978; or

17 (k) commission of two violent sex  
18 offenses, pursuant to the provisions of Sections 31-18-25 and  
19 31-18-26 NMSA 1978;

20 (2) a person not convicted of a violent felony,  
21 as enumerated in Paragraph (1) of this subsection, from another  
22 state, federal jurisdiction or foreign country within the last  
23 ten years;

24 (3) a person not serving a sentence of life  
25 imprisonment or a single or combined sentence of more than twenty  
years involving physical injury, physical violence or great  
bodily harm or a substantial threat or risk of physical injury,  
physical violence or great bodily harm to another person, to be

1 determined by the commission; or

2 (4) a person not classified as a maximum  
3 security inmate; and

4 E. "rated capacity" means the actual general  
5 population bed space, including only individual cells and areas  
6 designed for the long-term housing of inmates, available in the  
7 female prison facility or male prison facilities as certified by  
8 the secretary of corrections and subject to applicable state and  
9 federal law.

10 Section 12. [NEW MATERIAL] COMMISSION-- CREATION--  
MEMBERSHIP.--

11 A. There is created the "corrections population  
12 control commission".

13 B. The commission shall be appointed for two-year  
14 terms and shall be composed of:

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

17 (2) a member appointed by the New Mexico  
18 supreme court;

19 (3) a member appointed by the speaker of the  
20 house of representatives;

21 (4) a member appointed by the president pro  
22 tempore of the senate;

23 (5) one member each appointed by the minority  
24 leader of the house of representatives and the senate,  
25 respectively; and

(6) one member appointed by the governor.

C. A majority of the members of the commission

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1 constitutes a quorum for the transaction of commission business.

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

5 Section 13. [NEW MATERIAL] COMMISSION-- DUTIES-- ANNUAL  
6 REPORT. --

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

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

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

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

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

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

22 B. The provisions of Subsection A of Section 33-2-34  
23 NMSA 1978 shall take effect upon certification by the commission  
24 that an adequate level of programming is offered by the  
25 corrections department to ensure that all inmates who want to  
earn meritorious deductions have an opportunity to do so. If the  
commission fails to certify an adequate level of programming, on  
a semi annual basis, for any reason, the provisions of Subsection

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1 B of Section 33-2-34 NMSA 1978 will apply to all inmates.

2 C. The commission shall submit an annual report of  
3 its activities and legislative proposals to the interim  
4 legislative committee with jurisdiction over corrections issues.  
5 The report shall be filed with the interim legislative committee  
6 no later than November 1 of each year.

7 D. The commission staff support shall be provided by  
8 the corrections department.

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

11 A. When the inmate population of the corrections  
12 department facilities, exclusive of the inmate population housed  
13 in facilities used to relieve interim overcrowding, exceeds one  
14 hundred twelve percent of rated capacity on or before June 30,  
15 1999 or one hundred percent of rated capacity after June 30,  
16 1999, for a period of thirty consecutive days, the following  
17 measures shall be taken to reduce capacity:

18 (1) the corrections department shall engage in  
19 all lawful and professionally appropriate efforts to reduce the  
20 prison population to one hundred twelve percent or one hundred  
21 percent of rated capacity as applicable, including in-state and  
22 out-of-state inmate transfers;

23 (2) if prison population is still in excess of  
24 one hundred twelve percent or one hundred percent rated capacity  
25 as applicable after sixty consecutive days, the secretary of  
corrections shall notify the commission. Included in the  
notification shall be a list of nonviolent offenders who are  
within one hundred eighty days of their projected release date;

1                   (3) the commission shall convene within ten  
 2 days to consider the release of nonviolent offenders on the list  
 3 provided by the corrections department. The commission shall  
 4 also discuss with the corrections department the impact on  
 5 population of possible changes in the classification system and  
 6 expanding incarceration alternatives. Victims of those  
 7 nonviolent offenders shall receive appropriate notification that  
 8 the nonviolent offenders may be released before sentence  
 9 completion. If requested, the commission shall hear testimony or  
 10 review the written statement of a victim or relative of a victim,  
 11 as well as any public official who wishes to object to the  
 12 release of a particular nonviolent offender. For nonviolent  
 13 offenders as to whom an objection is made, the commission shall  
 14 deliberate on the release of the nonviolent offender  
 15 individually;

14                   (4) for nonviolent offenders approved by the  
 15 commission for release, the commission shall grant emergency  
 16 release credits in ten-day increments that will be applied to the  
 17 sentence or sentences being served by the nonviolent offenders.  
 18 The commission shall order release of the appropriate number of  
 19 nonviolent offenders to reduce the prison population to the  
 20 applicable rated capacity; and

20                   (5) notwithstanding any other provisions of  
 21 this section, a nonviolent offender shall not be released:

22                           (a) unless the nonviolent offender has a  
 23 parole plan pursuant to applicable parole board regulations;

24                           (b) if the information concerning the  
 25 nonviolent offender is discovered to be materially inaccurate;

1 (c) if the nonviolent offender commits a  
2 crime while incarcerated or receives a disciplinary infraction;

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

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

8 B. If a bill is introduced during a legislative  
9 session that proposes to create a new criminal offense, proposes  
10 the imposition of mandatory sentencing or proposes an increase to  
11 an existing sentence, the corrections department shall provide  
12 the legislature with:

13 (1) a fiscal impact report for a period five  
14 years into the future; and

15 (2) a report regarding the increased number of  
16 prison beds that will be needed for a period five years into the  
17 future.

18 Section 15. [NEW MATERIAL] TERMINATION OF AGENCY LIFE--  
19 TRANSFER OF FUNCTIONS.--The corrections population control  
20 commission is terminated on June 30, 2003. On July 1, 2003, the  
21 secretary of corrections shall assume the duties and  
22 responsibilities of the commission.

23 Section 16. TEMPORARY PROVISION.--

24 A. Effective immediately, the secretary of  
25 corrections shall implement those provisions of the Corrections  
Population Control Act that provide for the release of nonviolent  
offenders within one hundred eighty days of projected release.  
This release authorization shall be implemented by the secretary

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1 of corrections without regard to the creation of the corrections  
2 population control commission provided for in the Corrections  
3 Population Control Act and without regard to the procedural time  
4 frames provided for in that act.

5 B. The provisions of this section shall remain in  
6 effect until July 1, 1998.

7 Section 17. REPEAL. --Section 33-8-14 NMSA 1978 (being Laws  
8 1981, Chapter 127, Section 14) is repealed.

9 Section 18. APPLICABILITY. --The provisions of Sections 1  
10 and 4 through 7 of this act apply to persons convicted of a  
11 criminal offense committed on or after July 1, 1998. As to  
12 persons convicted of a criminal offense committed prior to July  
13 1, 1998, the laws with respect to meritorious deductions in  
14 effect at the time the offense was committed shall apply.

15 Section 19. EMERGENCY. --It is necessary for the public  
16 peace, health and safety that this act take effect immediately.

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HJC/HB 302

**FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998**

February 13, 1998

Mr. Speaker:

Your APPROPRIATIONS AND FINANCE COMMITTEE, to whom  
has been referred

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 302

has had it under consideration and reports same with  
recommendation that it DO PASS.

Respectfully submitted,

---

Max Coll, Chairman

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1 FORTY-THIRD LEGISLATURE  
2 SECOND SESSION, 1998

4 Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
5 (Chief Clerk) (Chief Clerk)

6  
7 Date \_\_\_\_\_

8  
9 The roll call vote was 13 For 0 Against

10 Yes: 13

11 Excused: Bird, Coll, Garcia, MH, Marquardt, Vigil

12 Absent: None

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FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

February 18, 1998

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 302

has had it under consideration and reports same with  
recommendation that it DO PASS.

Respectfully submitted,

---

Fernando R. Macias, Chairman

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FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Payne, Sanchez, Tsosie

Absent: None

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