

1 HOUSE BILL 529

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Rodolpho "Rudy" S. Martinez

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10 AN ACT

11 RELATING TO CRIMINAL SENTENCING; REMOVING THE REQUIREMENT OF
12 SENTENCING DEFENDANTS CONVICTED OF MISDEMEANORS TO A COUNTY
13 JAIL; LIMITING THE MAXIMUM PERIOD OF IMPRISONMENT IN A COUNTY
14 JAIL.

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

17 SECTION 1. Section 31-19-1 NMSA 1978 (being Laws 1963,
18 Chapter 303, Section 29-4, as amended) is amended to read:

19 "31-19-1. SENTENCING AUTHORITY--MISDEMEANORS--
20 IMPRISONMENT AND FINES--PROBATION.--

21 A. Where the defendant has been convicted of a
22 crime constituting a misdemeanor, the judge shall sentence the
23 person to be imprisoned [~~in the county jail~~] for a definite
24 term less than one year or to the payment of a fine of not more
25 than one thousand dollars (\$1,000) or to both such imprisonment

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1 and fine in the discretion of the judge.

2 B. Where the defendant has been convicted of a
3 crime constituting a petty misdemeanor, the judge shall
4 sentence the person to be imprisoned in the county jail for a
5 definite term not to exceed six months or to the payment of a
6 fine of not more than five hundred dollars (\$500) or to both
7 such imprisonment and fine in the discretion of the judge.

8 C. When the court has deferred or suspended
9 sentence, it shall order the defendant placed on supervised or
10 unsupervised probation for all or some portion of the period of
11 deferment or suspension."

12 SECTION 2. Section 31-20-2 NMSA 1978 (being Laws 1963,
13 Chapter 303, Section 29-13, as amended) is amended to read:

14 "31-20-2. PLACE OF IMPRISONMENT--COMMITMENTS.--

15 A. Persons sentenced to imprisonment for a term of
16 [~~one year or~~] more [~~shall~~] than six months may be imprisoned in
17 a county jail or in a corrections facility designated by the
18 corrections department, [~~unless~~] if a new trial is granted,
19 [~~or~~] a portion of the sentence is suspended so as to provide
20 for imprisonment for not more than eighteen months or the
21 convicted person is serving a period of incarceration that is
22 less than one year in a community corrections program, then the
23 imprisonment may be in such place of incarceration other than a
24 corrections facility under the jurisdiction of the corrections
25 department, as the sentencing judge, in [~~his~~] the judge's

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1 discretion, may prescribe; provided that [~~a sentence of~~
2 ~~imprisonment for one year or more but not more than eighteen~~
3 ~~months shall be subject to the provisions of Subsections D and~~
4 ~~E of this section and shall not be imposed unless]~~ the
5 requirements [~~set forth in Subsection D~~] of Subsections D and E
6 of this section are satisfied.

7 B. All commitments, judgments and orders of the
8 courts of this state for the imprisonment or release of persons
9 in the penitentiary of New Mexico shall run to the corrections
10 department, but nothing contained in this section shall
11 invalidate or impair the validity of any commitment, judgment
12 or order of any court in this state directed to the secretary
13 of corrections, the warden of the penitentiary of New Mexico or
14 to the penitentiary of New Mexico, and all such commitments,
15 judgments and orders shall be treated and construed as running
16 to the corrections department.

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

- 20 (1) process all inmates sentenced or committed
21 for purposes of diagnosis to the corrections department;
22 (2) classify inmates for housing assignments;
23 (3) develop an individualized plan for
24 participation by each inmate in programs, work assignments and
25 special needs;

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

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

11 (6) with the approval of the secretary of
12 corrections, may transfer inmates to any facility, including
13 the forensic hospital under the jurisdiction of the department
14 of health.

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

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

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

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

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

9 E. If a judge imposes a sentence of [~~one year or~~]
10 more than six months but not more than eighteen months and
11 provides for imprisonment in a place of incarceration other
12 than a corrections facility under the jurisdiction of the
13 corrections department:

14 (1) the local governing body or its agent
15 shall have the ability to petition that judge when the capacity
16 of the place of incarceration is filled or when any problem
17 develops concerning that offender requesting the judge to issue
18 an order committing the offender to the corrections department
19 for completion of the remainder of [~~his~~] the offender's
20 sentence. A hearing on a petition pursuant to this paragraph
21 shall be held within three days of the filing of the petition.
22 Notwithstanding any other provision of law, the judge shall
23 retain jurisdiction over the offender for the purpose of
24 implementing the local sentencing option; and

25 (2) the local governing body or its agent

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1 shall keep the district judges for the judicial district in
2 which the place of incarceration is located informed as to the
3 capacity for the sentencing of offenders in accordance with the
4 local sentencing option. No judge shall sentence an offender
5 in accordance with the local sentencing option if that sentence
6 will result in exceeding the number of offenders set forth in
7 the joint powers agreement.

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

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

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SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.