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SENATE BILL 603

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

CISCO MCSORLEY

AN ACT

RELATING TO CORRECTIONS; ENACTING THE CORRECTIONS POPULATION CONTROL ACT; ESTABLISHING THE CORRECTIONS POPULATION CONTROL COMMISSION; PROVIDING FOR THE DUTIES AND AUTHORITY OF THE COMMISSION; PROVIDING MECHANISMS FOR ADDRESSING INMATE OVERCROWDING.

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

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

Section 2. FINDINGS--PURPOSE. --

A. The legislature finds that:

(1) for many years, the state has experienced difficulty in managing the size of its inmate population. Often, the number of beds has been insufficient to accommodate the inmate population committed or detained in correctional

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1 facilities;

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

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

12 (4) although the corrections department is
13 responsible for the operation of correctional facilities, it
14 cannot resolve the problem of overcrowding by itself. The
15 department has no control over the admission of inmates into its
16 facilities and has only limited control over the release of
17 inmates from its facilities; and

18 (5) a permanent solution to the overcrowded
19 inmate population requires participation, commitment and
20 cooperation by the legislative, judicial and executive branches
21 of government and all criminal justice agencies.

22 B. The purpose of the Corrections Population Control
23 Act is to establish a corrections population control commission
24 that shall operate as an autonomous, nonpartisan body. The
25 commission shall develop and implement mechanisms to prevent the

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

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

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

8 B. "female prison facility" means any female prison
9 facility so designated by the corrections department;

10 C. "male prison facilities" means:

11 (1) the penitentiary of New Mexico, located in
12 Santa Fe;

13 (2) the central New Mexico correctional
14 facility, located in Los Lunas;

15 (3) the Los Lunas correctional facility,
16 located in Los Lunas;

17 (4) the southern New Mexico correctional
18 facility, located in Las Cruces;

19 (5) the western New Mexico correctional
20 facility, located in Grants;

21 (6) the Roswell correctional facility, located
22 in Hagerman; and

23 (7) any other male prison facilities so
24 designated by the corrections department;

25 D. "nonviolent offender" means a person convicted

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1 for a criminal offense that resulted from an act that did not
2 involve physical injury, physical violence or great bodily harm
3 or a substantial threat or risk of physical injury, physical
4 violence or great bodily harm to another person, to be
5 determined by the commission. "Nonviolent offender" does not
6 include a person convicted pursuant to the provisions of Section
7 31-18-16 or 31-18-16.1 NMSA 1978, Subsection D of 31-18-17 NMSA
8 1978 or Subsection G of Section 66-8-102 NMSA 1978, or a person
9 classified by the corrections department as a ~~maximum~~-security
10 inmate; and

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

17 Section 4. COMMISSION--CREATION--MEMBERSHIP.--

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

20 B. The commission shall be composed of thirteen
21 members. Appointed members shall serve at the pleasure of the
22 appointing authority. The commission shall consist of the
23 following individuals or their designees:

24 (1) the secretary of corrections, who shall
25 serve as chairman of the commission;

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1 (2) the president of the district attorneys'
2 association;

3 (3) the chief public defender;

4 (4) the president of the New Mexico criminal
5 defense lawyers association;

6 (5) the chief of the New Mexico state police;

7 (6) the chief justice of the supreme court;

8 (7) a district court judge appointed by the
9 district court judges' association of New Mexico;

10 (8) the chairman of the parole board;

11 (9) the secretary of children, youth and
12 families; and

13 (10) two members each from the house of
14 representatives and the senate, representative of the majority
15 and minority political parties, to be appointed by the New
16 Mexico legislative council.

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

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

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

23 A. The commission shall study, develop and recommend
24 policies and mechanisms designed to manage the growth of the
25 inmate population by:

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1 (1) developing models to accurately forecast
2 projected growth in the inmate population;

3 (2) providing information concerning impacts on
4 the inmate population caused by changes in sentencing policies
5 and law enforcement policies;

6 (3) reviewing the inmate classification system;

7 (4) expanding the availability of alternatives
8 to incarceration;

9 (5) analyzing the need for future construction
10 of additional correctional facilities and the location of the
11 facilities;

12 (6) if necessary, preparing proposed
13 legislation to further implementation of its policy
14 recommendations; and

15 (7) considering all of its recommendations in
16 light of public safety concerns.

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

22 Section 6. OVERCROWDING--PRIMARY POPULATION CONTROL
23 MECHANISMS--PROCEDURES.--When the inmate population of the
24 female prison facility or the male prison facilities exceeds
25 ninety-five percent of the rated capacity for thirty consecutive

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1 days, the secretary of corrections shall notify the governor and
2 the commission concerning the potential for overcrowding. No
3 later than five days following that notification, the commission
4 shall meet to discuss and initiate one or more of the following
5 measures as a means to reduce the overcrowding:

6 A. provide immediate notification to all district
7 courts concerning the overcrowding;

8 B. increase the number of inmates transferred to
9 community corrections programs;

10 C. accelerate parole hearings for eligible inmates
11 and expedite release of inmates who are granted parole;

12 D. temporarily suspend the return of technical
13 parole violators to the custody of the corrections department;
14 and

15 E. authorize the secretary of corrections, with the
16 governor's approval, to award emergency release credits to
17 nonviolent offenders who are within thirty days of parole or
18 release.

19 Section 7. OVERCROWDING--SECONDARY POPULATION CONTROL
20 MECHANISMS--PROCEDURES. --

21 A. If, sixty days after the secretary of
22 corrections' notification to the governor and commission
23 concerning overcrowding, the primary population control
24 mechanisms fail to result in a reduction of inmate population to
25 ninety-five percent or less of the rated capacity, the secretary

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1 shall notify the governor and the commission that the potential
2 for overcrowding persists. No later than five days following
3 that notification, the commission shall meet to discuss and
4 initiate one or more of the following measures as a means to
5 reduce the overcrowding:

6 A. provide immediate notification to all district
7 courts regarding the overcrowding; and

8 B. authorize the secretary of corrections, with the
9 governor's approval, to award emergency release credits to
10 nonviolent offenders who are within ninety days of parole or
11 release.

12 Section 8. OVERCROWDING--TERTIARY POPULATION CONTROL
13 MECHANISMS--PROCEDURES.--If, one hundred twenty days after the
14 secretary of corrections' notification to the governor and
15 commission concerning overcrowding, the secondary population
16 control mechanisms fail to result in a reduction of inmate
17 population to ninety-five percent or less of the rated capacity,
18 the secretary shall notify the governor and the commission that
19 the potential for overcrowding persists. No later than five
20 days following that notification, the commission shall meet to
21 discuss and initiate one or more of the following measures as a
22 means to reduce the overcrowding:

23 A. provide immediate notification to all district
24 courts regarding the overcrowding; and

25 B. authorize the secretary of corrections, with the

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1 governor's approval, to award emergency release credits to
2 nonviolent offenders who are within one hundred eighty days of
3 parole or release.

4 Section 9. EFFECTIVE DATE. -- The effective date of the
5 provisions of this act is July 1, 1997.

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 603

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

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 CORRECTIONS 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 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 of
2 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 state
6 funds for the correctional care of persons, including but not
7 limited to:

8 (1) the "penitentiary of New Mexico", which
9 consists of the penitentiary at Santa Fe and other places in the
10 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 Parole
13 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. -- ~~[A. There is~~
21 ~~created within the criminal justice department the "corrections~~
22 ~~division".]~~ The ~~[division]~~ department is responsible for all
23 matters pertaining to corrections as provided in the Corrections
24 Act or other law.

25 ~~[B. There is created the "corrections commission"~~
~~consisting of seven members appointed by the governor with the~~
~~advice and consent of the senate for staggered terms, one ending~~
~~June 30, 1972 and two ending June 30 of each of the following~~

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

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

17 Section 3. Section 33-2-34 NMSA 1978 (being Laws 1978,
18 Chapter 40, Section 1, as amended) is repealed and a new Section
19 33-2-34 NMSA 1978 is enacted to read:

20 "33-2-34. [NEW MATERIAL] ELIGIBILITY FOR EARNED MERITORIOUS
21 DEDUCTIONS. --

22 A. An inmate confined in the penitentiary of New Mexico
23 or other state correctional facility for committing a violent
24 offense is eligible to earn meritorious deductions of up to four
25 days per month upon recommendation of the classification committee

1 and approval by the warden.

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

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

13 D. An inmate whose record of conduct shows that he has
14 performed exceptionally meritorious service and whose record of
15 conduct shows that he has otherwise faithfully observed the rules
16 of the institution may be eligible for a lump sum meritorious
17 deduction award, not to exceed one year per award and not to exceed
18 a total of one year for all lump sum meritorious deduction awards
19 awarded in any consecutive twelve-month period, which may be
20 deducted from the length of the sentence then remaining unserved.
21 Exceptionally meritorious service shall include heroic acts of
22 saving life or property, but shall not include acts in performance
23 of normal work duties or program assignments. The classification
24 committee and the warden may recommend the number of days to be
25 awarded in each case based upon the particular merits, but any

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1 award shall be determined by the director of adult institutions.
2 Allowance for exceptionally meritorious service shall be in
3 addition to the meritorious deductions provided for in Subsections
4 A and B of this section, and in the event two or more consecutive
5 sentences are being served, the aggregate of the several sentences
6 shall be the basis upon which the deduction shall be computed.

7 E. The meritorious deductions provided for in
8 Subsections A and B of this section shall pertain to both the basic
9 sentence to be served and any enhanced term of imprisonment
10 pursuant to the provisions of the Criminal Sentencing Act.
11 Meritorious deductions of up to ninety days per occurrence shall be
12 permanently forfeited upon recommendation of the classification
13 committee and approval of the warden if the inmate does not
14 properly maintain the standard upon which the award was based. For
15 those inmates, permanent forfeitures in excess of ninety days may
16 be made upon approval of the director of adult institutions. No
17 inmate shall forfeit more than fifty percent of his meritorious
18 deductions accrued during the previous twelve months; and after
19 forfeiture of any portion of an inmate's accrued meritorious
20 deductions, the remainder shall vest and shall not be subject to
21 further forfeiture. Notwithstanding any other provisions of this
22 act, an inmate may forfeit up to one hundred percent of all accrued
23 meritorious deductions if he commits any of the following:

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

- 1 (a) another inmate;
- 2 (b) corrections department personnel;
- 3 (c) an employee of a contractor operating on
- 4 behalf of the corrections department; or
- 5 (d) any other person lawfully on the
- 6 premises of a corrections department facility or other facility
- 7 where department inmates are housed;
- 8 (2) one positive drug test while incarcerated;
- 9 (3) escape; or
- 10 (4) any felonious act.

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

- 13 (1) disobeys an order to perform labor, pursuant
- 14 to Section 33-8-4 NMSA 1978;
- 15 (2) is in disciplinary segregation;
- 16 (3) is not actively participating in a program
- 17 recommended and approved for him by the classification committee;
- 18 or
- 19 (4) is within the first thirty days' receipt by
- 20 the corrections department and his record from the county jail
- 21 reflects that he has committed misconduct in the county jail that
- 22 in the professional judgment of the corrections department should
- 23 result in a delay of thirty days to begin earning meritorious
- 24 deductions.

25 G. The provisions of this section shall not be

1 interpreted as providing eligibility to earn meritorious deductions
2 to an inmate during the initial thirty years of a sentence imposed
3 pursuant to the provisions of:

4 (1) Subsection A of Section 30-2-1 NMSA 1978;

5 (2) Section 31-18-23 NMSA 1978; or

6 (3) Section 31-18-25 NMSA 1978.

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

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

19 J. An inmate imprisoned in a correctional facility that
20 is operated by a public entity or a private company, pursuant to a
21 contract with the corrections department, is eligible to earn
22 meritorious deductions in the same manner as an inmate imprisoned
23 in a state-run correctional facility, subject to approval by the
24 corrections department.

25 K. As used in this section:

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

5 (2) "nonviolent offense" means any felony offense
6 other than a violent offense or any misdemeanor offense; and

7 (3) "violent offense" means:

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

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

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

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

17 (e) robbery, as provided in Section
18 30-16-2 NMSA 1978, which results in great bodily harm. "

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

21 "33-2-36. FORFEITURE OF EARNED MERITORIOUS DEDUCTIONS. -- [Any
22 ~~accrued deductions may be forfeited by the convict]~~

23 A. Meritorious deductions earned by an inmate may be
24 forfeited by that inmate for any major conduct violation upon the
25 recommendation of the classification committee, approval by the

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1 warden and final approval by the secretary of corrections.

2 B. The provisions of this section also apply to
3 forfeiture of earned meritorious deductions for an inmate
4 imprisoned in a correctional facility operated by a public entity
5 or a private company, pursuant to a contract with the corrections
6 department. "

7 Section 5. Section 33-2-37 NMSA 1978 (being Laws 1988,
8 Chapter 78, Section 7) is amended to read:

9 "33-2-37. RESTORATION OF FORFEITED MERITORIOUS DEDUCTIONS. --

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

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

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

24 "33-2-38. COMPUTATION OF TERM -- [~~Sec. 54. No convict shall~~]
25 An inmate shall not be discharged from the penitentiary of New

1 ~~Mexico or other correctional facility~~ until he has ~~remained~~
 2 ~~served~~ the full term for which he was sentenced. ~~[to]~~ The term
 3 shall be computed from and ~~[including]~~ include the day on which his
 4 sentence took effect and ~~[excluding]~~ shall exclude any time the
 5 ~~[convict]~~ inmate may have been at large by reason of escape
 6 ~~[therefrom]~~, unless he ~~[may be]~~ is pardoned or otherwise released
 7 by legal authority. ~~[Provided that nothing in]~~ The provisions of
 8 this section shall ~~[be so construed as]~~ not be interpreted to
 9 deprive ~~[any convict]~~ an inmate of any reduction of time to which
 10 he may be entitled ~~[to under § 5070]~~ pursuant to the provisions of
 11 Section 33-2-34 NMSA 1978. "

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

14 "33-8-2. DEFINITIONS. --As used in the Corrections Industries
 15 Act:

16 A. "commission" means the ~~[corrections commission]~~
 17 secretary of corrections;

18 B. "department" means the corrections department;

19 C. "enterprise" means a manufacturing, agricultural or
 20 service operation or group of closely related operations within the
 21 bounds of a facility but does not include standard facility
 22 maintenance activities and services;

23 D. "facility" means any place under the jurisdiction of
 24 the department at which individuals are confined pursuant to court
 25 order;

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1 E. "fund" means the corrections industries revolving
2 fund;

3 F. "local public body" means all political subdivisions
4 of the state and their agencies, instrumentalities and institutions
5 supported wholly or in part by funds derived from public taxation;
6 and

7 G. "state agency" means the state or any of its
8 branches, agencies, departments, boards, instrumentalities or
9 institutions supported wholly or in part by funds derived from
10 public taxation. "

11 Section 8. [NEW MATERIAL] SHORT TITLE. --Sections 8 through
12 14 of this act may be cited as the "Corrections Population Control
13 Act".

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

15 A. The legislature finds that:

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

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

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

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

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

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

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

25 A. "commission" means the corrections population

Underscored material = new
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1 control commission;

2 B. "female prison facility" means any female prison
3 facility so designated by the corrections department;

4 C. "male prison facilities" means:

5 (1) the penitentiary of New Mexico, located in
6 Santa Fe;

7 (2) the central New Mexico correctional facility,
8 located in Los Lunas;

9 (3) the Los Lunas correctional facility, located
10 in Los Lunas;

11 (4) the southern New Mexico correctional
12 facility, located in Las Cruces;

13 (5) the western New Mexico correctional facility,
14 located in Grants;

15 (6) the Roswell correctional facility, located in
16 Hagerman; and

17 (7) any other male prison facilities so
18 designated by the corrections department;

19 D. "nonviolent offender" means:

20 (1) a person not convicted of the following
21 violent offenses:

22 (a) murder in the first degree or murder in
23 the second degree pursuant to the provisions of Section 30-2-1 NMSA
24 1978;

25 (b) aggravated assault, pursuant to the

1 provisions of Section 30-3-2 NMSA 1978;

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

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

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

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

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

12 (h) use of a firearm during the commission
13 of a noncapital felony, pursuant to the provisions of Section
14 31-18-16 NMSA 1978;

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

19 (j) commission of three violent felonies,
20 pursuant to the provisions of Sections 31-18-23 and 31-18-24 NMSA
21 1978; or

22 (k) commission of two violent sex offenses,
23 pursuant to the provisions of Sections 31-18-25 and 31-18-26 NMSA
24 1978;

25 (2) a person not convicted of a violent felony,

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1 as enumerated in Paragraph (1) of this subsection, from another
2 state, federal jurisdiction or foreign country within the last ten
3 years;

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

10 (4) a person not classified as a maximum security
11 inmate;

12 E. "prisoner" refers to nonviolent offenders; and

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

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

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

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

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

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

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

5 (4) a member appointed by the president pro
6 tempore of the senate;

7 (5) a member appointed by the minority leader of
8 the house of representatives;

9 (6) a member appointed by the minority leader of
10 the senate; and

11 (7) a member appointed by the governor.

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

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

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

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

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

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

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1 law enforcement policies;

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

4 (4) if necessary, preparing proposed legislation
5 to further implementation of its policy 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 33-2-34
9 NMSA 1978 shall take effect upon certification by the commission
10 that an adequate level of programming is offered by the corrections
11 department to ensure that all inmates who want to earn meritorious
12 deductions have an opportunity to do so. If the commission fails
13 to certify an adequate level of programming, on a semiannual basis,
14 for any reason, the provisions of Subsection B of Section 33-2-34
15 NMSA 1978 shall apply to all inmates.

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

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

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

25 A. When the inmate population of the corrections

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

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

12 (2) if prison population is still in excess of
13 one hundred twelve percent or one hundred percent rated capacity as
14 applicable after sixty consecutive days, the secretary of
15 corrections shall notify the commission. Included in the
16 notification shall be a list of prisoners who are within one
17 hundred eighty days of their projected release date;

18 (3) the commission shall convene within ten days
19 to consider the release of prisoners on the list provided by the
20 corrections department. The commission shall also discuss with the
21 corrections department the impact on population of possible changes
22 in the classification system and expanding incarceration
23 alternatives. Victims of those prisoners shall receive appropriate
24 notification that the prisoners may be released before sentence
25 completion. If requested, the commission shall hear testimony or

1 review the written statement of a victim or relative of a victim,
2 as well as any public official who wishes to object to the release
3 of a particular prisoner. For prisoners as to whom an objection is
4 made, the commission shall deliberate on the release of the
5 prisoner individually;

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

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

14 (a) unless the prisoner has a parole plan
15 pursuant to applicable parole board regulations;

16 (b) if the information concerning the
17 prisoner is discovered to be materially inaccurate;

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

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

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

24 B. If a bill is introduced during a legislative session
25 that proposes to create a new criminal offense, proposes the

1 imposition of mandatory sentencing or proposes an increase to an
2 existing sentence, the corrections department shall provide the
3 legislature with:

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

6 (2) a report regarding the increased number of
7 prison beds that will be needed for a period five years into the
8 future.

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

14 Section 15. TEMPORARY PROVISION. --

15 A. Effective immediately, the secretary of corrections
16 shall implement those provisions of the Corrections Population
17 Control Act that provide for the release of nonviolent offender
18 prisoners within one hundred eighty days of projected release.
19 This release authorization shall be implemented by the secretary of
20 corrections without regard to the creation of the corrections
21 population control commission provided for in the Corrections
22 Population Control Act and without regard to the procedural time
23 frames provided for in that act.

24 B. The provisions of this section shall remain in
25 effect until July 1, 1997.

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1 Section 16. REPEAL. --Section 33-8-14 NMSA 1978 (being Laws
2 1981, Chapter 127, Section 14) is repealed.

3 Section 17. APPLICABILITY. --The provisions of Sections 3
4 through 6 of this act apply to persons convicted of a criminal
5 offense committed on or after July 1, 1997. As to persons
6 convicted of a criminal offense committed prior to July 1, 1997,
7 the laws with respect to the vesting of meritorious deductions in
8 effect at the time the offense was committed shall apply.

9 Section 18. EFFECTIVE DATE. --The effective date of the
10 provisions of Sections 3 through 6 of this act is July 1, 1997.

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

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