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SENATE BILL 1273

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

INTRODUCED BY

MANNY M ARAGON

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE.

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

1 FORTY-THIRD LEGISLATURE
2 FIRST SESSION, 1997
3
4

5 March 12, 1997
6

7 Mr. President:
8

9 Your FINANCE COMMITTEE, to whom has been referred
10

11 SENATE BILL 1273
12

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

16 SENATE FINANCE COMMITTEE SUBSTITUTE FOR
17 SENATE BILL 1273
18

19 DO PASS.
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21 Respectfully submitted,
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25 _____
Ben D. Altamirano, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

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Date _____

The roll call vote was 6 For 1 Against
Yes: 6
No: Lyons
Excused: Carraro, Fidel, Ingle, McKibben
Absent: None

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1 FORTY-THIRD LEGISLATURE
2 FIRST SESSION, 1997

3
4
5 March 12, 1997

6
7 Mr. President:

8
9 Your COMMITTEES' COMMITTEE, to whom has been referred

10
11 SENATE FINANCE COMMITTEE SUBSTITUTE FOR
12 SENATE BILL 1273

13
14 has had it under consideration and reports same WITHOUT
15 RECOMMENDATION.

16
17 Respectfully submitted,

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21 _____
22 Manny M. Aragon, Chairman
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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

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SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 1273

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

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
REQUIRING INMATES TO EARN MERITORIOUS DEDUCTIONS FROM A TERM OF
IMPRISONMENT; ENACTING THE CORRECTIONS POPULATION CONTROL ACT;
ESTABLISHING THE CORRECTIONS POPULATION CONTROL COMMISSION;
PROVIDING MECHANISMS FOR ADDRESSING INMATE OVERCROWDING;
LIMITING THE PERIODS OF INCARCERATION OF ADULT MALE INMATES
TRANSFERRED TO OUT-OF-STATE CORRECTIONAL FACILITIES; DIRECTING
THE CORRECTIONS DEPARTMENT TO CONTRACT WITH CIBOLA COUNTY TO
HOUSE ADDITIONAL INMATES AT THE CIBOLA COUNTY CORRECTIONS
CENTER; PROVIDING FOR ACQUISITION OF ADULT AND JUVENILE
CORRECTIONAL AND TREATMENT FACILITIES; ESTABLISHING A DRUG COURT
AND PROVIDING FOR AN ADDITIONAL JUDGE AND ADDITIONAL ASSISTANT
DISTRICT ATTORNEYS AND PUBLIC DEFENDERS IN THE SECOND JUDICIAL
DISTRICT; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA
1978; MAKING APPROPRIATIONS; DECLARING AN EMERGENCY.

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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;

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

C. "corrections facility" means any facility or
program controlled or operated by the state or any of its
agencies or departments and supported wholly or in part by state
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
state designated by the secretary; and

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

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

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

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

"33-1-4. CORRECTIONS ~~[DIVISION]~~ DEPARTMENT. -- ~~[A. There is
created within the criminal justice department the "corrections
division".]~~ The ~~[division]~~ department is responsible for all

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1 matters pertaining to corrections as provided in the Corrections
2 Act or other law.

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

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

23 Section 3. Section 33-2-34 NMSA 1978 (being Laws 1978,
24 Chapter 40, Section 1, as amended) is repealed and a new Section
25 33-2-34 NMSA 1978 is enacted to read:

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1 "33-2-34. [NEW MATERIAL] ELIGIBILITY FOR EARNED MERITORIOUS
2 DEDUCTIONS. --

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

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

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

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

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

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

1 and shall not be subject to further forfeiture. Notwithstanding
2 any other provisions of this act, an inmate may forfeit up to one
3 hundred percent of all accrued meritorious deductions if he commits
4 any of the following:

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

- 7 (a) another inmate;
- 8 (b) corrections department personnel;
- 9 (c) an employee of a contractor operating on
10 behalf of the corrections department; or

11 (d) any other person lawfully on the premises
12 of a corrections department facility or other facility where
13 department inmates are housed;

14 (2) one positive drug test while incarcerated;

15 (3) escape; or

16 (4) any felonious act.

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

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

21 (2) is in disciplinary segregation;

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

25 (4) is within the first thirty days' receipt by the

1 corrections department and his record from the county jail reflects
2 that he has committed misconduct in the county jail that in the
3 professional judgment of the corrections department should result
4 in a delay of thirty days to begin earning meritorious deductions.

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

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

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

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

24 J. An inmate imprisoned in a correctional facility that
25 is operated by a public entity or a private company, pursuant to a

1 contract with the corrections department, is eligible to earn
 2 meritorious deductions in the same manner as an inmate imprisoned
 3 in a state-run correctional facility, subject to approval by the
 4 corrections department.

5 K. As used in this section:

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

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

12 (3) "violent offense" means:

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

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

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

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

22 (e) robbery, as provided in Section
 23 30-16-2 NMSA 1978, which results in great bodily harm."

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

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1 "33-2-36. FORFEITURE OF EARNED MERITORIOUS DEDUCTIONS. -- [~~Any~~
2 ~~accrued deductions may be forfeited by the convict]~~

3 A. Meritorious deductions earned by an inmate may be
4 forfeited by that inmate for any major conduct violation upon the
5 recommendation of the classification committee, approval by the
6 warden and final approval by the secretary of corrections.

7 B. The provisions of this section also apply to
8 forfeiture of earned meritorious deductions for an inmate
9 imprisoned in a correctional facility operated by a public entity
10 or a private company, pursuant to a contract with the corrections
11 department."

12 Section 5. 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 DEDUCTIONS. --

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

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

1 department. "

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

4 "33-2-38. COMPUTATION OF TERM -- [~~Sec. 54. No convict shall~~]
5 An inmate shall not be discharged from the penitentiary of New
6 Mexico or other correctional facility until he has [~~remained~~]
7 served the full term for which he was sentenced. [~~to~~] The term
8 shall be computed from and [~~including~~] include the day on which his
9 sentence took effect and [~~excluding~~] shall exclude any time the
10 [~~convict~~] inmate may have been at large by reason of escape
11 [~~therefrom~~], unless he [~~may be~~] is pardoned or otherwise released
12 by legal authority. [~~Provided that nothing in~~] The provisions of
13 this section shall [~~be so construed as~~] not be interpreted to
14 deprive [~~any convict~~] an inmate of any reduction of time to which
15 he may be entitled [~~to under § 5070~~] pursuant to the provisions of
16 Section 33-2-34 NMSA 1978. "

17 Section 7. Section 33-8-2 NMSA 1978 (being Laws 1981, Chapter
18 127, Section 2, as amended) is amended to read:

19 "33-8-2. DEFINITIONS. --As used in the Corrections Industries
20 Act:

21 A. "commission" means the [~~corrections commission~~]
22 secretary of corrections;

23 B. "department" means the corrections department;

24 C. "enterprise" means a manufacturing, agricultural or
25 service operation or group of closely related operations within the

1 bounds of a facility but does not include standard facility
2 maintenance activities and services;

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

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

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

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

15 Section 8. [NEW MATERIAL] SHORT TITLE. --Sections 8 through
16 14 of this act may be cited as the "Corrections Population Control
17 Act".

18 Section 9. [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

1 cause of the disturbance that erupted at the penitentiary of New
2 Mexico in 1980. Moreover, problems caused by overcrowding remain
3 at the center of the ongoing federal litigation involving the
4 corrections department;

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

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

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

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

1 effect the reduction of the inmate population.

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

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

6 B. "female prison facility" means any female prison
7 facility so designated by the corrections department;

8 C. "male prison facilities" means:

9 (1) the penitentiary of New Mexico, located in Santa
10 Fe;

11 (2) the central New Mexico correctional facility,
12 located in Los Lunas;

13 (3) the Los Lunas correctional facility, located in
14 Los Lunas;

15 (4) the southern New Mexico correctional facility,
16 located in Las Cruces;

17 (5) the western New Mexico correctional facility,
18 located in Grants;

19 (6) the Roswell correctional facility, located in
20 Hagerman; and

21 (7) any other male prison facilities so designated
22 by the corrections department;

23 D. "nonviolent offender" means:

24 (1) a person not convicted of the following violent
25 offenses:

1 (a) murder in the first degree or murder in the
2 second degree pursuant to the provisions of Section 30-2-1 NMSA
3 1978;

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

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

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

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

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

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

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

19 (i) intentional injury to a person sixty years
20 of age or older or to a handicapped person during the commission of
21 a noncapital felony, pursuant to the provisions of Section 31-18-
22 16.1 NMSA 1978;

23 (j) commission of three violent felonies,
24 pursuant to the provisions of Sections 31-18-23 and 31-18-24 NMSA
25 1978; or

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1 (k) commission of two violent sex offenses,
2 pursuant to the provisions of Sections 31-18-25 and 31-18-26 NMSA
3 1978;

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

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

13 (4) a person not classified as a maximum security
14 inmate;

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

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

21 Section 11. [NEW MATERIAL] COMMISSION-- CREATION--
22 MEMBERSHIP.--

23 A. There is created the "corrections population control
24 commission".

25 B. The commission shall be appointed for two-year terms

1 and shall be composed of:

2 (1) the secretary of corrections, who shall serve as
3 chairman;

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

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

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

10 (5) one representative and one senator appointed by
11 the minority leader of the house of representatives and the senate,
12 respectively; and

13 (6) one member appointed by the governor.

14 C. A majority of the members of the commission
15 constitutes a quorum for the transaction of commission business.

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

19 Section 12. [NEW MATERIAL] COMMISSION-- DUTIES-- ANNUAL
20 REPORT. --

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

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

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

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

6 (4) if necessary, preparing proposed legislation to
7 further implementation of its policy recommendations; and

8 (5) considering all of its recommendations in light
9 of public safety concerns.

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

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

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

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

1 MECHANISM - PROCEDURES. --

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

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

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

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

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

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

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

16 (a) unless the prisoner has a parole plan
17 pursuant to applicable parole board regulations;

18 (b) if the information concerning the prisoner
19 is discovered to be materially inaccurate;

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

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

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

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

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

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

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

16 Section 15. Section 33-1-17 NMSA 1978 (being Laws 1985,
17 Chapter 149, Section 1, as amended) is amended to read:

18 "33-1-17. PRIVATE CONTRACT.--

19 A. The corrections department may contract for the
20 operation of any adult female facility or for housing adult female
21 inmates in a private facility with a person or entity in the
22 business of providing correctional or jail services to government
23 entities.

24 B. The corrections department may contract with a person
25 or entity in the business of providing correctional or jail

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1 services to government entities for

2 [~~(1) a correctional facility in Guadalupe county of~~
3 ~~not less than five hundred fifty and not more than two thousand two~~
4 ~~hundred beds;~~

5 ~~(2) a correctional facility in Lea, Chaves or Santa~~
6 ~~Fe county of not less than one thousand two hundred and not more~~
7 ~~than two thousand two hundred beds;~~

8 ~~(3) design and construction of a support services~~
9 ~~building, a laundry and an infirmary at the penitentiary of New~~
10 ~~Mexico in Santa Fe; or~~

11 ~~(4)]~~ the construction of a public facility to house a
12 special incarceration alternative program for adult male and adult
13 female felony offenders.

14 ~~[C. The authorization in Subsection B of this section for~~
15 ~~a correctional facility in Guadalupe county and a correctional~~
16 ~~facility in Lea, Chaves or Santa Fe county is contingent upon~~
17 ~~construction of both facilities, so that one of the facilities~~
18 ~~shall not be constructed unless both of the facilities are~~
19 ~~constructed, as nearly as practicable, simultaneously.~~

20 ~~D.]~~ C. The corrections department shall solicit proposals
21 and award any contract under this section in accordance with the
22 provisions of the Procurement Code. The contract shall include
23 such terms and conditions as the corrections department may require
24 after consultation with the general services department; provided
25 that the terms and conditions shall include provisions:

1 (1) setting forth comprehensive standards for
2 conditions of incarceration;

3 (2) that the contractor assumes all liability caused
4 by or arising out of all aspects of the provision or operation of
5 the facility;

6 (3) for liability insurance or other proof of
7 financial responsibility acceptable to the general services
8 department covering the contractor and its officers, employees and
9 agents in an amount sufficient to cover all liability caused by or
10 arising out of all aspects of the provision or operation of the
11 facility;

12 (4) for termination for cause upon ninety days'
13 notice to the contractor for failure to meet contract provisions
14 when such failure seriously affects the availability or operation
15 of the facility;

16 (5) that venue for the enforcement of the contract
17 shall be in the district court for Santa Fe county;

18 (6) that continuation of the contract is subject to
19 the availability of funds; and

20 (7) that compliance with the contract shall be
21 monitored by the corrections department and the contract may be
22 terminated for noncompliance.

23 ~~[E.]~~ D. When the contractor begins operation of a
24 facility, ~~[for which private contractor operation is authorized]~~
25 his employees performing the functions of correctional officers

1 shall be deemed correctional officers for the purposes of Sections
2 33-1-10 and 33-1-11 NMSA 1978 but for no other purpose of state
3 law, unless specifically stated.

4 [F-] E. Any contract awarded pursuant to this section may
5 include terms to provide for the renovation of the facility or for
6 the construction of new buildings. Work performed pursuant to such
7 terms and conditions shall not be considered a capital project as
8 defined in Section 15-3-23.3 NMSA 1978 or a state public works
9 project as defined in Section 13-1-91 NMSA 1978 nor shall it be
10 subject to the requirements of Section 13-1-150 NMSA 1978 or of the
11 Capital Program Act, review by the staff architect of the property
12 control division of the general services department pursuant to
13 Section 15-3-20 NMSA 1978 or regulation by the director of that
14 division pursuant to Section 15-3-11 NMSA 1978.

15 [G-] F. Any contract entered into by the corrections
16 department with a private contractor to operate an existing
17 facility shall include a provision securing the right of all
18 persons employed by that facility prior to the effective date of
19 that contract to be employed by that contractor in any position for
20 which they qualify before that position is offered to any person
21 not employed by that facility prior to that date."

22 Section 16. Section 33-1-18 NMSA 1978 (being Laws 1990 (1st.
23 S.S.), Chapter 5, Section 1, as amended) is amended to read:

24 "33-1-18. [FUNDS] FUND CREATED.--There [are] is created in
25 the state treasury a special [funds] fund to be known as the

1 "corrections department building fund" [~~the "Guadalupe county~~
 2 ~~prison fund" and the "New Mexico prison fund"~~]. The [funds] fund
 3 shall consist of money appropriated by the legislature, from year
 4 to year, from the income of the permanent fund and land income of
 5 which the penitentiary of New Mexico is the beneficiary [~~and any~~
 6 ~~other revenues that are appropriated to the funds, other than~~
 7 ~~revenues derived from property taxes or general fund revenues~~].
 8 Income from investment of [~~each special~~] the fund [~~created by this~~
 9 ~~section~~] shall be credited to [~~that~~] the fund. No other funds of
 10 the state shall be deposited or paid into the corrections
 11 department building fund."

12 Section 17. Section 33-1-19 NMSA 1978 (being Laws 1990 (1st.
 13 S.S.), Chapter 5, Section 2, as amended by Laws 1995, Chapter 43,
 14 Section 1 and also by Laws 1995, Chapter 215, Section 4) is amended
 15 to read:

16 "33-1-19. USE OF [FUNDS] FUND. -- [A.] The [~~funds created in~~
 17 ~~or pursuant to Section 33-1-18 NMSA 1978~~] corrections department
 18 building fund shall be used by the corrections department [~~or the~~
 19 ~~board of finance~~] solely for the purpose of acquiring, [~~designing,~~
 20 ~~constructing or equipping~~] by lease or [~~lease-purchase, or by~~
 21 ~~financing the ownership by the corrections department through the~~
 22 ~~issuance of bonds or other obligations by the corrections~~
 23 ~~department or the board of finance, or~~] other means, a corrections
 24 department central office complex, a personnel training academy, a
 25 special incarceration alternative facility [~~correctional~~

1 facilities] or any combination of these facilities. [~~and for~~
2 ~~paying the expenses relating to the lease, lease purchase or~~
3 ~~financing of these facilities. Before any of the funds created in~~
4 ~~Section 33-1-18 NMSA 1978 may be used for any such purpose, the~~
5 ~~state board of finance shall approve the proposed facility and the~~
6 ~~proposed use of the funds.~~

7 B. ~~The funds created in or pursuant to Section~~
8 ~~33-1-18 NMSA 1978 shall be used so that available appropriations~~
9 ~~are devoted to the following projects:~~

10 (1) ~~payment for the corrections department central~~
11 ~~office complex;~~

12 (2) ~~a correctional facility in Guadalupe county of~~
13 ~~not less than five hundred fifty and not more than two thousand two~~
14 ~~hundred beds;~~

15 (3) ~~a correctional facility in Lea, Chaves or Santa~~
16 ~~Fe county of not less than one thousand two hundred and not more~~
17 ~~than two thousand two hundred beds; and~~

18 (4) ~~design and construction of a support services~~
19 ~~building, a laundry and an infirmary at the penitentiary of New~~
20 ~~Mexico in Santa Fe.~~

21 C. ~~The use of funds designated in Subsection B of this~~
22 ~~section for a correctional facility in Guadalupe county and a~~
23 ~~correctional facility in Lea, Chaves or Santa Fe county is~~
24 ~~contingent upon construction of both facilities, so that one of the~~
25 ~~facilities shall not be constructed unless both of the facilities~~

1 ~~are constructed, as nearly as possible, simultaneously.~~

2 D-] Any balance at the end of any fiscal year in the
3 [~~special funds created in Section 33-1-18 NMSA 1978 that are~~]
4 corrections department building fund that is not needed to pay
5 leases, loans, bonds or other financing instruments in that fiscal
6 year may be appropriated by the legislature for expenditure in
7 succeeding fiscal years by the corrections department for
8 corrections purposes. "

9 Section 18. [NEW MATERIAL] ADULT MALE INMATES TRANSFERRED TO
10 OUT-OF-STATE CORRECTIONAL FACILITIES--LIMITED PERIOD OF TIME. --
11 Adult male inmates transferred to out-of-state correctional
12 facilities for the purpose of relieving overcrowding in New Mexico
13 correctional facilities may be kept in out-of-state correctional
14 facilities for a period of up to twelve months.

15 Section 19. [NEW MATERIAL] CONTRACT TO HOUSE ADULT INMATES IN
16 TREATMENT OR SPECIAL PROGRAM FACILITIES. --

17 A. The corrections department shall solicit proposals for
18 the purpose of entering into a contract with a private detention
19 facility pursuant to Subsection G of Section 31-20-2 NMSA 1978 to
20 operate both an adult female reintegration facility and an in-
21 prison substance abuse treatment facility for adult male inmates.

22 B. The facility contracting with the corrections
23 department pursuant to Subsection A of this section shall:

24 (1) be privately financed, designed, constructed and
25 operated by the contractor; provided that a facility financed by

Underscored material = new
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1 bonds issued pursuant to the Industrial Revenue Bond Act or the
2 County Industrial Revenue Bond Act and sold to the contractor shall
3 be privately financed by the contractor for the purposes of this
4 paragraph;

5 (2) consist of a two-hundred-fifty-bed adult female
6 reintegration facility and a four-hundred-bed adult male in-prison
7 substance abuse treatment facility located adjacent to each other
8 and adjacent to a six-hundred-bed medium-security correctional
9 facility that is located in the middle Rio Grande corridor, owned
10 by the state, operated by the corrections department and provides
11 supporting infrastructure and service facilities for the facility
12 under contract pursuant to this section; and

13 (3) certify that the facility was built by a primary
14 contractor and subcontractors that:

15 (a) maintain their primary places of business
16 in New Mexico;

17 (b) hired laborers for construction of the
18 facility as employees, rather than as independent contractors, and
19 who are New Mexico residents;

20 (c) provided health care benefits, retirement
21 benefits and unemployment insurance to their employees working on
22 construction of the facility; and

23 (d) maintain apprenticeship programs for their
24 employees.

25 C. The corrections department shall solicit proposals and

1 award any contract under this section in accordance with the
2 provisions of the Procurement Code. The contract shall include
3 such terms and conditions as the department may require after
4 consultation with the general services department; provided that
5 the terms and conditions shall include provisions that:

6 (1) set forth comprehensive standards for conditions
7 of incarceration;

8 (2) require the facility to meet or exceed
9 corrections department standards and meet appropriate certification
10 requirements within one year after beginning operation and remain
11 accredited through the life of the contract;

12 (2) require the contractor to assume all liability
13 caused by or arising out of all aspects of the provision or
14 operation of the facility;

15 (3) require liability insurance or other proof of
16 financial responsibility acceptable to the general services
17 department that covers the contractor and its officers, employees
18 and agents in an amount sufficient to cover all liability caused by
19 or arising out of all aspects of the provision or operation of the
20 facility;

21 (4) require termination for cause upon ninety days'
22 notice to the contractor for failure to meet contract provisions
23 when such failure seriously affects the availability or operation
24 of the facility;

25 (5) provide that venue for enforcement of the

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1 contract shall be in the district court for Santa Fe county;

2 (6) require continuation of the contract to be
3 subject to the availability of funds;

4 (7) provide that compliance with the contract shall
5 be monitored by the corrections department and the contract may be
6 terminated for noncompliance; and

7 (8) payments under the contract shall be made only
8 on a per diem per inmate basis without any additional or separate
9 charge for capital costs.

10 Section 20. [NEW MATERIAL] CONTRACT TO HOUSE ADJUDICATED
11 DELINQUENTS IN A CARE, REHABILITATION AND TREATMENT FACILITY. --

12 A. The children, youth and families department shall
13 solicit proposals for the purpose of entering into a contract with
14 a private care, rehabilitation and treatment facility to house male
15 adjudicated delinquents committed to the children, youth and
16 families department.

17 B. The facility contracting with the children, youth and
18 families department pursuant to Subsection A of this section shall:

19 (1) be privately financed, designed, constructed and
20 operated by the contractor; provided that a facility financed by
21 bonds issued pursuant to the Industrial Revenue Bond Act or the
22 County Industrial Revenue Bond Act and sold to the contractor shall
23 be privately financed by the contractor for the purposes of this
24 paragraph;

25 (2) consist of one hundred fifty beds and provide

1 care, rehabilitation and treatment for male adjudicated
2 delinquents;

3 (3) be located in the middle Rio Grande corridor;
4 and

5 (4) certify that the facility was built by a primary
6 contractor and subcontractors that:

7 (a) maintain their primary places of business
8 in New Mexico;

9 (b) hired laborers for construction of the
10 facility as employees, rather than as independent contractors, and
11 who are New Mexico residents;

12 (c) provided health care benefits, retirement
13 benefits and unemployment insurance to their employees working on
14 construction of the facility; and

15 (d) maintain apprenticeship programs for their
16 employees.

17 C. The children, youth and families department shall
18 solicit proposals and award any contract under this section in
19 accordance with the provisions of the Procurement Code. The
20 contract shall include such terms and conditions as the department
21 may require after consultation with the general services
22 department; provided that the terms and conditions shall include
23 provisions that:

24 (1) set forth comprehensive standards for conditions
25 of incarceration;

1 (2) require the facility to meet or exceed
2 applicable juvenile detention facility standards and meet
3 appropriate certification requirements within one year after
4 beginning operation and remain accredited through the life of the
5 contract;

6 (2) require the contractor to assume all liability
7 caused by or arising out of all aspects of the provision or
8 operation of the facility;

9 (3) require liability insurance or other proof of
10 financial responsibility acceptable to the general services
11 department that covers the contractor and its officers, employees
12 and agents in an amount sufficient to cover all liability caused by
13 or arising out of all aspects of the provision or operation of the
14 facility;

15 (4) require termination for cause upon ninety days'
16 notice to the contractor for failure to meet contract provisions
17 when such failure seriously affects the availability or operation
18 of the facility;

19 (5) provide that venue for enforcement of the
20 contract shall be in the district court for Santa Fe county;

21 (6) require continuation of the contract to be
22 subject to the availability of funds;

23 (7) provide that compliance with the contract shall
24 be monitored by the children, youth and families department and the
25 contract may be terminated for noncompliance; and

1 (8) payments under the contract shall be made only
2 on a per diem per inmate basis without any additional or separate
3 charge for capital costs.

4 Section 21. Section 34-6-5 NMSA 1978 (being Laws 1968,
5 Chapter 69, Section 8, as amended) is amended to read:

6 "34-6-5. JUDGES--SECOND JUDICIAL DISTRICT.--There shall be
7 [~~twenty-one~~] twenty-two district judges in the second judicial
8 district."

9 Section 22. TEMPORARY PROVISION--JUDGESHIP APPOINTMENT--DRUG
10 COURT.--

11 A. The additional judgeship provided for in Section 21 of
12 this act shall be filled by the governor pursuant to Article 6,
13 Section 36 of the constitution of New Mexico.

14 B. The additional judge provided for in Section 21 of
15 this act shall preside over the operation of a drug court.

16 Section 23. TEMPORARY PROVISION.--

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

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

3 Section 24. APPROPRIATION.--One million one hundred thousand
4 dollars (\$1,100,000) is appropriated from the general fund to the
5 corrections department for expenditure in fiscal year 1997 for the
6 purpose of paying for adult male inmates transferred to out-of-
7 state correctional facilities to relieve overcrowding in state
8 correctional facilities and paying for accompanying costs,
9 including medical costs and transportation costs. Any unexpended
10 or unencumbered balance remaining at the end of fiscal year 1997
11 shall revert to the general fund.

12 Section 25. APPROPRIATION.--One million eight hundred
13 thousand dollars (\$1,800,000) is appropriated from the general fund
14 to the corrections department for expenditure in fiscal year 1998
15 for the purpose of paying for adult male inmates transferred to
16 out-of-state correctional facilities and paying for accompanying
17 costs, including medical costs and transportation costs. Any
18 unexpended or unencumbered balance remaining at the end of fiscal
19 year 1998 shall revert to the general fund.

20 Section 26. APPROPRIATION TO HOUSE INMATES-- CONTRACT
21 PROVISIONS.--

22 A. Two million dollars (\$2,000,000) is appropriated from
23 the general fund to the corrections department for expenditure in
24 fiscal year 1998 to contract with Cibola county to house additional
25 inmates at the Cibola county corrections center. Any unexpended or

1 unencumbered balance remaining at the end of fiscal year 1998 shall
2 revert to the general fund.

3 B. The contract entered into pursuant to Subsection A of
4 this section shall provide:

5 (1) that the total number of state inmates housed at
6 the Cibola county corrections center shall equal five hundred
7 fifty-two medium security inmates and one hundred seventy-six
8 minimum restrict inmates; and

9 (2) that the corrections department shall not reduce
10 the number of inmates housed at the Cibola county corrections
11 center below the numbers specified in Paragraph (1) of this
12 subsection unless it has first removed all similarly classified
13 state inmates from all other state, private or county operated
14 correctional facilities.

15 Section 27. APPROPRIATIONS--CORRECTIONAL FACILITIES
16 ACQUISITION FUND. --

17 A. Ninety-three million dollars (\$93,000,000) is
18 appropriated from the correctional facilities acquisition fund to
19 the corrections department for expenditure in fiscal year 1998 and
20 subsequent fiscal years in the following amounts for the
21 acquisition of the following facilities:

22 (1) thirty-one million dollars (\$31,000,000) for a
23 correctional facility in Guadalupe county with an initial capacity
24 of six hundred beds, expandable to one thousand two hundred beds;

25 (2) thirty-one million dollars (\$31,000,000) for a

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1 correctional facility in Lea county with an initial capacity of six
2 hundred beds, expandable to one thousand two hundred beds; and

3 (3) thirty-one million dollars (\$31,000,000) for a
4 correctional facility in the middle Rio Grande corridor with six
5 hundred medium-security beds for adult male inmates that includes
6 infrastructure and service facilities available to a two-hundred-
7 fifty-bed adult female reintegration facility and a four-hundred-
8 bed in-prison substance abuse treatment facility for adult male
9 inmates that will be privately owned and operated facilities
10 adjacent to the correctional facility.

11 B. Five million dollars (\$5,000,000) of the proceeds of
12 the general obligation bonds for juvenile correctional and
13 rehabilitative facilities approved by the voters in the 1996
14 general election is appropriated to the children, youth and
15 families department to acquire a fifty-bed prefabricated juvenile
16 detention facility at the youth development and diagnostic center
17 and a fifty-bed prefabricated facility at the New Mexico boys'
18 school at Springer.

19 C. Any unexpended or unencumbered balance remaining from
20 the appropriations in Subsection A of this section at the end of
21 any fiscal year shall revert to the correctional facilities
22 acquisition fund for disposition as provided by law for money in
23 that fund.

24 D. The appropriations in Subsections A and B of this
25 section are contingent upon the enactment into law of Senate

1 Finance Committee Substitute for Senate Bill 1054 of the first
2 session of the forty-third legislature.

3 E. No contract for the acquisition of a facility shall be
4 entered into pursuant to Subsections A and B of this section unless
5 the secretary of the contracting agency certifies that the facility
6 will be built by a primary contractor and subcontractors that:

7 (1) maintain their primary places of business in New
8 Mexico;

9 (2) hire laborers for construction of the facility
10 as employees, rather than as independent contractors, and who are
11 New Mexico residents;

12 (3) provide health care benefits, retirement
13 benefits and unemployment insurance to their employees working on
14 construction of the facility; and

15 (4) maintain apprenticeship programs for their
16 employees.

17 Section 28. APPROPRIATION. --

18 A. Three hundred eighty-nine thousand two hundred dollars
19 (\$389,200) is appropriated from the general fund to the following
20 entities in the following amounts for expenditure in fiscal year
21 1998 for the purpose of establishing a drug court in the second
22 judicial district:

23 (1) one hundred ninety thousand nine hundred dollars
24 (\$190,900) to the second judicial district to pay a district court
25 judge's salary and benefits and provide support staff for that

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1 judge;

2 (2) one hundred one thousand three hundred dollars
3 (\$101,300) to the district attorney's office for the second
4 judicial district to pay for salaries and benefits for two
5 assistant district attorneys; and

6 (3) ninety-seven thousand dollars (\$97,000) to the
7 public defender department to pay for salaries and benefits for two
8 public defenders.

9 B. Any unexpended or unencumbered balance remaining at
10 the end of fiscal year 1998 shall revert to the general fund.

11 Section 29. APPROPRIATION. -- Five hundred thousand dollars
12 (\$500,000) is appropriated from the general fund to the DNA
13 identification system fund for expenditure in fiscal year 1998 for
14 the purpose of implementing the provisions of the DNA
15 Identification Act, contingent upon enactment into law of Senate
16 Judiciary Committee Substitute for Senate Bill 114 by the first
17 session of the forty-third legislature. Any unexpended or
18 unencumbered balance remaining at the end of fiscal year 1998 shall
19 not revert to the general fund.

20 Section 30. REPEAL. -- Section 33-8-14 NMSA 1978 (being Laws
21 1981, Chapter 127, Section 14) is repealed.

22 Section 31. APPLICABILITY. -- The provisions of Sections 3
23 through 6 of this act apply to persons convicted of a criminal
24 offense committed on or after July 1, 1997. As to persons
25 convicted of a criminal offense committed prior to July 1, 1997,

1 the laws with respect to the vesting of meritorious deductions in
2 effect at the time the offense was committed shall apply.

3 Section 32. EFFECTIVE DATE. --The effective date of the
4 provisions of Sections 3 through 6 of this act is July 1, 1997.

5 Section 33. EMERGENCY. --It is necessary for the public peace,
6 health and safety that this act take effect immediately.

Underscored material = new
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HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
SENATE BILL 1273
SENATE FINANCE COMMITTEE SUBSTITUTE FOR
43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

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AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
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;

B. "director" or "secretary" means the secretary of

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corrections;

C. "corrections facility" means any facility or program controlled or operated by the state or any of its agencies or departments and supported wholly or in part by state 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 state designated by the secretary; and

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

~~[D. "commissiion" means the corrections commissiion; and~~

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

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

"33-1-4. CORRECTIONS ~~[DIVISION]~~ DEPARTMENT. -- ~~[A. There is created within the criminal justice department the "corrections division".]~~ The ~~[division]~~ department is responsible for all matters pertaining to corrections as provided in the Corrections Act or other law.

~~[B. There is created the "corrections commissiion" 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 three years. Thereafter, appointments shall be made for terms of four years or less in a manner that the terms of one or two~~

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

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

15 Section 3. Section 33-1-17 NMSA 1978 (being Laws 1985,
16 Chapter 149, Section 1, as amended) is amended to read:

17 "33-1-17. PRIVATE CONTRACT. --

18 A. The corrections department may contract for the
19 operation of any adult female facility or for housing adult female
20 inmates in a private facility with a person or entity in the
21 business of providing correctional or jail services to government
22 entities.

23 B. The corrections department may contract with a person
24 or entity in the business of providing correctional or jail
25 services to government entities for

1 ~~[(1) a correctional facility in Guadalupe county of~~
2 ~~not less than five hundred fifty and not more than two thousand two~~
3 ~~hundred beds;~~

4 ~~(2) a correctional facility in Lea, Chaves or Santa~~
5 ~~Fe county of not less than one thousand two hundred and not more~~
6 ~~than two thousand two hundred beds;~~

7 ~~(3) design and construction of a support services~~
8 ~~building, a laundry and an infirmary at the penitentiary of New~~
9 ~~Mexico in Santa Fe; or~~

10 ~~(4)]~~ the construction of a public facility to house a
11 special incarceration alternative program for adult male and adult
12 female felony offenders.

13 ~~[C. The authorization in Subsection B of this section for~~
14 ~~a correctional facility in Guadalupe county and a correctional~~
15 ~~facility in Lea, Chaves or Santa Fe county is contingent upon~~
16 ~~construction of both facilities, so that one of the facilities~~
17 ~~shall not be constructed unless both of the facilities are~~
18 ~~constructed, as nearly as practicable, simultaneously.~~

19 ~~D.]~~ C. The corrections department shall solicit proposals
20 and award any contract under this section in accordance with the
21 provisions of the Procurement Code. The contract shall include
22 such terms and conditions as the corrections department may require
23 after consultation with the general services department; provided
24 that the terms and conditions shall include provisions:

25 (1) setting forth comprehensive standards for

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[bracketed material] = delete

1 conditions of incarceration;

2 (2) that the contractor assumes all liability caused
3 by or arising out of all aspects of the provision or operation of
4 the facility;

5 (3) for liability insurance or other proof of
6 financial responsibility acceptable to the general services
7 department covering the contractor and its officers, employees and
8 agents in an amount sufficient to cover all liability caused by or
9 arising out of all aspects of the provision or operation of the
10 facility;

11 (4) for termination for cause upon ninety days'
12 notice to the contractor for failure to meet contract provisions
13 when such failure seriously affects the availability or operation
14 of the facility;

15 (5) that venue for the enforcement of the contract
16 shall be in the district court for Santa Fe county;

17 (6) that continuation of the contract is subject to
18 the availability of funds; and

19 (7) that compliance with the contract shall be
20 monitored by the corrections department and the contract may be
21 terminated for noncompliance.

22 ~~[E.]~~ D. When the contractor begins operation of a
23 facility, ~~[for which private contractor operation is authorized]~~
24 his employees performing the functions of correctional officers
25 shall be deemed correctional officers for the purposes of Sections

1 33-1-10 and 33-1-11 NMSA 1978 but for no other purpose of state
 2 law, unless specifically stated.

3 ~~[F.]~~ E. Any contract awarded pursuant to this section may
 4 include terms to provide for the renovation of the facility or for
 5 the construction of new buildings. Work performed pursuant to such
 6 terms and conditions shall not be considered a capital project as
 7 defined in Section 15-3-23.3 NMSA 1978 or a state public works
 8 project as defined in Section 13-1-91 NMSA 1978 nor shall it be
 9 subject to the requirements of Section 13-1-150 NMSA 1978 or of the
 10 Capital Program Act, review by the staff architect of the property
 11 control division of the general services department pursuant to
 12 Section 15-3-20 NMSA 1978 or regulation by the director of that
 13 division pursuant to Section 15-3-11 NMSA 1978.

14 ~~[G.]~~ F. Any contract entered into by the corrections
 15 department with a private contractor to operate an existing
 16 facility shall include a provision securing the right of all
 17 persons employed by that facility prior to the effective date of
 18 that contract to be employed by that contractor in any position for
 19 which they qualify before that position is offered to any person
 20 not employed by that facility prior to that date."

21 Section 4. Section 33-1-18 NMSA 1978 (being Laws 1990 (1st.
 22 S.S.), Chapter 5, Section 1, as amended) is amended to read:

23 "33-1-18. ~~[FUNDS]~~ FUND CREATED.--There ~~[are]~~ is created in
 24 the state treasury a special ~~[funds]~~ fund to be known as the
 25 "corrections department building fund" ~~[the "Guadalupe county~~

Underscored material = new
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1 ~~prison fund" and the "New Mexico prison fund"]~~. The ~~[funds]~~ fund
2 shall consist of money appropriated by the legislature, from year
3 to year, from the income of the permanent fund and land income of
4 which the penitentiary of New Mexico is the beneficiary ~~[and any~~
5 ~~other revenues that are appropriated to the funds, other than~~
6 ~~revenues derived from property taxes or general fund revenues]~~.
7 Income from investment of ~~[each special]~~ the fund ~~[created by this~~
8 ~~section]~~ shall be credited to ~~[that]~~ the fund. No other funds of
9 the state shall be deposited or paid into the corrections
10 department building fund."

11 Section 5. Section 33-1-19 NMSA 1978 (being Laws 1990 (1st.
12 S.S.), Chapter 5, Section 2, as amended by Laws 1995, Chapter 43,
13 Section 1 and also by Laws 1995, Chapter 215, Section 4) is amended
14 to read:

15 "33-1-19. USE OF ~~[FUNDS]~~ FUND. -- ~~[A.]~~ The ~~[funds created in or~~
16 ~~pursuant to Section 33-1-18 NMSA 1978]~~ corrections department
17 building fund shall be used by the corrections department ~~[or the~~
18 ~~board of finance]~~ solely for the purpose of acquiring, ~~[designing,~~
19 ~~constructing or equipping]~~ by lease or ~~[lease purchase, or by~~
20 ~~financing the ownership by the corrections department through the~~
21 ~~issuance of bonds or other obligations by the corrections~~
22 ~~department or the board of finance, or]~~ other means, a corrections
23 department central office complex, a personnel training academy, a
24 special incarceration alternative facility ~~[correctional~~
25 ~~facilities]~~ or any combination of these facilities. ~~[and for~~

1 ~~paying the expenses relating to the lease, lease-purchase or~~
2 ~~financing of these facilities. Before any of the funds created in~~
3 ~~Section 33-1-18 NMSA 1978 may be used for any such purpose, the~~
4 ~~state board of finance shall approve the proposed facility and the~~
5 ~~proposed use of the funds.~~

6 ~~B. The funds created in or pursuant to Section~~
7 ~~33-1-18 NMSA 1978 shall be used so that available appropriations~~
8 ~~are devoted to the following projects:~~

9 ~~(1) payment for the corrections department central~~
10 ~~office complex;~~

11 ~~(2) a correctional facility in Guadalupe county of~~
12 ~~not less than five hundred fifty and not more than two thousand two~~
13 ~~hundred beds;~~

14 ~~(3) a correctional facility in Lea, Chaves or Santa~~
15 ~~Fe county of not less than one thousand two hundred and not more~~
16 ~~than two thousand two hundred beds; and~~

17 ~~(4) design and construction of a support services~~
18 ~~building, a laundry and an infirmary at the penitentiary of New~~
19 ~~Mexico in Santa Fe.~~

20 ~~C. The use of funds designated in Subsection B of this~~
21 ~~section for a correctional facility in Guadalupe county and a~~
22 ~~correctional facility in Lea, Chaves or Santa Fe county is~~
23 ~~contingent upon construction of both facilities, so that one of the~~
24 ~~facilities shall not be constructed unless both of the facilities~~
25 ~~are constructed, as nearly as possible, simultaneously.~~

1 ~~D-~~] Any balance at the end of any fiscal year in the
2 ~~[special funds created in Section 33-1-18 NMSA 1978 that are]~~
3 corrections department building fund that is not needed to pay
4 leases, loans, bonds or other financing instruments in that fiscal
5 year may be appropriated by the legislature for expenditure in
6 succeeding fiscal years by the corrections department for
7 corrections purposes. "

8 Section 6. 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 MERITORIOUS
12 DEDUCTIONS. --

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

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

1 committee may recommend and approve only education programs, mental
2 health programs, drug or alcohol treatment programs, drug or
3 alcohol counseling programs, or work programs.

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

23 E. The meritorious deductions provided for in Subsections
24 A and B of this section shall pertain to both the basic sentence to
25 be served and any enhanced term of imprisonment pursuant to the

1 provisions of the Criminal Sentencing Act. Meritorious deductions
2 of up to ninety days per occurrence shall be permanently forfeited
3 upon recommendation of the classification committee and approval of
4 the warden if the inmate does not properly maintain the standard
5 upon which the award was based. For those inmates, permanent for-
6 feitures in excess of ninety days may be made upon approval of the
7 director of adult institutions. No inmate shall forfeit more than
8 fifty percent of his meritorious deductions accrued during the
9 previous twelve months; and after forfeiture of any portion of an
10 inmate's accrued meritorious deductions, the remainder shall vest
11 and shall not be subject to further forfeiture. Notwithstanding
12 any other provisions of this act, an inmate may forfeit up to one
13 hundred percent of all accrued meritorious deductions if he commits
14 any of the following:

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

17 (a) another inmate;
18 (b) corrections department personnel;
19 (c) an employee of a contractor operating on
20 behalf of the corrections department; or

21 (d) any other person lawfully on the premises
22 of a corrections department facility or other facility where
23 department inmates are housed;

24 (2) one positive drug test while incarcerated;

25 (3) escape; or

1 (4) any felonious act.

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

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

6 (2) is in disciplinary segregation;

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

9 or

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

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

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

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

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

22 H. The corrections department shall promulgate rules and
23 regulations to implement the provisions of this section, and the
24 rules and regulations shall be matters of public record. A concise
25 summary of the rules and regulations shall be provided to every

1 inmate and every inmate shall receive a quarterly statement of the
2 meritorious deductions he has earned.

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

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

15 K. As used in this section:

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

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

22 (3) "violent offense" means:

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

25 (b) voluntary manslaughter, as provided in

1 Section 30-2-3 NMSA 1978;

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

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

7 (e) robbery, as provided in Section
8 30-16-2 NMSA 1978, which results in great bodily harm "

9 Section 7. Section 33-2-36 NMSA 1978 (being Laws 1988,
10 Chapter 78, Section 6) is amended to read:

11 "33-2-36. FORFEITURE OF EARNED MERITORIOUS DEDUCTIONS. -- [~~Any~~
12 ~~accrued deductions may be forfeited by the convict]~~

13 A. Meritorious deductions earned by an inmate may be
14 forfeited by that inmate for any major conduct violation upon the
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 forfeiture 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 8. Section 33-2-37 NMSA 1978 (being Laws 1988,
23 Chapter 78, Section 7) is amended to read:

24 "33-2-37. RESTORATION OF FORFEITED MERITORIOUS DEDUCTIONS. --

25 A. Meritorious deductions forfeited under Section 33-2-36

Underscored material = new
[bracketed material] = delete

1 NMSA 1978 may be restored in whole or in part to ~~[any prisoner]~~ an
2 inmate who is exemplary in conduct and work performance for a
3 period of not less than six months following the date of
4 forfeiture. Meritorious deductions may be restored upon
5 recommendation of the classification committee, approval by the
6 warden and final approval by the secretary of corrections.

7 B. The provisions of this section also apply to
8 restoration of earned meritorious deductions for an inmate
9 imprisoned in a correctional facility operated by a public entity
10 or a private company, pursuant to a contract with the corrections
11 department."

12 Section 9. Section 33-2-38 NMSA 1978 (being Laws 1889,
13 Chapter 76, Section 13, as amended) is amended to read:

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

1 Section 33-2-34 NMSA 1978. "

2 Section 10. Section 33-8-2 NMSA 1978 (being Laws 1981,
3 Chapter 127, Section 2, as amended) is amended to read:

4 "33-8-2. DEFINITIONS. --As used in the Corrections Industries
5 Act:

6 A. "commission" means the [~~corrections commission~~]
7 secretary of corrections;

8 B. "department" means the corrections department;

9 C. "enterprise" means a manufacturing, agricultural or
10 service operation or group of closely related operations within the
11 bounds of a facility but does not include standard facility
12 maintenance activities and services;

13 D. "facility" means any place under the jurisdiction of
14 the department at which individuals are confined pursuant to court
15 order;

16 E. "fund" means the corrections industries revolving
17 fund;

18 F. "local public body" means all political subdivisions
19 of the state and their agencies, instrumentalities and institutions
20 supported wholly or in part by funds derived from public taxation;
21 and

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

25 Section 11. [NEW MATERIAL] SHORT TITLE. --Sections 11 through

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1 17 of this act may be cited as the "Corrections Population Control
2 Act".

3 Section 12. [NEW MATERIAL] FINDINGS--PURPOSE. --

4 A. The legislature finds that:

5 (1) for many years, the state of New Mexico has
6 experienced difficulty in managing the size of its inmate
7 population. Often, the number of beds has been insufficient to
8 accommodate the inmate population committed or detained in
9 correctional facilities;

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

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

20 (4) although the corrections department is
21 responsible for the operation of correctional facilities, it cannot
22 resolve the problem of overcrowding by itself. The department has
23 no control over the admission of inmates into its facilities and
24 has only limited control over the release of inmates from its
25 facilities; and

1 (5) a permanent solution to the overcrowded inmate
2 population requires participation, commitment and cooperation by
3 the legislative, judicial and executive branches of government and
4 all criminal justice agencies.

5 B. The purpose of the Corrections Population Control Act
6 is to establish a corrections population control commission that
7 shall operate as an autonomous, nonpartisan body. The commission
8 shall develop and implement mechanisms to prevent the inmate
9 population from exceeding the rated capacity of correctional
10 facilities and shall take appropriate action when necessary to
11 effect the reduction of the inmate population.

12 Section 13. [NEW MATERIAL] DEFINITIONS.--As used in the
13 Corrections Population Control Act:

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

16 B. "female prison facility" means any female prison
17 facility so designated by the corrections department;

18 C. "male prison facilities" means:

19 (1) the penitentiary of New Mexico, located in Santa
20 Fe;

21 (2) the central New Mexico correctional facility,
22 located in Los Lunas;

23 (3) the Los Lunas correctional facility, located in
24 Los Lunas;

25 (4) the southern New Mexico correctional facility,

1 located in Las Cruces;

2 (5) the western New Mexico correctional facility,
3 located in Grants;

4 (6) the Roswell correctional facility, located in
5 Hagerman; and

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

8 D. "nonviolent offender" means:

9 (1) a person not convicted of the following violent
10 offenses:

11 (a) murder in the first degree or murder in the
12 second degree pursuant to the provisions of Section 30-2-1 NMSA
13 1978;

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

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

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

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

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

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

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

4 (i) intentional injury to a person sixty years
5 of age or older or to a handicapped person during the commission of
6 a noncapital felony, pursuant to the provisions of Section 31-18-
7 16.1 NMSA 1978;

8 (j) commission of three violent felonies,
9 pursuant to the provisions of Sections 31-18-23 and 31-18-24 NMSA
10 1978; or

11 (k) commission of two violent sex offenses,
12 pursuant to the provisions of Sections 31-18-25 and 31-18-26 NMSA
13 1978;

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

17 (3) a person not serving a sentence of life
18 imprisonment or a single or combined sentence of more than twenty
19 years involving physical injury, physical violence or great bodily
20 harm or a substantial threat or risk of physical injury, physical
21 violence or great bodily harm to another person to be determined by
22 the commission; or

23 (4) a person not classified as a maximum security
24 inmate;

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

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

6 Section 14. [NEW MATERIAL] COMMISSION-- CREATION--
7 MEMBERSHIP. --

8 A. There is created the "corrections population control
9 commission".

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

12 (1) the secretary of corrections, who shall serve as
13 chairman;

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

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

18 (4) a member appointed by the president pro tempore
19 of the senate;

20 (5) a member appointed by the minority leader of the
21 house of representatives;

22 (6) a member appointed by the minority leader of the
23 senate; and

24 (7) a member appointed by the governor.

25 C. A majority of the members of the commission

1 constitutes a quorum for the transaction of commission business.

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

5 Section 15. [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 inmate
9 population by:

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

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

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

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

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

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

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1 to certify an adequate level of programming, on a semi annual basis,
2 for any reason, the provisions of Subsection B of Section 33-2-34
3 NMSA 1978 shall apply to all inmates.

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

9 D. The commission staff support shall be provided by the
10 corrections department.

11 Section 16. [NEW MATERIAL] OVERCROWDING--POPULATION CONTROL
12 MECHANISM - PROCEDURES. --

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

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

25 (2) if prison population is still in excess of one

1 hundred twelve percent or one hundred percent rated capacity as
2 applicable after sixty consecutive days, the secretary of
3 corrections shall notify the commission. Included in the
4 notification shall be a list of prisoners who are within one
5 hundred eighty days of their projected release date;

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

19 (4) for prisoners approved by the commission for
20 release, the commission shall grant emergency release credits in
21 ten-day increments that will be applied to the sentence or
22 sentences being served by the prisoners. The commission shall
23 order release of the appropriate number of prisoners to reduce the
24 prison population to the applicable rated capacity; and

25 (5) notwithstanding any other provisions of this

1 section, no prisoner shall be released:

2 (a) unless the prisoner has a parole plan
3 pursuant to applicable parole board regulations;

4 (b) if the information concerning the prisoner
5 is discovered to be materially inaccurate;

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

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

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

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

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

19 (2) a report regarding the increased number of
20 prison beds that will be needed for a period five years into the
21 future.

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

1 responsibilities of the commission.

2 Section 18. TEMPORARY PROVISION. --

3 A. Effective immediately, the secretary of corrections
4 shall implement those provisions of the Corrections Population
5 Control Act that provide for the release of nonviolent offender
6 prisoners within one hundred eighty days of projected release.
7 This release authorization shall be implemented by the secretary of
8 corrections without regard to the creation of the corrections
9 population control commission provided for in the Corrections
10 Population Control Act and without regard to the procedural time
11 frames provided for in that act.

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

14 Section 19. REPEAL. --Section 33-8-14 NMSA 1978 (being Laws
15 1981, Chapter 127, Section 14) is repealed.

16 Section 20. APPLICABILITY. --The provisions of Sections 6
17 through 9 of this act apply to persons convicted of a criminal
18 offense committed on or after July 1, 1997. As to persons
19 convicted of a criminal offense committed prior to July 1, 1997,
20 the laws with respect to the vesting of meritorious deductions in
21 effect at the time the offense was committed shall apply.

22 Section 21. EFFECTIVE DATE. --The effective date of the
23 provisions of Sections 6 through 9 of this act is July 1, 1997.

24 Section 22. EMERGENCY. --It is necessary for the public peace,
25 health and safety that this act take effect immediately.

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