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HOUSE JOINT MEMORIAL  
**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY

DISCUSSION DRAFT

FOR THE INDIAN AFFAIRS COMMITTEE

A JOINT MEMORIAL

RESPECTFULLY REQUESTING THAT MEMBERS OF THE UNITED STATES  
CONGRESS ENACT LEGISLATION PROMPTLY TO ADDRESS THE DISPARITY IN  
CRIMINAL SENTENCES AND TIME SERVED IN PRISON FOR INDIVIDUALS  
CONVICTED IN FEDERAL COURTS VERSUS STATE COURTS AND THE  
RESULTING IMPACT ON NATIVE AMERICANS AND PEOPLE OF COLOR.

WHEREAS, the New Mexico legislature has always been  
committed to the fair treatment of all people and also to the  
notion that criminal sentences should be proportional to the  
crime committed; in other words, the sentence should fit the  
crime; and

WHEREAS, the duration of federal court sentences and state  
court sentences based on the same criminal conduct can vary  
greatly; and

WHEREAS, federal court sentences are often longer than

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1 state court sentences for a number of reasons, including  
2 mandatory minimum sentences for many crimes adjudicated in  
3 federal courts; and

4 WHEREAS, for certain crimes, federal law requires  
5 mandatory minimum prison terms to be served consecutively,  
6 called "stacking", not concurrently with each other and with  
7 any other punishment the person receives for the underlying  
8 offense, which results in lengthy sentences; and

9 WHEREAS, in many states, courts have the ability to run  
10 sentences concurrently or consecutively, depending on the  
11 crime, prior infractions and aggravating or mitigating  
12 circumstances; and

13 WHEREAS, earned meritorious deductions in prison time,  
14 also known as "good time", in many cases will reduce a person's  
15 jail time more in a state prison than in a federal prison; and

16 WHEREAS, state judges often impose either a deferred  
17 sentence or a conditional discharge, which means the person  
18 convicted spends little or even no time in jail, provided that  
19 the defendant successfully completes all of the terms of  
20 probation; and

21 WHEREAS, although the federal criminal justice system does  
22 offer pretrial diversion for certain offenders, it is  
23 underutilized, and it is unavailable for certain crimes  
24 involving controlled substances; and

25 WHEREAS, criminal jurisdiction, which controls the court

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1 in which a case will be heard, for crimes committed on Native  
2 American reservation or trust land depends on where the crime  
3 occurred, who the perpetrator was and who the victim was; and

4 WHEREAS, often, if a crime occurs on reservation or trust  
5 land and either the perpetrator or the victim is Native  
6 American, the case will go to federal court; and

7 WHEREAS, for crimes on reservation or trust land, if both  
8 the perpetrator and the victim are non-Native American, the  
9 case will be heard in state court; and

10 WHEREAS, this idiosyncrasy in jurisdictional jurisprudence  
11 leads to a situation in which Native Americans accused of a  
12 crime are more likely to go to federal court than non-Native  
13 Americans accused of the same crime; and

14 WHEREAS, for those individuals from states in which there  
15 are no federal prisons, like New Mexico, the travel to visit a  
16 federal prisoner is an additional hardship for the family, the  
17 friends and the prisoner;

18 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE  
19 STATE OF NEW MEXICO that it respectfully request members of the  
20 United States congress to enact legislation promptly to address  
21 the disparity in criminal sentences and time served in prison  
22 for individuals convicted in federal courts versus state courts  
23 and the resulting impact on Native Americans and people of  
24 color; and

25 BE IT FURTHER RESOLVED that copies of this memorial be

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1 transmitted to the president of the United States, members of  
2 congress and the commissioners of the United States sentencing  
3 commission.

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