

CHAPTER 8

CHAPTER 8, LAWS 2002

AN ACT

RELATING TO CORRECTIONS; ENACTING THE CORRECTIONS POPULATION CONTROL ACT; ESTABLISHING THE CORRECTIONS POPULATION CONTROL COMMISSION; PROVIDING FOR THE DUTIES AND AUTHORITY OF THE COMMISSION; PROVIDING MECHANISMS FOR ADDRESSING INMATE OVERCROWDING; ENACTING SECTIONS OF THE NMSA 1978.

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

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

Section 2. PURPOSE.--The purpose of the Corrections Population Control Act is to establish a corrections population control commission that shall operate as an autonomous, nonpartisan body. The commission shall develop and implement mechanisms to prevent the inmate population from exceeding the rated capacity of correctional facilities and shall take appropriate action when necessary to effect the reduction of the inmate population.

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

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

B. "female correctional facilities" means:

(1) the women's correctional facility, located in Grants; and

(2) any other female correctional facility so designated by the corrections department;

C. "male correctional facilities" means:

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

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

(3) the southern New Mexico correctional facility, located in Las Cruces;

(4) the western New Mexico correctional facility, located in Grants;

(5) the Roswell correctional facility,

located in Hagerman;

(6) the Guadalupe county correctional facility, located in Santa Rosa;

(7) the Lea county correctional facility, located in Hobbs; and

(8) any other male correctional facility so designated by the corrections department;

D. "nonviolent offender" means:

(1) a person convicted only of possession of a controlled substance, pursuant to the provisions of Section 30-31-23 NMSA 1978;

(2) a person incarcerated for violating the conditions of his parole plan due to use or possession of a controlled substance whose original conviction was for commission of a nonviolent offense; or

(3) an inmate designated by the commission as a nonviolent offender; provided that the offender was convicted for the commission of a nonviolent offense, as that term is defined in Subsection L of Section 33-2-34 NMSA 1978; and

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

Section 4. COMMISSION--CREATION--MEMBERSHIP--TERMS.--

A. The "corrections population control commission" is created.

B. The commission shall be composed of seven members:

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

(2) a public official or private citizen appointed by the chief justice of the New Mexico supreme court;

(3) a public official or private citizen appointed by the speaker of the house of representatives;

(4) a public official or private citizen

appointed by the president pro tempore of the senate;

(5) a public official or private citizen appointed by the minority leader of the house of representatives;

(6) a public official or private citizen appointed by the minority leader of the senate; and

(7) a public official or private citizen appointed by the governor.

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

D. The appointed members of the commission shall serve until June 30, 2007. A vacancy on the commission shall be filled by the individual who made the original appointment.

E. Following the initial appointments to the commission, when a new individual assumes any of the leadership positions set forth in Paragraphs (2) through (7) of Subsection B of this section, that individual may make his own appointment to the commission to replace an existing member.

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

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

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

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

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

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

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

(5) considering all of its recommendations

in light of public safety concerns.

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

C. The commission staff support shall be provided by the corrections department.

Section 6. OVERCROWDING--POPULATION CONTROL MECHANISM--PROCEDURES.--When the inmate population of female correctional facilities or male correctional facilities exceeds one hundred percent of rated capacity for a period of thirty consecutive days, the following measures shall be taken to reduce capacity:

A. the corrections department shall engage in all lawful and professionally appropriate efforts to reduce the inmate population to one hundred percent of rated capacity;

B. if inmate population is still in excess of one hundred percent of rated capacity after sixty consecutive days, the secretary of corrections shall notify the commission. Included in the notification shall be a list of nonviolent offenders who are within one hundred eighty days of their projected release date;

C. the commission shall convene within ten days to consider the release of nonviolent offenders on the list provided by the secretary of corrections. The commission shall also discuss with the corrections department the impact on the inmate population of possible changes in the classification system and expanding incarceration alternatives;

D. for nonviolent offenders approved by the commission for release, the commission shall grant emergency release credits in ten-day increments that will be applied to the sentences being served by the nonviolent offenders. The commission shall order release of the appropriate number of nonviolent offenders to reduce the inmate population; and

E. notwithstanding any other provisions of this section, a nonviolent offender shall not be released:

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

(2) if the information concerning the nonviolent offender is discovered to be materially inaccurate;

(3) if the nonviolent offender committed a crime while incarcerated;

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

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

Section 7. ADDITIONAL POPULATION CONTROL MECHANISMS.--

A. The governor may order the commission to convene at any time to consider the release of nonviolent offenders who are within one hundred eighty days of their projected release date. When the governor orders the commission to convene, the commission shall comply with the provisions of Subsections C through E of Section 6 of the Corrections Population Control Act.

B. The commission may order itself to convene at any time to consider the release of nonviolent offenders who are within one hundred eighty days of their projected release date, upon a two-thirds' vote by members who are appointed. When the commission orders itself to convene, the commission shall comply with the provisions of Subsection C through E of Section 6 of the Corrections Population Control Act.

Section 8. TERMINATION OF AGENCY LIFE--TRANSFER OF FUNCTIONS.--The corrections population control commission is terminated on June 30, 2007. On July 1, 2007, the secretary of corrections shall assume the duties and responsibilities of the commission.

HOUSE JUDICIARY COMMITTEE SUBSTITUTE
FOR HOUSE BILL 263, AS AMENDED
WITH CERTIFICATE OF CORRECTION