

1 SENATE BILL 526

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Sander Rue

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10 AN ACT

11 RELATING TO DETENTION FACILITIES; REQUIRING THE ATTORNEY  
12 GENERAL TO HIRE A DETENTION FACILITY AUDITOR TO AUDIT DETENTION  
13 FACILITIES FOR COMPLIANCE WITH THE FEDERAL PRISON RAPE  
14 ELIMINATION ACT OF 2003; PRESCRIBING QUALIFICATIONS AND DUTIES  
15 OF THE AUDITOR; PRESCRIBING DUTIES OF DETENTION FACILITIES AND  
16 THEIR OPERATORS; MAKING AN APPROPRIATION.

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

19 SECTION 1. SHORT TITLE.--This act may be cited as the  
20 "Detention Facility Audit Act".

21 SECTION 2. DEFINITIONS.--As used in the Detention  
22 Facility Audit Act:

23 A. "auditor" means a detention facility auditor;

24 B. "detention facility" means an adult or juvenile  
25 facility in New Mexico that is operated by or on behalf of the

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1 federal government, the state government or a local government,  
2 and that is used to hold inmates, residents or detainees;

3 C. "entity" means a unit of the federal government,  
4 state government or local government or a corporation that is  
5 responsible for the operation of a detention facility; and

6 D. "standards" means the standards promulgated  
7 pursuant to the federal Prison Rape Elimination Act of 2003.

8 SECTION 3. AUDITOR--QUALIFICATIONS--DUTIES.--

9 A. The attorney general shall hire a full-time  
10 auditor to conduct audits of detention facilities in New Mexico  
11 in accordance with the federal Prison Rape Elimination Act of  
12 2003 and the provisions of the Detention Facility Audit Act.

13 B. To qualify for the position of auditor, a person  
14 shall:

15 (1) be certified by the United States  
16 department of justice; and

17 (2) not have received financial compensation  
18 from an entity within the three years preceding the person's  
19 date of hire as an auditor, except for compensation received  
20 for conducting previous audits pursuant to the federal Prison  
21 Rape Elimination Act of 2003.

22 C. The detention facility auditor shall:

23 (1) have the power to subpoena, which may be  
24 enforced through any district court of the state;

25 (2) conduct audits of detention facilities in

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1 New Mexico in accordance with the federal Prison Rape  
2 Elimination Act of 2003, using the audit instrument developed  
3 and issued by the United States department of justice pursuant  
4 to that act;

5 (3) conduct an audit of each detention  
6 facility in New Mexico at least once every three years,  
7 beginning on August 20, 2013; and

8 (4) conduct audits of at least one-third of  
9 the total number of each of the following types of detention  
10 facilities in New Mexico every year:

11 (a) prisons or similar detention  
12 facilities that hold persons serving sentences equal to or  
13 greater than one year in duration;

14 (b) jails or similar detention  
15 facilities that hold persons serving sentences less than one  
16 year in duration;

17 (c) lockups or similar detention  
18 facilities that are operated by a law enforcement agency or a  
19 court and that temporarily hold persons who were recently  
20 arrested or detained or who are being transferred between  
21 detention facilities or to or from a court;

22 (d) community correctional facilities,  
23 including community treatment centers, halfway houses,  
24 transitional living facilities, mental health facilities,  
25 alcohol or drug rehabilitation facilities and similar

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1 facilities in which persons reside as part of a term of  
2 imprisonment or as a condition of release from a term of  
3 imprisonment; and

4 (e) juvenile detention facilities.

5 D. In conducting an audit pursuant to the Detention  
6 Facility Audit Act, the auditor shall:

7 (1) observe all areas of a detention facility;

8 (2) review copies of an entity's and a  
9 detention facility's documents, records and other information  
10 relevant to the audit;

11 (3) review all of an entity's and a detention  
12 facility's relevant policies, procedures, reports, internal and  
13 external audits and detention facility accreditations;

14 (4) interview a representative sample of  
15 inmates, residents or detainees and staff members, supervisors  
16 and administrators of a detention facility;

17 (5) conduct private and confidential  
18 interviews with inmates, residents or detainees of a detention  
19 facility;

20 (6) review a detention facility's videotapes  
21 or other electronic data relevant to the audit;

22 (7) gather relevant information from  
23 organizations, including victims' advocate organizations, in  
24 the community in which a detention facility is located;

25 (8) retain and preserve all documentation,

1 including videotapes and interview notes, on which the auditor  
2 relied in making audit determinations;

3 (9) provide documentation on which the auditor  
4 relied in making audit determinations to the United States  
5 department of justice, upon its request;

6 (10) on completion of an audit, produce a  
7 report that:

8 (a) states whether the entity's and  
9 detention facility's policies, procedures and practices comply  
10 with the standards;

11 (b) includes, with respect to each  
12 standard, the auditor's rating of a detention facility using  
13 the following rating scale: 1) "exceeds standard", which means  
14 the detention facility substantially exceeds the requirements  
15 of the standard; 2) "meets standard", which means the detention  
16 facility substantially complies in all material ways with the  
17 standard; or 3) "does not meet standard", which means the  
18 detention facility requires corrective action with respect to a  
19 standard;

20 (c) includes, with respect to a  
21 detention facility that fails to comply with any material  
22 aspect of an audit, an overall facility rating of "non-  
23 compliant";

24 (d) includes a summary of the audit that  
25 states the number of standards for which the auditor assigned a

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1 detention facility rating of "exceeds standard", "meets  
2 standard" and "does not meet standard";

3 (e) includes a description of the  
4 auditor's methodology and sampling sizes, and the bases for the  
5 auditor's assignment of ratings for each standard;

6 (f) includes recommendations for  
7 corrective action to be taken with respect to any standard for  
8 which a detention facility was rated "does not meet standard";

9 (g) includes the auditor's certification  
10 that no conflict of interest exists with respect to the  
11 auditor's ability to conduct the audit of a detention facility;  
12 and

13 (h) does not include personally  
14 identifiable information on inmates, residents, detainees or  
15 staff members of a detention facility, except that an  
16 unredacted version of the audit report, containing personally  
17 identifiable information on inmates, residents, detainees and  
18 staff members, shall be provided to the relevant entity or to  
19 the United States department of justice upon request;

20 (11) publish a copy of final audit reports on  
21 the attorney general's web site and make the final audit  
22 reports available to the public in any other appropriate  
23 format;

24 (12) in response to a rating of "does not meet  
25 standard", regarding one or more standards, develop a

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1 corrective action plan, in cooperation with an entity, to bring  
2 a detention facility into compliance with respect to all  
3 standards within one hundred eighty days;

4 (13) verify that corrective action plans are  
5 implemented by reviewing an entity's and a detention facility's  
6 updated policies and procedures, re-inspecting detention  
7 facilities and taking other appropriate actions; and

8 (14) issue a final determination, following  
9 the one-hundred-eighty-day period of a corrective action plan,  
10 which states whether a detention facility meets the standards  
11 that required corrective action.

12 E. An auditor shall not be employed by, contract  
13 with or otherwise receive financial compensation from an entity  
14 for three years following the auditor's issuance of a final  
15 determination regarding an entity's detention facility, with  
16 the exception of contracting for subsequent audits pursuant to  
17 the federal Prison Rape Elimination Act of 2003.

18 **SECTION 4. ENTITY--DUTIES--POWERS.--**

19 A. With respect to audits conducted in accordance  
20 with the federal Prison Rape Elimination Act of 2003 and the  
21 Detention Facility Audit Act, an entity shall provide:

22 (1) to the auditor within fifteen days, copies  
23 of correspondence or notices received from the United States  
24 department of justice that relate to or require action pursuant  
25 to the federal Prison Rape Elimination Act of 2003;

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1 (2) the auditor with full access to and an  
2 opportunity to observe all areas of a detention facility;

3 (3) the auditor with copies of documents,  
4 records and other information, including videotapes and other  
5 electronic data, relevant to an audit, upon request; and

6 (4) the auditor with access to inmates,  
7 residents and detainees so the auditor can conduct private and  
8 confidential interviews with them.

9 B. An entity may request subsequent audits,  
10 conducted at the entity's expense after the entity takes  
11 corrective action as required by an audit, to show compliance  
12 with the standards that required corrective action.

13 C. With respect to an audit, an entity may:

14 (1) within ninety days of an auditor's final  
15 determinations, file an appeal with the United States  
16 department of justice regarding any specific audit  
17 determination that the entity believes to be incorrect; and

18 (2) commission a re-audit of the entity's  
19 detention facility, if the United States department of justice  
20 believes the entity stated good cause in its appeal. The re-  
21 audit shall be conducted by an auditor mutually agreed upon by  
22 the United States department of justice and the entity, at the  
23 entity's expense, and the results of the re-audit shall be  
24 considered final.

25 SECTION 5. ENTITY NONCOMPLIANCE--PENALTIES.--An entity or

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1 detention facility that knowingly violates its obligations  
2 pursuant to the Detention Facility Audit Act shall be subject  
3 to a civil penalty of not more than one thousand dollars  
4 (\$1,000) for each violation of a provision of that act.

5 SECTION 6. APPROPRIATION.--Three hundred fifty thousand  
6 dollars (\$350,000) is appropriated from the general fund to the  
7 office of the attorney general for expenditure in fiscal year  
8 2014 for the salary, benefits, travel expenses and other costs  
9 related to two detention facility auditors. Any unexpended or  
10 unencumbered balance remaining at the end of fiscal year 2014  
11 shall revert to the general fund.

12 SECTION 7. EFFECTIVE DATE.--The effective date of the  
13 provisions of this act is July 1, 2013.