

HOUSE BILL 626

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

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AN ACT

RELATING TO DETENTION; PROHIBITING CERTAIN CONTRACTS;
RESTRICTING AUTHORITY OF SHERIFFS AND JAILS TO HOLD DETAINEES;
REPEALING A REFERENCE IN STATE LAW TO A REPEALED FEDERAL LAW;
DECLARING AN EMERGENCY.

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

SECTION 1. [NEW MATERIAL] PRIVATE CONTRACTS PROHIBITED.--

A. Except as provided in Section 33-3-16 NMSA 1978 and Subsections C and D of this section, neither the state nor a political subdivision of the state or its agencies or instrumentalities, including home rule municipalities, shall contract with a detention facility involved in:

(1) the separation of a refugee child from the child's parent or guardian without a finding by a district court that the parent or guardian is unfit or presents a danger

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1 to the child, or a judicial determination of probable cause to
2 believe that the child committed an offense contrary to law;

3 (2) the detention of a refugee child that
4 fails to meet the basic needs of the child, including:

5 (a) a well-maintained facility with
6 access to reasonable amenities and that adequately provides for
7 the health, safety and well-being of the child; and

8 (b) visitation with family members; or

9 (3) a separation or detention that results in
10 great bodily harm to or the death of a refugee child as a
11 result of intentional harm or negligent care.

12 B. The children, youth and families department
13 shall promulgate rules defining the standards provided in
14 Paragraph (2) of Subsection A of this section.

15 C. The state, a political subdivision of the state
16 or its agencies or instrumentalities, including home rule
17 municipalities, may contract with any detention facility,
18 including one that was in violation of Subsection A of this
19 section, if the detention facility:

20 (1) shows it has not violated Subsection A of
21 this section for the previous three months;

22 (2) agrees in writing that any violation of
23 Subsection A of this section is grounds for termination of the
24 contract, leaving the state or the state agency or
25 instrumentality immune from liability; and

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1 (3) maintains policies consistent with the
2 rules promulgated by the children, youth and families
3 department pursuant to Subsection B of this section.

4 D. Nothing in this section shall be deemed to
5 terminate an existing contract between the state, a political
6 subdivision of the state or its agencies or instrumentalities,
7 including home rule municipalities.

8 E. As used in this section:

9 (1) "detention facility" means any building or
10 structure that houses detained refugees, including a federal or
11 state prison, a private prison, a county or municipal jail or
12 any detention facility whether government- or privately
13 operated;

14 (2) "family member" includes:

15 (a) a parent, stepparent, foster parent
16 or the domestic partner of a parent, stepparent or foster
17 parent;

18 (b) a grandparent;

19 (c) a sibling, a stepsibling or a foster
20 sibling;

21 (d) a first cousin;

22 (e) an aunt or an uncle; and

23 (f) any other person who financially
24 supports the child refugee; and

25 (3) "refugee" means a displaced person who has

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1 crossed national boundaries and who has applied, is applying or
2 intends to apply for asylum status.

3 SECTION 2. Section 33-3-16 NMSA 1978 (being Laws
4 1865-1866, Chapter 19, Section 15, as amended) is amended to
5 read:

6 "33-3-16. UNITED STATES PRISONERS.--~~[It shall be the duty~~
7 ~~of]~~ The sheriff of each county [~~his~~] or the sheriff's deputy,
8 the jailer, the jail administrator as defined in Section
9 4-44-19 NMSA 1978 or the independent contractor to whom any
10 person [~~shall be~~] is remitted in conformity with a [~~legal~~
11 ~~process issued by or under the authority of the United States,~~
12 ~~and he is hereby required, to]~~ warrant or order issued by a
13 United States district judge in a criminal proceeding may
14 receive such person [~~or persons~~] into [~~his~~] custody and keep
15 [~~them~~] the person safely until [~~they shall be~~] the person is
16 placed at liberty according to the laws of the United States
17 [~~provided that~~]. The United States shall be responsible for
18 the payment of the fee [~~which~~] that shall be established from
19 time to time by the sheriff or the sheriff's deputy, the
20 jailer, the jail administrator or the independent contractor in
21 charge of the operation of a jail."

22 SECTION 3. REPEAL.--Section 29-1-10 NMSA 1978 (being Laws
23 1966, Chapter 24, Section 1) is repealed.

24 SECTION 4. EMERGENCY.--It is necessary for the public
25 peace, health and safety that this act take effect immediately.

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