HOUSE BILL 40

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY
Angelica Rubio and Karen C. Bash and Daymon Ely and Gail Chasey
and Katy Duhigg

AN ACT

RELATING TO CORRECTIONAL INSTITUTIONS; ENACTING THE PRIVATE
DETENTION FACILITY MORATORIUM ACT; REMOVING AUTHORIZATION TO
ENTER INTO CONTRACTS OR AGREEMENTS WITH INDEPENDENT CONTRACTORS
FOR THE OPERATION OF DETENTION FACILITIES; PROVIDING FOR
RECOMMENDED TERMINATION OF CONTRACTS FOR OPERATION OF JAILS
UNDER CERTAIN CIRCUMSTANCES; MAKING THE OPERATION OF A PRIVATE
DETENTION FACILITY UNLAWFUL; PROHIBITING PUBLIC FUNDING OF
PRIVATELY OPERATED DETENTION FACILITIES; REQUIRING ANNUAL
REPORTS; PROVIDING A PENALTY; REPEALING SECTIONS 33-1-17 AND
33-3-26 NMSA 1978 (BEING LAWS 1985, CHAPTER 149, SECTION 1 AND
LAWS 1984, CHAPTER 22, SECTION 17, AS AMENDED); DECLARING AN
EMERGENCY.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 3 of this act may be cited as the "Private Detention Facility Moratorium Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Private Detention Facility Moratorium Act:

A. "detention facility" means a facility other than a work-release facility in which a person is incarcerated or otherwise involuntarily confined for purposes other than medical or mental health necessity or addiction therapy;

B. "operate" means to house, protect and discipline people involuntarily confined in a detention facility; and

C. "private detention facility" means a detention facility that is operated by a nongovernmental entity."

SECTION 3. [NEW MATERIAL] OPERATION OF A PRIVATE DETENTION FACILITY PROHIBITED--CERTAIN AGREEMENTS AND INCENTIVES PROHIBITED--EXCEPTIONS.--

A. It is unlawful for any person, corporation, business or nonprofit entity to operate a private detention facility.

B. Neither the state, nor any other governmental entity, county sheriff, or any officer, employee or agent thereof, shall:

   (1) enter into, renew or modify in a manner that would increase the capacity of a detention facility to house or detain individuals, an agreement of any kind for the detention of individuals in a detention facility owned, managed
or operated, in whole or in part, by a private entity; or

(2) pay, reimburse or subsidize in any way any costs related to the sale, purchase, construction, development, ownership, management or operation of a detention facility that is owned, managed or operated, in whole or in part, by a private entity.

C. This section does not apply to:

(1) a facility whose principal function is to provide:

(a) educational services or rehabilitative, physical, mental or behavioral health services to a juvenile inmate; or

(b) educational, vocational, medical or other services ancillary to detention to an adult or juvenile inmate;

(2) a school facility used for the disciplinary detention of a student;

(3) a facility used to isolate or quarantine a person for public health reasons;

(4) a facility used for the temporary detention of a person detained or arrested by a private security guard or other private person; or

(5) a private detention facility that is operating pursuant to a contract effective prior to the enactment of the Private Detention Facility Moratorium Act.
SECTION 4. Section 31-20-2 NMSA 1978 (being Laws 1963, Chapter 303, Section 29-13, as amended) is amended to read:

"31-20-2. PLACE OF IMPRISONMENT--COMMITMENTS.--

A. Persons sentenced to imprisonment for a term of one year or more shall be imprisoned in a corrections facility designated by the corrections department, unless a new trial is granted or a portion of the sentence is suspended so as to provide for imprisonment for not more than eighteen months; then the imprisonment may be in such place of incarceration, other than a corrections facility under the jurisdiction of the corrections department, as the sentencing judge, in [his] the judge's discretion, may prescribe; provided that a sentence of imprisonment for one year or more but not more than eighteen months shall be subject to the provisions of Subsections D and E of this section and shall not be imposed unless the requirements set forth in Subsection D of this section are satisfied.

B. All commitments, judgments and orders of the courts of this state for the imprisonment or release of persons in the penitentiary of New Mexico shall run to the corrections department, but nothing contained in this section shall invalidate or impair the validity of any commitment, judgment or order of any court in this state directed to the secretary of corrections, the warden of the penitentiary of New Mexico or to the penitentiary of New Mexico, and all such commitments,
judgments and orders shall be treated and construed as running
to the corrections department.

C. There is created within the corrections
department an "intake and classification center". The intake
and classification center shall have the following duties:

(1) process all inmates sentenced or committed
for purposes of diagnosis to the corrections department;

(2) classify inmates for housing assignments;

(3) develop an individualized plan for
participation by each inmate in programs, work assignments and
special needs;

(4) monitor each inmate's progress during
incarceration and reclassify or modify classification
assignments as may be necessary, taking into consideration the
overall needs of the inmate population, institutional and
facility requirements and the individual inmate's needs;

(5) with the approval of the secretary of
corrections, may transfer inmates of the penitentiary of New
Mexico to an institution under the control of another state if
that state has entered into a corrections control agreement
with New Mexico; and

(6) with the approval of the secretary of
corrections, may transfer inmates to any facility, including
the forensic hospital under the jurisdiction of the department
of health.
D. A sentence of one year or more but not more than eighteen months and providing for imprisonment in a place of incarceration other than a corrections facility under the jurisdiction of the corrections department pursuant to Subsection A of this section, which shall be known as the local sentencing option, shall not be imposed unless:

(1) the place of incarceration is located within the county in which the crime was committed; and

(2) the governing authority in charge of the place of incarceration has entered into a joint powers agreement with the corrections department setting forth:

(a) the amount of money the corrections department shall pay for offenders sentenced to a term of one year or more but not more than eighteen months and the number of offenders [which] that may be sentenced to such terms; and

(b) any other provisions deemed appropriate and agreed to by the local governing body and the corrections department.

E. If a judge imposes a sentence of one year or more but not more than eighteen months and provides for imprisonment in a place of incarceration other than a corrections facility under the jurisdiction of the corrections department:

(1) the local governing body or its agent shall have the ability to petition that judge when the capacity
of the place of incarceration is filled or when any problem
develops concerning that offender requesting the judge to issue
an order committing the offender to the corrections department
for completion of the remainder of [his] the offender's
sentence. A hearing on a petition pursuant to this paragraph
shall be held within three days of the filing of the petition.
Notwithstanding any other provision of law, the judge shall
retain jurisdiction over the offender for the purpose of
implementing the local sentencing option; and

(2) the local governing body or its agent
shall keep the district judges for the judicial district in
which the place of incarceration is located informed as to the
capacity for the sentencing of offenders in accordance with the
local sentencing option. No judge shall sentence an offender
in accordance with the local sentencing option if that sentence
will result in exceeding the number of offenders set forth in
the joint powers agreement.

F. The corrections department shall file an annual
report with the legislature [which] that shall contain the
number of joint powers agreements in operation pursuant to this
section, copies of those agreements, the number of offenders
currently incarcerated pursuant to those agreements and any
other relevant information relating to the implementation of
this section.

G. The corrections department may enter into
contracts with public detention facilities for the purpose of housing inmates lawfully committed to the corrections department. Any facility with which the department contracts shall meet or exceed corrections department standards prior to the housing of any inmates within the facility and shall meet certification requirements for prisons within eighteen months of entering into such contracts. The contractor shall adhere to all appropriate corrections department policies and procedures and shall agree to have staff trained at the corrections department training academy."

SECTION 5. A new section of Chapter 33, Article 3 NMSA 1978 is enacted to read:

"[NEW MATERIAL] DEFINITION--JAIL ADMINISTRATOR.--For the purposes of Chapter 33, Article 3 NMSA 1978, "jail administrator" means a person hired by a county, municipality or a combination of these, who supervises the entire operation of a jail and reports directly to the administrative head of the local governmental entity or local governing body."

SECTION 6. Section 33-3-1 NMSA 1978 (being Laws 1865-1866, Chapter 19, Section 1, as amended) is amended to read:

"33-3-1. COMMON JAILS--OPERATION BY SHERIFF, JAIL ADMINISTRATOR OR INDEPENDENT CONTRACTOR.--

A. The common jails shall be under the control of the: .218364.2
(1) respective sheriffs [independent contractors] or jail administrators hired by the board of county commissioners or other local public body or combination thereof [and the same]; or

(2) independent contractors with whom those entities have entered into contracts.

B. The common jails shall be used as prisons in the respective counties.

[B. Contracts between local public bodies and private independent contractors for the operation or provision and operation of a jail are specifically authorized by this section; provided that prior to July 1, 1987, no more than two pilot projects involving private independent contractors are authorized in New Mexico pursuant to Section 33-3-26 NMSA 1978.]

SECTION 7. Section 33-3-2 NMSA 1978 (being Laws 1972, Chapter 69, Section 1, as amended) is amended to read:

"33-3-2. JOINT AGREEMENTS FOR THE CONSTRUCTION, MANAGEMENT AND OPERATION OF CORRECTIONAL AND DETENTION FACILITIES AND JAILS.--

A. Notwithstanding the provisions of Subsection A of Section 33-3-1 NMSA 1978, the board of county commissioners of a county may enter into an agreement with other counties and municipalities to provide for the construction, maintenance or operation of one or more jails or correctional or detention
facilities for confinement of persons charged with crimes or
violations of municipal or county ordinances or committed to
jail.

B. The agreement authorized in Subsection A of this
section:

(1) may provide for the control of the
indicated facilities by the sheriff of the county in which the
facility is located [or], by a jail administrator as defined in
Section 4-44-19 NMSA 1978 or by an independent contractor with
whom the county has entered into a contract; and [the
agreement]

(2) shall state the manner in which the person
in control shall be selected if it is other than the sheriff.

C. In a class A county utilizing a joint city and
county jail, municipalities shall pay a fee to the board of
county commissioners for each prisoner housed in the county
jail charged with municipal offenses or arrested by municipal
officers. The fee shall be a reasonable fee established by the
board of county commissioners and approved by the local
government division of the department of finance and
administration.

D. [No] An agreement or [an] amendment to an
agreement authorized by this section is not effective until it
is approved by the local government division of the department
of finance and administration."

.218364.2

- 10 -
SECTION 8. Section 33-3-4 NMSA 1978 (being Laws 2011, Chapter 142, Section 1) is amended to read:

"33-3-4. INSPECTION OF JAILS AND DETENTION CENTERS--REPORT.--

A. Each governing body of a county or municipality shall conduct an annual site visit to the jail or detention center under its jurisdiction to inspect the overall conditions at the facility. Following a site visit, an inspection report shall be presented at a regular meeting of the governing body and provided to the corrections department.

B. The corrections department shall review each inspection report for compliance with each contract with an independent contractor entered into pursuant to Chapter 33, Article 3 NMSA 1978. The corrections department shall recommend termination of the contract upon ninety days' notice to the contractor if:

1. the independent contractor fails to meet the provisions of the contract;

2. the department determines that the failure seriously impairs the availability or operation of the facility; and

3. the recommended termination is consistent with the termination provisions of the contract."

SECTION 9. Section 33-3-18 NMSA 1978 (being Laws 1889, Chapter 8, Section 4, as amended) is amended to read:
"33-3-18. COUNTIES WITHOUT JAILS--ARRANGEMENTS WITH OTHER COUNTRIES.--In case any county in this state lacks a jail or proper place of confinement for its prisoners, the board of county commissioners of that county shall make contractual arrangements with other counties or municipalities [or independent contractors] for the incarceration and care of its prisoners [and that]. The jail [see] designated by any board of county commissioners of any county not having a jail or other proper place of confinement shall be the legal place of confinement of the prisoners of [said] the county."

SECTION 10. Section 33-3-27 NMSA 1978 (being Laws 1984, Chapter 22, Section 18, as amended) is amended to read:

"33-3-27. JAIL AGREEMENTS--APPROVAL--LIABILITY--TERMINATION--VENUE.--

A. Agreements with a private independent contractor for the operation of a jail or for the incarceration of prisoners shall be made for a period of up to five years, but those agreements may allow for additional one-year, two-year or three-year extensions not to exceed a total of six extensions. Agreements binding on future governing bodies for construction, purchase or lease of a jail facility for not more than fifteen years are authorized.

B. All agreements with private independent contractors for the operation or provision and operation of jails shall include a performance bond and be approved in
writing, prior to their becoming effective, by the local
government division of the department of finance and
administration and the office of the attorney general.
Disapproval may be based on any reasonable grounds, including
adequacy or appropriateness of the proposed plan or standards;
suitability or qualifications of the proposed contractor or the
contractor's employees; absence of required or desirable
contract provisions; unavailability of funds; or any other
reasonable grounds. No agreement shall be valid or enforceable
without prior approval.

C. All agreements with private independent
contractors for the operation or provision and operation of
jails shall provide for the independent contractor to provide
and pay for training for jailers to meet minimum training
standards, which shall be specified in the contract.

D. All agreements with private independent
contractors for the operation or provision and operation of
jails shall set forth comprehensive standards for conditions of
incarceration, either by setting them forth in full as part of
the contract or by reference to known and respected
compilations of those standards.

E. All agreements with private independent
contractors for the operation or provision and operation of
jails shall be approved in writing, prior to their becoming
effective, by the risk management division of the general
services department. Approval shall be conditioned upon contractual arrangements satisfactory to the risk management division for:

(1) the contractor's assumption of all liability caused by or arising out of all aspects of the provision and operation of the jail; and

(2) liability insurance covering the contractor and its officers, jailers, employees and agents in an amount sufficient to cover all liability caused by or arising out of all aspects of the provision and operation of the jail. A copy of the proposed insurance policy for the first year shall be submitted for approval with the contract.

F. All agreements with private independent contractors for the operation or provision and operation of jails shall provide for termination for cause by the local public body parties upon ninety days' notice to the independent contractor. A termination shall be allowed for at least the following reasons:

(1) failure of the independent contractor to meet minimum standards and conditions of incarceration, which standards and conditions shall be specified in the contract; or

(2) failure to meet other contract provisions when the failure seriously affects the operation of the jail.

The reasons for termination set forth in this subsection are not exclusive and may be supplemented by the parties.
G. Venue for the enforcement of any agreement entered into pursuant to the provisions of this section shall be in the district court of the county in which the facility is located or in Santa Fe county.

H. The provisions of this section apply to agreements specifically authorized pursuant to Section 33-3-1 NMSA 1978."

SECTION 11. Section 33-6-4 NMSA 1978 (being Laws 1939, Chapter 75, Section 5) is amended to read:

"33-6-4. COUNTY COMMISSIONERS AUTHORIZED TO ACT. --The boards of county commissioners of the several counties are hereby authorized and empowered to enter into any and all contracts and to do and perform any and all things necessary and proper to carry into effect the provisions of Chapter 33, Article 6 NMSA 1978, except that a board of county commissioners shall not extend, renew or enter into a contract with an independent contractor for the operation of a juvenile detention home."

SECTION 12. REPEAL. --Sections 33-1-17 and 33-3-26 NMSA 1978 (being Laws 1985, Chapter 149, Section 1 and Laws 1984, Chapter 22, Section 17, as amended) are repealed.

SECTION 13. EMERGENCY. --It is necessary for the public peace, health and safety that this act take effect immediately.