

HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 352

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

AN ACT

RELATING TO CORRECTIONAL INSTITUTIONS; ENACTING THE PRIVATE
DETENTION FACILITY MORATORIUM ACT; REMOVING AUTHORIZATION TO
ENTER INTO CONTRACTS OR AGREEMENTS WITH PRIVATE INDEPENDENT
CONTRACTORS FOR THE OPERATION OF DETENTION FACILITIES; CREATING
THE PRIVATE DETENTION FACILITIES TRANSITION TASK FORCE;
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:

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

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

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

9 SECTION 3. ~~[NEW MATERIAL]~~ CERTAIN AGREEMENTS FOR THE
10 OPERATION OF A PRIVATE DETENTION FACILITY PROHIBITED--
11 EXCEPTIONS.--

12 A. Neither the state, nor any political subdivision
13 of the state or other governmental entity, county sheriff or
14 any officer, employee or agent, shall:

15 (1) enter into an agreement with a private
16 independent contractor that would provide for the operation or
17 management of a private detention facility; or

18 (2) modify any existing agreement with a
19 private independent contractor for the operation or management
20 of a private detention facility in a manner that would increase
21 the capacity of the facility to house or detain individuals.

22 B. This section does not apply to:

23 (1) a facility that has as its principal
24 function the provision of:

25 (a) educational services or

1 rehabilitative, physical, mental or behavioral health services
2 to a juvenile inmate; or

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

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

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

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

13 **SECTION 4.** Section 31-20-2 NMSA 1978 (being Laws 1963,
14 Chapter 303, Section 29-13, as amended) is amended to read:

15 "31-20-2. PLACE OF IMPRISONMENT--COMMITMENTS.--

16 A. Persons sentenced to imprisonment for a term of
17 one year or more shall be imprisoned in a corrections facility
18 designated by the corrections department, unless a new trial is
19 granted or a portion of the sentence is suspended so as to
20 provide for imprisonment for not more than eighteen months;
21 then the imprisonment may be in such place of incarceration,
22 other than a corrections facility under the jurisdiction of the
23 corrections department, as the sentencing judge, in ~~his~~ the
24 judge's discretion, may prescribe; provided that a sentence of
25 imprisonment for one year or more but not more than eighteen

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1 months shall be subject to the provisions of Subsections D and
2 E of this section and shall not be imposed unless the
3 requirements set forth in Subsection D of this section are
4 satisfied.

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

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

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

20 (2) classify inmates for housing assignments;

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

24 (4) monitor each inmate's progress during
25 incarceration and reclassify or modify classification

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1 assignments as may be necessary, taking into consideration the
2 overall needs of the inmate population, institutional and
3 facility requirements and the individual inmate's needs;

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

9 (6) with the approval of the secretary of
10 corrections, may transfer inmates to any facility, including
11 the forensic hospital under the jurisdiction of the department
12 of health.

13 D. A sentence of one year or more but not more than
14 eighteen months and providing for imprisonment in a place of
15 incarceration other than a corrections facility under the
16 jurisdiction of the corrections department pursuant to
17 Subsection A of this section, which shall be known as the local
18 sentencing option, shall not be imposed unless:

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

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

24 (a) the amount of money the corrections
25 department shall pay for offenders sentenced to a term of one

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1 year or more but not more than eighteen months and the number
2 of offenders [~~which~~] that may be sentenced to such terms; and

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

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

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

22 (2) the local governing body or its agent
23 shall keep the district judges for the judicial district in
24 which the place of incarceration is located informed as to the
25 capacity for the sentencing of offenders in accordance with the

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1 local sentencing option. No judge shall sentence an offender
2 in accordance with the local sentencing option if that sentence
3 will result in exceeding the number of offenders set forth in
4 the joint powers agreement.

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

12 G. The corrections department may enter into
13 contracts with public [~~or private~~] detention facilities for the
14 purpose of housing inmates lawfully committed to the
15 corrections department. Any facility with which the department
16 contracts shall meet or exceed corrections department standards
17 prior to the housing of any inmates within the facility and
18 shall meet certification requirements for prisons within
19 eighteen months of entering into such contracts. The
20 contractor shall adhere to all appropriate corrections
21 department policies and procedures and shall agree to have
22 staff trained at the corrections department training academy."

23 SECTION 5. A new section of Chapter 33, Article 3 NMSA
24 1978 is enacted to read:

25 "[NEW MATERIAL] DEFINITION--JAIL ADMINISTRATOR.--For the

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1 purposes of Chapter 33, Article 3 NMSA 1978, "jail
2 administrator" means an individual employed by a county,
3 municipality or a combination of these, who supervises the
4 entire operation of a jail and reports directly to the
5 administrative head of the local governmental entity or local
6 governing body."

7 SECTION 6. Section 33-3-1 NMSA 1978 (being Laws
8 1865-1866, Chapter 19, Section 1, as amended) is amended to
9 read:

10 "33-3-1. COMMON JAILS--OPERATION BY SHERIFF, JAIL
11 ADMINISTRATOR OR PRIVATE INDEPENDENT CONTRACTOR.--

12 A. The common jails shall be under the control of
13 the:

14 (1) respective sheriffs [~~independent~~
15 ~~contractors~~] or jail administrators [~~hired~~] employed by the
16 board of county commissioners or other local public body or
17 combination thereof [~~and the same~~]; or

18 (2) private independent contractors that have
19 entered into an agreement for the operation or management of a
20 detention facility before the effective date of the Private
21 Detention Facility Moratorium Act.

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

24 [~~B. Contracts between local public bodies and~~
25 ~~private independent contractors for the operation or provision~~

1 ~~and operation of a jail are specifically authorized by this~~
 2 ~~section; provided that prior to July 1, 1987, no more than two~~
 3 ~~pilot projects involving private independent contractors are~~
 4 ~~authorized in New Mexico pursuant to Section 33-3-26 NMSA~~
 5 ~~1978.]"~~

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

8 "33-3-2. JOINT AGREEMENTS FOR THE CONSTRUCTION,
 9 MANAGEMENT AND OPERATION OF CORRECTIONAL AND DETENTION
 10 FACILITIES AND JAILS.--

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

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

21 (1) may provide for the control of the
 22 indicated facilities by the sheriff of the county in which the
 23 facility is located [~~or~~], by a jail administrator [~~as defined~~
 24 ~~in Section 4-44-19 NMSA 1978 or by an independent contractor~~]
 25 or by a private independent contractor if that private

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1 contractor has entered into the agreement prior to the
2 effective date of the Private Detention Facility Moratorium
3 Act; and [~~the agreement~~]

4 (2) shall state the manner in which the person
5 in control shall be selected if [~~it~~] the person is other than
6 the sheriff.

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

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

19 SECTION 8. Section 33-3-18 NMSA 1978 (being Laws 1889,
20 Chapter 8, Section 4, as amended) is amended to read:

21 "33-3-18. COUNTIES WITHOUT JAILS--ARRANGEMENTS WITH OTHER
22 COUNTIES.--In case any county in this state lacks a jail or
23 proper place of confinement for its prisoners, the board of
24 county commissioners of that county shall make contractual
25 arrangements with other counties or municipalities [~~or~~

1 ~~independent contractors~~] for the incarceration and care of its
 2 prisoners [~~and that~~]. The jail [so] designated by [any] the
 3 board of county commissioners of any county not having a jail
 4 or other proper place of confinement shall be the legal place
 5 of confinement of the prisoners of [~~said~~] the county."

6 SECTION 9. Section 33-6-4 NMSA 1978 (being Laws 1939,
 7 Chapter 75, Section 5) is amended to read:

8 "33-6-4. COUNTY COMMISSIONERS AUTHORIZED TO ACT.--The
 9 boards of county commissioners of the several counties are
 10 [~~hereby~~] authorized and empowered to enter into any [~~and all~~]
 11 contracts and to do [and perform] any [and all] things
 12 necessary and proper to carry into effect the provisions
 13 [~~hereof~~] of Chapter 33, Article 6 NMSA 1978, except that a
 14 board of county commissioners shall not enter into a contract
 15 with a private independent contractor for the operation or
 16 management of a juvenile detention home."

17 SECTION 10. TEMPORARY PROVISION--PRIVATE DETENTION
 18 FACILITIES TRANSITION TASK FORCE--CREATED--DUTIES--REPORTING
 19 REQUIREMENTS.--

20 A. The "private detention facilities transition
 21 task force" is created and shall exist until December 20, 2021.

22 B. The task force consists of seventeen members,
 23 which shall include:

24 (1) one member from the corrections
 25 department, appointed by the secretary of corrections;

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1 (2) one member from the economic development
2 department, appointed by the secretary of economic development;

3 (3) one member from the workforce solutions
4 department, appointed by the secretary of workforce solutions;

5 (4) one member of the office of the governor,
6 appointed by the governor;

7 (5) one member who represents a county
8 government in a community that may be affected by the closure
9 of a private detention facility, appointed by the governor;

10 (6) one representative from the legislative
11 interim committee that studies courts, corrections and justice
12 issues, appointed by the co-chairs of that committee;

13 (7) one senator from the legislative interim
14 committee that studies courts, corrections and justice issues,
15 appointed by the co-chairs of that committee;

16 (8) one representative from the labor
17 organization representing the largest number of corrections
18 officers in the state, appointed by the co-chairs of the
19 legislative interim committee that studies courts, corrections
20 and justice issues;

21 (9) two members from a criminal justice reform
22 organization, appointed by the co-chairs of the legislative
23 interim committee that studies courts, corrections and justice
24 issues;

25 (10) two members who were formerly

1 incarcerated or detained, appointed by the co-chairs of the
2 legislative interim committee that studies courts, corrections
3 and justice issues;

4 (11) two members from a community-based
5 organization, appointed by the co-chairs of the legislative
6 interim committee that studies courts, corrections and justice
7 issues;

8 (12) two members from an immigrant advocacy
9 organization, appointed by the co-chairs of the legislative
10 interim committee that studies courts, corrections and justice
11 issues; and

12 (13) one member with a background in public
13 health, appointed by the co-chairs of the legislative interim
14 committee that studies courts, corrections and justice issues.

15 C. The task force shall be appointed no later than
16 the second meeting in 2021 of the interim committee that
17 studies courts, corrections and justice issues or by July 31,
18 2021, whichever is earlier.

19 D. The task force shall select a chair from among
20 its members at the first meeting.

21 E. The task force shall develop proposals for
22 legislation and create a plan to phase out private detention
23 facilities that includes recommendations to:

24 (1) determine the economic impacts of phasing
25 out private detention facilities, including assessing the

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1 potential impact on employment and the state budget and
2 measures to address this impact;

3 (2) safely reduce the prison population
4 overall; and

5 (3) analyze the state's capacity to take over
6 private detention facilities.

7 F. No later than December 20, 2021, the task force
8 shall submit a report of its findings, including specific
9 recommendations and proposed legislation, to the governor, the
10 New Mexico legislative council and the appropriate legislative
11 interim committee that studies courts, corrections and justice
12 issues.

13 SECTION 11. REPEAL.--Sections 33-1-17 and 33-3-26 NMSA
14 1978 (being Laws 1985, Chapter 149, Section 1 and Laws 1984,
15 Chapter 22, Section 17, as amended) are repealed.

16 SECTION 12. EMERGENCY.--It is necessary for the public
17 peace, health and safety that this act take effect immediately.