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HOUSE BILL 263

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

Mimi Stewart

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; DECLARING AN EMERGENCY.

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. FINDINGS-- PURPOSE. --

A. The legislature finds that:

(1) for many years, the state of New Mexico has experienced difficulty in managing the size of its inmate population. Often, the number of beds has been insufficient

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1 to accommodate the inmate population committed or detained in
2 correctional facilities;

3 (2) an overcrowded inmate population was a
4 major cause of the disturbance that erupted at the
5 penitentiary of New Mexico in 1980;

6 (3) a permanent solution to the overcrowded
7 inmate population must be established to ensure that the
8 corrections department is able to effectively operate its
9 facilities and to mitigate public safety concerns;

10 (4) although the corrections department is
11 responsible for the operation of correctional facilities, it
12 cannot resolve the problem of overcrowding by itself. The
13 department has no control over the admission of inmates into
14 its facilities and has only limited control over the release
15 of inmates from its facilities; and

16 (5) a permanent solution to the overcrowded
17 inmate population requires participation, commitment and
18 cooperation by the legislative, judicial and executive
19 branches of government and all criminal justice agencies.

20 B. The purpose of the Corrections Population
21 Control Act is to establish a corrections population control
22 commission that shall operate as an autonomous, nonpartisan
23 body. The commission shall develop and implement mechanisms
24 to prevent the inmate population from exceeding the rated
25 capacity of correctional facilities and shall take appropriate

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1 action when necessary to effect the reduction of the inmate
2 population.

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

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

7 B. "female correctional facilities" means:

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

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

12 C. "male correctional facilities" means:

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

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

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

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

21 (5) the Roswell correctional facility,
22 located in Hagerman;

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

25 (7) the Lea county correctional facility,

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1 located in Hobbs; and

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

4 D. "nonviolent offender" means:

5 (1) a person convicted of possession of a
6 controlled substance, pursuant to the provisions of Section
7 30-31-23 NMSA 1978;

8 (2) a person convicted of possession with
9 intent to distribute a controlled substance, pursuant to the
10 provisions of Section 30-31-22 NMSA 1978; or

11 (3) a person incarcerated for violating the
12 conditions of his parole plan due to use or possession of a
13 controlled substance; and

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

20 Section 4. COMMISSION-- CREATION-- MEMBERSHIP. --

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

23 B. The commission shall be composed of:

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

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1 (2) a member appointed by the New Mexico
2 supreme court;

3 (3) a member appointed by the speaker of the
4 house of representatives;

5 (4) a member appointed by the president pro
6 tempore of the senate;

7 (5) a member appointed by the minority leader
8 of the house of representatives;

9 (6) a member appointed by the minority leader
10 of the senate; and

11 (7) a member appointed by the governor.

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

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

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

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

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

24 (2) providing information concerning impacts
25 on the inmate population caused by changes in sentencing

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1 policies and law enforcement policies;

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

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

7 (5) considering all of its recommendations in
8 light of public safety concerns.

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

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

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

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

25 B. if inmate population is still in excess of one

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1 hundred percent of rated capacity after sixty consecutive
2 days, the secretary of corrections shall notify the
3 commission. Included in the notification shall be a list of
4 nonviolent offenders who are within one hundred eighty days of
5 their projected release date;

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

12 D. for nonviolent offenders approved by the
13 commission for release, the commission shall grant emergency
14 release credits in ten-day increments that will be applied to
15 the sentences being served by the nonviolent offenders. The
16 commission shall order release of the appropriate number of
17 nonviolent offenders to reduce the inmate population to the
18 applicable rated capacity; and

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

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

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

25 (3) if the nonviolent offender committed a

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1 crime while incarcerated;

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

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

7 Section 7. TERMINATION OF AGENCY LIFE--TRANSFER OF
8 FUNCTIONS.--The corrections population control commission is
9 terminated on June 30, 2007. On July 1, 2007, the secretary
10 of corrections shall assume the duties and responsibilities of
11 the commission.

12 Section 8. EMERGENCY.--It is necessary for the public
13 peace, health and safety that this act take effect
14 immediately.