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SENATE BILL 201

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

INTRODUCED BY

Cisco McSorley

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

7 E. "rated capacity" means the actual general  
8 population bed space, including only individual cells and  
9 areas designed for the long-term housing of inmates, available  
10 in female correctional facilities or male correctional  
11 facilities as certified by the secretary of corrections and  
12 subject to applicable state and federal law.

13 Section 4. COMMISSION-- CREATION-- MEMBERSHIP. --

14 A. The "corrections population control commission"  
15 is created.

16 B. The commission shall be composed of:

17 (1) the secretary of corrections, who shall  
18 serve as chairman;

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

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

23 (4) a member appointed by the president pro  
24 tempore of the senate;

25 (5) a member appointed by the minority leader

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1 of the house of representatives;

2 (6) a member appointed by the minority leader  
3 of the senate; and

4 (7) a member appointed by the governor.

5 C. A majority of the members of the commission  
6 constitutes a quorum for the transaction of commission  
7 business.

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

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

12 A. The commission shall study, develop and  
13 recommend policies and mechanisms designed to manage the  
14 growth of the inmate population by:

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

17 (2) providing information concerning impacts  
18 on the inmate population caused by changes in sentencing  
19 policies and law enforcement policies;

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

22 (4) if necessary, preparing proposed  
23 legislation to further implementation of its policy  
24 recommendations; and

25 (5) considering all of its recommendations in

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1 light of public safety concerns.

2 B. The commission shall submit an annual report of  
3 its activities and legislative proposals to the interim  
4 legislative committee with jurisdiction over corrections  
5 issues. The report shall be filed with the interim  
6 legislative committee no later than November 1 of each year.

7 C. The commission staff support shall be provided  
8 by the corrections department.

9 Section 6. OVERCROWDING--POPULATION CONTROL MECHANISM--  
10 PROCEDURES.--When the inmate population of female correctional  
11 facilities or male correctional facilities exceeds one hundred  
12 twelve percent of rated capacity on or before June 30, 2003 or  
13 one hundred percent of rated capacity after June 30, 2003, for  
14 a period of thirty consecutive days, the following measures  
15 shall be taken to reduce capacity:

16 A. the corrections department shall engage in all  
17 lawful and professionally appropriate efforts to reduce the  
18 inmate population to one hundred twelve percent or one hundred  
19 percent of rated capacity as applicable, including in-state  
20 and out-of-state inmate transfers;

21 B. if inmate population is still in excess of one  
22 hundred twelve percent or one hundred percent rated capacity  
23 as applicable after sixty consecutive days, the secretary of  
24 corrections shall notify the commission. Included in the  
25 notification shall be a list of nonviolent offenders who are

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1 within one hundred eighty days of their projected release  
2 date;

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

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

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

18 (1) unless the nonviolent offender has a  
19 parole plan pursuant to applicable parole board regulations  
20 and the parole plan includes a requirement that the nonviolent  
21 offender participate in a drug treatment program following his  
22 release;

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 or received a disciplinary infraction while  
2 incarcerated;

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

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

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

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