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HOUSE BILL 272

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Antonio "Moe" Maestas

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO CORRECTIONS; CLARIFYING PROVISIONS IN THE
CORRECTIONS POPULATION CONTROL ACT; PROVIDING FOR THE ELECTION
OF A CHAIRPERSON BY THE CORRECTIONS POPULATION CONTROL
COMMISSION; MODIFYING CONSIDERATIONS FOR RELEASE OF NONVIOLENT
OFFENDERS; REPEALING SUNSET.

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

Section 1. Section 33-2A-1 NMSA 1978 (being Laws 2002,
Chapter 8, Section 1) is amended to read:

"33-2A-1. SHORT TITLE.--~~[This act]~~ Chapter 33, Article 2A
NMSA 1978 may be cited as the "Corrections Population Control
Act"."

Section 2. Section 33-2A-2 NMSA 1978 (being Laws 2002,
Chapter 8, Section 2) is amended to read:

"33-2A-2. PURPOSE.--The purpose of the Corrections

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1 Population Control Act is to establish a corrections population
2 control commission that shall operate as an autonomous,
3 nonpartisan body. The commission shall develop and implement
4 mechanisms to prevent the inmate population from exceeding the
5 rated capacity of any correctional [~~facilities~~] facility and
6 shall take appropriate action when necessary to effect the
7 reduction of the inmate population."

8 Section 3. Section 33-2A-3 NMSA 1978 (being Laws 2002,
9 Chapter 8, Section 3) is amended to read:

10 "33-2A-3. DEFINITIONS.--As used in the Corrections
11 Population Control Act:

12 A. "commission" means the corrections population
13 control commission;

14 B. "female correctional [~~facilities~~] facility"
15 means:

16 (1) the women's correctional facility, located
17 in Grants; [~~and~~] or

18 (2) any other female correctional facility so
19 designated by the corrections department;

20 C. "male correctional [~~facilities~~] facility" means:

21 (1) the penitentiary of New Mexico, located in
22 Santa Fe;

23 (2) the central New Mexico correctional
24 facility, located in Los Lunas;

25 (3) the southern New Mexico correctional

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1 facility, located in Las Cruces;

2 (4) the western New Mexico correctional
3 facility, located in Grants;

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

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

8 (7) the Lea county correctional facility,
9 located in Hobbs; [~~and~~] or

10 (8) any other male correctional facility so
11 designated by the corrections department;

12 D. "nonviolent offender" means:

13 (1) a person convicted only of possession of a
14 controlled substance, pursuant to the provisions of Section
15 30-31-23 NMSA 1978;

16 (2) a person incarcerated for violating the
17 conditions of [~~his~~] the person's parole plan due to use or
18 possession of a controlled substance whose original conviction
19 was for commission of a nonviolent offense; or

20 (3) an inmate designated by the commission as
21 a nonviolent offender; provided that the offender was convicted
22 for the commission of a nonviolent offense, as that term is
23 defined in Subsection L of Section 33-2-34 NMSA 1978; and

24 E. "rated capacity" means the actual general
25 population bed space, including only individual cells and areas

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1 designed for the long-term housing of inmates, available in a
2 female correctional [~~facilities~~] facility or a male
3 correctional [~~facilities~~] facility as certified by the
4 secretary of corrections and subject to applicable state and
5 federal law."

6 Section 4. Section 33-2A-4 NMSA 1978 (being Laws 2002,
7 Chapter 8, Section 4) is amended to read:

8 "33-2A-4. COMMISSION--CREATION--MEMBERSHIP--TERMS.--

9 A. The "corrections population control commission"
10 is created.

11 B. The commission shall be composed of seven
12 members:

13 (1) the secretary of corrections [~~who shall~~
14 ~~serve as chairman~~];

15 (2) a public official or private citizen
16 appointed by the chief justice of the New Mexico supreme court;

17 (3) a public official or private citizen
18 appointed by the speaker of the house of representatives;

19 (4) a public official or private citizen
20 appointed by the president pro tempore of the senate;

21 (5) a public official or private citizen
22 appointed by the minority leader of the house of
23 representatives;

24 (6) a public official or private citizen
25 appointed by the minority leader of the senate; and

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1 (7) a public official or private citizen
2 appointed by the governor.

3 C. The commission shall elect a chair and adopt
4 rules as necessary to carry out its duties. A majority of the
5 members of the commission constitutes a quorum for the
6 transaction of commission business.

7 D. ~~[The]~~ An appointed ~~[members]~~ member of the
8 commission shall serve until ~~[June 30, 2007]~~ excused by the
9 appointing authority. A vacancy on the commission shall be
10 filled by the ~~[individual who]~~ appointing authority that made
11 the original appointment.

12 E. Following the initial appointments to the
13 commission, when a new individual assumes any of the leadership
14 positions set forth in Paragraphs (2) through (7) of Subsection
15 B of this section, that individual may make ~~[his]~~ the
16 individual's own appointment to the commission to replace an
17 existing member.

18 F. The members of the commission shall be paid
19 pursuant to the provisions of the Per Diem and Mileage Act and
20 shall receive no other perquisite, compensation or allowance."

21 Section 5. Section 33-2A-6 NMSA 1978 (being Laws 2002,
22 Chapter 8, Section 6) is amended to read:

23 "33-2A-6. OVERCROWDING--POPULATION CONTROL MECHANISM--
24 PROCEDURES.--When the inmate population of a female
25 correctional ~~[facilities]~~ facility or a male correctional

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1 [facilities] facility exceeds one hundred percent of rated
2 capacity for a period of thirty consecutive days, the following
3 measures shall be taken to reduce capacity:

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

7 B. if inmate population is still in excess of one
8 hundred percent of rated capacity after sixty consecutive days,
9 the secretary of corrections shall notify the commission.

10 Included in the notification shall be a list of nonviolent
11 offenders who are within one hundred eighty days of their
12 projected release date;

13 C. the commission shall convene within ten days to
14 consider the release of nonviolent offenders on the list
15 provided by the secretary of corrections. The commission shall
16 also discuss with the corrections department the impact on the
17 inmate population of possible changes in the classification
18 system and expanding incarceration alternatives;

19 D. for nonviolent offenders approved by the
20 commission for release, the commission shall grant emergency
21 release credits in ten-day increments that [~~will~~] shall be
22 applied to the sentences being served by the nonviolent
23 offenders. The commission shall order release of the
24 appropriate number of nonviolent offenders to reduce the inmate
25 population; and

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

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

5 (2) if the information [~~concerning the~~
6 ~~nonviolent offender~~] that classifies the offender as a
7 nonviolent offender pursuant to Subsection D of Section 33-2A-3
8 NMSA 1978 is discovered to be materially inaccurate; or

9 (3) if the nonviolent offender [~~committed~~] was
10 convicted of a crime while incarcerated

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

13 ~~(5) if the effect of releasing nonviolent~~
14 ~~offenders will result in the loss of federal funds to any~~
15 ~~agency of the state]."~~

16 Section 6. REPEAL.--Section 33-2A-8 NMSA 1978 (being Laws
17 2002, Chapter 8, Section 8) is repealed.