

HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 636

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

AN ACT

RELATING TO COUNTY CORRECTIONS; CREATING A COUNTY ALTERNATIVE  
INCARCERATION PROGRAM; MAKING ESCAPE FROM A COUNTY ALTERNATIVE  
INCARCERATION PROGRAM A CRIME; PROVIDING FOR COUNTY JAIL  
ADMISSION POLICIES AND CLASSIFICATION POLICIES; ELIMINATING  
LOCAL GOVERNING BODIES AS JAIL INSPECTORS; PROVIDING FOR  
OPERATING POLICIES AND PROCEDURES SETTING PUNISHMENT FOR  
VIOLATION OF JAIL RULES; ENACTING THE COUNTY DETENTION FACILITY  
POPULATION CONTROL ACT; PROVIDING FOR THE CREATION OF A COUNTY  
DETENTION FACILITY POPULATION CONTROL COMMISSION; AUTHORIZING  
THE AWARD OF GOOD TIME CREDIT TO INMATES IN THE EVENT OF  
OVERCROWDING IN A COUNTY DETENTION FACILITY; AMENDING,  
REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 30-22-8.1 NMSA 1978 (being Laws 1999,

.169125.2

underscored material = new  
[bracketed material] = delete

1 Chapter 118, Section 1) is amended to read:

2 "30-22-8.1. ESCAPE FROM A COMMUNITY CUSTODY RELEASE  
3 PROGRAM.--

4 A. Escape from a community custody release program  
5 consists of a person, excluding a person on probation or  
6 parole, who has been lawfully committed to a judicially  
7 approved community custody release program or an alternative  
8 incarceration program implemented by a sheriff or a jail  
9 administrator, as the term "jail administrator" is defined in  
10 Section 4-44-19 NMSA 1978, that has been approved by a board of  
11 county commissioners, including a day reporting program, an  
12 electronic monitoring program, a day detention program or a  
13 community tracking program, escaping or attempting to escape  
14 from the community custody release program or an alternative  
15 incarceration program.

16 B. Whoever commits escape from a community custody  
17 release program, or an alternative incarceration program, when  
18 the person was committed to the program for a misdemeanor  
19 charge, is guilty of a misdemeanor.

20 C. Whoever commits escape from a community custody  
21 release program, or an alternative incarceration program, when  
22 the person was committed to the program for a felony charge, is  
23 guilty of a felony."

24 Section 2. Section 33-3-3 NMSA 1978 (being Laws 1865-  
25 1866, Chapter 19, Section 2, as amended) is amended to read:

.169125.2

1 "33-3-3. CONFINEMENT OF PRISONERS IN COUNTY WHERE OFFENSE  
2 COMMITTED.--

3 A. Except as provided in Section 33-3-23 NMSA 1978,  
4 the jail or jails in each county shall be used or be available  
5 for the detention of every person who, within the same county,  
6 is charged with any crime or properly committed for trial or  
7 for the imprisonment of every person who in conformity with  
8 sentence, upon conviction of an offense, may have been  
9 sentenced, and for the safekeeping of every person who shall be  
10 committed by competent authority according to law.

11 B. The sheriff, or a jail administrator as defined  
12 in Section 4-44-19 NMSA 1978, shall adopt and implement written  
13 policies for the admission and assignment of inmates to the  
14 county jail, or an alternative incarceration program in  
15 accordance with Section 4 of this 2007 act, and for the  
16 classification of inmates in the jail or alternative  
17 incarceration program that shall provide for their separation  
18 by gender or by other factors that reasonably provide for the  
19 safety and well-being of inmates and the community."

20 Section 3. Section 33-3-8 NMSA 1978 (being Laws 1865-  
21 1866, Chapter 19, Section 10, as amended) is amended to read:

22 "33-3-8. RULES FOR PUNISHMENT.--The sheriffs, jail  
23 administrators as defined in Section 4-44-19 NMSA 1978 or  
24 independent contractors in charge of the respective jails shall  
25 submit proposed rules [~~and regulations, which shall be~~

.169125.2

1 ~~effective upon being adopted~~ or operating policies and  
2 procedures for approval by the local governing body [~~or bodies~~]  
3 responsible for the jail, for the punishment of persons  
4 violating the rules of the jail."

5 Section 4. A new section of Chapter 33, Article 3 NMSA  
6 1978 is enacted to read:

7 "[NEW MATERIAL] ALTERNATIVE INCARCERATION PROGRAM.--

8 A. The sheriff or jail administrator, as defined in  
9 Section 4-44-19 NMSA 1978, of a county may develop and  
10 implement, in conjunction with the county detention facility  
11 population control committee and approved by the board of  
12 county commissioners, an alternative incarceration program,  
13 ensuring the public safety and safety of inmates in the  
14 program, that may involve housing an inmate in a county jail or  
15 in some other location.

16 B. An inmate charged or convicted of a nonviolent  
17 offense, as that term is defined in Subsection L of Section  
18 33-2-34 NMSA 1978, is eligible to be placed in an alternative  
19 incarceration program described in Subsection A of this section  
20 unless:

21 (1) information concerning the inmate is  
22 discovered to be materially inaccurate;

23 (2) the inmate committed a crime while  
24 incarcerated;

25 (3) the inmate fails a drug screening test

.169125.2

1 within three days of the inmate's scheduled placement in an  
2 alternative incarceration program; or

3 (4) participation is not authorized by the  
4 assigned or sentencing judge.

5 C. An inmate charged or convicted of a nonviolent  
6 offense who is placed in an alternative incarceration program  
7 may pay the costs associated with that placement according to a  
8 sliding fee scale set by the board of county commissioners.

9 D. An inmate in an alternative incarceration  
10 program shall undergo substance abuse, educational and life  
11 skills counseling as determined by the sheriff or jail  
12 administrator.

13 E. The provisions of Section 30-22-8.1 NMSA 1978  
14 shall apply to a person who escapes from an alternative  
15 incarceration program.

16 F. The time that an inmate serves in an alternative  
17 incarceration program shall be credited to the inmate as if the  
18 time in that program was served in a county jail."

19 Section 5. [NEW MATERIAL] SHORT TITLE.--Sections 5  
20 through 11 of this act may be cited as the "County Detention  
21 Facility Population Control Act".

22 Section 6. [NEW MATERIAL] PURPOSE.--The purpose of the  
23 County Detention Facility Population Control Act is to  
24 establish, develop and implement mechanisms to prevent the  
25 inmate population from exceeding the rated capacity of county

.169125.2

1 detention facilities and to provide procedures to be followed  
2 to reduce the inmate population.

3 Section 7. [NEW MATERIAL] DEFINITIONS.--As used in the  
4 County Detention Facility Population Control Act:

5 A. "commission" means the county detention facility  
6 population control commission;

7 B. "nonviolent offender" means:

8 (1) a person convicted only of possession of a  
9 controlled substance, pursuant to the provisions of Section  
10 30-31-23 NMSA 1978;

11 (2) a person incarcerated for violating the  
12 conditions of the person's parole plan due to use or possession  
13 of a controlled substance and whose original conviction was for  
14 commission of a nonviolent offense; or

15 (3) a person charged or convicted for the  
16 commission of a nonviolent offense, as that term is defined in  
17 Subsection L of Section 33-2-34 NMSA 1978; and

18 C. "rated capacity" means the actual general  
19 population bed space, including only individual cells and areas  
20 designed for the housing of inmates as provided for in the  
21 county detention facility's design and the available staffing  
22 level.

23 Section 8. [NEW MATERIAL] RATED CAPACITY.--The board of  
24 county commissioners shall at least annually, by resolution,  
25 establish a rated capacity for each county detention facility

.169125.2

1 based on the facility's design and staffing level.

2 Section 9. [NEW MATERIAL] COUNTY DETENTION FACILITY  
3 POPULATION CONTROL COMMISSION--CREATED--MEMBERS.--

4 A. The board of county commissioners may create a  
5 "county detention facility population control commission" to  
6 address instances of overcrowding in a county detention  
7 facility. If created, the commission shall be composed of the  
8 following five persons:

9 (1) the jail administrator, as defined in  
10 Section 4-44-19 NMSA 1978, or county sheriff who operates the  
11 particular county detention facility, who shall serve as chair  
12 of the commission;

13 (2) two public officials or private citizens  
14 appointed by the board of county commissioners;

15 (3) the chief judge of the district court or  
16 the chief judge's designee; and

17 (4) the chief judge of the metropolitan or  
18 magistrate court or the chief judge's designee.

19 B. A majority of the members of the commission  
20 constitutes a quorum for the transaction of commission  
21 business.

22 C. The commission shall convene quarterly to review  
23 population data and data regarding the use of alternative  
24 incarceration programs and the use or anticipated use of other  
25 population control mechanisms.

.169125.2

1           D. The appointed members of the commission shall  
2 serve four-year terms. A vacancy on the commission shall be  
3 filled by the individual or board that made the original  
4 appointment.

5           E. The members of the commission shall receive  
6 reimbursement for expenses pertaining to commission duties  
7 pursuant to the provisions of the Per Diem and Mileage Act but  
8 shall receive no other perquisite, compensation or allowance  
9 for service on the commission.

10           F. The members of the commission shall be immune  
11 from liability in civil actions for the performance of their  
12 duties pursuant to the County Detention Facility Population  
13 Control Act, provided that the members perform their duties in  
14 good faith.

15           Section 10. [NEW MATERIAL] OVERCROWDING--POPULATION  
16 CONTROL MECHANISM--PROCEDURES.--

17           A. When the inmate population of a county detention  
18 facility exceeds one hundred percent of rated capacity for a  
19 period of ninety consecutive days, the jail administrator, as  
20 defined in Section 4-44-19 NMSA 1978, or county sheriff shall  
21 engage in all lawful and professionally appropriate efforts to  
22 reduce the inmate population to one hundred percent of rated  
23 capacity. Included in these efforts shall be the provision of  
24 notice to the corrections department that the county detention  
25 facility is in excess of the rated capacity and a list to that

.169125.2



1 department of all convicted felons in the county detention  
2 facility. Within thirty days of this notice, the corrections  
3 department shall convene a meeting of the corrections  
4 population control commission created pursuant to the  
5 Corrections Population Control Act. The corrections population  
6 control commission shall exercise its powers and duties under  
7 the Corrections Population Control Act to reduce overcrowding  
8 at the county detention facility.

9 B. If the inmate population of a county detention  
10 facility is in excess of one hundred percent of rated capacity  
11 after one hundred twenty consecutive days, the county sheriff  
12 or jail administrator shall notify the commission, the district  
13 court, the metropolitan court, the municipal court, the  
14 magistrate court, the district attorney, the public defender,  
15 the secretary of corrections and local law enforcement  
16 agencies. Included in the notification shall be a list of  
17 nonviolent offenders.

18 C. The commission shall convene within ten days of  
19 receipt of the notice from the county sheriff or jail  
20 administrator given pursuant to Subsection B of this section to  
21 review the list of nonviolent offenders and the commission  
22 shall be permitted, with judicial approval by the sentencing  
23 judge, to award good time credit pursuant to Section 33-3-9  
24 NMSA 1978 and to release nonviolent offenders who, with the  
25 good time credit, have completed their sentence; provided that

.169125.2

1 a nonviolent offender shall not be released if:

2 (1) information concerning the nonviolent  
3 offender is discovered to be materially inaccurate;

4 (2) the nonviolent offender committed a crime  
5 while incarcerated;

6 (3) the nonviolent offender fails a drug  
7 screening test within ten days of the offender's scheduled  
8 release; or

9 (4) the effect of releasing nonviolent  
10 offenders will result in the loss of federal funds to any  
11 agency of the state.

12 Section 11. [NEW MATERIAL] COUNTY SHERIFF OR JAIL  
13 ADMINISTRATOR--DUTIES--ANNUAL REPORT.--The jail administrator,  
14 as defined in Section 4-44-19 NMSA 1978, or county sheriff  
15 shall study, develop and recommend annually no later than  
16 August 1 of each year to the commission, the board of county  
17 commissioners, the local judiciary and local law enforcement  
18 agencies policies and mechanisms designed to manage the growth  
19 of the inmate population by:

20 A. reviewing county detention facility models to  
21 forecast projected growth in the inmate population;

22 B. providing information concerning impacts on the  
23 inmate population caused by changes in sentencing policies and  
24 law enforcement policies;

25 C. analyzing the need for future construction of

.169125.2

1 additional county detention facility space;

2 D. if necessary, preparing proposed legislation for  
3 further implementation of policy recommendations; and

4 E. considering all policy recommendations in light  
5 of public safety concerns.

6 Section 12. REPEAL.--Section 33-3-4 NMSA 1978 (being Laws  
7 1865-1866, Chapter 19, Section 3, as amended) is repealed.

8 Section 13. EFFECTIVE DATE.--The effective date of the  
9 provisions of this act is July 1, 2007.

10 - 11 -

underscored material = new  
[bracketed material] = delete