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HOUSE BILL 40

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

INTRODUCED BY

Angelica Rubio

AN ACT

RELATING TO CORRECTIONAL INSTITUTIONS; ENACTING THE PRIVATE  
DETENTION FACILITY MORATORIUM ACT; REMOVING AUTHORIZATION TO  
ENTER INTO CONTRACTS OR AGREEMENTS WITH INDEPENDENT CONTRACTORS  
FOR THE OPERATION OF DETENTION FACILITIES; PROVIDING FOR  
RECOMMENDED TERMINATION OF CONTRACTS FOR OPERATION OF JAILS  
UNDER CERTAIN CIRCUMSTANCES; MAKING THE OPERATION OF A PRIVATE  
DETENTION FACILITY UNLAWFUL; PROHIBITING PUBLIC FUNDING OF  
PRIVATELY OPERATED DETENTION FACILITIES; REQUIRING ANNUAL  
REPORTS; PROVIDING A PENALTY; 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

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1 through 3 of this act may be cited as the "Private Detention  
2 Facility Moratorium Act".

3 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
4 Private Detention Facility Moratorium Act:

5 A. "detention facility" means a facility other than  
6 a work-release facility in which a person is incarcerated or  
7 otherwise involuntarily confined for purposes other than  
8 medical or mental health necessity or addiction therapy;

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

11 C. "private detention facility" means a detention  
12 facility that is operated by a nongovernmental entity."

13 SECTION 3. [NEW MATERIAL] OPERATION OF A PRIVATE  
14 DETENTION FACILITY PROHIBITED--CERTAIN AGREEMENTS AND  
15 INCENTIVES PROHIBITED--EXCEPTIONS.--

16 A. It is unlawful for any person, corporation,  
17 business or nonprofit entity to operate a private detention  
18 facility.

19 B. Neither the state, nor any other governmental  
20 entity, county sheriff, or any officer, employee or agent  
21 thereof, shall:

22 (1) enter into, renew or modify in a manner  
23 that would increase the capacity of a detention facility to  
24 house or detain individuals, an agreement of any kind for the  
25 detention of individuals in a detention facility owned, managed

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1 or operated, in whole or in part, by a private entity; or

2 (2) pay, reimburse or subsidize in any way any  
3 costs related to the sale, purchase, construction, development,  
4 ownership, management or operation of a detention facility that  
5 is owned, managed or operated, in whole or in part, by a  
6 private entity.

7 C. This section does not apply to:

8 (1) a facility whose principal function is to  
9 provide:

10 (a) educational services or  
11 rehabilitative, physical, mental or behavioral health services  
12 to a juvenile inmate; or

13 (b) educational, vocational, medical or  
14 other services ancillary to detention to an adult or juvenile  
15 inmate;

16 (2) a school facility used for the  
17 disciplinary detention of a student;

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

20 (4) a facility used for the temporary  
21 detention of a person detained or arrested by a private  
22 security guard or other private person; or

23 (5) a private detention facility that is  
24 operating pursuant to a contract effective prior to the  
25 enactment of the Private Detention Facility Moratorium Act.

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

3           "31-20-2. PLACE OF IMPRISONMENT--COMMITMENTS.--

4           A. Persons sentenced to imprisonment for a term of  
5 one year or more shall be imprisoned in a corrections facility  
6 designated by the corrections department, unless a new trial is  
7 granted or a portion of the sentence is suspended so as to  
8 provide for imprisonment for not more than eighteen months;  
9 then the imprisonment may be in such place of incarceration,  
10 other than a corrections facility under the jurisdiction of the  
11 corrections department, as the sentencing judge, in [~~his~~] the  
12 judge's discretion, may prescribe; provided that a sentence of  
13 imprisonment for one year or more but not more than eighteen  
14 months shall be subject to the provisions of Subsections D and  
15 E of this section and shall not be imposed unless the  
16 requirements set forth in Subsection D of this section are  
17 satisfied.

18           B. All commitments, judgments and orders of the  
19 courts of this state for the imprisonment or release of persons  
20 in the penitentiary of New Mexico shall run to the corrections  
21 department, but nothing contained in this section shall  
22 invalidate or impair the validity of any commitment, judgment  
23 or order of any court in this state directed to the secretary  
24 of corrections, the warden of the penitentiary of New Mexico or  
25 to the penitentiary of New Mexico, and all such commitments,

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1 judgments and orders shall be treated and construed as running  
2 to the corrections department.

3 C. There is created within the corrections  
4 department an "intake and classification center". The intake  
5 and classification center shall have the following duties:

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

8 (2) classify inmates for housing assignments;

9 (3) develop an individualized plan for  
10 participation by each inmate in programs, work assignments and  
11 special needs;

12 (4) monitor each inmate's progress during  
13 incarceration and reclassify or modify classification  
14 assignments as may be necessary, taking into consideration the  
15 overall needs of the inmate population, institutional and  
16 facility requirements and the individual inmate's needs;

17 (5) with the approval of the secretary of  
18 corrections, may transfer inmates of the penitentiary of New  
19 Mexico to an institution under the control of another state if  
20 that state has entered into a corrections control agreement  
21 with New Mexico; and

22 (6) with the approval of the secretary of  
23 corrections, may transfer inmates to any facility, including  
24 the forensic hospital under the jurisdiction of the department  
25 of health.

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1           D. A sentence of one year or more but not more than  
2 eighteen months and providing for imprisonment in a place of  
3 incarceration other than a corrections facility under the  
4 jurisdiction of the corrections department pursuant to  
5 Subsection A of this section, which shall be known as the local  
6 sentencing option, shall not be imposed unless:

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

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

12                           (a) the amount of money the corrections  
13 department shall pay for offenders sentenced to a term of one  
14 year or more but not more than eighteen months and the number  
15 of offenders [~~which~~] that may be sentenced to such terms; and

16                           (b) any other provisions deemed  
17 appropriate and agreed to by the local governing body and the  
18 corrections department.

19           E. If a judge imposes a sentence of one year or  
20 more but not more than eighteen months and provides for  
21 imprisonment in a place of incarceration other than a  
22 corrections facility under the jurisdiction of the corrections  
23 department:

24                   (1) the local governing body or its agent  
25 shall have the ability to petition that judge when the capacity

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1 of the place of incarceration is filled or when any problem  
2 develops concerning that offender requesting the judge to issue  
3 an order committing the offender to the corrections department  
4 for completion of the remainder of ~~[his]~~ the offender's  
5 sentence. A hearing on a petition pursuant to this paragraph  
6 shall be held within three days of the filing of the petition.  
7 Notwithstanding any other provision of law, the judge shall  
8 retain jurisdiction over the offender for the purpose of  
9 implementing the local sentencing option; and

10 (2) the local governing body or its agent  
11 shall keep the district judges for the judicial district in  
12 which the place of incarceration is located informed as to the  
13 capacity for the sentencing of offenders in accordance with the  
14 local sentencing option. No judge shall sentence an offender  
15 in accordance with the local sentencing option if that sentence  
16 will result in exceeding the number of offenders set forth in  
17 the joint powers agreement.

18 F. The corrections department shall file an annual  
19 report with the legislature ~~[which]~~ that shall contain the  
20 number of joint powers agreements in operation pursuant to this  
21 section, copies of those agreements, the number of offenders  
22 currently incarcerated pursuant to those agreements and any  
23 other relevant information relating to the implementation of  
24 this section.

25 G. The corrections department may enter into

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1 contracts with public [~~or private~~] detention facilities for the  
2 purpose of housing inmates lawfully committed to the  
3 corrections department. Any facility with which the department  
4 contracts shall meet or exceed corrections department standards  
5 prior to the housing of any inmates within the facility and  
6 shall meet certification requirements for prisons within  
7 eighteen months of entering into such contracts. The  
8 contractor shall adhere to all appropriate corrections  
9 department policies and procedures and shall agree to have  
10 staff trained at the corrections department training academy."

11 SECTION 5. A new section of Chapter 33, Article 3 NMSA  
12 1978 is enacted to read:

13 "[NEW MATERIAL] DEFINITION--JAIL ADMINISTRATOR.--For the  
14 purposes of Chapter 33, Article 3 NMSA 1978, "jail  
15 administrator" means a person hired by a county, municipality  
16 or a combination of these, who supervises the entire operation  
17 of a jail and reports directly to the administrative head of  
18 the local governmental entity or local governing body."

19 SECTION 6. Section 33-3-1 NMSA 1978 (being Laws  
20 1865-1866, Chapter 19, Section 1, as amended) is amended to  
21 read:

22 "33-3-1. COMMON JAILS--OPERATION BY SHERIFF, JAIL  
23 ADMINISTRATOR OR INDEPENDENT CONTRACTOR.--

24 A. The common jails shall be under the control of  
25 the:

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1                   (1) respective sheriffs [~~independent~~  
2 ~~contractors~~] or jail administrators hired by the board of  
3 county commissioners or other local public body or combination  
4 thereof [~~and the same~~]; or

5                   (2) independent contractors with whom those  
6 entities have entered into contracts.

7                   B. The common jails shall be used as prisons in the  
8 respective counties.

9                   ~~[B. Contracts between local public bodies and~~  
10 ~~private independent contractors for the operation or provision~~  
11 ~~and operation of a jail are specifically authorized by this~~  
12 ~~section; provided that prior to July 1, 1987, no more than two~~  
13 ~~pilot projects involving private independent contractors are~~  
14 ~~authorized in New Mexico pursuant to Section 33-3-26 NMSA~~  
15 ~~1978.]"~~

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

18                   "33-3-2. JOINT AGREEMENTS FOR THE CONSTRUCTION,  
19 MANAGEMENT AND OPERATION OF CORRECTIONAL AND DETENTION  
20 FACILITIES AND JAILS.--

21                   A. Notwithstanding the provisions of Subsection A  
22 of Section 33-3-1 NMSA 1978, the board of county commissioners  
23 of a county may enter into an agreement with other counties and  
24 municipalities to provide for the construction, maintenance or  
25 operation of one or more jails or correctional or detention

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1 facilities for confinement of persons charged with crimes or  
2 violations of municipal or county ordinances or committed to  
3 jail.

4 B. The agreement authorized in Subsection A of this  
5 section:

6 (1) may provide for the control of the  
7 indicated facilities by the sheriff of the county in which the  
8 facility is located [~~or~~], by a jail administrator as defined in  
9 Section 4-44-19 NMSA 1978 or by an independent contractor with  
10 whom the county has entered into a contract; and [~~the~~  
11 ~~agreement~~]

12 (2) shall state the manner in which the person  
13 in control shall be selected if it is other than the sheriff.

14 C. In a class A county utilizing a joint city and  
15 county jail, municipalities shall pay a fee to the board of  
16 county commissioners for each prisoner housed in the county  
17 jail charged with municipal offenses or arrested by municipal  
18 officers. The fee shall be a reasonable fee established by the  
19 board of county commissioners and approved by the local  
20 government division of the department of finance and  
21 administration.

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

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1           SECTION 8. Section 33-3-4 NMSA 1978 (being Laws 2011,  
2 Chapter 142, Section 1) is amended to read:

3           "33-3-4. INSPECTION OF JAILS AND DETENTION CENTERS--  
4 REPORT.--

5           A. Each governing body of a county or municipality  
6 shall conduct an annual site visit to the jail or detention  
7 center under its jurisdiction to inspect the overall conditions  
8 at the facility. Following a site visit, an inspection report  
9 shall be presented at a regular meeting of the governing body  
10 and provided to the corrections department.

11           B. The corrections department shall review each  
12 inspection report for compliance with each contract with an  
13 independent contractor entered into pursuant to Chapter 33,  
14 Article 3 NMSA 1978. The corrections department shall  
15 recommend termination of the contract upon ninety days' notice  
16 to the contractor if:

17                   (1) the independent contractor fails to meet  
18 the provisions of the contract;

19                   (2) the department determines that the failure  
20 seriously impairs the availability or operation of the  
21 facility; and

22                   (3) the recommended termination is consistent  
23 with the termination provisions of the contract."

24           SECTION 9. Section 33-3-18 NMSA 1978 (being Laws 1889,  
25 Chapter 8, Section 4, as amended) is amended to read:

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1           "33-3-18. COUNTIES WITHOUT JAILS--ARRANGEMENTS WITH OTHER  
2 COUNTIES.--In case any county in this state lacks a jail or  
3 proper place of confinement for its prisoners, the board of  
4 county commissioners of that county shall make contractual  
5 arrangements with other counties or municipalities [~~or~~  
6 ~~independent contractors~~] for the incarceration and care of its  
7 prisoners [~~and that~~]. The jail [~~so~~] designated by any board of  
8 county commissioners of any county not having a jail or other  
9 proper place of confinement shall be the legal place of  
10 confinement of the prisoners of [~~said~~] the county."

11           **SECTION 10.** Section 33-3-27 NMSA 1978 (being Laws 1984,  
12 Chapter 22, Section 18, as amended) is amended to read:

13           "33-3-27. JAIL AGREEMENTS--APPROVAL--LIABILITY--  
14 TERMINATION--VENUE.--

15           A. Agreements with a private independent contractor  
16 for the operation of a jail or for the incarceration of  
17 prisoners shall be made for a period of up to five years, but  
18 those agreements may allow for additional one-year, two-year or  
19 three-year extensions not to exceed a total of six extensions.  
20 Agreements binding on future governing bodies for construction,  
21 purchase or lease of a jail facility for not more than fifteen  
22 years are authorized.

23           B. All agreements with private independent  
24 contractors for the operation or provision and operation of  
25 jails shall include a performance bond and be approved in

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1 writing, prior to their becoming effective, by the local  
2 government division of the department of finance and  
3 administration and the office of the attorney general.  
4 Disapproval may be based on any reasonable grounds, including  
5 adequacy or appropriateness of the proposed plan or standards;  
6 suitability or qualifications of the proposed contractor or the  
7 contractor's employees; absence of required or desirable  
8 contract provisions; unavailability of funds; or any other  
9 reasonable grounds. No agreement shall be valid or enforceable  
10 without prior approval.

11 C. All agreements with private independent  
12 contractors for the operation or provision and operation of  
13 jails shall provide for the independent contractor to provide  
14 and pay for training for jailers to meet minimum training  
15 standards, which shall be specified in the contract.

16 D. All agreements with private independent  
17 contractors for the operation or provision and operation of  
18 jails shall set forth comprehensive standards for conditions of  
19 incarceration, either by setting them forth in full as part of  
20 the contract or by reference to known and respected  
21 compilations of those standards.

22 E. All agreements with private independent  
23 contractors for the operation or provision and operation of  
24 jails shall be approved in writing, prior to their becoming  
25 effective, by the risk management division of the general

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1 services department. Approval shall be conditioned upon  
2 contractual arrangements satisfactory to the risk management  
3 division for:

4 (1) the contractor's assumption of all  
5 liability caused by or arising out of all aspects of the  
6 provision and operation of the jail; and

7 (2) liability insurance covering the  
8 contractor and its officers, jailers, employees and agents in  
9 an amount sufficient to cover all liability caused by or  
10 arising out of all aspects of the provision and operation of  
11 the jail. A copy of the proposed insurance policy for the  
12 first year shall be submitted for approval with the contract.

13 F. All agreements with private independent  
14 contractors for the operation or provision and operation of  
15 jails shall provide for termination for cause by the local  
16 public body parties upon ninety days' notice to the independent  
17 contractor. A termination shall be allowed for at least the  
18 following reasons:

19 (1) failure of the independent contractor to  
20 meet minimum standards and conditions of incarceration, which  
21 standards and conditions shall be specified in the contract; or

22 (2) failure to meet other contract provisions  
23 when the failure seriously affects the operation of the jail.

24 The reasons for termination set forth in this subsection  
25 are not exclusive and may be supplemented by the parties.

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