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AMEND NMSA 31-21-10 TO PROVIDE THAT ALL INMATES ARE SUBJECT TO A PROBATION OR PAROLE TAIL REGARDLESS OF WHETHER THEY FINISH OUT TIME IN A DEPARTMENT OF CORRECTIONS FACILITY OR A JAIL.

The New Mexico parole statutes contain a loophole that allows criminal defendants, whose probation has been revoked, to avoid serving the otherwise mandatory parole period currently applicable only to inmates who serve their sentences at facilities operated by the Department of Corrections. The primary result of this loophole has been that criminal defendants who are alleged to violate conditions of probation enter into sentencing agreements with prosecutors that allow them to serve the balance of their sentences in local county jails, often with no good time credits. The current statutory scheme constitutes a significant portion of recent rises in county jail populations around the State, rises that have occurred while the tax bases for operations and new construction have fallen. This situation has helped to create an overcrowding crisis at many county jails around New Mexico.

The loophole in question is contained in several statutes, the primary one being NMSA 1978, § 31-21-10 (2009), which provides that a criminal defendant convicted of first, second or third degree felonies shall complete two years of parole. The statute further provides that defendants convicted of fourth degree felonies complete one year of parole. There are further parole terms for defendants convicted of first degree homicide or some sex offenses. All of these parole terms contain as a precondition that the defendant be released from a facility operated by the Department of Corrections. Inmates released from other facilities, such as county jails, are not required to complete parole terms.

Due to a practice developed from NMSA 31-19-1 and 31-20-1 originally intended to apply to misdemeanants serving terms of less than 364 days, felons serving sentences of less than 364 days are permitted to finish out their sentences in jail as well.

County jails are attractive to felons due to the fact that, as stated above, the sentences in county jails do not end with a remaining parole term to be served. Upon completing a jail sentence, a felon is free to immediately resume criminal behavior without the potential of a parole officer monitoring their compliance and scrutinizing their behavior.

County jails are not equipped to accommodate "sentenced felons." Although jails are spending millions of dollars in an attempt to educate and rehabilitate low-level misdemeanants at an early stage in their criminal development, sentenced felons disrupt the jails' attempts to redirect the misdemeanants by providing their own form of education.

Violent gangs from "three-strike" states such as California are migrating to New Mexico because our laws are much more permissive. Once in New Mexico, gang members are arrested for short sentence felonies and permitted to serve their sentences in county jails where they can actively recruit and intimidate misdemeanants who might otherwise not be exposed to street and prison gangs. The new recruits return to New Mexico communities to commit more serious crimes as newly recruited gang members.

Sentenced felons also capitalize on the time they are permitted to serve in county jails by teaching misdemeanants police counter-attacks, victim ambushes, and drug manufacturing and distribution techniques; as well as criminal motives, drives, rationalizations and attitudes. County jails are thus becoming universities for crime where low-level and inexperienced misdemeanants graduate back to the community within months of arrest, prepared to commit more sophisticated and violent crimes on society. Despite costly attempts by counties to rehabilitate inexperienced offenders through providing programming aimed at reducing recidivism, misdemeanants jailed for such crimes as

shoplifting and drug possession go to jail to join a gang or learn to commit violent crimes at the feet of “sentenced felons.”

New Mexico criminal courts have crowded dockets. Most criminal cases are initially resolved through plea agreements, a large proportion of whom receive probation. The often unacknowledged truth of the criminal justice system is that it encourages defendants to resolve their charges through plea agreements. If a defendant violates probation, the State may file a petition to revoke probation and seek incarceration with a lower standard of proof and relaxed evidentiary rules. Even under this regime the numbers of defendants alleged to violate conditions of probation are so great that the vast majority of probation violation petitions are also resolved by plea agreements. Defendants are often encouraged to enter these plea agreements with a promise that they can serve the balance of their sentences in their local county jails with no mandatory parole periods.

This practice, while currently authorized by statute, is wrong for a number of reasons. First, it rewards defendants who violate probation with sentences significantly shorter than those authorized by the Legislature. For example, a defendant convicted of a third degree felony who completes his/her sentence in county jail no longer need complete the two year parole period, which shortens the authorized period of supervision from five years to three. This lessens the deterrence value of the sentencing statutes enacted by the Legislature.

Second, felony defendants placed in county jails often have access to few if any of the rehabilitative programs available in facilities operated by the Department of Corrections. The Department of Corrections currently offers a vanguard reentry program with a 46.7% three year re-incarceration rate, better than the national average, which is unavailable to defendants released from county jails. The primary purpose of county jails is to detain inmates awaiting trial. They are not constructed or funded to provide more than meager rehabilitative services.

Third, the plea agreements allowing defendants to complete their sentences at county jails comprise an unacceptable burden on New Mexico counties. In years past, with more funds at their disposal and fewer numbers of inmates, counties were able to house defendants sentenced to complete their sentences in local jails. Now the numbers of inmates are overwhelming county jails. Many county jails are already overcrowded and facing costly litigations based upon their excessive inmate populations. County taxpayers must ultimately pay for litigation expenses created by this overcrowding. The best adjective to describe the situation in many county jails is crisis. Meanwhile the Department of Corrections currently has vacant beds.

The solution to this crisis is to require incarcerated defendant to complete their parole periods no matter where they are incarcerated. This solution will no longer provide an incentive for defendants to seek incarceration in county jails to avoid parole. It will also give more inmates access to appropriate rehabilitative services and increase the deterrent effect of the New Mexico sentencing statutes. In order to achieve these goals this bill seeks to amend the statutory framework to provide that all incarcerated criminal defendants are subject to the mandatory parole period whether they complete their sentences at county jails or Department of Corrections’ facilities.