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**TORRANCE COUNTY
BOARD OF COUNTY COMMISSONERS
RESOLUTION NO. R 2021- 9**

**A RESOLUTION OPPOSING HOUSE BILL 40, ENACTING THE PRIVATE
DETENTION FACILITY MORATORIUM ACT**

WHEREAS, NMSA, 1978, Section 4-38-18 (1976) provides that a Board of County Commissioners has the duty and authority “[t]o represent the county and have the care of the county property and the management of the interest of the county in all cases where no other provision is made by law; and,

WHEREAS, since 1984, the Legislature has expressly authorized the counties to contract with independent contractors for the provision and operation of the common jails, pursuant to NMSA 1978, Section 33-3-1(B)(1984); and,

WHEREAS, due to infrastructure constraints, lack of access to medical services, difficulties in recruiting and retaining competent personnel, exorbitant increases in insurance premiums resulting from the immense exposure to liability that threatens to drive counties to adopt property tax increments to cover judgments not covered by insurance, several New Mexico counties have made the difficult decision to lay off county employees and either close their county jails and to contract with independent contractors for the provision and operation of detention, or alternatively to contract with independent contractors for the operation of the county jail; and,

WHEREAS, the counties were not extended the courtesy of consultation prior to Representative Rubio’s introduction of House Bill (HB) 40, which prohibits private entities to operate a private detention facility, and further prohibits the county from entering into, renewing or modifying an agreement for the detention of individuals in a detention facility owned, managed or operated, in whole or in part, by a private entity; and,

WHEREAS, Governor Lujan Grisham’s Administration, through Corrections Secretary Alisha Tafoya Lucero, an eighteen-year veteran of the State Prison system, has expressed concerns about the implications of HB 40, including but not limited to, the loss of 3,000 beds for state inmates and the State’s resulting inability to accommodate the proposed reduction in inmate beds; and,

WHEREAS, HB 40 would drive up the cost of inmate beds in the State, as the counties would be placed in direct competition with the State to identify and compete for available inmate beds; and,

WHEREAS, as reflected by its provisions, HB 40 has not provided adequate consideration to the lack of available inmate beds, infrastructure constraints of existing county detention centers, lack of access to medical services in rural areas for inmates, difficulties in recruiting and retaining competent detention personnel, particularly in rural areas, or the exorbitant increases in insurance premiums resulting from the immense exposure to liability, which threatens to drive counties to adopt property tax increments to cover judgments not covered by insurance;

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2 **WHEREAS**, the counties contract with these private entities that, unlike many county
3 detention centers, agree to comply with American Correctional Association standards, the gold
4 standard in corrections; and,
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6 **WHEREAS**, unlike with county detention centers, the State ensures that a private
7 contractor's proposed standards are adequate, that the qualifications of the proposed contractor are
8 suitable, that the qualifications of the proposed contractor's employees are suitable, and that the
9 agreement contains satisfactory and required contract provisions; and,
10

11 **WHEREAS**, as part of the State's review, it mandates that the agreement requires the
12 contractor to provide and pay for training for jailers to meet minimum training standards,
13 establishes comprehensive standards for conditions of incarceration, either by setting forth such
14 standards in full as part of the contract or by reference to known and respected compilations of
15 those standards, and contains a termination clause for cause by the county for failure to satisfy
16 minimum standards and conditions of incarceration and other contractual provisions that seriously
17 affects jail operations; and
18

19 **WHEREAS**, as part of its review, the State requires that the agreement additionally
20 provide for the contractor's assumption of all liability caused by or arising out of all aspects of the
21 provision and operation of jail, and including liability insurance covering the contractor and its
22 officers, jailers, employees and agents; and
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24 **WHEREAS**, the State does not make such similar inquiry into the operations of county
25 detention centers; and,
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27 **WHEREAS**, the State has not established minimum standards for training for county
28 detention employees, nor has it established a mechanism by which counties can displace all
29 liability caused by or arising out of all aspects of the provision and operation of county jails aside
30 from contracting with private operators; and,
31

32 **WHEREAS**, the implementation of HB 40 would run counter to its intent, resulting in a
33 degradation in the care presently afforded to inmates, overcrowding of facilities, and the
34 commoditization of inmates; and,
35

36 **WHEREAS**, CoreCivic in Torrance County employs 151 individuals, pays \$390,361.52
37 in county property taxes, and contributes significantly to the local economy; and,
38

39 **NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of
40 the County of Torrance that we do hereby express our strong opposition to HB 40 for the reasons
41 stated herein.
42

43 **DONE THIS 10th DAY OF FEBRUARY, 2021.**
44

1 APPROVED AS TO FORM ONLY:

BOARD OF COUNTY COMMISSIONERS

2
3 *Ben M. Betts* 2/10/21
4 County Attorney Date

Ryan Schwebach
Ryan Schwebach, Chair
District 2

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Kevin McCall
Kevin McCall, Vice Chair
District 1

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LeRoy Candelaria
LeRoy Candelaria, Member
District 3

13 ATTEST:
14 *Yvonne Otero*
15 Yvonne Otero, County Clerk
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