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## FISCAL IMPACT REPORT

SPONSOR: Godbey DATE TYPED: 03/14/01 HB 294/aSJC  
 SHORT TITLE: Expense of Incarcerating Certain Prisoners SB \_\_\_\_\_  
 ANALYST: Trujillo

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		\$3000.0 See Narrative		Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 624 and HB 547

### SOURCES OF INFORMATION

- LFC Files
- Administrative Office of the Courts (AOC)
- Attorney General (AG)
- Children Youth and Families Department (CYFD)
- Corrections Department (CD)
- Association of Counties

### SUMMARY

#### Synopsis of SJC Amendments

Senate Judiciary Committee amendments for HB294 are as follows:

- Enacts sections and makes an appropriation;
- Strikes Section B in its entirety and replaces it with “When a person under parole supervision by the corrections department is incarcerated in a county jail for a parole violation solely on the basis of an arrest and hold order or a warrant issued by the corrections department, or when a person is incarcerated in a county jail while awaiting transportation to the custody of the corrections department following the entry and filing of a judgement and sentence and commitment or other lawful commitment to the corrections department, the corrections department shall reimburse the county for the expense of incarcerating that person as follows:
  - (1) a county shall receive reimbursement from the corrections department in an amount not to exceed thirty dollars (\$30.00) for each day that the person is incarcerated in a county jail; and

- (2) Counties with one hundred thousand persons or more, as determined by the 2000 United States census, shall not cumulatively receive more than fifty percent of the total amount of money allocated to all counties, in each fiscal year, as reimbursement from the corrections department.”;
- Inserts a new section which caps the amount of state reimbursement to counties for the expense of incarcerating certain state prisoners at three million dollars (\$3,000,000); and
  - Changes the effective date to July 1, 2002.

#### Synopsis of Original Bill

HB294 requires CD to “reimburse” the various county jails for the expense of incarcerating parole violators and those awaiting transport to a correctional facility following the entry of a judgment and sentence or an order of confinement. It also provides that the amount of reimbursement shall be established by the county sheriff, jail administrator or independent contractor who operates the jail.

#### Significant Issues

CD reports the most significant issue to the department is that as to offenders awaiting transportation to a state facility after entry of a judgment and sentence or order of confinement, CD does not receive an appropriation to pay these “reimbursement” charges and will be unable to absorb this cost increase. CD currently receives an appropriation of approximately \$1 million each year to pay Counties for the cost of housing parole violators. However, CD is only paying for those parole violators who are being held solely on the basis of an Arrest and Hold Order issued by the parole officer; and not for those inmates who are also being held after being arrested and “booked” on new criminal charges. Furthermore, until recently, only two (2) or three (3) counties were billing CD. Recently, that number has increased to about ten (10) counties. The \$1 million has barely been sufficient to cover these billings. If HB294 passes, it is likely most if not all counties will begin billing CD and the \$1 million appropriation will be insufficient to cover even just the parolees. This does not even begin to address the entirely new costs of reimbursing counties for housing other inmates awaiting transport to prison after a commitment order has been issued.

Also, there will be a substantial increase in the administrative burden required to do the bookkeeping involved.

Furthermore, allowing the county jail administrator/operator to simply set the amount of reimbursement could lead to overcharging, as well as lack of consistent financial charges among the various counties.

According to CD, HB294 will result in a situation whereby government entities will constantly be at odds when the CD is not appropriated sufficient funds to pay for any or all of these charges, whether the inmate is being held as a parole violator or because of having been charged with a new offense, the number of days to be charged, and who is responsible for the failure to transport in a timely manner. HB294 creates an inevitable continuing conflict between the CD and the various counties which could result in unseemly litigation. HB 294l will create a disincentive for the County Sheriff to perform timely transportation to state facilities.

Finally, the “amount of reimbursement” set by the counties is not subject to accounting cost analysis and could exceed their true cost of housing these offenders.

#### **PERFORMANCE IMPLICATIONS**

CD reports HB 294 will adversely impact the department’s parole supervision program, because it

will unduly discourage the arrest and detention of parole violators, thereby resulting in a threat to public safety in that community.

Also, the bill will adversely impact upon the department's accounts and business office program, because it will require an excessive amount of time to do the bookkeeping involved in tracking thousands of inmates and inmate days in over thirty (30) different counties.

### **FISCAL IMPLICATIONS**

There is no appropriation in HB294 to cover the anticipated tremendous increase in costs to CD Department. Furthermore, since the bill requires cash "reimbursement", there is absolutely no possibility of absorbing these costs. CD currently receives an appropriation of \$1 million to cover only the costs of parolees housed in county jails and the same amount is contained in this year's budget request. CD currently does not receive any appropriation to reimburse counties for the cost of housing offenders awaiting transport to state facilities after entry of a judgment and sentence or other order of confinement.

According to the Association of Counties, in August 2000, a study by the New Mexico Criminal Justice Statistical Analysis Center entitles The Interface between Jails and prisons in New Mexico's Criminal Justice System, stated that the counties were incurring approximately 29,596 inmate days on behalf of the state, for probation and parole violators. Also, probation and parole violators are held for about one month, on the average. The study estimated that the financial consequences of holding time for state prisoners in county jails at \$4.2 million per year; \$1.5 million of this is directly related to probation and parole costs.

CD estimates the costs as follows. In Fiscal Year 2000, there was a total of approximately 3475 offenders sentenced to imprisonment by the Department who were likely in the county jail before being committed to the Department. This includes ordinary new commitments, probation violators sentenced to prison, parole violators who are revoked and returned to prison, and persons committed for diagnostic evaluations. If you assume that each one spent an average of twenty (20) days in the county jail awaiting transport to prison after entry of a commitment order, at an average cost of \$80 per day, the cost would be \$6,255,000 annually.

### **ADMINISTRATIVE IMPLICATIONS**

According to CD, in both the short-term and the long-term the bill will result in a significant increase in the administrative burden placed upon probation and parole personnel, particularly in the business office, who will be required to keep track of the billing for thousands of inmates for thousands of inmate days at differing rates for over thirty (30) different counties. There will be a large number of billing disputes. The billing task and billing disputes will also require the time of probation and parole officers and the department's legal staff. CD will be unable to absorb this additional burden and one (1) additional F.T.E. will be required just to do the bookkeeping.

### **OTHER SUBSTANTIVE ISSUES**

HB 294 does not contain an appropriation and does not establish a reimbursement rate to be followed, leaving the rates to be determined by the local county or jail administrator.

CD suggest rather than require CD to reimburse the counties, appropriate the funds directly to the counties or to the Local Government Division of the Department of Finance and Administration. If the money is appropriated to the counties, it encourages the counties to remain efficient.

Also, consider setting a cap on the maximum amount or establishing a standard amount that can be charged per day per prisoner.

The Association of Counties reports, in some cases, municipal law enforcement officers are charging violators under state statutes rather than filing charges in municipal court under city ordinances, which means that counties must pay the cost of housing such prisoner. Consequently counties often bear a disproportionate share of detention costs generated by municipal law enforcement activities, yet revenue streams to provide these and other unfounded mandates are lacking or inadequate at the county level.

4-44-18, NMSA 1978, authorizes reimbursement to counties “extraditing prisoners from without the state and for transporting persons committed by a court to any state institution or required to be returned by order of the court from any state institution to the county of commitment. The county may be reimbursed by the state for the per diem and mileage expenses incurred under this subsection by submitting claims for reimbursement to the department of finance and administration in accordance with the department's regulations.”

The appropriation for the transportation and extradition of prisoners has decreased dramatically since the mid 1990's from \$700.0 thousand in FY95 to \$0.0 in FY01.

LT/ar/njw