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FISCAL IMPACT REPORT

ORIGINAL DATE 2/12/19
LAST UPDATED 3/05/19

SPONSOR SPAC HB CS/CS/192/SPACS/
SHORT TITLE Pregnant and Lactating Inmate Options SB SJCS

ANALYST Edwards

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	Substantial	Substantial	Substantial	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Related to Senate Bill 124.

SOURCES OF INFORMATION

LFC Files

Responses Not Received From

New Mexico Attorney General (NMAG)
Law Office of the Public Defender (LOPD)
New Mexico Corrections Department (NMCD)
Department of Health (DOH)

SUMMARY

Synopsis of Bill

The Senate Judiciary Committee Substitute for Senate Public Affairs Committee for Senate Bill 192 permits the court to consider a person's pregnancy or lactation status when determining whether the inmate is eligible for release or bond and in the computation of good time credit. A presumption shall be made in favor of release for a person who is pregnant or lactating and the person released will be placed on least restrictive means necessary.

FISCAL IMPLICATIONS

There could be a substantial impact to NCMD as a result of this bill as it could expose the department to legal liability and costs associated with appropriately housing an offender. Because the bill does not specifically state that its provisions apply to only jails, only state correctional institutions, or both, it is assumed NMCD will be affected by this bill.

NMCD stated in response to the bill as originally drafted:

This fiscal impact would likely include, because the woman is essentially in the custody of the NMCD at the time of her release, the cost of providing adequate housing to pregnant women during the course of the custodial release, as well as costs associated with the woman's behavioral health and mental health care, prenatal care, and nourishment/basic needs for herself and her new baby.

Additionally, the bill exposes the NMCD to substantial legal liability by potentially ordering the release of a pregnant woman who may be at high risk of committing other crimes, fleeing, or injuring herself or others while on release. Nothing in the bill exempts or protects the NMCD from being sued under New Mexico or federal law if the offender commits a crime or otherwise harms herself or others while on release, be that release custodial or noncustodial. While the court can order the release and would have judicial immunity if the female offender then harmed herself or others, the NMCD would be subject to lawsuits alleging that it improperly, negligently or recklessly failed to supervise the offender during her release.

LOPD stated in its analysis of Senate Bill 192 as originally drafted that there would be no negative fiscal impact for this bill's passage. However, while it is impossible to predict the number of inmates to whom it would apply, if judges regularly exercise the discretion that would be offered by Senate Bill 192, it could potentially reduce the amount of social work services the LOPD would need to provide for its clients to whom the bill would apply. LOPD resource expenditure could be reduced, and ultimately, additional new social work hires may be avoided where existing social workers are not tasked to spend as much time addressing health and safety needs of incarcerated expecting or new mothers that are simultaneously LOPD clients.

SIGNIFICANT ISSUES

The New Mexico Attorney General's analysis of the original bill lays out the following concerns:

There is no guidance as to what type of court hearing is necessary to determine whether release is appropriate, nor guidance as to who brings this petition for release, appeal, or motion to revoke the release. The bill does not provide guidance to the court as to factors or weight in determining how release would affect public safety or good time.

There is already opportunity for the courts to address the issue of the female offender's pregnancy before that offender is booked into a jail or NMCD prison facility. For those females pregnant or lactating with pending trials, judges have the authority and mandate to consider factors that will assure appearance at trial and account for the safety of the community. For example Rule 7-401, Bail, Section B of the Rules of Criminal Procedure for the Metropolitan Courts, lists Factors to be Considered in Determining Conditions of Release. This allows courts, in regard to individuals with pending trials, to determine the type of bail and which conditions of release will reasonably assure appearance of the person as required and the safety of any other person in the community. Adding pregnancy and lactation status to this list within this rule may better serve the intent of this bill, and would likely often allow the courts to address and resolve these issues even before sending the female offender to jail or prison.

This bill places the operational burdens of custodial release of an inmate (already incarcerated and under supervision of NMCD) on the NMCD. While the bill allows judges to order such releases, it does not delineate what the NMCD's responsibilities would be if the judge ordered a custodial release—would the NMCD have to send a correctional officer or probation officer to check on the woman in person, pay for electronic monitoring and monitor her, or what? The bill also does not contemplate or address what would happen if the women failed to return to prison after the term of her court-ordered release has expired.

Nothing in the bill exempts or protects the NMCD from being sued under New Mexico or federal law if the woman commits crimes or otherwise harms herself or others while on release.

DOH analysis provides the following information:

The positive health effects of breastfeeding are well recognized. “Breast milk is uniquely suited to the human infant’s nutritional needs and is a live substance with unparalleled immunological and anti-inflammatory properties that protect against a host of illnesses in both mothers and children.” [See](#) National Center for Biotechnology Information. Breastfeeding has been recommended by numerous prominent organizations of health professionals because breastfeeding provides many important health, psychosocial, economic, and environmental benefits. The American Academy of Pediatrics (AAP), American Academy of Family Physicians, American College of Obstetricians and Gynecologists (ACOG), and American Public Health Association all recommend that infants be breastfed for at least 12 months. “These organizations also recommend that infants be exclusively breastfed for the first six months of life, meaning they should not be given any foods or liquids [including water] other than breast milk.” [See](#) National Center for Biotechnology Information.

Breastfeeding remains the recommended method of nourishment for all children, in part because non-breastfed children have a [2.6 times higher chance](#) of experiencing abuse than breastfed children. In addition, the U.S. Surgeon General’s 2011 “Call to Action to Support Breastfeeding”, Appendix B, [lists](#) the excess health risks associated with not breastfeeding, which include ear infections, eczema, diarrhea, vomiting, respiratory hospitalizations including asthma, childhood obesity, type 2 diabetes, leukemia and sudden infant death syndrome for full-term infants; necrotizing enterocolitis for pre-term infants; and breast and ovarian cancer for mothers.

A Committee Opinion on Health Care for Pregnant and Postpartum Incarcerated Women and Adolescent Females, issued by ACOG and reaffirmed in 2016, [recommends](#) that “federal and state governments adopt policies to support provision of perinatal care for pregnant and postpartum incarcerated women and adolescents.” ACOG emphasizes the importance of not separating mothers and infants and lists prison nurseries, alternative sentencing of women to community-based non-institutional settings, and options for infants to visit in facilities without prison nurseries as ways to address this need.

Senate Bill 192 affects the New Mexico Corrections Department and the New Mexico Judicial Branch. In 2017, Senate Bill 277, which contains substantially similar language to Senate Bill 192 was passed but pocket vetoed.

Women who are or may be incarcerated and their babies are impacted by Senate Bill 192. In 2014, the [imprisonment rate](#) for African American women (109 per 100,000) was more than twice the rate of imprisonment for white women (53 per 100,000). Hispanic women were incarcerated at 1.2 times the rate of white women (64 vs. 53 per 100,000).

Women and adolescent females represent an increasing proportion of inmates in the U.S. correctional system. Incarcerated women and adolescent females often come from economically, educationally, and socially disadvantaged environments and have high rates of chronic illness, substance abuse, and undetected health problems. Most of these women are of reproductive age and are at [high risk](#) of unintended pregnancy and sexually transmitted infections, including HIV. Due to the benefits of breastfeeding, Senate Bill 192 may support healthier outcomes for these marginalized women and their infants, which in turn, could reduce subsequent health costs.

The New Mexico Breastfeeding Task Force submitted the following information:

Inmates released to community custody are able to locate near [clinics] [...] which allows them to receive optimal prenatal care and treatment. They are able to be coupled with their babies saving the state from placing them in foster care. They are able to breastfeed their children saving on [...] health care costs for both mother and child [...]. [A Bureau of Business and Economic Research] BBER [report](#) shows if the state increases 6 month breastfeeding rates by 10 percent, [...] conservative estimates suggest \$48 million [in] cost savings [to] healthcare and matching WIC dollars.

One of the reasons for this bill is to not have the facility incur [...] costs [once an inmate is released]. Inmates are not eligible for Medicaid while incarcerated, but they often are once they are released. This bill will allow a judge the discretion to place the inmate in the setting that serves the community the best (either in full security custody, in community custody, on house arrest, or released on their own recognizance). The point is to not separate the children from their mother provided that their mother is not dangerous to the child. Someone who has a opioid dependence and is [receiving] opioid replacement therapy has lower chances of relapse and does not transfer the medication to their child via breastfeeding. Neonatal abstinence syndrome babies who are breastfed fare better than babies that are separated from their mothers (ie they receive less morphine, they are released from the hospital earlier, etc).

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