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## FISCAL IMPACT REPORT

SPONSOR: King DATE TYPED: 02/08/01 HB 274  
 SHORT TITLE: Correctional Emergency Response Plan SB \_\_\_\_\_  
 ANALYST: Trujillo

### APPROPRIATION

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

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files  
 Attorney General (AG)  
 Corrections Department (CD)  
 Department of Public Safety (DPS)  
 Children Youth and Families Department (CYFD)

### SUMMARY

#### Synopsis of Bill

HB274 amends NMSA 1978, § 33-1-17 which governs contracts between CD and private entities in the business of providing correctional or jail services to government entities. The bill also establishes similar requirements for wardens of county-operated or privately-operated correctional facilities that do not have a contract with CD for the incarceration of state inmates.

Under the bill, these correctional facilities are required to:

- (1) Provide the Secretary of Corrections, the Secretary of Public Safety and the County Sheriff for the County in which the facility is located with the following information, which shall be kept confidential, regarding an out-of-state inmate, including a federal inmate, who is incarcerated in the facility for more than 120 days:
  - (a) the jurisdiction in which the inmate was convicted;
  - (b) the criminal offense for which the inmate was convicted; and
  - (c) the original classification level for the inmate;
  
- (2) Subject to consultation with and final approval by the Secretary of Corrections, prepare and

submit a written emergency response plan for the correctional facility. Copies of the plan are to be provided to the Secretary of Corrections, the Secretary of Public Safety, the County Sheriff for the County in which the facility is located and the governing bodies for the municipality and County where the facility is located;

- (3) Have all their prospective correctional officers successfully complete a training program with the same standards as the Corrections Department's program. (If they attend the Corrections Department Academy, the Corrections Department is to be reimbursed for expenses.); and
- (4) Immediately notify the Secretary of Corrections, the Secretary of Public Safety and the County Sheriff when any inmate escapes from the facility, when a hostage situation occurs, when a firearm is discharged at the facility, or a disturbance involving five or more inmates occurs at the facility.

#### Significant Issues

According to the AG, as drafted, the bill leaves an apparent loophole for county-operated and privately-operated county jails with which CD has a contract for the incarceration of state inmates. The term "correctional facilities" used in the bill should be defined or clarified.

CD reports the most significant issue to the department is that although HB274 requires that certain information be provided to the department, the bill does not provide the department with, and the department does not have, the authority to take effective action in response to the information provided. Specifically, the bill requires these correctional facilities to provide the Secretary of Corrections with limited information regarding out-of-state inmates. However, this information is of little value unless the Secretary were to have the authority to, for example, prohibit the housing of these inmates at that correctional facility because the facility is not suitable for housing such inmates. Similarly, although the bill requires these facilities to immediately notify the Secretary of Corrections whenever there is an escape, a hostage situation, a firearm is discharged or a hostage situation at the facility, it is unclear what the Secretary is supposed to do once such information is received.

Also, requiring the Secretary of Corrections to be provided with this information will likely result in liability claims against the Secretary and the department when out-of-state inmates engage in misconduct.

Another issue of concern to CD is the significant increase in the costs and administrative burden placed upon the Secretary or the department to review and approve emergency plans for all correctional facilities.

#### **PERFORMANCE IMPLICATIONS**

CD is transitioning into performance-based budgeting in FY02. Performance measures addressing the merits of this bill are not included.

CD reports unless the Secretary and the Department are provided with sufficient resources to accomplish these additional duties, the performance of the department's own programs will suffer.

#### **FISCAL IMPLICATIONS**

## **House Bill 274 -- Page 3**

There is no appropriation in the bill to cover the increase in costs to CD. The bill will result in additional in-state travel costs, perhaps out-of-state travel costs, mileage, per diem, postage, supplies and materials. CD reports these costs will be recurring and they are not able to absorb them.

DPS reports if more calls are received by law enforcement because of mandated notifications, there could be a budget impact to operations, and over time, to the New Mexico State Police (from \$10K to \$100K). It is unknown whether passage of the proposed legislation will affect any federal appropriation or any other local, state or federal matching fund.

### **ADMINISTRATIVE IMPLICATIONS**

According to CD, both the short-term and long-term administrative impact will be to substantially increase the administrative burden upon the Secretary and/or department employees who will be required to review and approve emergency plans and perhaps respond to emergency situations. The department will be unable to absorb this additional burden. The review and approval of emergency plans could require one (1) or two (2) additional F.T.E. If a substantial number of these facilities choose to have their correctional officers trained at the Corrections Department Academy, three (3) or four (4) additional F.T.E. could be required. If the Secretary is required to review and approve the placement of out-of-state inmates in these correctional facilities, depending on the number of such inmates, four (4) or five (5) additional F.T.E. could be required. Other states with this type of legislation have department of corrections staff to support the function.

DPS reports there is possible administrative impact from passage of the proposed legislation, as the legislation requires that a contractor notify the Secretary of Public Safety of certain information specified in the proposed legislation. From a reading of the proposed legislation, it appears this language transmittal to the Secretary of Public Safety is purely informational in nature.

### **RELATIONSHIP**

This bill somewhat relates to House Bill 124.

According to the AG, HB274 conflicts with NMSA 1978, § 33-1-2(C). Section 2 of the bill refers to county and privately operated “correctional facilities.” The use of this term is confusing. Presently, Section 33-1-2(C) of the Corrections Act defines “corrections facility” to refer to facilities for correctional care operated by the state. County or municipal owned and operated facilities are usually referred to as “jails.”

HB274 overlaps and conflicts with NMSA 1978, § 33-3-27(C). Section 2 of the bill requires correctional officers employed at county and privately operated correctional facilities to complete a training program with the same standards as the training program required for officers employed at state-operated facilities. Section 33-3-27(C) now requires jailers at county jail facilities operated by private independent contractors to receive training as specified in the contract between the county and independent contractor.

### **TECHNICAL ISSUES**

According to the AG, the term “correctional facility” used in Section 2 should be defined to make clear that it covers county and other local jails. (See discussion above under “Conflict/ Duplication/ Companionship/ Relationship”.)

## OTHER SUBSTANTIVE ISSUES

Attachment A is an excerpt from a January 2000 report by a panel of experts that discussed privately operated prisons and public safety. The following is taken from the report:

*One area of concern raised by the panel of experts in the January 14, 2000 report provided to the New Mexico legislature, secretary of corrections and attorney general was “Although not in the scope of this study, it is clear that other private facilities are being operated in New Mexico without sufficient oversight. This should be addressed as well.”*

*In an information brief provided by the U.S. Department of Justice based on a forum of correctional experts, legislators and others with an interest in correctional policy the following discussion occurred: “There was a consensus among forum participants that regulation of some form was both constitutional and appropriate. The most compelling reason is to assure that the operation of the private prisons does not threaten public safety. The issue of public safety is particularly sensitive when the facility is housing inmates from out-of-state. In these cases, the host-state and the local jurisdiction in which the facility is located need to be concerned about public safety issues (escapes, inmate disturbances, fires, natural disasters, work stoppages, or other labor disputes that may threaten the prison).*

Another area of concern raised by the panel of experts in the January 14, 2000 report included a liability issue as it relates to the training of correctional officers of privately operated facilities and the utilization of state standards.

The AG reports HB274 is not entirely consistent with the existing statutory scheme governing state and local correctional facilities. Currently, the state is authorized to enter into contracts with private entities for certain specified state corrections facilities. § 33-1-17. The CD is also generally authorized to enter into contracts with public or private detention facilities for housing state inmates. § 30-20-2(G). Alternatively (and more typically), the state has entered into contracts with counties to house state inmates in those counties’ jails. The counties’ jails may be provided and operated by private independent contractors, as authorized by § 33-3-27. Nothing in state law authorizes a private company to operate a corrections facility or jail in New Mexico absent an agreement with the state, a county or other local governmental body.

The bill only covers (1) state corrections facilities operated by private entities under § 33-1-17 and (2) county or privately-operated jails with which the state does not have a contract for the incarceration of state inmates. This effectively creates a loophole for counties with which the state contracts for the incarceration of state inmates in the counties’ jails. Since, as discussed above, this is the usual arrangement for housing state prisoners in privately-operated county jails, the loophole may affect a significant number of correctional facilities.

LAT/njw:ar  
Attachment