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FISCAL IMPACT REPORT

SPONSOR Martinez ORIGINAL DATE 1/24/07
LAST UPDATED 3/15/07 HB _____
SHORT TITLE Corrections Population Control Act Changes SB 194/aSPAC/aHCPAC
ANALYST Peery-Galon

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Non-Rec | Fund Affected |
|---------------|------|-------------------------|------------------|
| FY07 | FY08 | | |
| | NFI | | |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Response Received From

New Mexico Corrections Department (NMCD)

No Responses Received From

New Mexico Sentencing Commission (NMSC)

SUMMARY

Synopsis of the HCPAC Amendment

The House Consumer and Public Affairs Committee amendment to Senate Bill 194 changes the definition of overcrowding back to the current definition in statute. Currently, overcrowding is defined in statute as when the rated capacity of all male or female facilities exceeds 100 percent of its rated capacity for 60 consecutive days.

Synopsis of the SPAC Amendment

The Senate Public Affairs Committee amendment to Senate Bill 194 adds new language to not allow nonviolent offenders that fail drug screening test within ten days of the offender's scheduled release to be considered for early release under the Corrections Population Control Act.

Synopsis of Original Bill

Senate Bill 194 repeals the sunset provision of the Corrections Population Control Act which established the Corrections Population Control Commission. The proposed legislation removes

the secretary of NMCD as the chairman of the commission, but allows the secretary to remain a member of the commission. The proposed legislation would amend the Act in the following ways:

- Redefining overcrowding to mean when the rated capacity of any one facility exceeds 100 percent of its rated capacity for a certain defined period,
- Removing language that prevents nonviolent offenders from being released early from prison if the offender fails a drug screening test within ten days the offender's scheduled release, and
- Removing language that prevents nonviolent offenders from being released early from prison if the effect of releasing the offender would result in a loss of federal funds for any state agency.

FISCAL IMPLICATIONS

NMCD states if the proposed legislation results in the early release of certain prisoners, it will probably minimally to moderately reduce the prison population and minimally to moderately increase the caseloads of probation and parole officers.

NMCD states the annual cost of incarcerating an inmate is \$23,867 per year for males and \$21,651 per year for females. The cost per client in probation and parole for a standard supervision program is \$1,467 per year, for an intensive supervision program is \$3,383 per year, for a NMCD community corrections program is \$3,503 per year, for a privately-owned community corrections program is \$7,917 per year, and for male and female residential community corrections program is \$39,401 per year.

SIGNIFICANT ISSUES

NMCD states by amending the Act to define overcrowding to mean when the rated capacity of any one facility exceeds 100 percent of its rated capacity for a certain defined period, as opposed to all male facilities in the aggregate or all female facilities in the aggregate, makes it more likely to result in the early release of nonviolent offenders.

NMCD states serious concern about public safety whenever any inmate is released early from one of its prisons. NMCD reports an individual defined by law as a nonviolent offender does not prevent the individual from engaging in new crimes of a serious nature. NMCD points out DWI offenders could be considered by the commission to be nonviolent offenders subject to early release. NMCD also expresses concern about the commission considering a nonviolent offender for early release if that offender has recently tested positive for illegal drugs while in prison. NMCD states offenders under the influence of drugs upon release are obviously at a higher risk of committing another crime due to drug induced poor judgment or in order to get money to buy more drugs.

NMSC's report "Estimated Number of Offenders in New Mexico Corrections Department Facilities in November 2006 Eligible for Controlled Release" states 69 nonviolent offenders with a level 1 custody assignment had a projected release date, 12 months or less, that would have made them eligible for controlled release. Further, the report shows 160 nonviolent offenders with a level 2 final custody assignment had a projected release that would have made them eligible for controlled release. Offenders serving time on a drug possession conviction comprised the largest group followed by burglary convictions and fraud convictions. The

analysis did not include violent offenders, sex offender, DWI offenders or individuals serving time on a drug trafficking offense.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The proposed legislation is a duplication of House Bill 272.

ALTERNATIVES

NMCD endorses the following changes to the proposed legislation:

- Nonviolent offenders who fail a drug test with ten days of release continue to be ineligible for early release,
- Current provisions requiring the consideration of early release only when the rated capacity of all female facilities in the aggregate or all male facilities in the aggregate remains in effect, and
- Change language on page 7, line 9 and 10, to state “if the nonviolent offender was convicted of a crime that was committed while incarcerated.”

Defining overcrowding to mean when the rate capacity of any security level (I, II, III, IV, V, or VI), male or female, exceeds 100 percent of its rated capacity for a defined period. NMCD historically struggles with the lack of security level III male inmate beds. By redefining overcrowding by security level it targets specifically where inmate beds are lacking, which is not always reflected by a correctional facility housing anywhere from one to six different security levels.

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