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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/5/07

SPONSOR Lopez LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE County Detention & Incarceration Programs SB 743

ANALYST Peery-Galon

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	None		

(Parenthesis ( ) Indicate Expenditure Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$.1	\$.1	\$.1	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

#### Responses Received From

New Mexico Corrections Department (NMCD)  
 New Mexico Sentencing Commission (NMSC)  
 Attorney General's Office (AGO)  
 Administrative Office of the Courts (AOC)  
 Public Defender Department (PDD)  
 Bernalillo County Metro Court (BCMC)

#### No Responses Received From

New Mexico Municipal League  
 New Mexico Association of Counties

### SUMMARY

#### Synopsis of Bill

Senate Bill 743 allows a county sheriff or other jail official to develop and implement an alternative incarceration program that provide for separation by gender and may involve housing inmates in locations outside of a county jail. The proposed legislation states inmates convicted

of nonviolent offenses are eligible for the alternative incarceration program, with the exception of inmates that have committed a crime while incarcerated or failed a drug screening test within three days of placement into the program. The inmates in the alternative incarceration program must pay the placement costs using a sliding fee scale. The fee schedule is to be set by the county commissioners. The proposed legislation also makes escape from an alternative incarceration program punishable as either a misdemeanor or a fourth degree felony, depending on whether the inmate as originally held on a misdemeanor or a felony charge.

The proposed legislation also enacts the County Detention Facility Population Control Act and the formation of a county detention facility population control commission in every New Mexico County. Members of the commission are to be immune from civil liability. The Act is to prevent the inmate population from exceeding its rated capacity at a county facility and to reduce the inmate population if it exceeds its rated capacity for more than 90 consecutive days. The proposed legislation would require the New Mexico Corrections Department to remove all convicted felons from the county facility if it exceeds its rated capacity for more than 90 consecutive days, and to do so within 30 days of receiving notice.

### **FISCAL IMPLICATIONS**

NMCD states the proposed legislation could result in the department having to remove a substantial number of felony offenders from county facilities. NMCD reports this will cause the prison population to grow and reach rated capacity, and it is likely the department would have to seek out-of-state beds for prisoners. NMCD notes there is no appropriation to offset any increases to prison population or probation/parole caseloads and associated costs caused by the proposed legislation.

NMCD notes the proposed legislation's creation of a new felony crime of escaping an alternative program could have a minimal impact on the prison population and probation/parole caseloads.

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 to require the department to remove all convicted felons from a county detention facility would jeopardize public safety due to the department having no beds available in its system for offenders. NMCD is already near its rated capacity for male prison facilities.

AOC and BCMC notes the proposed legislation does not provide for notice to victims regarding changes in misdemeanor cases, such as assault and battery against a household member, negligent use of a deadly weapon, stalking and child abandonment with respect to application of the New Mexico Victim of Crimes Act.

BCMC states concern that members of the county detention facility population control commission will be making decisions on the release of inmates that contradict the decisions of

sentencing judges, when the judges have greater knowledge of the cases and the defendants.

### **PERFORMANCE IMPLICATIONS**

NMCD states the department would have great difficulty in providing services to the current inmates, probationers and parolees if they had to absorb inmates from the counties.

### **ADMINISTRATIVE IMPLICATIONS**

NMCD reports the department is currently short staffed, and adding more offenders will have a negative administrative impact.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

The proposed legislation duplicates House Bill 636.

NMCD states pursuant to Section 33-2-19 and 31-20-2 (A) NMSA 1978, the department lacks the statutory authority to remove or house individuals convicted of felonies if the time to be served, after accounting for any pre-sentenced credit and any period of confinement being suspended or deferred, is less than one year. NMCD has no authority to remove a person from a county facility if a person convicted of a felony is incarcerated in a county facility for a probation violation, or has been arrested and placed in a county facility on a new criminal charge but not on a parole violation.

NMCD states while there is a recent court of appeals case holding the department generally responsible for paying the counties for any parole violators housed, that case does not require the New Mexico Corrections Department to remove parole violators from any county facility. NMCD reports to remove parole violators from the county facilities could appear to conflict with Section 33-3-3 NMSA 1978, which provides that the county jail shall be used as the place of detention for every person charged with or convicted of crimes and committed by lawful order.

AOC states currently there are limits on the award of good time for persons incarcerated in a county detention facility, including a requirement that the award of good time needs “the approval of the committing judge or presiding judge” pursuant to Section 33-3-9 (A) NMSA 1978. AOC and BCMC state the proposed legislation creates a conflict of uncertain dimension due to it permitting the commission to award good time without judicial approval although statute requires court approval. AOC states the proposed legislation raises separation of powers concerns by eliminating judicial involvement in the sentence served by a class of convicted offenders. AOC reports removing courts from good time awards also has a negative impact on the ability of drug courts to use that incentive in treatment of offenders.

BCMC notes a conflict if House Bill 479 or Senate Bill 65 is enacted due to an inmate who consumes a controlled substance will have committed a crime. So all failures of drug screening tests will require the exclusion of the offending inmates from consideration for placement into an alternative incarceration program.

**ALTERNATIVES**

NMCD suggests amending the proposed legislation to focus on awarding good time credits for county inmates in order to reduce capacity, and to remove the provision requiring the New Mexico Corrections Department to remove all convicted felons from the county facilities.

RGP/mt