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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/10/09  
 SPONSOR Chasey LAST UPDATED 2/24/09 HB 642/aHJC  
 SHORT TITLE AG Correctional Facility Inspections SB \_\_\_\_\_  
 ANALYST Ortiz

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	\$500.0	Non-recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		Unknown	Unknown	Unknown	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Children, Youth and Families Department (CYFD)  
 Corrections Department (NMCD)  
 Attorney General's Office (AGO)  
 Department of Finance and Administration (DFA)

### SUMMARY

#### Synopsis of HJC Amendment

The House Judiciary Committee amendment adds juvenile correctional facilities to its definition of "facilities".

#### Synopsis of Bill

House Bill 642 appropriates \$500 thousand from the general fund to the Attorney General for the purpose of salaries and benefits, furniture, supplies and equipment for additional staff and to provide training in the oversight, monitoring and investigation of adult and juvenile correctional facilities, detention centers and local jails.

The bill adds a correctional facility oversight function to the Attorney General's Office, allowing it complete access to all facilities, prisoners, staff, documents and materials and be allowed to visit facilities without advance notice for the purpose of evaluating the treatment of prisoners.

### **FISCAL IMPLICATIONS**

According to the December 2008 revenue estimate, FY10 recurring revenue will only support a base expenditure level that is \$293 million, or 2.6 percent, less than the FY09 appropriation. All appropriations outside of the general appropriation act will be viewed in this declining revenue context.

The appropriation of \$500 thousand contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2010 shall revert to the general fund.

The AGO explains that while the appropriation provides start-up costs, there would be recurring costs related to personal services and employee benefit and travel.

### **SIGNIFICANT ISSUES**

According to NMCD, there is no evidenced-based proof or studies that demonstrate that such an oversight entity would be effective or meaningful. It also adds that the bill overlooks consistent external oversight of NMCD. The American Correctional Association (ACA) utilizes independent audit teams to audit NMCD prisons on a broad spectrum of standards. ACA sets national standards for the safe and effective operations of prisons, covering such areas as inmate housing, environmental conditions, program and service areas, inmate rights, prisoner rules and discipline, security and control, safety and emergency procedures, food service, sanitation and hygiene, classification, health care, library, counseling and substance abuse programs, mail/telephone/visiting, and administrative segregation. NMCD's current ACA accreditation for its privately and publicly operated prisons indicates its full compliance with those standards. NMCD must continue to submit to ACA independent audits in order to maintain this prestigious ACA accreditation.

Similarly, NMCD is also already independently audited and accredited by the National Commission on Correctional Health Care (NCCHC). NCCHC sets national standards regarding the effective provision of inmate medical and mental health care. NMCD's current NCCHC accreditation for its public and private prisons indicates its full compliance with those standards as well. NMCD must also continue to submit to NCCHC independent audits in order to maintain this prestigious NCCHC accreditation.

NMCD is also subject to oversight from several other independent public entities, including the Department of Health (regarding kitchen food temperature, food service standards, etc.), the State Auditor (who conducts yearly audits of financial transactions, including accounting, accounts payable, purchasing and budget), the State Fire Marshall (who inspects all prisons for compliance with all promulgated fire safety regulations), and the State Personnel Office (whose Quality Assurance Audit Team helps ensure NMCD's compliance with all SPO rules and regulations).

Significantly, NMCD is also overseen by the New Mexico judiciary who hears and rules on lawsuits filed by inmates under New Mexico and federal law challenging their conditions of confinement, the surviving provisions of the Duran Consent Decree prohibiting NMCD from

double-celling inmates in its older prisons and prohibits any inmate from being housed in a dayroom for more than 120 consecutive days and the Inspection of Public Records Act, which requires NMCD to allow inspection and copying of all of its business records subject to certain limited exceptions.

Pursuant to the Prison Rape Elimination Act, the federal government will soon be promulgating a substantive and exhaustive set of standards that NMCD must comply with in order to avoid losing certain federal funding. Additionally, NMCD works with and must respond to inmate or prison-related recommendations made by the Sex Offender Management Board, the New Mexico Sentencing Commission, the Sentencing Commission sentencing reform committee, and the Sentencing Commission legislative committee. NMCD also consistently consults with ACA, the National Institute of Corrections (NIC) and the Association of State Correctional Administrators (ASCA) in order to adopt their best practices for the safe and secure operations of its prisons. It is also important to remember that NMCD Secretary Joe Williams has already given New Mexico Legislators “golden key” access to all public prisons.

### **PERFORMANCE IMPLICATIONS**

NMCD’s position is that the prison oversight created by this bill would unduly or unconstitutionally interfere with NMCD’s statutory duties, the Executive Branch’s powers and duties in general, and specifically the Governor’s authority and discretion in how he ultimately manages NMCD.

### **ADMINISTRATIVE IMPLICATIONS**

CYFD expressed concern that if the appropriation is not included in the final bill it would be responsible for gathering a lot of the information that the bill contemplates being the responsibility of the Attorney General’s Office.

### **OTHER SUBSTANTIVE ISSUES**

According to CYFD, this bill is the result of a task force convened in response to two memorials passed in the 2007 session (HJM37 and HM72). These memorials addressed the need for oversight in the correctional system in New Mexico. Although the primary focus of the memorials was the adult correctional system, the task force members felt that it would be appropriate to include all “correctional” facilities in the Attorney General’s oversight.

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