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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/18/09

SPONSOR Rehm LAST UPDATED \_\_\_\_\_ HB 661

SHORT TITLE Prison Meritorious Deduction Requirements SB \_\_\_\_\_

ANALYST Weber

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

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$0.1 Substantial	\$0.1 Substantial	\$0.1 Substantial	Recurring	General

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 New Mexico Corrections Department (NMCD)  
 Higher Education Department (HED)

### SUMMARY

#### Synopsis of Bill

House Bill 661 amends Section 33-2-34 NMSA 1978, governing eligibility for earned meritorious deductions to allow a prisoner who has not earned a general education diploma (GED) to accumulate, but not earn, available meritorious deductions, until the prisoner has earned a GED or, when appropriate, has successfully completed an approved vocational, substance abuse or mental health program. The bill provides that upon earning the diploma or completing the program, the prisoner will earn both lump-sum and accumulated meritorious deductions.

The HB 661 amendment to Section 33-2-34 NMSA 1978 also provides that except for compelling security reasons, a prisoner shall not be transferred while the prisoner is an active participant in one of the following programs:

- (1) an approved vocational, substance abuse or mental health program;
- (2) a general education diploma program;
- (3) an associate's degree program;
- (4) a bachelor's degree program; or
- (5) a graduate qualification program

The amendment also increases the amount of lump-sum meritorious deductions for earning a general education diploma as well as for engaging in a heroic act from 3 months to 4 months

## **FISCAL IMPLICATIONS**

NMCD notes that the bill will ultimately result in substantial increase in costs.

By preventing prisoners from transferring from their current prison to a different one (which often occurs because higher custody inmates progress into a lower custody or security level), prisoners are going to “stack up” in certain security levels. Many of the Department’s prisoners are classified as level three (medium custody) inmates. As prisoners from levels six through four progress to level three (which happens regularly), soon there will be no level three beds available because prisoners programming in the level three facilities would not be allowed to be transferred to a level two facility. The Department may need to enter into expensive contracts with county jails and other appropriate in-state facilities and potentially out-of-state facilities so that no level three prisoner who is programming (which is the vast majority of them) has to move.

Further, if even a small percentage of prisoners actively participate in vocational and mental health programming but refuse or fail to earn a GED, which is very likely to happen, these prisoners will be forced to serve their full criminal sentences. Most prisoners only serve approximately one half of their sentences due to receiving good time. The Department’s prison population will thus steadily rise, and soon the Department will be forced to seek additional beds both in and outside the state. These beds are expensive, especially the out-of state ones. This prison population increase will be exacerbated by prisoners being unable to transfer to other facilities because of the “no transfer” provision of this bill.

The contract/private prison annual cost of incarcerating an inmate is \$27,761 per year for males. The cost per client to house a female inmate at a privately operated facility is \$31,600 per year.

## **SIGNIFICANT ISSUES**

NMCD notes:

If this bill were to pass, it would invalidate the NMCD's classification risk assessment procedure. The New Mexico Corrections Department currently has a classification system that has been validated by Dr. James Austin, a nationally recognized classification expert. This system was developed in 2000 following a report issued by the Independent Board of Inquiry, a group of national corrections experts who studied the NMCD following serious incidents which occurred at the privately operated facilities.

Risk Assessment and Needs Assessment are both classification issues. However, Risk Assessment and Needs Assessment are based on different factors and should never be mixed. As stated by the U.S. Department of Justice, National Institute of Corrections "Security risk assessments measure the likelihood of a prisoner engaging in high-risk behavior or attempting to escape while incarcerated". They should not include overrides based on program assignments.

As NMCD knows from strategic planning, classification has much to do with the future allocation of prison resources and planning for prison management. If inmates are kept in higher

custody levels based on their program needs without consideration of security needs, NMCD will not only end up with inmates being held in expensive higher security beds at this time, NMCD will also be projecting the need for more expensive higher security beds in the future, meaning that more expensive beds will need to be built in the future to accommodate inmates who are in TC or GED when these inmates should be in less expensive lower security beds where they could receive the same programs.

The New Mexico Corrections Department is proud that its facilities are accredited by the American Correctional Association (ACA). By implementing a procedure that does not place inmates in the least restrictive environment based on security and custody considerations but instead keeps them in higher custody levels based on program needs, the NMCD will be in possible violation of ACA standards.

HED adds the following concerning the value of education.

Earning a high school diploma or higher credential is one of the most effective ways to move into sustainable employment and thus reduce prisoner recidivism. The New Mexico Higher Education Department (NMHED) Adult Basic Education (ABE) Division oversees GED programs around New Mexico that help people develop the skills to enter college, obtain gainful employment, and become productive citizens. NMHED ABE oversees the Adult Basic Education program offered through the Corrections Education Bureau. The ABE program is accountable to NMHED, which has instituted state-level policies, program specific performance measures, and fiscal procedures. According to NMHED data, in FY08, 127 inmates received their GED and 149 entered postsecondary and/or training programs through the Education Bureau.

MW/mt