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FISCAL IMPACT REPORT

ORIGINAL DATE 02/15/09
LAST UPDATED 03/07/09 **HB** _____

SPONSOR Garcia, MJ

SHORT TITLE Pregnant Prisoner Restraints & Supervision **SB** 423/aSPAC/aSJC

ANALYST Weber

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Indeterminate	Indeterminate	Indeterminate	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Corrections Department (NMCD)

New Mexico Association of Counties (NMAC)

SUMMARY

Synopsis of Senate Judiciary Committee Amendment to Senate Bill 423a/SPAC

1. On page 1, lines 18 and 19, strike “—Female Supervision”.
2. On page 1, line 21, strike “not” and after “use” strike the remainder of the line and strike line 22 through “on” and insert in lieu thereof ‘the least restrictive restraints necessary when the facility has actual or constructive knowledge that”.
3. On page 1, line 23, strike “who” and after “pregnancy” insert”. No restraints of any kind shall be used on an inmate who is”.

Items 2 and 3 may not be properly constructed and should be reviewed to ensure the amendment is grammatically correct.

Synopsis of SPAC amendments to Senate Bill 423

1. On page 1, line 12, strike the second semicolon, strike lines 13 and 14 and strike line 15 up to the period. This eliminates the following language in the purpose statement of the act: **REQUIRING FEMALE PERSONNEL TO SUPERVISE PREGNANT WOMEN DURING TRANSPORTATION TO AND FROM AND DURING THEIR STAY AT A MEDICAL FACILITY.**
2. On page 2, strike lines 10 through 13. This eliminates the following language: Only female correctional officers or personnel may supervise a pregnant inmate, or an inmate

recuperating from delivery, during her transportation to and from a medical facility and during her stay at the medical facility.

Synopsis of Original Bill

Senate Bill 423 requires all adult and juvenile correctional facilities, prisons and jails, to not use handcuffs, waist shackles, leg irons or restraints of any kind at any time on an inmate in the second or third trimester of her pregnancy, in labor, delivering her baby or recuperating from the delivery unless there are compelling grounds to believe that the inmate presents an immediate and serious threat of harm to herself, staff or others; or is a substantial flight risk and cannot be reasonably contained by other means. If inmates in labor or who are delivering their babies have to be restrained as allowed above, then only the least restrictive restraints necessary to ensure safety and security shall be used.

The bill also requires that only female correctional officers or personnel supervise a pregnant inmate or an inmate recuperating from delivery during her transportation to and from a medical facility and during her stay at the medical facility.

FISCAL IMPLICATIONS

There are only minimal implications for costs to the state general fund. However, there may be more for local jails that have less information regarding the physical condition of inmates and a smaller staff that may not regularly have an adequate number of female employees available to meet the requirements. This could lead to overtime or legal costs. The exact amount is indeterminate but would contribute to an already difficult financial environment for detention facilities.

SIGNIFICANT ISSUES

The NMCD offers the following comment.

The Department rarely houses pregnant inmates. Further, all female inmates are housed at the Corrections Corporation of America (CCA) owned and operated facility in Grants, New Mexico.

By policy, pregnant inmates are already not restrained, so this portion of the bill does not affect the Department or CCA.

However, there is substantially more male prison staff than female prison staff in the CCA prison (and in the Department's state operated prisons). Female staff may not be on duty or otherwise available if a pregnant inmate needs to be transported to or from a medical facility or needs to stay at the medical facility. In some instances, it may be impossible for CCA to comply with this portion of the bill. CCA may be able to secure an otherwise unavailable female staff member by paying her overtime, but no one can guarantee that the payment of overtime or even a direct order for a female staff member to report to work would result in the availability of a female staff member on any given day. If CCA is found to have violated this law, it may seek reimbursement from the Department or an increase in the fees or rates it is paid under its contract with the Department.

NMAC adds the following:

This will be costly for detention facilities that do not have on duty medical staff or sufficient numbers of female officers. Individuals booked into detention facilities are not subject to a complete physical on arrival. Arrestee pregnancy status may be unknown or unverified. It would be financially burdensome to verify pregnancy status (including trimester) for every female on booking.

There may be no medical reason to limit restraints in the second or third trimester of pregnancy. Appropriate use of restraints contributes to the safe and secure operation of detention facilities.

MW/svb:mt