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FISCAL IMPACT REPORT

ORIGINAL DATE 02/22/13

SPONSOR Maestas LAST UPDATED _____ HB 572

SHORT TITLE Move Probation From Corrections Department SB _____

ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$5,000.0	\$5,000.0	\$10,000.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

HB 572 is similar to SB 145, Community Corrections Panels
 HB 572 is similar to SB 20, Raise Probation Costs
 HB 572 is similar to SB 143, Intensive Probation and Parole Officer Caseload
 HB 572 is similar to SB 522, Court “Adult” Definitions and Reporting

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Corrections Department (NMCD)
 Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorney (AODA)
 Attorney General’s Office (AGO)
 New Mexico Sentencing Commission (NMSC)

SUMMARY

Synopsis of Bill

House Bill 572 proposes that all personnel, money, appropriations, records, furniture, equipment, supplies, and other property that belongs to the probation and parole division of the NMCD in connection with probation services be transferred to the AOC. Additionally, all probation services currently provided by the NMCD will now be provided by the AOC. The bill does this by creating a probation division within the administrative office of the courts; creates and defines the duties of a new chief probation officer within the AOC; changes language within various statutes to remove probation services from the NMCD adding these services to the AOC; creates an intensive supervision program within the new AOC probation division with a maximum caseload of 20 probationers per probation officer; and, creates the “probation division intensive supervision fund” for the maintenance and operation of intensive supervision programs.

FISCAL IMPLICATIONS

The AOC provided the following:

The AOC would need funding in the amount of \$5.0 million for recurring and nonrecurring expenses that will be incurred for transferring probation operations and staff from the corrections department, adult probation and division, and providing additional staff to provide the necessary support and functions to the probation division within the administrative office of the courts. Probation officers within the Judicial Branch are typically paid at a higher rate than those in the Corrections Department and will require additional funding to bring approximately 207 probation officers and other probation personnel consisting of region managers, supervisors, hearing officers and secretaries (149) under the classification and compensation plan of the New Mexico judicial branch.

We anticipate a budget transfer of \$25.8 million and approximately 356 full-time employees to the AOC to provide probation services pursuant to the Probation and Parole Act. In addition, the AOC will administer a new intensive supervision fund and provide support in the areas of human resources, fiscal, procurement, legal, training, certification, and facilities to the probation division and the probation offices dedicated to the district courts in each judicial district. Ten additional employees will be necessary to carry out the work and functions required in HB572. The current location of the AOC will not be sufficient to accommodate the additional FTE.

SIGNIFICANT ISSUES

The NMCD stated that probation and parole officers do not carry caseloads that are designated as probation or parole only; officers instead carry a mix of offenders. This makes it difficult to estimate how many officers or positions would need to be employed by or transferred to the AOC. The NMCD currently supervises approximately 12,913 offenders on probation, 1,581 offenders on parole, and 1,108 offenders on dual supervision (on both probation and parole supervision). If probation was moved to the AOC or judiciary, the NMCD would be left to supervise 1,581 offenders on parole and 1,108 offenders on dual supervision.

The NMCD stated further that the bill cause a situation where there would be a significant conflict of interest to have the judicial branch both convict and sentence offenders to probation, and then also supervise and act as witnesses against these same offenders in probation revocation hearings. Judicial branch probation officers would be prosecution witnesses in any probation revocation hearings, and yet these hearings would be held in front of other judicial branch judges. If this bill passes, whenever judges rule after formal hearing in favor of the district probation officers in resolving disputes, then it appears likely that numerous other disputes would arise regarding whether or not the judge made a proper, impartial, and fair decision or merely sided with what will likely be perceived as “the judge’s employee or subordinate”—the AOC/judicial branch probation officer. Keeping probation services within NMCD avoids this inevitable and substantial controversy and conflict of interest.

Over time, adult probation services moved from the judicial to the executive branch, and is now located in the judicial branch in only one quarter of the states. The trend in adult probation is towards centralization, where authority for a state’s probation activities is placed in a single

statewide administrative body (NIC 1993). Research indicates that three quarters of all states located adult probation in the executive branch, where services and funding were centralized.

ADMINISTRATIVE IMPLICATIONS

HB572 may present administrative difficulties and inefficiencies due to offenders that are dual supervised serving on both probation and parole.

The NMCD stated that current law requires when defendants are required to serve a probation period following incarceration, the court's imposed probation conditions must be deemed as additional conditions of parole. Offender violations, issues and concerns may be miscommunicated or not communicated at all, to the detriment of public safety. Such time-consuming communication would not be needed if you had the same entity (NMCD) supervising all offenders. Further, it may be more effective with one agency (NMCD) supervising all probation and parole offenders for a variety of public safety and other reasons: only one agency has to conduct NCIC warrant checks on the offenders and to obtain the permission of the federal government to do so; directly conflicting parole and probation conditions are more likely to be discovered and corrected more quickly if only one agency is involved; only one agency would have to deal with and meet the numerous requirements of the Interstate Compact; and, outside law enforcement agencies will only have to call and coordinate with one agency and would not have to figure out if their suspect is on probation or parole before contacting the proper agency or entity.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

If SB522 were to pass it would likely result in a substantial number of misdemeanor offenders being sent to NMCD (or now under this bill to AOC) by the magistrate and metropolitan courts for probation supervision. The cost per client in Probation and Parole for a standard supervision program is \$2,227 per year. If the AOC had to provide probation supervision to a possible 21,803 additional misdemeanor offenders, the yearly cost could be large.

OTHER SUBSTANTIVE ISSUES

The AOC provided the following:

Those who support placement of probation services in the judicial branch state the following advantages (Nelson, Ohmart, and Harlow, 1978):

- Probation is more responsive to the courts, to which it provides services, when administered by the judiciary.
- The relationship of probation staff to the courts creates an automatic feedback mechanism on the effectiveness of various dispositions.
- Courts will have greater awareness of the resources needed by the probation agency.
- Judges will have greater confidence in an agency for which they are responsible, allowing probation staff more discretion than they would allow members of an outside agency.
- If probation is administered on a statewide basis, it is usually incorporated into a

department of corrections, and under such circumstances, probation services might be assigned a lower priority than they would have as part of the judicial branch.

Those who oppose the placement of probation in the judiciary note the following disadvantages:

- Judges, trained in law and not administration, are not equipped to administer probation services.
- Under judicial control, services to persons on probation may receive a lower priority than services to the judge (e.g., presentence investigations).
- Probation staff may be assigned duties unrelated to probation.
- The courts are adjudicatory and regulative; they are not service-oriented bodies.

Placement in the executive branch has these features to recommend it:

- All other human services agencies are in the executive branch.
- All other corrections subsystems are located in the executive branch.
- With executive branch placement, program budgeting can be better coordinated, and an increased ability to negotiate fully in the resource allocation process becomes possible.
- A coordinated continuum of services to offenders and better use of probation personnel are facilitated.

ALTERNATIVES

Section 31-21-27 NMSA 1978 is amended to state that the probation division's statutory authority is not limited by this section; yet this section only deals with "inmates" in the NMCD. Since probationers are not included in this section, there is no need to make this statement about the probation division.

EC/blm