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FISCAL IMPACT REPORT

ORIGINAL DATE 02/19/13

SPONSOR Cervantes LAST UPDATED _____ HB _____

SHORT TITLE Criminal Penalty Bill Fiscal Impact Reports SB 450

ANALYST Chenier

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		
	\$176.5	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Sentencing Commission (NMSC)
 Department of Finance and Administration (DFA)
 New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of Bill

Senate Bill 450 (SB 450) proposes to appropriate \$176.5 thousand from the General Fund to the New Mexico Sentencing Commission (NMSC) to cover expenses related to fiscal impact statements in personal and other costs. Unexpended balances revert to the general fund.

SB 450 requires the NMSC to prepare fiscal impact statements for any legislation that will create a new crime or repeals an existing crime for which imprisonment is authorized, increases or decreases the period of imprisonment authorized for an existing crime, imposes or removes mandatory minimum terms of imprisonment or modifies the law governing release of inmates in such a way that the time served in prison will increase or decrease. The fiscal impact statements will reflect projected increases in annual operating costs to the New Mexico Corrections Department (NMCD) including details related to increases or decreases in the inmate population.

The bill requires the NMCD to annually provide the NMSC with the average operating costs per inmate and the number of inmates in adult correctional facilities. The bill also requires the NMCD to annually provide the NMSC with admission and release data for all inmates in adult correctional facilities. The Judiciary is also required to annually provide the NMSC with requested data necessary to prepare fiscal impact statements.

The Bill would create the non-reverting Criminal Justice Special Fund with no immediate appropriation. Future appropriations would come from a requirement that the legislature, in bills that are covered by SB 450, include appropriations equal to amounts indicated in the NMSC fiscal impact statements. Furthermore, these appropriations are to be made from the general fund to the proposed criminal justice special fund.

FISCAL IMPLICATIONS

The appropriation of \$176.5 thousand contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY14 shall revert to the general fund.

SB 450 would create the criminal justice special fund in the state treasury, which is a non-reverting fund, consisting of appropriations, gifts, grants, donations, and bequests made to the fund. Money will be appropriated from the general fund to the criminal justice special fund at levels specified by the NMSC within the commission's fiscal impact statements. Money in the fund will be subject to appropriations by the legislature for criminal justice purposes.

SIGNIFICANT ISSUES

The NMSC provided the following:

The NMSC is well placed to measure the fiscal impact of criminal justice bills on the NMCD, due to its association with university research scientists and access to needed data. The NMSC currently produces and publishes inmate population projections for the NMCD.

A bill similar to SB 450 passed both chambers of the Legislature in 2007 and was subsequently pocket vetoed by Governor Richardson. (See HB 296, sponsored by Representative Joseph Cervantes).

In 2008, Senate Memorial 47 instructed the Legislative Finance Committee, the Department of Finance and Administration and the NMSC to meet and discuss the methodology, data and resources needed to produce the fiscal impact statements contemplated in the 2007 legislation. A written report that details those meetings is attached to this FIR. (See report titled "Measuring the Fiscal Impact of Criminal Justice Legislation of the New Mexico Corrections Department: A Response to Senate Memorial 47" (July 2008).

The NMCD provided the following:

The NMCD currently provides the data requested in the bill to the NMSC for annual inmate population projections and quarterly updates. The NMSC and its limited staff already analyze bills introduced during the legislative session. This bill would expand the NMSC's current work by requiring it to provide additional detail on relevant bills' projected fiscal impact to the NMCD over a six year period. If the NMSC were able to provide this type of analysis, it would be very beneficial to the NMCD in helping it more appropriately plan for overall population growth and growth in particular classifications of inmates.

CONFLICT

This bill may be in conflict with Article III of the New Mexico Constitution in that it requires the legislature to make appropriations at levels specified by an executive branch agency.

This bill may be in conflict with legislative procedure in that it requires appropriations to be attached to legislation that may or may not have been reviewed by the NMSC at the time of introduction.

The bill may not take into consideration costs that may be able to be absorbed due to fund balances and other sources of revenue within the NMCD's budget.

OTHER SIGNIFICANT ISSUES

The bill creates a process for appropriations for criminal penalties that is contrary to the current appropriation process. It would require the legislature to appropriate an amount that is calculated by an executive agency (NMCS) to the Criminal Justice Special Fund and, then, to re-appropriate the amount to agencies to be used in their operating budgets.

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Summary

- During the most recent 60 day Legislative Session (2007), the NMSC tracked approximately 200 criminal justice bills.
- Approximately 50% of those bills would have had some effect on the state prison population.
- If provided with appropriate resources, the NMSC can provide timely and accurate assessments of the fiscal impact of criminal justice legislation on the New Mexico Corrections Department.
- NMSC also believes that with the infrastructure and data analysis anticipated by this memorial, it could assist the Corrections department and its contractors in refining the process of projecting state inmate populations.

Measuring the Fiscal Impact of Criminal Justice Legislation on the New Mexico Corrections Department: *A Response to Senate Memorial 47*

Introduction

Senate Memorial 47 instructed the Legislative Finance Committee (LFC), the Department of Finance and Administration (DFA) and the NM Sentencing Commission (NMSC or Commission) to collaborate and look at the feasibility of devising a method of measuring the fiscal impact of legislation that increases or decreases criminal penalties, creates new crimes, imposes or removes mandatory minimum terms or imprisonment, requires specific technology for monitoring probationers or parolees or modifies the law in such a way that the time served in prison or on probation or parole increases or decreases.

The group was asked to determine what computer models, technology, research, data and personnel are necessary to enable one of those agencies, likely the Sentencing Commission, to generate fiscal impact reports in a timely manner on criminal justice legislation. (Senate Memorial 47 is attached as Appendix A)

THE PROCESS

In accordance with SM 47, NMSC staff met with DFA and LFC staff on March 11, 2008 to discuss the initial steps needed to respond to the Memorial. The group met a second time on April 22, 2008. Since both New Mexico Corrections Department (NMCD) and Judiciary data is essential to carry out the analysis contemplated by the Memorial, the second meeting also included James Brewster, General Council for the NMCD and Steve Prisoc, Chief Information Officer for the Judiciary.

In preparation for and during the April 22 meeting, NMSC staff presented:

1. A statement of the Corrections and Judicial data that would be required to effectively analysis prison impacts (see table below)
2. A summary of available software products which could assist in this analysis
3. A prospective budget to commence such an analysis (see Appendix B)
4. A sample fiscal analysis completed by the Kansas Sentencing Commission (see Appendix C)

GENERAL FINDINGS:

- During the most recent 30 day Legislative Session (2008), the NMSC tracked and reported on 90 criminal justice bills.
- During the most recent 60 day Legislative Session (2007), the NMSC tracked approximately 200 criminal justice bills.
- Approximately 50% of those bills would have had some effect on the state prison population.
- AOC and NMCD representatives indicated a willingness to provide to the NMSC the data needed to prepare fiscal analyses.
- Two states – Virginia and Kansas – have laws which require fiscal analysis of criminal justice bills. A sample of an analysis done by the Kansas Sentencing Commission is found in Appendix C.

- The Virginia and Kansas sentencing commissions, who produce the fiscal analyses, are among the nation’s most mature sentencing commissions. Virginia, for example, has 4 FTE dedicated solely to fiscal analysis of criminal justice bills. The lead analyst is a PhD criminologist.

OTHER CONSIDERATIONS

Cost vs. Benefit of This Method vs. Current Fiscal Impact Report (FIR).

At the April 22 meeting, it was asked what benefit the state might derive from doing the level of fiscal analysis contemplated in this Senate Memorial. The current FIR process requires agencies to make “on the fly” estimates of the fiscal impact of legislation on their agencies. These estimates are often not specific in terms of fiscal impact. In some cases, such as a when a new crime is being created by a bill, it would be difficult to accurately assess an impact on the prison system.

Because changes in criminal laws can have a significant and recurring impact on prison costs, that the work contemplated in this bill could allow the state to either save substantial incarceration costs or at least make important public safety decisions with a more accurate picture of the fiscal impact on the Corrections Department.

NMSC also believes that with the infrastructure and data analysis anticipated by this memorial, it could assist the Corrections department and its contractors in improving the process of projecting prison populations.

Impact of Criminal Justice Legislation on Other State Agencies, Branches and Jurisdictions.

The Sentencing Commission was asked if it could also provide fiscal impact analysis of criminal justice legislation on other state agencies and entities, such as police, county jails, district attorneys, public defenders, and courts. Sentencing Commission staff feel confident that, if provided with the data referred to earlier in this report, it can accurately deliver fiscal impacts of criminal justice legislation to the Corrections Department. The State of Virginia began by providing fiscal impacts to only the state prison system; over a number of years it expanded its fiscal impact analyses to include impacts to jails and juvenile detention facilities.

The impacts of changes to criminal law are much less predictable on prosecutors, defenders and the courts. For example, a law which adds days or months to the sentence for felony DWI could result in more trials, but the actual impact would not be knowable until the law was in place. The Workload Measurement Study conducted and updated by the Sentencing Commission is a tool better suited to measure the resource needs of the Judiciary, District Attorneys and Public Defender Department.

Data Required from State Agencies.

The chart below depicts the Sentencing Commission’s preliminary review of what data would be needed to begin to meet the requirements of SM 47. The following includes the data source, the type of data, and limited comments concerning the data.

New Mexico Corrections Department data would allow NMSC to analyze impacts to the prison population and probation and parole population. Administrative Office of the Courts data would allow the NMSC to analyze

Data Source	Data	Comments
New Mexico Corrections Department (NMCD)	Prison Data Confined Admissions Releases	The NMSC has been provided three years of data (CY 2004, 2005, 2006) that consists of all offenders admitted and released during each period and offenders confined on a given day during each of the listed calendar years.
New Mexico Corrections Department	Probation Data Confined Admissions Releases	The NMSC currently does not possess these data. These data would include information on offenders admitted and released by calendar year and confined on a given day during each calendar year.
Administrative Office of the Courts (AOC)	Court Data Filed Snapshot Disposition	The NMSC has been provided 8 years (FY 2000 – 2007) of disposed felony cases. The NMSC has been given permission to request any court data including magistrate and district court data and filing dates. Importantly, current and historical AOC data does not include Bernalillo County Metropolitan Court (BCMC) data because this court maintains a separate system. Also, the Second Judicial District Court (SJDC) does not use the sentencing module in the AOC’s system. NMSC would need to separately obtain automated data from the BCMC and manually sample hard copy records for the SJDC.

impacts to individuals sentenced to county detention facilities. Court information may also supplement or replace Corrections Department data in some analyses. This may be possible because the court information includes complete sentencing information.

NMSC has access to limited county detention facility information that is collected annually through a survey conducted by the NMSC. This information includes a count of individuals in detention by facility annually on June 30th and includes a count of parole violators, probation violators, individuals sentenced awaiting transport to a state facility, and felons sentenced to a county facility. Approximately 30% of the data is not verified. This information may be of limited use.

The Administrative Office of the Courts agreed to provide NMSC with or assist NMSC in obtaining access to Bernalillo County Metropolitan Court data and Second Judicial District Court data.

Summary

NMSC staff believes it could provide timely and accurate assessments of the fiscal impact of substantive criminal justice bills on the Corrections Department if it is given the following resources:

- Ready access to the required NMCD and Court data
- Recurring funding for 2.00 FTE (a 1.00 FTE research scientist, a 0.15 FTE senior research scientist, a 0.50 FTE analyst/programmer and a 0.25 FTE administrative assistant)
- Recurring funding for undergraduate research assistants totaling 1,000 hours
- See Appendix B regarding projected costs.

Appendix A - Senate Memorial 47

A MEMORIAL REQUESTING THE NEW MEXICO SENTENCING COMMISSION, THE LEGISLATIVE FINANCE COMMITTEE AND THE DEPARTMENT OF FINANCE AND ADMINISTRATION TO COLLABORATE ON DEVELOPING A METHOD FOR MEASURING THE FISCAL IMPACT OF LEGISLATION THAT MODIFIES CRIMINAL PENALTIES.

WHEREAS, appropriations to the corrections department approached three hundred million dollars (\$300,000,000) in fiscal year 2008, representing an increase of more than eleven percent from the previous year; and

WHEREAS, since 1980, the number of adult prisoners in New Mexico has increased by more than four hundred forty percent, and the corrections department projects an increase of another thirty-seven percent by the year 2016, requiring bed space for approximately nine thousand three hundred sixty-five inmates; and

WHEREAS, the number of adult prisons has increased since 1980 from one facility to twelve facilities, with a thirteenth facility under construction to house six hundred prisoners this summer; and

WHEREAS, despite additional facilities in Clayton, Springer and Albuquerque, the corrections department may face overcrowding sometime between 2009 and 2011; and

WHEREAS, the case loads of probation and parole officers continue to increase, compromising public safety and offender rehabilitation and reentry; and

WHEREAS, in 2007, a law was enacted requiring real-time global positioning monitoring of all sex offenders on parole, which will cost millions of dollars in technology and additional personnel, and, although some costs were provided in a narrative, no fiscal impact was estimated for that legislation; and

WHEREAS, fiscal impact reports generated during a legislative session do not account for the fiscal impact of bills that increase or decrease criminal penalties, create new crimes, impose or remove mandatory minimum terms of imprisonment, require specific technology for monitoring probationers or parolees or modify the law in such a way that the time served in prison or on probation or parole increases or decreases; and

WHEREAS, there are computer models, research and data available that can assist in forecasting the fiscal impact of such legislation;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NEW MEXICO that the legislative finance committee, the department of finance and administration and the New Mexico sentencing commission be requested to collaborate on establishing a method, if feasible, to measure the fiscal impact of legislation that increases or decreases criminal penalties, creates new crimes, imposes or removes mandatory minimum terms of imprisonment, requires specific technology for monitoring probationers or parolees or modifies the law in such a way that the time served in prison or on probation or parole increases or decreases; and

BE IT FURTHER RESOLVED that the legislative finance committee, the department of finance and administration and the New Mexico sentencing commission determine what computer models, technology, research, data and personnel are necessary to enable the legislative finance committee to generate fiscal impact reports in a timely manner on legislation that affects criminal penalties; and

BE IT FURTHER RESOLVED that the legislative finance committee, the department of finance and administration and the New Mexico sentencing commission report the results of their study to the appropriate interim legislative committee during the 2008 interim; and

BE IT FURTHER RESOLVED that copies of this memorial be transmitted to the chair of the legislative finance committee, the chair of the New Mexico sentencing commission, the secretary of finance and administration, the director of the legislative finance committee and the executive director of the New Mexico sentencing commission.

Appendix B-NMSC Projected Costs

A. Personnel		Budget
Name/Position	Computation	Cost
Senior Research Scientist	0.15 FTE @ \$88167.00 for 1 year	\$13,225
Research Scientist 3	1.00 FTE @ \$56340.00 for 1 year	\$56,340
Analyst/Programmer 3	0.50 FTE @ \$21.98 an hour for 1 year	\$22,859
Administrative Assistant 3	0.25 FTE @ \$14.73 an hour for 1 year	\$7,660
Undergraduate Research Assistants	1,000 hours @ \$8.00 an hour	\$8,000
Subtotal		\$108,084
B. Fringe Benefits		
Name/Position	Computation	Cost
Senior Research Scientist - Paul Guerin	36.0%	\$4,761
Research Scientist 3	36.0%	\$20,282
Analyst/Programmer 3	36.0%	\$8,229
Administrative Assistant 3	36.0%	\$2,757
Undergraduate Research Assistants	1.0%	\$80
Subtotal		\$36,110
C. Travel		
Travel to meetings outside Albuquerque	mileage and per-diem	\$2,000
Travel to training and cost of training for selected software	2 staff @\$1,500 per staff	\$3,000
Subtotal		\$5,000
D. Supplies		
Supply Items	Computation	Cost
Consumable Supplies and Copying	\$100 a month for 12 months	\$1,200
Subtotal		\$1,200
E. Other Costs		
Description	Computation	Cost
2 computers and monitors	\$2,000 per system	\$4,000
Cost of software for simulations	\$1,995 per copy x 3	\$5,985
Subtotal		\$9,985
F. Indirect Costs		
Description	Computation	Cost
Total Direct Costs	\$160,379	
Modified Total Direct Costs	\$160,379	
F+A Costs (F+A=Facilities and Administration)	10%	\$16,038
Total Personnel & Fringe Benefits		\$144,194
Total Non-Personnel Costs		\$32,223
Total Project Cost		\$176,417

Appendix C - Sample Fiscal Impact Report from Kansas

This bill provides that a first conviction of stalking as described in K.S.A. 21-3438(a)(3) is a severity level 9, person felony; a second or subsequent conviction of stalking as described in subsection (a)(3) is a severity level 5, person felony.

This bill establishes a presumption to have acted intentionally as to any like future act targeted at the specific person or persons named in a protective order as defined by K.S.A. 21-3843, and amendments thereto, or as to any person after having been advised by a uniformed law enforcement officer that such person's actions were in violation of K.S.A. 21-3438, and places the burden of proof of any exception, excuse or exemption upon the defendant.

KEY ASSUMPTIONS

- The target population in this bill includes any offender who commits the crime of stalking.
 - A first conviction of stalking as described in K.S.A. 21-3438(a)(1) is a class A person misdemeanor; a second or subsequent conviction of stalking as described in subsection (a)(1) is a severity level 7, person felony.
 - A first conviction of stalking as described in K.S.A. 21-3438(a)(2) is a class A person misdemeanor; a second or subsequent conviction of stalking as described in subsection (a)(2) is a severity level 5, person felony.
 - A first conviction of stalking as described in K.S.A. 21-3438(a)(3) is a severity level 9, person felony; a second or subsequent conviction of stalking as described in subsection (a)(3) is a severity level 5, person felony.
- Projected admission to prison for the target offenders is assumed to increase by an annual average of 0.75%, which is the same percentage used in relation to the baseline prison population forecast produced in August 2007 by the Kansas Sentencing Commission.
- The percentage of sentence served in prison is assumed to be 80% less jail credit and good time for the theft offenders whose severity level is 7 to 10 and 85% for the theft offenders whose severity level is 5, which is consistent with the projections released in August 2007.
- It is assumed that the effective date is on July 1, 2008.

FINDINGS

In FY 2007, 11 offenders were convicted of the crime of stalking. Of this number, 2 were sentenced to prison and 9 were sentenced to probation. Of the prison sentences, 1 offender received 10 months and 1 offender received 15 months. Of the 11 offenders, 5 were convicted of stalking as described in the current K.S.A. 21-3438(a), stalking in all other cases and 6 were convicted of stalking as described in the current K.S.A. 21-3438(b), stalking when victim has a temporary restrain order. Their severity levels and criminal history categories are as follows:

IMPACT ASSESSMENT

Current Policy: If current policy remains unchanged, 2 prison beds would be needed during the forecast period from FY 2008 to FY 2018.

- Impact: If:
 1. 1 offender with criminal history category B who is convicted of stalking as described in the current K.S.A. 21-3438(a), stalking in all other cases is sentenced to prison at severity level 7 with a length of sentence of 29 months and 4 offenders convicted of stalking as described in the current K.S.A. 21-3438(a) are sentenced as class A person misdemeanor and
 2. 1 offender with criminal history category B and 1 offender with criminal history category C who were convicted of stalking as described in the current K.S.A. 21-3438(b), stalking when victim has a temporary restrain order are sentenced to prison at severity level 5 with a length of sentence of 120 months and 57 months respectively and 4 offenders are sentenced to probation at severity level 9, .. by FY 2009, 3 prison beds would be needed and .. by FY 2018, 14 prison beds would be needed.

SUMMARY

- Impact on Prison Admissions: This bill would result in 1 additional prison admission during the forecast period from FY 2008 to FY 2018.
- Impact on Prison Beds: This bill would result in 1 additional prison bed needed by the end of FY 2009 and 12 additional prison bed needed by the end of FY 2018.
- Impact on the Workload of the Commission: This bill would result in a reduction of the workload of the Commission by 4 journal entries each year from FY 2008 to FY 2018.