



The amendment also makes some changes to the language requiring NMCD to establish a method of independent review of post-traumatic stress disorder diagnosis (PTSD) to confirm eligibility for compensation, by changing that language to require that NMCD establish a method of independent review of a rebuttable presumption of a post-traumatic stress disorder diagnosis to confirm eligibility for compensation, but only if the secretary determines review is necessary. This means that the law enforcement officers (or their estates) eligible for compensation will be presumed to have PTSD unless proven otherwise.

Finally the amendment removes the language in the original bill requiring that a qualifying correctional officer or his estate have the \$100.0 thousand payment reduced by the amount the officer previously received in the way of compensation for the officer's involvement in the riot. This change may result in higher total compensation to be paid out and may mean that the \$1.5 million appropriation will be insufficient to meet the requirements of the bill. It also means that any officers who may have received prior compensation through individual action will have received a higher total compensation than those who did not, raising issues of fairness.

AGO analysis summarizes the significant impact of the amendments:

The Judiciary Committee amendments to House Bill 435 effectively shift the burden of establishing a diagnosis of PTSD from the claimant to a rebuttable presumption reviewable by the secretary of corrections.

Generally in administrative law, a claimant has the burden of establishing eligibility for compensation. It is unclear under the amendments to Bill 435, whether the claimant need establish anything to receive compensation. In fact the only requirements placed on the eligible parties are that they provide information necessary to establish their identity, presence at the riot and details of previous compensation. The claimant need not establish they suffered PTSD. In fact, a claimant possesses a rebuttable presumption that they suffered PTSD if they were involved in the 1980 penitentiary riot. This presumption need not even be reviewed, unless the secretary of corrections "determines a review is necessary." In practice, these amendments make virtually every corrections officer present at the riot eligible for a \$100.0 payment.

Furthermore, the amendments by the Judiciary Committee eliminate a clause in subsection C that appeared to offset damages. This clause required a reduction of the \$100,000 payment by whatever compensation the claimant had already received relating to their experiences in the riot. By eliminating this clause, it appears that all claimants will receive \$100,000 regardless whether they were compensated in the past.

### Synopsis of Original Bill

House Bill 435 provides a statutory process to provide \$100,000 in compensation to each Penitentiary of New Mexico correctional officer who is suffering from, or has suffered from, a post-traumatic stress disorder as a result of their physical presence and involvement in the February 1980 penitentiary riot from February 2-4<sup>th</sup>.

The bill requires the NMCD to identify relevant officers or their personal representatives (if the officer is now deceased) who were present at the riot; give notice to the officers and representatives of their right to make a claim; and provide and administer an application and

evaluation process to determine whether the officers are suffering or previously suffered from a post-traumatic stress disorder as a result of the officer's involvement in the riot.

The department must identify and notify all potential candidates/applicants for compensation before December 31, 2015, so that all candidates can submit their applications for compensation before or on the deadline of December 31, 2015. The application process developed by the NMCD must require the applicant to submit proof of identity, details of the officer's involvement in the riot, and a certified diagnosis from a licensed health care provider verifying that the stress disorder resulted from the riot. NMCD's application process must also establish a method of independent review of the stress disorder diagnosis to confirm eligibility.

NMCD must provide an informal hearing for each applicant (or personal representative), and allow the candidate or the representative to be represented by counsel or other person, if the Secretary of Corrections determines that he needs more information from the applicant before he can make a decision about whether the applicant is entitled to \$100,000. Each approved applicant must receive a \$100,000 payment or, if the officer or his estate received previous compensation related to the riot, the \$100,000 must be reduced by that amount. Similarly, no payment can be made if the previous payment to the officer or his estate was more than \$100,000. Finally, the approved applicant must sign a waiver and release from further claims before he or she can receive any payment.

### **FISCAL IMPLICATIONS**

The appropriation of \$1.5 million contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2016 shall revert to the general fund.

Twelve corrections officers were either held hostage, assaulted or injured by inmates during the 1980 prison riot. Others reported for work just following the incident. HB 435 provides that no more than \$100.0 thousand in the appropriation may be used for administrative costs related to the bill. This would leave \$1.4 million for compensation, which is limited to no more than \$100.0 thousand per officer who is or was affected by PTSD as a result of the riot.

NMCD analysis states:

Pending further investigation, it is unknown whether the \$1.5 million dollar appropriation will be sufficient for the NMCD to be able to pay out all submitted claims or to properly review and administer the claims.

The NMCD may have to hire additional staff with relevant expertise to properly review and process the claims, and such expertise may include a mental health background and will likely require a substantial amount of compensation. Therefore, at this point the fiscal impact of this bill on the NMCD is unknown.

### **SIGNIFICANT ISSUES**

This is an account of the 1980 prison riot that occurred in 1980 at the State Penitentiary (also known as "Old Main") south of Santa Fe, taken from the NMCD website.

In 1956, the New Mexico Corrections Department opened the main, which was the only state prison at the time. It was built to hold 900 men. By the late 1970's the facility was overcrowded, underfunded and on a path disaster. On February 2, 1980, inmates attacked corrections officers during the overnight count. Within minutes inmates had taken control of several cell blocks, dormitories and most importantly the prison control center.

12 officers, some of which had only worked for NMCD for a matter of weeks, were held hostage. Some were brutally beaten, stabbed and sexually assaulted. Others were protected and escaped the violence with the help of sympathetic inmates. The officers weren't the only victims in the riot, which spanned 36 hours. Offenders, having access to the whole facility, found power tools left behind from an on-going construction project. They used those tools to mutilate, torture and eventually murder 33 inmates.

[http://corrections.state.nm.us/pio/old\\_main.html](http://corrections.state.nm.us/pio/old_main.html)

NMCD analysis states:

The 1980 riot at the Penitentiary of New Mexico, regarded as one of the worst riots in American history, had a deep impact on those involved, the NMCD and our New Mexican communities. From the inmates in NMCD custody at PNM through this event, to the Correctional Officers and Penitentiary staff that remained locked up and doing their best to keep themselves and others safe in the facility throughout these horrific days, and finally to the national guard members and other law enforcement who stepped forward and responded to the call for support in this crisis--many of those that were present at the penitentiary during the riots have expressed how the events shook them, and left memories they will carry throughout a lifetime.

The NMCD deeply appreciates the intentions of this bill and related appropriations. The Secretary of Corrections recognizes that should this legislation pass such an effort requires a great deal of respect, professionalism and expertise.

Recognizing that those who have survived trauma and live with Post Traumatic Stress Disorder may need access to a wide range of behavioral health care and services, the NMCD takes the intention of this legislation very seriously.

NMCD analysis also raises the issue of expertise, potential conflict of interest, and need to independence in the proceedings:

The bill essentially requires the Secretary of Corrections to act as an administrative law judge and requires him to consider complex mental health and medical information before rendering a decision regarding whether or not to grant the requesting former correctional officers' claims for compensation. It requires him to determine if the officer's post-traumatic stress disorder resulted from the riot or from some other cause, or even if the officer is actually suffering from the disorder. While appreciating the intentions of this bill, NMCD and the Secretary of Corrections do not have this type of training or expertise needed to perform this important but specialized type of work.

The bill requires the NMCD to establish a method of independent review of the post-traumatic stress disorder diagnoses to confirm the former officers' eligibility for

compensation, and it is very important to the NMCD that these decisions remain independent and impartial. Having an entity or person other than the NMCD designated to engage in the design review and processing of the former correctional officers' claims for compensation, more specifically a person or entity which has mental health/medical expertise and no ties or loyalty to the NMCD, may be an approach better suited to meet the intentions of this bill.

### **ADMINISTRATIVE IMPLICATIONS**

NMCD advises that, given the sensitive nature of this bill, it will be administratively very difficult for the NMCD to identify and notify all potential applicants (including personal representatives) in sufficient time to give those applicants sufficient time to submit their applications by the mandated December 31, 2015 deadline.

To meet the intentions of this bill, the NMCD would need to bring together a relevant team of experts who could develop and implement an application and subsequent process to compile and review the information of those working and present during the riot. It is unlikely that it would be able to absorb this administrative impact with existing staff levels given the December 31, 2015 deadline.

### **OTHER SUBSTANTIVE ISSUES**

An article in the [Albuquerque Journal](#) from February 1, 2013 includes an interview with Marcella Armijo, a correctional officer who was not taken hostage but who reported to work on the Sunday February 3, 1980 to clean up the penitentiary after the riot ended. She suffers from post-traumatic stress syndrome. See: <http://www.abqjournal.com/165219/news/riot-photos-still-haunt-female-guard.html>

### **ALTERNATIVES**

The intentions of the bill may be better met by having an entity or person other than the NMCD designated to engage in the review and processing of the former correctional officers' claims for compensation, more specifically a person or entity with mental health/medical expertise and no ties or loyalty to the NMCD. This may be a reasonable approach to avoid the inherent conflict of interest created if the NMCD has to determine whether former NMCD employees are entitled to the compensation. A possibility would be to have the case reviewed by Worker's Compensation judges for a determination.