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## FISCAL IMPACT REPORT

SPONSOR Papen ORIGINAL DATE 2/12/2016  
LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Corrections Use of Isolated Confinement SB 140

ANALYST Rogers

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		
\$0.0	\$100.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 193

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Finance and Administration (DFA)  
Children, Youth, and Families Department (CFYD)  
New Mexico Corrections Department (NMCD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 140 creates the Isolated Confinement Act and defines isolated confinement as the confinement of an inmate in a cell or similar living quarters in a correctional facility for twenty two or more hours each day that severely restricts the inmate's activity, movement and social interaction regardless of if the confinement is instituted pursuant to disciplinary, administrative, inmate classification or other action.

The Act prohibits the use of isolated confinement for inmates who are younger than 18 years old and for inmates who have a serious mental illness.

Beginning on July 1, 2016, the Act requires every correctional facility to submit a report regarding its inmates in isolated segregation every three months to the county commission where the facility is located and to the legislature. The report must include the name and age of every inmate placed in isolated confinement during the previous three months including those in confinement at the time the report is submitted, the reason isolated confinement was used on the

inmate, and the number of days each inmate spent in isolated confinement during the previous three months.

Finally, the Act requires that, beginning on July 1, 2016 and every three months thereafter, every private correctional facility must submit to the county commission of the county in which the facility is located a report of all monetary settlements which were paid to inmates or former inmates as a result of lawsuits filed by the inmates or former inmates against the private correctional facility or its employees. The report is not limited to isolated confinement-related lawsuit settlements, and appears to include any and all lawsuit settlements.

The bill appropriates \$25 thousand from the general fund to the NMCD for expenditure in fiscal year 2017 for the preparation of reports required by the Act. Any unexpended or unencumbered balance remaining at the end of fiscal year 2017 must revert to the general fund.

The bill also appropriates \$75 thousand from the general fund to the local government division of DFA for expenditure in fiscal year 2017 for the preparation of reports required by the Act. Any unexpended or unencumbered balance remaining at the end of fiscal year 2017 must revert to the general fund.

### **FISCAL IMPLICATIONS**

The bill appropriates \$25 thousand to NMCD and \$75 thousand to DFA for expenditure in fiscal year 2017 for the preparation of reports required by the Act.

According to NMCD, the bill as written will have little or no fiscal or operational impact, as the department for the most part already does not use isolated confinement as defined in this bill. If needed, the department could slightly modify its practices and policies to ensure that it does not engage in isolated confinement in a manner not authorized or allowed by this bill.

There is no fiscal impact to CYFD.

There may be a fiscal impact if facilities have to develop new programs or methods of caring for dangerous inmates that normally would be placed in solitary confinement. There is no guidance or alternative provided in this bill as to how these inmates would be handled by the correctional facility in which they are incarcerated if some type of confinement or action were otherwise required.

### **SIGNIFICANT ISSUES**

While NMCD is in a position where it already complies with or could shortly comply with the bill's limitations on the use of what it calls isolated confinement, NMCD reports that the vast majority of county jails throughout this state lack the staff, resources and infrastructure to comply with the bill's limitations on the use of isolated confinement. The financial impact on the counties would be substantial if this bill were to be enacted. While NMCD understands that the counties have made concerted efforts over the past year to address its use of this type of confinement, most county jails would not be able to comply with this bill at this time.

NMCD states that the bill's requirement that NMCD submit a quarterly list of its offenders in isolated confinement to the county commission of the county in which the correctional facility is

located is not logical. The county commission has no authority or jurisdiction over the NMCD, even if NMCD were to have any names on such a list or ever use isolated confinement in a manner authorized by this bill.

Similarly, NMCD states that the requirement for private facilities to provide lawsuit settlement-related information to the county commission and legislature is not logical, as this has nothing to do with isolated confinement and the bill does not limit the settlement numbers to only lawsuits involving isolated confinement. Further, since the private facilities generally already follow NMCD policies when housing NMCD inmates, private facilities will not be utilizing isolated confinement in a manner not authorized by this bill.

CYFD Juvenile Justice Services (JJS) does not operate segregation or isolation units. As a matter of practice, juveniles in CYFD custody are not placed in long-term confinement. However, there may be limited instances where clients may be secured in their rooms for a period to exceed twenty-two (22) hours for reasons that are not addressed in this bill, such as quarantine or other medical circumstances that might require client segregation.

CFYD points out that there are separate chapters in statute for adult corrections and juvenile delinquency (the Children's Code) but this bill addresses both juveniles and adults.

This bill specifically prohibits isolated confinement for an inmate that is younger than eighteen years of age. However there are clients in CYFD secure facilities that are 18, 19 and 20 years of age. Programming requirements are the same for all clients and therefore having different standards for different age groups could be problematic.

CYFD states that that isolated clients can reduce tension in the general population. It is conceivable that there could be an increase in client altercations as a result of the bill.

DFA stated that while the bill specifically prohibits placing an inmate who has a mental illness or is eighteen years or younger in isolated confinement, there is no guidance/alternative provided in this bill as to how these inmates will be handled by the correctional facility in which they are incarcerated if such type of confinement or action were otherwise required. This circumstance may require correctional facilities to establish new procedures and possibly provide other services within the facility or elsewhere to address these situations. This may result in higher costs for the correctional facility.

DFA also states that the specific reporting requirements in the bill are unclear. The bill requires correctional facilities to submit reports to the county commission of the county in which the correctional facility is located and to the state legislature. However, funds for the preparation of these reports are appropriated directly to NMCD and to the DFA Local Government Division (LGD). This lack of clarity raises the question whether the intent is for Corrections Department and LGD to simply recompile the reports that have already been submitted to the county commission and to the state legislature.

DFA also states that the bill specifically requires that a private facility report any monetary settlements that have been paid out to an inmate or former inmate, but there is no corresponding requirement established for a county or state run facility, resulting in a lack of uniformity in reporting requirements.

## **ADMINISTRATIVE IMPLICATIONS**

DFA explained that the bill may require LGD to develop a new program, conduct a solicitation in accordance with the Procurement Code, contract with organization(s) that provide correctional reporting services statewide, and oversee and monitor contracts. LGD may require the need for 1 additional FTE to administer the new program. Each year, several new programs and appropriations are proposed to be administered through LGD. DFA is concerned with LGD's ability to meet its critical statutory duties and its overall mission if its resources are redirected towards numerous small special projects.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Relates to HB 193 which appropriates \$50 thousand to the Corrections Department and \$50 thousand to the LGD and it prohibits "pregnant women" from isolated confinement.

## **OTHER SUBSTANTIVE ISSUES**

NMCD continues to search for and implement new ways to safely reduce its use of segregation. For example, NMCD recently implemented policy changes limiting its use and length of disciplinary segregation. NMCD policy now generally limits disciplinary segregation for an inmate's incident of misconduct to only 30 consecutive days, credits time served in pre-hearing detention towards the 30 day period, and limits disciplinary segregation to an additional 30 days for an inmate who assaults staff while already in disciplinary segregation. Disciplinary officers are also encouraged to use alternative sanctions such as the loss of good time or privileges in lieu of disciplinary segregation. The department is confident that it can continue to use policy and practice changes to safely but slowly decrease its uses of segregation, and currently maintains the ability to continue to alter its segregation policies and practices if they prove to be ineffective or problematic.

It should be noted that NMCD has already reduced its segregation population from 11 percent in 2011 to now under 8 percent, with the goal of ultimately reducing its use to only 5 percent of the population.

TMR/al