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FISCAL IMPACT REPORT

SPONSOR Maestas ORIGINAL DATE 3/3/2017
LAST UPDATED _____ HB 471

SHORT TITLE Confinement Detention & Time Served SB _____

ANALYST Rogers

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI	NFI	NFI	NFI

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Law Office of the Public Defender (LOPD)

New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of Bill

House Bill 471 proposes to amend Section 31-20-12 NMSA 1978, to add misdemeanors and petty misdemeanors to the requirement for awarding pre-sentence, pre-conviction, confinement credit.

The bill would also create a new subsection allowing credit for time spent in alternative state custody, such as a specialty treatment court, home detention, inpatient treatment, or restrictive movement pretrial monitoring. Finally, HB 471 would create a definition for “official confinement”.

FISCAL IMPLICATIONS

The AOC explains HB 471 would have a minimal fiscal impact on the courts. Most courts already conduct an analysis of presentence confinement credit, regardless of the level of offense. HB 471 would only require courts to do what they mostly already do with judicial discretion. The bill may require courts to conduct an additional analysis for the discretionary, alternative qualifiers for presentence credit, under proposed subsection B. HB 471 will only result in longer sentencing hearings, but it will not increase the caseload or number of trials, therefore the impact

will be more administrative than fiscal. There will also be a minimal administrative cost for statewide update, distribution and documentation of statutory changes.

LOPD states “HB 471 could feasibly reduce litigation related to the terms of confinement in pending cases by offering clarity and giving courts more options, but any fiscal impact on the Law Offices of the Public Defender is likely to be negligible.”

NMCD analysis explains the fiscal impact of this bill on the NMCD is unknown. The NMCD does not normally incarcerate misdemeanor offenders or misdemeanor offenders. However, in some small number of cases, the NMCD does house offenders who have been convicted of and sentenced on both felony and misdemeanor offenses where the two crimes run consecutively to each other.

SIGNIFICANT ISSUES

LOPD explains HB 471 would clarify and expand upon the meaning of “official confinement” currently utilized by the courts. In *State v. Fellhauer*, 1997-NMCA-064, ¶ 17, 123 N.M. 476, the Court of Appeals defined “official confinement” as referring to time spent in a correctional facility or time outside a facility when “(1) a court has entered an order releasing the defendant from a facility but has imposed limitations on the defendant’s freedom of movement, or the defendant is in the actual or constructive custody of state or local law enforcement or correctional officers; and (2) the defendant is punishable for a crime of escape if there is an unauthorized departure from the place of confinement or other non-compliance with the court’s order.” HB 471 defines “official confinement” as “confinement, pursuant to arrest or court order ... in the actual or constructive custody of state or local law enforcement or correctional officers” but does not require a defendant to be subject to an escape charge for noncompliance in order to receive credit. HB 471 also specifically includes release “in a judicially approved community custody program” in the definition of “official confinement.”

In addition LOPD states “HB 471 would add a provision specifically *allowing* courts to give credit to defendants for time spent in home detention, under electronic monitoring, in a specialty court, or in an in-patient substance abuse or mental health treatment facility. By permitting courts to give defendants credit for time spent under such conditions of confinement, HB 471 would incentivize treatment or other alternatives to incarceration in a jail or correctional facility and would give courts greater sentencing flexibility.”

According the LOPD, HB 471 clarifies an area of law that causes significant confusion and litigation. Under current law, credit is to be given against any sentence finally imposed for “that offense.” This has resulted in significant litigation as to whether a defendant was confined in relation to one case versus a different case and whether the defendant should receive credit for one or both cases. By clarifying that credit should be given against “any sentence finally imposed for all offenses pending during confinement,” HB 471 would provide a bright-line rule that is easier for courts to apply and which ensures uniformity in the treatment defendants receive.

PERFORMANCE IMPLICATIONS

According to the AOC, the courts are participating in performance based budgeting. HB 471 may impact the courts’ performance based budgeting measures, which may result in a need for additional resources. The courts’ performance measure clearance rates may be impacted due to

the increased amount of judge and clerk time needed to process and dispose of these types of cases.

OTHER SUBSTANTIVE ISSUES

NMCD states “if the judgment and sentence does specifically indicate the amount of pre-sentence credit owed, be it for a felony or a misdemeanor, the NMCD cannot give any such credit. If this bill passes, prosecutors and defense counsel will need to ensure that the pre-sentence credit amount is included in the relevant Judgment and Sentence to ensure that the credit can be given. This bill may impact the county jails, which normally hold offenders charged with or convicted of misdemeanors and petty misdemeanors.”

TR/jle