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FISCAL IMPACT REPORT

ORIGINAL DATE 2/5/09

SPONSOR Lopez LAST UPDATED _____ HB _____

SHORT TITLE Community Custody Release Programs SB 251

ANALYST Weber

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	None		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorney (AODA)
 Bernalillo County Metro Court (BCMC)
 Attorney General (AOG)
 Department of Finance and Administration (DFA)
 Public Defender Department (PDD)
 New Mexico Corrections Department (NMCD)
 Department of Public Safety (DPS)

No Response Received From

New Mexico Association of Counties

SUMMARY

Synopsis of Bill

Senate Bill 251 adds a new section to Chapter 33, Article 3 NMSA 1978 that allows county jail administrators to establish a community custody release program as an alternative to incarcerating offenders in a county jail. The program is determined by the jail administrator with approval of county commissioners and may include substance abuse treatment and counseling, employment or school attendance, day reporting, electronic monitoring, a day detention program or a community tracking program. Only offenders charged or convicted of a non-violent crime would qualify for such a program.

The bill also amends Section 30-22-8.1, to define the crime of escape from a community custody release program (county jail) to include individuals committed to a program by either a judge or a jail administrator.

The bill also amends Section 30-22-8.1, to define jail administrator as the supervisor of the jail's operations or the county sheriff.

FISCAL IMPLICATIONS

BCMC comments on the fiscal implications.

There may be a small reduction in the cost to localities that maintain detention facilities; however cost alone should not be a factor in assessing defendant punishment. The allowance for making the inmates pay some or all of the costs will not likely increase the savings to municipalities and counties, because there will always be need to maintain the facility and likely the facility will always have the ability to run at capacity, or else overall it will not be financially feasible to keep open, anyway.

Furthermore, the bare costs of lodging a defendant must be weighed against the societal costs of an offender out in a community, who had been ordered to jail by a judge, who is now free to commit other crimes and cause financial harm to more people, likely with reduced ability to make financial restitution because of their criminal record.

NMCD feels state costs could increase minimally.

The additional felony convictions resulting from this bill would increase NMCD's costs by leading to minimal to moderate increases to the inmate population and probation/parole caseloads. The bill seems unlikely to lead to a substantial number of new felony convictions, or to result in a substantial increase in the inmate population or probation/parole caseloads. However, it is always difficult to accurately predict or estimate the ultimate effect of any bill essentially expanding a crime.

SIGNIFICANT ISSUES

AODA offers the following poignant comments.

This bill contemplates replacing court-ordered incarceration with some non-restraint alternative chosen by a jail administrator or a county board of commissioners, without requiring judicial review either in the establishment of the programs or the decisions who participates. This total lack of input from the judicial system (Judges, District Attorney, Probation and Parole) in matters which would significantly interfere with decisions made on offenders not only would completely gut Victims' rights, but would also substitute the possibility of lowest costs at the expense of true societal reparation for crime. Under the Victims' Rights Act, Prosecutors and Judges are required to advise victims of the sentence an offender is receiving, but this will make it impossible to do so. There is no notification procedure for the Victim, for the Prosecutor, or even the Judge, no opportunity to weigh in on the decision, and no criteria that the programs approved are determined to be of value in rehabilitating offenders or providing appropriate punishment for their offenses.

This bill allows for either a jail administrator or a judge to commit an inmate to a community program. It does not have a provision for resolving conflicting commitments made by the judge and the jail administrator. Potentially an unelected administrator could overturn a judicial order.

This bill requires the board of county commissioners to approve all such programs. However in some instances the city runs the jail. This bill does not provide the flexibility to allow city officials to oversee city jail programs.

The provisions that allow the jail administrator to charge the inmate some or all of the cost of the program creates a strong incentive for the jailer to commit inmates to these programs, which increase the likelihood of the above described situations arising.

The BCMC continues along the same vein.

The proposed bill would afford a jail administrator the full and complete authority to commit someone to a community custody release program (CCP). The policy of this state has long been to require a judge, the individual who has heard the testimony of the witnesses, reviewed the evidence, the probation report, the criminal history report, and who ultimately passed sentence on the defendant, to make a determination as to the fitness of that individual to be released into the community.

The Legislature has put great emphasis in the recent past on the creation and funding of Specialty Courts in New Mexico, including Drug, Mental Health, Domestic Violence and Homeless Courts. The efficacy of these courts in catering to the special needs of offenders who qualify for inclusion in their programs, as well as in addressing their recidivism rates, has been well documented. There is extensive and persuasive anecdotal evidence in the Metropolitan Court that defendants agree to participate in Specialty Courts because they fear the alternative – a sentence of incarceration. The Court is concerned that an expectation of automatic eligibility for CCP will greatly negate the apprehension associated with a jail sentence. Many defendants who would be best served by placement in a Specialty Court program, as an alternative for a jail sentence, will opt for “doing the time”, with the knowledge that the jail will open the doors and place them into CCP at the first opportunity.

The bill provides that all inmates charged with or convicted of a “nonviolent offense” as defined in Section 33-2-34 NMSA are eligible for placement in a CCP. A “nonviolent offense,” however, is defined as any crime that is not one of the serious violent felonies set forth in Section 33-2-34(L)(4). By applying those standards to the CCP program, every offender that is convicted in the Metropolitan Court or in a Magistrate Court would be eligible for placement in a CCP. If the proposed legislation were to pass, individuals convicted of any misdemeanor, including violent misdemeanors such as aggravated battery, aggravated battery on a household member, assault on a household member, simple assault, negligent arson, negligent use of a deadly weapon, resisting arrest and stalking would be automatically eligible for CCP and could serve no jail time.

The proposed bill essentially abrogates the due process rights afforded to victims under the Victims of Crime Act, NMSA 1978, § 31-26-1 et seq. The Victims of Crime Act includes at least five misdemeanors, within its definition of “criminal offense” in Section 31-26-3(B). A victim of a crime enumerated in the Act is entitled to notice and an opportunity to be heard at various stages in the criminal proceeding, including any post-sentencing hearings. However, if decisions concerning eligibility for CCP are dictated by statute and the assignment to a particular CCP is determined solely by the jail administrator or sheriff, without any judicial process, then victims of the crimes enumerated in the Act would be denied their opportunity to be heard. If the degree of offenses identified in the Victim of Crimes Act are so grave that the victims of those crimes are afforded certain due process rights in the proceedings, both pre- and post-adjudication, then it does not follow that individuals convicted of those same offenses should be automatically eligible for CCP and thereby avoid incarceration. It is also important to note that the list of offenses constituting “criminal offenses” under the Victims of Crime Act is a much broader list than the very narrow list of serious violent felonies under the good time statutes upon which the proposed senate bill is based.

POSSIBLE QUESTIONS

Should there be consideration to having less restrictive criteria for eligibility in light of the AODA’s discussion of what crimes may constitute non-violent under the definition offered in the bill?

MW/mc