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F I S C A L I M P A C T R E P O R T

SPONSOR: Godbey DATE TYPED: 03/01/01 HB 286/HJCS
SHORT TITLE: Walking Away From Inmate-Release Program SB _____
ANALYST: Trujillo

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
				Recurring	GF

(Parenthesis () Indicate Expenditure Decreases)

Relates to appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files
Corrections Department (CD)
NM Public Defender (NMPD)
Children Youth and Families Department (CYFD)
Administrative Office of the Courts (AOC)
Attorney General (AG)
§ 30-22-9,NMSA 1978; §33-9-5,NMSA 1978; § 31-21-13.1,NMSA 1978; § 33-2-46,NMSA 1978 and
State v. Pearson, 13 P.3d 980 (Ct.App. 2000).

SUMMARY

Synopsis of Bill

HB286/HJCS has two (2) related purposes; both of which pertain to amending the definition of existing criminal laws regarding to “escape” from a correctional facility.

First, the bill amends the existing crime of “Escape From the Penitentiary.” It expands the definition of the offense to include those circumstances where an inmate who is still technically serving his or her prison term but who has been released from prison early on a community corrections or intensive supervision program willfully fails to appear in person as directed by Corrections Department personnel. This would now be a second degree felony.

Second, the bill amends the existing crime of “Escape From An Inmate Release Program.” It expands the definition of this offense to provide that an inmate who has been released on an authorized work or school release program and then willfully and without authorization fails to report to or walks away from the approved location would be guilty of a fourth degree felony.

Significant Issues

The AG reports as it stands, the bill appears to adequately address various “gaps” in New Mexico’s current laws relating to inmates that fail to appear and/or escape in the circumstances set forth in the bill. There is an additional circumstance, however, recently reviewed by our state Court of Appeals, that should also be addressed when amending § 30-22-9.

PERFORMANCE IMPLICATIONS

CD reports the bill will have a positive impact upon the department’s work and school release program by discouraging inmate misconduct and making it more likely that the program will continue to operate. The bill will also remove one more impediment to the department’s potential reactivation of the early release program. Having another alternative to incarceration would also improve the prison program.

HB286/HJCS does not include performance measures.

FISCAL IMPLICATIONS

It is possible that the bill could result in minor cost increases CD and should be able to absorb any such minimal increase in costs.

Also, if the bill encourages CD to reactivate the early release program, this could result in a smaller prison population and lower costs.

ADMINISTRATIVE IMPLICATIONS

According to CD, in both the short-term and the long-term, the bill should have a positive administrative impact upon the work release and school release program if the deterrent effect results in fewer inmates who engage in a frolic and then later decide not to return to the minimum-security prison. In the short-term, the bill will encourage CD to reactivate the early release program which could reduce the administrative burden on prison personnel. The deterrent effect upon the participants would also reduce the administrative burden upon the supervising probation and parole officer.

TECHNICAL ISSUES

According to the AG, the bill appears to fill some current “gaps” in New Mexico’s escape laws. Most recently, however, the state Court of Appeals addressed an additional “gap” that is not covered by this bill. In State v. Pearson, 13 P.3d 980 (Ct.App. 2000), the Court determined that § 30-22-9 does not provide for a conviction for “escape” when a convicted defendant, who is not immediately incarcerated after sentencing, fails to appear for commencement of a lawfully entered prison sentence with the Department of Corrections. The Court held that because § 30-22-9 does not contain language addressing this circumstance, the defendant could not be charged with escape.

Thus, in order to address the additional “gap” presented by the circumstances presented in the Pearson case, it is suggested that the bill also include language further defining “escape” to include the circumstance where a person fails to appear for the commencement of a lawfully entered prison sentence.

The AG suggests including a new paragraph to the amendments of § 30-22-9 already set forth in the bill, to define escape from the penitentiary as also consisting of “failing to appear in person for the commencement of a lawfully entered prison sentence as directed by court order” or similar language in order to address the issue raised in Pearson.

AOC reports the wording of the amendment might be better clarified. New Section 30-22-9 C. might read:

Bill No -- Page 3

willfully failing to appear in person as directed by corrections department personnel as part of ... a community corrections program as provided in Section 33-9-5 NMSA 1978 or an intensive supervision program as provided in Section 31-21-13.1 NMSA 1978, when the term of incarceration specified in the person's judgment and sentence or commitment has not yet expired.

CD suggests these amendments for the following reasons. First, it is currently not a criminal offense for an inmate who has been released from prison early on a community corrections or intensive supervision program to abscond from supervision. CD is considering re-implementing this program and in the interest of public safety it would be best that absconding from supervision while on such status be punishable as an escape. This would give the department and the public more confidence in the program and would also act to deter the program participant from absconding.

Secondly, as to the inmate work release and school release program, there have been situations in which inmates who are participating in the program have been released from a minimum-security facility to attend work or school and then either fail to report to the approved location or once they report, they leave the authorized site and go on a frolic. The New Mexico Court of Appeals has ruled that the present statute does not apply to these circumstances because it cannot be shown that the inmate intended never to return. In other words, currently it is not a crime for an inmate on the work release or school release to leave the assigned location on a frolic or fail to report to the approved site.

Unfortunately, experience has shown that inmates who go off on a frolic tend to engage in misconduct such as consuming alcohol or drugs which often leads to further criminal activity. This, in turn, results in the need to involve the entire criminal justice system. CD reports it needs this amendment to deter inmates on the work or school release program from failing to report to or leaving the approved location without authorization. The bill would make such misconduct a fourth degree felony. It will also enhance public safety and confidence in the program and make it more likely that it will continue.

OTHER SUBSTANTIVE ISSUES

NMPD reports new criminal sanctions mean more work for the department, particularly since the criminal statutes herein contemplated apply to a class of citizen (convict or parolee) who is almost certainly indigent. This particular amendment recognizes that some persons may be diverted from incarceration, released or provided additional privileges. At the same time, a failure to comply with stated terms triggers a measure that does not seem to comport with the freedoms granted. The person released is no longer incarcerated. A failure to comply with the terms of release (or a perceived failure to comply) can not be treated as an "escape from penitentiary" and sentenced in accordance with 31-18-15 without seeming unduly punitive. This must certainly be the case if the defendant is also facing a probation violation for his failure to comply with the strictures of his release.

LAT/njw