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FISCAL IMPACT REPORT



SPONSOR: HJC DATE TYPED: 02/05/02 HB 263/HJCS

SHORT TITLE: Corrections Population Control Act SB _____

ANALYST: Trujillo

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY02	FY03	FY02	FY03		
		\$0.1	Indeterminate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to Appropriation in The General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received

Attorney General (AG)

Public Defender (PD) (JPB)

Corrections Department (CD)

SUMMARY

Synopsis of Bill

House Judiciary Committee Substitute for House Bill 263 enacts the Corrections Population Control Act. The bill establishes the Corrections Population Control Commission and establishes its duties. It also provides a mechanism for addressing inmate overcrowding, ultimately including the early release of “non-violent offenders”, which for purposes of the Act is defined as “a person convicted only of possession of a controlled substance ... a person incarcerated for violating the conditions of his parole plan due to the use or possession of a controlled substance, whose original conviction was for commission of a nonviolent offense; or an inmate designated by the commission as a nonviolent offender.” The Corrections Population Control Commission is composed of:

- (1) the Secretary of Corrections, who shall serve as chairman;
- (2) a member appointed by the New Mexico Supreme Court;
- (3) a member appointed by the Speaker of the House;

- (4) a member appointed by the President Pro Tempore of the Senate;
- (5) a member appointed by the Minority Leader of the House;
- (6) a member appointed by the Minority Leader of the Senate; and
- (7) a member appointed by the Governor.

The Commission is required to study, develop and recommend policies and mechanisms designed to manage the growth of inmate population by:

- (1) reviewing CD models to forecast growth;
- (2) providing information concerning impacts on the inmate population caused by changes in sentencing policies and law enforcement policies;
- (3) analyzing the need for future construction of additional correctional facilities;
- (4) preparing proposed legislation; and
- (5) considering its recommendations in light of public safety concerns

The Commission is required to submit an annual report of its activities and legislative proposals to the Interim Legislative Committee with jurisdiction over corrections issues. The report must be filed with the Interim Legislative Committee by November 1 of each year.

The Committee Substitute specifically requires the CD to provide staff support to the Commission.

Whenever the inmate population exceeds 100% of rated capacity for a period of thirty (30) days, a series of measures is to take place. First the CD is to engage in all lawful and potentially appropriate efforts to reduce the population. Second, if the population is still in excess of rated capacity after sixty (60) days, the Secretary of Corrections is to notify the Commission. Included in the notification is to be a list of "non-violent offenders" who are within 180 days of their projected release date. These "non-violent offenders" are defined as those who have been convicted only of possession of a controlled substance or a person whose parole has been violated due to possession or use of a controlled substance whose original conviction was for commission or a nonviolent offense; or an inmate designated by the commission as a non violent offender. The Commission is required to meet within ten (10) days to consider the release of these drug offenders. The Commission is also required to discuss with the CD the impact on the inmate population of possible changes in the classification system and expanding incarceration alternatives. In order to provide for the early release, the Commission is given the authority to grant emergency release credits in ten (10) day increments to be applied to the sentences of these offenders. The Commission is given the authority to release the appropriate number of offenders to reduce the inmate population. There are certain qualifications that these non-violent offenders must meet in order to be eligible for early release, including that they have a parole plan, pass a drug test, and not have committed a crime while in prison.

The Commission's life is terminated on June 30, 2007. On July 1, 2007, the Secretary of Corrections is required to assume the duties of the Commission.

The bill also has an emergency clause.

Significant Issues

CD reports the definition of the term “non-violent offender” is still somewhat ambiguous. The bill defines the term to include “a person incarcerated for violating the conditions of his parole plan due to the use or possession of a controlled substance, whose original conviction was for commission of a non-violent offense.” Is the intent to restrict that portion of the definition of a person whose parole was violated and who was committed to prison for only such an offense, and no other offense? According to CD, the definition as written would include persons whose parole was violated and who was committed to prison for more serious violations.

CD indicates most of these inmates are likely to be classified as either minimum custody or minimum restrict custody. Therefore, releasing these inmates will not increase capacity for more dangerous medium custody, close custody or maximum security inmates where the current prison bed shortage exists.

The vast majority of overcrowding in the New Mexico prison system, as well as nationally, is in the medium custody, close custody and maximum security facilities. In this sense, the bill will have little or no impact on what is purports to accomplish, i.e., inmate population control.

Minimum and minimum restrict custody inmates are the least expensive inmates to house (approximately \$50.00 - \$60.00 per day). It would be inappropriate to reduce the department’s budget by the average cost for housing an inmate (approximately \$80.00 per day) for each such inmate released. More appropriately, the marginal cost for each such inmate is approximately \$12.00 per day. The bill will not reduce or eliminate the department’s need for additional medium, close and maximum-security prison bed space (approximately \$85.00 to \$120.00 per day).

According to CD, the bill may give the impression it controls growth in the major portion of the population. In fact it does not. The State of New Mexico needs to provide the CD with sufficient bed space to meet its sentencing obligations imposed by the courts, as well as to allow for safe and appropriate prison management.

CD reports if the State of New Mexico embarks upon this method to control inmate population, all post-Duran and Independent Board of Inquiry progress could be lost.

The bill does not allow the CD much flexibility in the use of dayrooms for housing inmates. Such use of dayrooms is allowed by the surviving provisions of the Duran decree. CD has, over the years, learned how to properly and efficiently utilize dayrooms for housing inmates for relatively short periods of overcrowding.

The bill would impose a significant additional administrative burden upon CD personnel. The Secretary of Corrections is required to spend a significant amount of time and effort as Chairman of the Corrections Population Control Commission. The bill also requires that all staff support for the Commission shall be provided by CD.

FISCAL IMPLICATIONS

There is no appropriation in the bill. CD reports the bill may result in a minimal decrease in costs to the department if it results in the early release of a substantial number of inmates. However, the bill will result in an increase in costs for providing staff support to the Commission. Additionally, since the Commission is closely tied to the CD, the department would presumably be required to pay for the per diem and mileage expenses of Commission members. It will be difficult for the department to absorb these additional costs.

PD reports the legislation will have a positive fiscal impact if it fulfills its intent of reducing the incidence of prison violence. Further the “making a better criminal through incarceration” phenomena prevalent when prison conditions are not suitable will be significantly reduced. Both “cures” will significantly reduce (long term) this office’s obligation to represent society’s quintessential indigents and this agency’s seemingly endless cycle of defending post-incarceration recidivists.

ADMINISTRATIVE IMPLICATIONS

CD reports the bill would result in a significant increase in the administrative burden placed upon Department personnel. The Secretary would be required to devote a substantial amount of time as Chairman of the Commission. CD personnel would be required to provide staff support to the Commission, and this will be a significant administrative burden which CD may not be unable to absorb.

CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP

Almost duplicates SB 201.

TECHNICAL ISSUES

CD suggests on page 3, line 10, the definition of “non-violent offender” should presumably be amended to insert the word “only” after the word “due”.

PD suggests the Chief Public Defender or her representative should be on the “corrections population control commission”, not only to help make informed substantive proposals to the legislature, but to insure first hand input into issues that bear substantially on this agency’s mandate to provide Post-Conviction representation of inmates. The Attorney general’s office should also participate on the commission.

AG suggests:

1. On page 4; lines 4-6. The definition of “nonviolent offender” is not consistent with the definition of “nonviolent offense” in Section 33-2-34(L)(3).
2. Page 5; line 13 to Page 6; line 4. The commission membership section does not specify whether appointees: (1) can have designees; (2) have fixed terms; (3) can be public or private members.
3. Page 7; lines 10-11. The term “emergency release credits” is not specifically defined. Other statutory provisions use the word “deductions” and not “credits.”

OTHER SUBSTANTIVE ISSUES

The AG indicates this measure remains very similar to a former Oklahoma statute, 57 Okla. Statutes Annotated. § 573 (now repealed) (OKLAHOMA PRISON OVERCROWDING EMERGENCY POWERS ACT). Their experience with this sort of statutory scheme might be of benefit to legislators considering this bill or, in the event this measure is enacted, to implementation of the program.

LAT/ar