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## FISCAL IMPACT REPORT



SPONSOR: McSorley DATE TYPED: 01/28/02 HB \_\_\_\_\_

SHORT TITLE: Corrections Population Control Act SB 201

ANALYST: Trujillo

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY02	FY03	FY02	FY03		
			\$0.01	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Appropriation in The General Appropriation Act  
Almost Duplicates HB 263

### SOURCES OF INFORMATION

LFC files

#### Responses Received

- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorney's (AODA)
- Public Defender (PD)
- Attorney General (AG)
- Children Youth and Families Department (CYFD)
- Corrections Department (CD)

### SUMMARY

#### Synopsis of Bill

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 of possession of a controlled substance". 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 Corrections Department 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 bill specifically requires CD to provide staff support to the Commission.

The bill provides that after June 30, 2003, 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 CD is to engage in all efforts to reduce the population, including in-state and out-of-state transfers. 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. Again, these “non-violent offenders” are defined as “a person convicted of possession of a controlled substance”. The Commission is required to meet within ten (10) days to consider the release of these drug offenders. In order to provide for the early release of these offenders, 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 drug offenders to reduce the inmate population to rated capacity. 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 received a disciplinary infraction 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 bill raises several issues of significance to the department. First, the definition of the term “non-violent offender” is ambiguous. When the bill defines the term as “a person convicted of possession of a controlled substance”, the intent appears to restrict the definition to a person sentenced to prison for only possession of a controlled substance, and no other offense. The definition

is written in such a way that it would include persons convicted of and sentenced to prison for any number of other more serious felonies, as long as the person had also been convicted of possession of a controlled substance. Many of those inmates would not be eligible for early release because they have received a disciplinary infraction while in prison.

There are an insufficient number of these offenders to make this an effective population control mechanism. For example, the department currently has only about 90 inmates in its entire prison system that are serving a sentence for only possession of a controlled substance.

Most of these inmates are likely to be classified as either minimum custody or minimum restrict custody, and releasing these inmates will not increase capacity for more dangerous medium custody, close custody or maximum security inmates. Most 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 inmate population control.

Furthermore, minimum and minimum restrict custody inmates are the least expensive inmates to house (approximately \$50.00 - \$60.00 per day) and it would be inappropriate to reduce CDs 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).

CD further indicates the bill may give the impression that it controls growth in the major portion of the population, when in does not. The State of New Mexico needs to provide 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.

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

The bill would also impose a significant additional administrative burden upon department 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.

The AG reports this bill would create a commission to oversee the inmate population of various state and privately operated correction facilities in New Mexico. The commission would be charged with studying and developing recommended policies to manage the growth of the inmate population.

The commission would also have the authority to grant "emergency release credits" to certain "non-violent inmates" when the corrections facilities exceed 100% of inmate capacity as defined in the bill. "Non-violent offender" is also defined as anyone serving a sentence for a felony drug offense.

Presumably this includes an inmate serving a sentence after probation revocation. Any such inmate who is within 180 days of release could be considered for emergency release credits against his sentence that might result in his early release. The commission would apply these credits in ten-day increments against the remaining time to be served. However, inmates can only receive the credits if they have a parole plan, have not committed any crimes while in prison or have not failed a recent

drug test. The commission must also consider whether releasing offenders will jeopardize the receipt of federal funds by any state agency.

### **PERFORMANCE IMPLICATIONS**

CD reports there is some possibility that the bill could have a minor impact upon the department prison program by reducing overcrowding. However, the bill could also have a detrimental impact upon the department's prison programs if it leads to the erroneous assumption that it will effectively control inmate population growth. The bill will not eliminate the need for CD to obtain additional medium, close and maximum security beds.

### **FISCAL IMPLICATIONS**

There is no appropriation in the bill. CD reports the bill may result in a minimal to modest decrease in costs to the department if it results in the early release of a substantial number of inmates. The bill will result in an increase in costs to CD as a result of the additional expenses related to 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 extremely difficult for the department to absorb these additional costs.

PD reports the legislation will have a positive fiscal impact on the agency 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) the agency's obligation to represent society's indigents and defending post-incarceration recidivists.

### **ADMINISTRATIVE IMPLICATIONS**

According to CD, 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. CD may be unable to absorb these additional administrative burdens.

### **DUPLICATION**

Almost duplicates HB 263

### **TECHNICAL ISSUES**

According to CD, unless the bill receives an Executive Message, it may not be germane since it does not contain an appropriation.

CD suggests, on page 4, lines 5, and page 4, line 8, the definition of "non-violent offender" should presumably be amended to strike the words "convicted of" and insert in lieu thereof the phrase "sentenced to prison only for".

The AG reports:

- (a) 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).
- (b) Page 4; lines 4-6. It is unclear whether a person convicted under Section 30-31-23 AND a violent offense is still eligible.
- (c) 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.
- (d) 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 reports this measure is 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.

PD suggests the Chief Public Defender or a 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 AG’s office should also participate on the commission.

AODA reports, in years past, CD implemented an early release program for the purpose of alleviating over crowding in the prisons. They were able to accomplish this without the creation of a separate Commission. They worked in conjunction with the Adult Parole Board to review inmates who were nearing the end of their sentences. The Adult Parole Board is already set up to perform this function, and should probably be the vehicle that is used.

AODA suggests using the Adult Parole Board to review cases for possible early release.

LAT/ar/njw