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## FISCAL IMPACT REPORT

SPONSOR Taylor DATE TYPED 2/10/05 HB 710/aHJC

SHORT TITLE County Detention Facility Reform Act SB \_\_\_\_\_

ANALYST Peery

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	\$18,835.0			Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
	\$18,835.0		Recurring	County Detention Facility Reform Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
New Mexico Corrections Department (NMCD)

#### No Responses

Attorney General (AG)  
Association of Counties

### SUMMARY

#### Synopsis of HJC Amendment

The House Judiciary Committee amendment removes Section 7 on page 5 that pertains to Section 33-3-3 NMSA 1978 being repealed.

### Synopsis of Bill

House Bill 710 appropriates \$18,835,031 from the general fund to the newly created County Detention Facility Reform fund in the State Treasury to be administered by the New Mexico Corrections Department for the purpose of reimbursing counties for the incarceration of a “state prisoner”. The proposed legislation repeals Section 33-3-3 NMSA 1978, which provides that the county jail shall be used as the place of detention for every person charged with or convicted of crimes and committed by lawful order.

The proposed legislation sets the rate of reimbursement at eight times the federal hourly minimum wage per day, currently at around \$41.20 per day. The proposed legislation requires the

Corrections Department to reimburse counties for the cost of providing ancillary services to “state prisoners”, such as medical, dental, mental health, vision care, prescription drugs, ambulatory, and transportation services.

The proposed legislation appropriates the \$18,835,031 in the following ways: \$2,181,231 for the incarceration of probation and parole violators sentenced to detention facilities; \$4,433,413 for the incarceration of state prisoners sentenced to detention facilities; \$2,194,671 for the incarceration of state prisoners sentenced to prison and awaiting transport; and \$10,025,716 for the incarceration of unsentenced probation and parole violators.

### Significant Issues

NMCD reports a “state prisoner” is defined essentially as a person charged with or convicted of a felony who:

- Has violate his parole and is charged with a parole violation;
- While on parole is charged with a violation of local, state, tribal, federal or international law;
- Is awaiting transportation and commitment to the Corrections Department following pronouncement of a judgment, sentence or order of confinement;
- Is charged with a violation of his probation by the department or by a district court;
- Is sentenced, ordered or removed by the district court to incarceration in a county detention facility; or
- Is incarcerated on the basis of an arrest and hold order or a warrant issued by the Corrections Department.

### **PERFORMANCE IMPLICATIONS**

NMCD reports the proposed legislation could adversely affect the Department’s ability to pay contractors on a timely basis because this bill will impose a significant new burden on Central Office business managers, accounts payable personnel or other designated personnel to keep us with new billion on hundreds or thousands of “state prisoners” in county jails. However, NMCD also states the proposed legislation could indirectly result in an improvement in the performance of the Department prison programs if it slowed the growth rate of the prison population.

## **FISCAL IMPLICATIONS**

The appropriation of \$18,835,031 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of the fiscal year shall revert to the general fund.

### Continuing Appropriations

This bill creates a new fund and provides for continuing appropriations. The LFC objects to including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities.

## **ADMINISTRATIVE IMPLICATIONS**

NMCD reports the proposed legislation will result in a substantial increase in the administrative burden to Central Office Business Manager, accounts payable personnel and other employees who will have to closely monitor or track the number of “state prisoners” in county jails, and also verify and pay hundreds of thousands of new claims. NMCD states the proposed legislation may require that additional FTE be hired by the Department in order to meet the administrative burden. The Corrections Department feels, even though the proposed legislation states funding may not be used by the Department for administration, that it would make sense to allow the Department to utilize three percent of the fund to hire FTEs and administer the fund.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

NMCD states the proposed legislation is very similar to SB 162 from the 2004 legislative session, and is identical to Senate Bill 517 from the 2005 legislative session.

## **TECHNICAL ISSUES**

NMCD states the definition of “state prisoner” includes those offenders who have only been charged, but not convicted, of a crime. This is an extremely broad and unusual definition of a state prisoner. Typically, a person would only become a state prisoner if he or she were first convicted of a crime.

## **OTHER SUBSTANTIVE ISSUES**

NMCD reports that if Section 33-3-3- NMSA 1978 is repealed, there will be no statutory provision in the law requiring county jails to house persons charged with criminal offenses. NMCD states the counties might then attempt to argue that they are not obligated to house arrestees or “state prisoners”, especially if the circumstances arises where the money appropriated to the County Detention Facility Reform Fund is completely exhausted or expended.

## **ALTERNATIVES**

NMCD suggest the proposed legislation should be amended to expressly limit the Corrections Department’s liability to reimburse the counties to the amount of the appropriation and other monies contained in the County Detention Facility Reform Fund.

The Corrections Department suggests amending the bill to allow the Corrections Department flexibility regarding payment of the claims made by the counties. This is in event there are insufficient funds in one category, that the Department has the ability to use some money from another category. NMCD states the bill could also be amended to state that once a particular category of money is expended, NMCD has no obligation to pay for any more claims pertaining to the category.

NMCD suggests amending the bill to allow the Department to utilize three percent of the fund money to hire FTEs and administer the fund. NMCD further states that if this is not done, the bill should be amended to state the Local Government Division of DFA should administer the fund.

Finally, NMCD states that Section 33-3-3 NMSA 1978 should not be appealed, but instead should be amended to state that the Corrections Department will reimburse the counties for housing "state prisoners" in accordance with the County Detention Facility Reform Act.

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