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FISCAL IMPACT REPORT

ORIGINAL DATE 3/06/2017

SPONSOR Maestas & Lundstrom LAST UPDATED 3/13/2017 HB HFL/CS/175

SHORT TITLE Isolated Confinement Act SB _____

ANALYST Rogers

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Indeterminate	Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB 242 and SB 185.

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Sentencing Commission (NMSC)
 New Mexico Corrections Department (NMCD)
 Office of the Attorney General (OAG)

SUMMARY

Synopsis of Bill

The House Floor substitute for House Bill 175 proposes to enact a new act entitled the Restricted Housing Act.

The bill prohibits the use of restricted housing when an inmate is less than 18 years of age and when a female inmate is pregnant. The bill also creates restrictions on restricted housing when an inmate has a known serious mental disability. The bill requires every correctional facility to report the following information to the board of county commissioners of the county in which the correctional facility is located and to the legislature, every three months:

- the age, gender, and ethnicity of every inmate who was placed in restricted housing during the previous three months, including every inmate who is in restricted housing at the time the report is submitted;
- the reason restricted housing was instituted for each inmate named in the report; and
- the dates on which each inmate was placed in and released from restricted housing during

the previous three months.

Additionally, the substitute requires every private correctional facility to report to the board of county commissioners of the county in which the private correctional facility is located and the legislature, every three months, all monetary settlements that were paid to inmates or former inmates as a result of lawsuits filed by the inmates or former inmates against the private correctional facility or its employees.

Reporting requirements begin July 1, 2017.

FISCAL IMPLICATIONS

With higher staff to inmate ratios and less efficient prison space usage, the cost to house inmates in restricted housing is more expensive than housing inmates in the general population. Reducing the use of isolated confinement could reduce costs; however, the cost of having these inmates in the general population is unquantifiable. Isolated inmates reduce tension in the general population. Having fewer isolated inmates may require increased guard to prisoner ratios and increased litigation.

In response to a 2015 version of the bill (HB 376) the Association of Counties stated “without the use of solitary confinement, there will be an increase in inmate altercations. The cost of inmate assault claims varies a great deal depending upon the extent of injuries. Over the past 4 years the average cost per county detention claim arising out of inmate on inmate altercation has been \$35,740 with the most expensive single claim costing \$245 thousand.

In January 2016, NMCD reported it houses about 460 inmates, or 6.5 percent, in segregation. Neither LFC nor NMCD has a marginal cost estimate for these inmates, but the average per inmate per day cost to house inmates at state owned facilities in FY16 was \$122.67. Other states, such as Arizona, have put the cost of housing maximum security inmates at about \$50 thousand annually compared to \$20 thousand for inmates housed among the general population. There is no estimate for how many inmates would be moved from restricted housing to the general population under this substitute bill.

Requiring correctional facilities to report on the usage of solitary confinement will result in additional costs to county and state correctional facilities. In previous analysis of similar bills, NMCD estimated that the reporting requirements of the bill could require the hiring of an additional staff member at a cost of approximately \$60 thousand per year.

This substitute would decrease costs in some areas and increase costs in others, making the fiscal implications of this bill indeterminate.

NMCD explained, in response to the original bill, because the definition of serious mental illness outlined in the bill appears to be slightly broader than the criteria the department currently uses, the department may need to refine its screening tool for Alternative Placement Areas (APA) to make it broad enough to include all the inmates that meet the criteria for serious mental illness as defined under this bill. Currently, NMCD states the APA does not meet the definition of restricted housing contained in the bill, but of course if the bill passes it is likely that some inmates will claim in litigation that their placement therein constitutes restricted housing.

If NMCD has to engage in a one-on-one monitoring process with inmates who cannot be immediately placed into the MHTC or APA, which would require one correctional officer to solely focus on, observe and supervise this one inmate, then the fiscal impact on NMCD will be moderate to substantial.

SIGNIFICANT ISSUES

NMSC reports:

In 2014, NMCD implemented the “Motivating Offender Change Program,” a strategy used by the State of Washington that has yielded promising recidivism reduction results. The program allows trained staff members to facilitate cognitive behavioral programming to safely and humanely restrained active predatory inmates.

The Vera Institute of Justice recently published a report entitled: “Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives” (Alison Shames, Jessa Wilcox and Ram Subramanian) (May 2015). A copy of the full report is included with this analysis and the language below is set forth in the introduction to the report:

“What is commonly known as solitary confinement is a practice still widely used by corrections officials in the United States today, largely as a means to fulfill a prison’s or jail’s top priority: the safety of its staff and the incarcerated people under its care. While it is most often deployed when incarcerated people break rules or engage in violent or disruptive behavior, it is also used as a preventative measure in an effort to protect those at high risk of sexual assault and physical abuse in a prison’s or jail’s general population (for example, incarcerated people who are transgender or former law enforcement officers). The term solitary confinement, however, is often not used by corrections officials, who prefer labels such as restricted housing, segregated housing, and special or intensive management.”

NMCD states the department does not normally incarcerate inmates who are under the age of eighteen years old, and it already does not use restricted housing as it is defined in the bill on its pregnant female prisoners.

The department has established two programs used to treat and rehabilitate known mentally ill inmates, some of whom try to harm themselves or others and need to be removed or isolated from the general population. The department’s Alternative Placement Area (APA) program is used to divert inmates with known serious mental illnesses out of its predatory behavior management program. APA inmates are out of their cells more than two hours per day, and are offered groups, activities, classes, etc. Because the definition of serious mental illness outlined in the bill appears to be slightly broader than the criteria the department currently uses, the department may need to refine its screening tool for APA to make it broader to catch all the inmates that meet the criteria for serious mental illness as defined under this bill. The APA does not meet the definition of isolated confinement contained in the bill, but of course if the bill passes it is likely that some inmates will claim in litigation that their placement therein constitutes isolated confinement.

The department’s second program for the treatment of known seriously mentally ill inmates, including those who try to harm themselves or others and must be removed from the general population, is the Mental Health Treatment Center (MHTC). The MHTC is an inpatient

psychiatric hospital where decisions are made by a treatment team with rehabilitation and recovery always kept in mind. There may be times that certain inmates within the MHTC are temporarily kept within their cells twenty two hours a day, a decision made by the treatment team in order to protect other inmates, to protect the mentally ill inmate from other inmates, or to protect the mentally ill inmate from having access to things to harm himself. Seriously mentally ill inmates are often manipulated, preyed upon, and targeted because of their mental illness in general population. Some seriously mentally ill inmates also act violently, and need to be isolated even while their treatment plans and treatment are implemented and take time to become effective. However, all inmates in the MHTC always have access to and are provided with interactions with others and ample opportunities to participate in educational, vocational or rehabilitative programs - these inmates are seen daily by nursing and psychiatry staff, have regular meetings with their therapist, classification officer, unit manager, recreation officer, educational staff members, and other members of the treatment team. MHTC units are very busy units with inmate porters, different members of security, multiple therapists, other treatment team members, etc., walking through and talking with inmates almost constantly. Therapeutically, each MHTC inmate is offered the level of services in which they are able to meaningfully participate. So while the NMCD does use seclusion at the MHTC, this always done as a therapeutic tool, not as a disciplinary decision, and such seclusion always stems from a psychiatrist's order with the goal of treatment and safety. The treatment team at the MHTC operates in accordance to the "least drastic means" principle. The treatment team meets weekly, sometimes more often, and evaluates every inmate therein to see if they can be moved to a less restrictive setting. While the NMCD's MHTC is an inpatient psychiatric hospital and rehabilitative program, again there are times where a particular inmate must remain in his cell for more than twenty two hours per day for treatment and safety reasons, and this bill's broad definition of isolated confinement would prohibit this practice if the bill passed.

There are also some instances where inmates who are known to be mentally ill sometimes do attack or harm other inmates, themselves, or staff, and are placed in restrictive housing awaiting placement into the APA or the MHTC. Placement into the APA or the MHTC is often done the same day, but this is not always possible due to limited bed space. The bill offers no administrative alternative to the NMCD even while it prohibits the use of isolated confinement on these occasions.

While long term isolated confinement for known mentally ill inmates is not what the department is seeking, it does need some way to protect other inmates and staff from mentally ill inmates who have acted out to act out to harm others. If NMCD has to engage in a one-on-one monitoring process with inmates who cannot be immediately placed into the MHTC or APA, which would require one correctional officer to solely focus on, observe and supervise this one inmate, cost would increase at the department.

As a matter of policy, CYFD does not use restricted housing.

ADMINISTRATIVE IMPLICATIONS

NMCD explains "the requirement for the private facilities to provide lawsuit settlement-related information to the county commission and legislature is not logical, as this has nothing to do with isolated confinement and the bill does not limit the settlement numbers to only lawsuits involving isolated confinement. Further, since the private facilities generally already follow

NMCD policies when housing NMCD inmates, these private facilities will not be utilizing isolated confinement just like the NMCD will not use it in its state owned and operated prison facilities in a manner not authorized by this bill.”

The report to the Legislature is to be filed in the Legislative Council Service Library but there is no provision on how the report is to be used by the Legislature or any of the session or interim committees.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 175 is identical to HB 242 and SB 185 of the current session.

TR/jle/al/jle