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## FISCAL IMPACT REPORT

SPONSOR Candelaria ORIGINAL DATE 2/26/19  
 LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Convert Prisons to Treatment Facilities SM 47

ANALYST Edwards

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	NFI	NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to House Bill 43, House Bill 267, House Bill 290, House Bill 298, and Senate Bill 250.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Indian Affairs Department (IAD)  
 Human Services Department (HSD)  
 Department of Health (DOH)  
 Administrative Office of the Courts (AOC)  
 New Mexico Attorney General (NMAG)  
 Department of Workforce Solutions (DWS)  
 Public Education Department (PED)  
 Law Office of the Public Defender (LOPD)

#### Responses Not Received From

New Mexico Corrections Department (NMCD)  
 Department of Public Safety (DPS)  
 Association of Counties  
 Municipal League

### SUMMARY

#### Synopsis of Memorial

Senate Memorial 47 requests the formation of a task force to study the feasibility of converting correctional facilities into drug and alcohol treatment facilities. The Behavioral Health Services Division (BHSD) of the Human Services Department (HSD) is requested to convene the task force. The task force would be comprised of a representative of BHSD, appointed by the

Secretary of HSD, to serve as chair, and several other departments and organizations.

The task force will study the possible use of a prison-turned-treatment center as an alternate sentencing option for offenders with an addiction to drugs or alcohol. The task force will seek the input of nationwide experts and state, county, and municipal stakeholders and study all consequences of closing a correctional facility.

By November 1, 2019, the task force would report to the Legislative Health and Human Services Committee, the Legislative Finance Committee and the appropriate interim committees.

## **FISCAL IMPLICATIONS**

None of the responding agencies noted a fiscal impact to create and participate on the task force as required by the bill outside of time and effort.

However, implementing the recommendations of the task force in the next legislative session could be costly. The Fort Lyon Treatment Center in Colorado, 95 miles east of Pueblo, formerly a minimum security prison, costs almost \$5 million per year to run and serves as a rehab clinic for homeless addicted to drugs and alcohol, according to news reports.

## **SIGNIFICANT ISSUES**

HSD explains “extensive and costly renovation would be required of existing correctional facilities to remove security infrastructure and create an [Americans with Disabilities Act] ADA compliant, therapeutic environment suitable for the non-incarcerated population.”

In response to Senate Memorial 8 of this session, a duplicate of this memorial, HSD explained:

It is BHSD position’s that less costly and more effective models provision of behavioral health treatment within correctional facilities should be explored instead of what is requested in this memorial. As an example, The American Correctional Association’s Behavioral Health Resource Guide outlines recommendations for providing behavioral health and wellness services within correctional facilities, including assessment, therapeutic techniques, medication-assisted therapy, trauma-informed care, suicide prevention strategies, alternatives for the mentally ill in restrictive housing, treatment malls, veterans services, staff and contractor training, and physical plant considerations to develop small, “home-like” settings within facilities for the behavioral health population (*Behavioral Health Resource Guide*, Correctional Behavioral Health Working Group, Coalition of Correctional Health Authorities, American Correctional Association, April 17).

AOC analysis explains that, though the focus of the task force is on conversion of incarceration facilities, the scope of the issue at hand, i.e., addressing drug- and alcohol-addicted offenders in the criminal justice system, is significantly broader. Unless the task force also incorporates the roles and functions of diversion programs (such as Law Enforcement Assisted Diversion), alternative sentencing programs (such as problem solving courts), misdemeanor compliance programs and adult probation, re-entry services, and parole, what is completed within the confinement facilities will be of only limited value.

AOC also states:

Incarcerated individuals are often at a deficit, if not upon entry, then at release. Providing behavioral health services during incarceration along with re-entry planning and services upon release would likely create positive results, including those intended by this bill. Contributing to continuity of care would be beneficial to arrestees, inmates, and those incarcerated on remands [...].

The Senate Memorial 18 New Mexico Drug Policy Task Force final report submitted December 1, 2011, includes recommendations for substance abuse services related to offenders in the NM criminal justice system. Though it does not go so far as to recommend converting confinement facilities to treatment centers, it does recommend providing treatment within the incarceration setting. For example, in addition to suggesting a variety of detention alternatives and supervision-related diversions, the report endorses incorporating Medication Assisted Treatment (MAT) during confinement, fully funding Therapeutic Communities (TCs) in the prisons, and replicating the San Juan jail-based treatment model at the community level.

DOH provided the following analysis of the need for substance abuse treatment options:

According to the 2018 [New Mexico Substance Abuse State Epidemiology Profile](#), New Mexico has had the highest alcohol-related death rate in the United States for over 20 years, since 1997. Both alcohol-related chronic diseases and alcohol-related injuries contribute to this high rate. New Mexico also had the seventeenth highest drug overdose death rate in the nation in 2017, with Hispanic males experiencing the highest drug overdose death rate. For all NM residents, the overdose death rate has [risen considerably](#) over the past 30 years. Additionally, between 2013 and 2017 opioid overdose related [emergency department visits](#) increased by 51 percent in the state. Drug and alcohol abuse are significant concerns and a substantial cause of death in the state.

According to a 2015 study, “approximately 50 percent of state prisoners meet the criteria for a diagnosis of drug abuse or dependence; however, only 10 percent of prisoners receive drug treatment. Diverting offenders to community-based treatment has been shown to generate positive net social benefits. [The study] build[s] on a lifetime simulation model of a nationally representative state prison cohort to examine diversion from reincarceration to community-based substance abuse treatment. [Findings show] that diversion provides positive net societal benefits to the United States and cost savings to the national criminal justice system. [The] study demonstrates the societal gains from improving access to the community drug treatment system as an alternative to prison” (Zarkin, Cowell, Hicks, Mills, Belenko, Dunlap, & Keyes [2015]. Lifetime benefits and costs of diverting substance-abusing offenders from state prison. *Crime & Delinquency*, 61 [6], 829–850.0

In Colorado, the Office of Behavioral Health was allotted \$5,256,185 for the Jail Based Behavioral Health Services (JBBS) Substance Use Disorder (SUD) Program for FY 2018-19. The JBBS program supports county sheriffs in providing screening, assessment and treatment for substance use disorders and co-occurring substance use and mental health disorders to people who need such services while they are in jail. Outcomes for the JBBS include: JBBS clients being discharged from the program successfully, JBBS clients having low inappropriate service utilization in the community, and recidivism resulting in jail or prison

that involves alcohol and other drugs decreasing among JBBS clients (Colorado Office of Behavioral Health [2017]. [Jail Based Behavioral Health Services Annual Report](#)).

In Kentucky, there is a six-month evidence-based substance abuse treatment opportunity for those individuals assessed with substance use disorder and classified to be housed in a prison setting. Residents in these programs are housed separately from the prison general population, thereby forming their own community that encourages responsibility and accountability through peer support and uninterrupted focus on substance use treatment. Also, the [Kentucky Department of Corrections](#) contracts with 24 detention centers to provide evidence-based substance abuse treatment programming for individuals classified to a jail setting. Individuals are housed separate from the jail general population, fostering a community accountable to, and responsible for, a supportive treatment environment.

Senate Memorial 47 affects the following executive agencies by requesting their participation on the taskforce: Human Services Department, Department of Health, Department of Corrections, Department of Public Safety, Department of Indian Affairs, Public Education Department, and the Department of Workforce Solutions.

IAD explains:

[According to](#) the Substance Abuse and Mental Health Services Administration, in 2017 the state of New Mexico had 136 treatment facilities, of which 20 were tribally controlled, and approximately 18,808 patients were treated in these 136 facilities.

The state of New Mexico and the nations, tribes and pueblos have worked for many years to address the growing need for effective, culturally relevant and community-informed treatment services for Native American patients overall, through the support of Behavioral Health Local Collaboratives (LCs), a tribal needs assessment, and other initiatives. The task force created through Senate Memorial 47 will be able to address the link between recidivism and substance abuse and treatment, while also considering the unique needs of the tribes, nations and pueblos, such as distance and availability of these substance abuse services.

It is paramount that the Behavioral Health Services Division of the Human Services Department be requested to convene this prison conversion task force because the issue of parolees and addictions is a behavioral health issue first. Currently, the state legislature is considering reforms of the criminal justice system in New Mexico. The Indian Affairs Department is part of the Justice Reinvestment Working Group that is considering recommendations to this bill.

PED submitted the following analysis:

PED is responsible for the oversight and monitoring of the Title I, Part D, Neglected and Delinquent Youth Program also known as N and D. The N and D program provides federal funds to school districts and state agencies to supplement the regular program of instruction of students who are served by these sites. The N and D data for New Mexico is as follows (from PED 2018 Annual N and D Report submitted to U.S. Department of Education):

Adult Facilities

New Mexico Department of Corrections (11 facilities): 22

Juvenile Facilities

Children, Youth and Families Department (3 facilities):	138
New Mexico Department of Health (1 facility):	33
<u>Mimbres School at UNM Hospital (1 facility):</u>	<u>71</u>
Total	264 students in 16 facilities

Additionally, eleven school districts serve 387 Delinquent students.

The U.S. Department of Education and the U.S. Department of Justice recommend incorporating a treatment program into the re-entry plans for juveniles exiting juvenile justice residential facilities. Such a plan is part of a larger effort designed to re-integrate youths into society, including school, and to prevent recidivism ([See](#) Guiding Principles for Providing High-Quality Education in Juvenile Justice Secure Care Settings, Washington, D.C., 2014).

In 2017 New Mexico high school students had the third highest rate of any state participating in the CDC's [Youth Risk Behavior Survey](#) (YRBS) for drinking alcohol before the age of 13. 26.2 percent of New Mexico high schools students report drinking alcohol within the past 30 days with 20.7 percent reporting they had their first drink of alcohol before the age of 13. 27.3 percent of New Mexico high school students report using marijuana in the past 30 days, 6.9 percent report using pain killers to get high in the past 30 days, and 5.1 percent report using cocaine in the past 30 days.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Relates to House Bill 43, House Bill 267, House Bill 290, House Bill 298, and Senate Bill 250.

**TECHNICAL ISSUES**

PED believes the deadline for the taskforce generated report is somewhat short given the type and amount of research and input required.

HSD suggests it may be less costly and more effective models for provision of behavioral health treatment within correctional facilities could be explored. The American Correctional Association’s Behavioral Health Resource Guide outlines recommendations for providing behavioral health and wellness services within correctional facilities, including assessment, therapeutic techniques, medication-assisted therapy, trauma-informed care, suicide prevention strategies, alternatives for the mentally ill in restrictive housing, treatment malls, veterans services, staff and contractor training, and physical plant considerations to develop small, “home-like” settings within facilities for the behavioral health population (*Behavioral Health Resource Guide*, Correctional Behavioral Health Working Group, Coalition of Correctional Health Authorities, American Correctional Association, April 17). The Behavioral Health Collaborative could create a working group to explore innovative and best practice treatment within correctional facilities for individuals with behavioral health conditions.

TE/sb