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FISCAL IMPACT REPORT

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| SPONSOR <u>Maestas</u> | LAST UPDATED _____ |
| | ORIGINAL DATE <u>2/28/23</u> |
| SHORT TITLE <u>Solitary Confinement Limits</u> | BILL NUMBER <u>Senate Bill 399</u> |
| | ANALYST <u>Daly</u> |

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

| | FY23 | FY24 | FY25 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------------------|------------------|------------------|-------------------|---------------------------|---------------|
| NMCD | No Fiscal Impact | No Fiscal Impact | No Fiscal Impact | No Fiscal Impact | | |
| County Jails | \$3,828.0 | \$3,828.0 | \$3,828.0 | \$11,484.0 | Recurring | County Funds |
| Total | | | | | | |

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent version of this legislation.

Sources of Information

LFC Files

Responses Received From

Children, Youth and Families Department (CYFD)
New Mexico Attorney General (NMAG)
New Mexico Corrections Department (NMCD)
New Mexico Counties (NM Counties)
New Mexico Sentencing Commission (NMSC)

SUMMARY

Synopsis of Senate Bill 399

Senate Bill 399 amends the Restrictive Housing Act to reduce the period of time each day that an inmate may be confined in restricted housing without any rehabilitative programming that includes daily, meaningful and sustained human interaction from 22 hours to 17 hours per day.

SB 399 also amends restrictions on the use of restrictive housing:

- The current prohibition on using restricted housing for inmates under 18 now excludes inmates younger than 21 or older than 55;
- The current prohibition on using restricted housing for inmates known to be pregnant is expanded to include those inmates who are eight or fewer weeks postpartum;
- The use of involuntary restricted housing or protective custody for inmates who belong to vulnerable populations (including those who identify as lesbian, gay, bisexual, transgender, or queer) is newly prohibited;

- For inmates housed in facilities operated by NMCD (including its contractors), the use of restricted housing for more than 15 consecutive days or more than 90 total days in a 12-month period is newly prohibited;
- If an inmate requires housing in restricted housing for more than 90 total days in a 12-month period, the person in charge of the correctional facility is now required to make a written record of the reason behind the need for using restricted housing and prepare a written action plan for transitioning the inmate out of restricted housing as soon as possible; and
- The use of restricted housing for inmates housed in a county jail or other local government facility is now prohibited for the first three days of incarceration unless a suicide screening finds that the inmate is unlikely to engage in self-harm.

Existing law requiring quarterly reports concerning inmates in restrictive housing is amended to require inclusion of every inmate's name and identification number and to remove the requirement that the report include the reason each inmate was placed in restrictive housing. NMCD remains responsible for posting every report on its public website.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

NMCD budgets a correctional officer vacancy at \$66 thousand per year. Assuming SB399 requires at least two new officers to be employed at each of the 11 prisons in the state to supervise inmates from restrictive housing, the cost to NMCD would be approximately \$1.5 million per year. Given the agency's \$23 million in vacancy savings, this cost likely can be absorbed by the agency, resulting in no fiscal impact. Assuming that same need at the county level, LFC staff estimates the fiscal impact to be \$3.8 million (two correctional officers each at 29 jails) per year.

SIGNIFICANT ISSUES

The proportion of individuals in custody for violent offenses has increased substantially since 2010, according to NM Counties based on a 2020 study by NMSC of detention populations in six counties. NM Counties explains the reasons for and difficulties in housing at least some of these inmates in restricted housing:

There are several reasons why someone might be placed in restricted confinement. It is an important component of discipline for detainees that assault staff or each other. It is a tool for protective custody for individuals who are vulnerable or dangerous. It can be required for individuals on medical quarantine.

Detention facility housing units with cells have day rooms where detainees spend their out of cell time. Detainees who cannot be mixed cannot be out of their cells and in the common area at the same time. Housing units typically contain at least 10 cells. There are not enough hours in the day to provide everyone in a mixed classification housing unit with 7 hours of out of cell time per day.

Further:

Out of cell time for violent and dangerous individuals in restricted confinement is extremely staff intensive with 2 or more staff required to move such individuals to and from their cells. County detention facilities are currently experiencing a staffing crisis with more than half having a staff vacancy rate of more than 20% and some with vacancy rates of over 30, 40 and even 50%.

In short, NM Counties argues that increasing the number of hours per day that persons in detention must be outside their cells will compromise safety and security, require substantial physical plant expansion, and cause a significant increase in detention personnel. NMCD raises similar concerns:

In August 2016, the Standards Committee of the American Correctional Association—a professional association and accrediting organization for corrections—voted to pass comprehensive standards regulating the use of restrictive housing. NMCD has adopted these standards. This bill drastically diverges from existing best practices in corrections that define restricted housing as no more than 22 hours in a 24-hour period without daily meaningful human interaction.

These decisions are operational in nature and must be left up to experienced corrections leaders who are ultimately responsible for managing New Mexico’s most dangerous criminals. Even when done for well-intended purposes, failure to properly secure an inmate who has proven to be dangerous and violent is irresponsible and risks the lives of hundreds of staff and other inmates.

NMCD reports it already limits the number of days an inmate can be placed in restricted housing to 30 consecutive days and no longer places female inmates in restrictive housing. According to NMCD, the number of inmates in restricted housing at any given time represents less than 2 percent of the total inmate population of NMCD.

Both NM Counties and NMCD object to the restriction barring the placement of members of a vulnerable population in protective custody, arguing that such placement is used only as necessary to reduce the threat of harm or due to the inmate’s own safety concerns. NM Counties notes that, while federal regulation provide that a person’s gender identity or sexual orientation should not be the sole reason for classification decisions, it believes that SB399 imposes “blanket requirements that ignore the many legitimate factors that should be considered.” Similarly, NMAG comments that this type of bright-line rule could limit a facility’s ability to maintain order and safety for all inmates. NMSC points out that the use of the phrase “vulnerable population” without definition may lead to difficulties in implementation and NMAG believes could result in litigation.

Addressing the impact of SB399 on juvenile detention and adjudication, CYFD advises Juvenile Justice Services does not classify clients into restrictive housing units like segregation or isolation units. According to CYFD, as a matter of policy and procedure, its clients are generally not placed in long-term isolated confinements. It notes that, during room confinement, its clients are offered programming and services that address SB399’s mandate of rehabilitative programming. It does note, however, the bill does not provide exceptions for quarantine or other medical circumstances that might require client segregation. CYFD, along with NM Counties, notes that requiring names in public quarterly reports could violate Children’s Code provisions and regulations. See Section 32A-2-32, NMSA 1978 and 8.14.14.11(G) NMAC. NM Counties

asserts, as well, that there is no legitimate public purpose for requiring names in the quarterly reports.

PERFORMANCE IMPLICATIONS

CYFD reports it has performance measures related to physical assaults involving juvenile clients. Removing clients from the milieu can reduce tension in the general population and placing an unsafe client in the milieu could contribute to an increase in assaultive incidents.

TECHNICAL ISSUES

NMSC notes that, as drafted, Section 2 (D) and (E) conflict. Subsection D could be revised to state “Except as provided in Subsection (E)” at the beginning of the subsection.

OTHER SUBSTANTIVE ISSUES

NMSC comments:

Advocates for the reform or abolition of the use of restricted housing argue that the practice does not improve safety in correctional facilities and may increase the rate of recidivism, in addition to having negative effects on the psychological, neurological, and physiological wellbeing of inmates. See, e.g., “The Impacts of Solitary Confinement” published by the Vera Institute of Justice, April 2021, available here: <https://www.vera.org/downloads/publications/the-impacts-of-solitary-confinement.pdf>.

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