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FISCAL IMPACT REPORT

ORIGINAL DATE 03/07/11

SPONSOR Martinez, R. LAST UPDATED _____ HB 529

SHORT TITLE No Jail for Certain Misdemeanors SB _____

ANALYST Segura

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	None		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	\$2.0	\$2.0	\$2.0	\$6.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Sentencing Commission (NMSC)
 Administrative Office District Attorney (AODA)
 Administrative Office of the Courts (AOC)
 New Mexico Corrections Department (NMCD)

SUMMARY

House Bill 529 proposes to remove the requirement of sentencing defendants convicted of misdemeanors to a county jail limiting the maximum period of imprisonment in a county jail. The bill amends Section 31-19-1 NMSA 1978 to allow for persons convicted of a misdemeanor with a sentence of six months or more to be imprisoned in a county jail or Corrections Department facility.

The AODA summarizes the bill as follows; HB 529 would amend NMSA 1978, 31-19-1(A) , to strike language requiring that if the defendant has been convicted of an misdemeanor the judge shall sentence the person to imprisonment in the county jail for a definite term less than a year. Under HB 529, 31-19-1(A) states that where the defendant has been convicted of a crime

constituting a misdemeanor, the judge shall sentence the person to be imprisoned for a definite term less than one year. Subsection (A) no longer says where the person shall be imprisoned. The bill also amends NMSA 31-20-2 (A) to read as follows; Persons sentenced to imprisonment for a term of more than six months may be imprisoned in a county jail or in a corrections facility designated by the corrections department.

FISCAL IMPLICATIONS

The NMCD indicates that enactment of House Bill 529 would immediately fill NMCD to its rated or maximum capacity. NMCD is already at 90 % of its rated capacity for its male population, and is at 98% of its rated capacity for its female population. While this bill may indeed serve to drastically lessen county jail populations, it simply transfers those inmates to the custody of NMCD. House bill 529 does not contain an appropriation to NMCD to incarcerate these inmates to the custody of NMCD.

SIGNIFICANT ISSUES

AODA states under current law a defendant convicted of a misdemeanor shall be sentenced to incarceration in the county jail for a term of up to one year. Under House Bill 529 a defendant convicted of a misdemeanor shall be sentenced to incarceration for a term of up to one year. Where the incarceration is to take place is no longer specified in 31-19-1(A). The amendment to 30-20-2 proposes that a person convicted of a misdemeanor and sentenced to a term of incarceration of more than six months may be incarcerated in either a county jail or in a corrections facility designated by the corrections department. AODA raises the concern that a person convicted of a misdemeanor and sentenced to serve less than six months incarceration would still be incarcerated in the county jail, as would a person convicted of a petty misdemeanor, but that is not apparent in the proposed legislation.

In addition, under 31-20-1(A) as amended by HB 529 a person sentenced to imprisonment for a term of more than six months may be imprisoned in a county jail or in a corrections facility designated by the corrections department. This amendment appears to allow a person sentenced to a five year term of incarceration to serve that incarceration in a county jail and not a correctional facility as required under 31-20-1(A) as currently written. They indicate that this cannot be correct.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB 519

OTHER SUBSTANTIVE ISSUES

NMCD states that placing misdemeanor offenders in state prisons presents significant barriers to their rehabilitation. It would expose them to often more violent and more sophisticated felony offenders, who in some cases may try to train them to become more serious or successful criminals. It would also remove them from close proximity to their families.

RS/svb