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FISCAL IMPACT REPORT

SPONSOR O'Neill/Cadena **ORIGINAL DATE** 2/2/19
LAST UPDATED 2/7/19 **HB** _____

SHORT TITLE Halfway Houses & Residential Facilities **SB** 265

ANALYST Edwards

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
\$0.0	\$0.0	At least \$2,800.0	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0.0	\$0.0	\$4,500.0	At least \$4,500.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

*See fiscal implications section.

Relates to Senate Bill 254 – General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of Bill

Senate Bill 265 creates the Halfway House and Transitional Residential Facility Act. The act requires the New Mexico Corrections Department (NMCD) to divide the state in to no fewer than four probation and parole regions, operate or contract for a transitional living or halfway house in each region by July 1, 2022 for both men and women, and create the rules necessary to administer the act.

The act requires the department to collect housing payments based on a sliding fee scale established by the department that takes into account the offender's ability to pay and deposit

these revenues into the general fund. No offender that is eligible for halfway or transitional living houses shall be denied housing due to inability to pay. The act requires the same duties from contractors; however, the bill does not specify where these revenues should be deposited.

The act requires NMCD to make high school equivalency education available to each offender living in a halfway or transitional living house and requires each person living in a transitional living facility to participate in programs that address the needs of offenders as determined by a risk and needs assessment.

The act requires NMCD to develop criteria for determining eligibility for halfway and transitional living houses but mandates priority be given to release eligible inmates, nonviolent offenders (as defined by 33-2A-3 NMSA 1978), and any other offenders as determined by the department.

Lastly, the act allows electronic monitoring at the discretion of the department and allows an offender to be removed from halfway or transitional living facilities at the discretion of the department.

FISCAL IMPLICATIONS

Senate Bill 265 could have significant fiscal impact on NMCD. In FY17, 203 offenders were in halfway houses at a cost of \$1.5 million. In FY18, about 67 women and 76 men utilized transitional living centers in the Albuquerque area, a total of about \$3 million. In all, NMCD spends about \$4.5 million on transitional and halfway houses per year. To double the services provided and serve another 200 offenders (only about 1 percent of those on supervision) could cost at least another \$4.5 million. This analysis assumes the department will not incur costs until FY21, giving some time to identify locations and contract with providers.

The bill allows the department to charge offenders a sliding scale fee. If the department charges the fee, the fees must be deposited in to the general fund. This means fees generated may not help defray the costs of services to the department. The bill does not identify where fees a contractor charges are to be deposited or how the fees are to be used.

It is difficult to estimate the revenue that could be generated by this bill. This analysis assumes the average offender income is \$16,992 per year, assuming the individual works full time and is paid the minimum wage of \$8.85 per hour. If the department and contractors charge an average fee of 30 percent of a \$16,992 income (\$5,098), \$2.8 million in income could be generated (200 additional offenders served + 346 currently served offenders x \$5,098= \$2.8 million).

NMCD explains Senate Bill 265 would likely be expensive for the department to comply with. The department explains costs may include hiring NMCD staff or contractors to operate the halfway houses and transitional residential facilities, purchasing or leasing several buildings to serve as houses or facilities, and purchasing and providing behavioral health treatment, educational, and vocational programs to the residents. NMCD would need to work closely with the General Services Department's Facilities Management Division (FMD) in order to comply with the requirements of the Act. NMCD explains FMD has the expertise and experience to better quantify the specific costs of this very large project involving the purchase or lease of four suitable halfway houses or transitional residential facilities.

Notably, both the LFC and executive budget recommendations including an additional \$2.2 million in the Corrections Department base budget to add 88 additional transitional living beds (48 for women and 40 for men). Additionally, the LFC recommendation includes \$750 thousand for on-site, highly rated, evidence-based programming specifically at halfway houses, which a [2018 LFC program evaluation](#) found were lacking in meaningful programming.

SIGNIFICANT ISSUES

NMCD submitted the following response to the bill:

By its own policy direction, the NMCD is committed to the expansion of community level correctional programming, but at a more gradual rate, commensurate with its available funding. Accordingly, the overall intent of the Act is well intentioned and fully supported by the NMCD. It would give release eligible inmates, nonviolent offenders, inmates within one year of scheduled release and any other inmates determined by NMCD, the opportunity to transition successfully into society by living in one of the houses or facilities (and engaging in GED-related classes and other designated rehabilitative, educational and vocational skills programming and/or treatment as determined by a validated risk and needs assessment). The NMCD already uses state property to have a private vendor to operate and provide services in a men's recovery center in Los Lunas, New Mexico, a women's recovery center in Albuquerque, New Mexico, and the Pavilions, a transitional living center for females on probation or parole, in Los Lunas, New Mexico. These facilities respectively house 80, 50 and 22 offenders who are on probation or parole supervision. The NMCD also promulgated a Request for Proposals (RFP) for a transitional living center for offenders with supportive services for offenders reentering the community from incarceration or otherwise displaced in the community. The NMCD is therefore already working to expand its use of transitional living centers in all areas of the state, but needs to expand within the confines of its budget and both its and the communities' resources. There is no need for legislation requiring the NMCD to do so.

In any event, the requirements of the Act are numerous and onerous. The Act requires the operation of a minimum of four half way houses or transitional residential facilities throughout the state, and requires one to be in place in four regions by July 1, 2022. Finding existing appropriate buildings to lease is not easy and would take time, as would finding a qualified vendor or vendors to operate the houses and facilities if the NMCD decided to pursue that option. If the NMCD could not find suitable existing facilities, which is a reasonable possibility which will be better known after any responsive bids are submitted during the pending RFP process, the financing and completion of the construction of suitable state buildings or suitably zoned privately owned buildings in each of four regions would prove difficult if not impossible. The bill removes the authority and discretion of the NMCD to expand its transitional living centers in a realistic, efficient, and reasonable manner. The bill overlooks the fact that there may not be suitable buildings, and there may not be enough experienced vendors or NMCD staff to so quickly operate a facility in each of the four designated regions.

Even if the NMCD had sufficient appropriations to fully fund the Act's requirements, it may prove exceedingly difficult if not impossible for the NMCD to have four halfway houses or transitional residential facilities operational by the mandated time period.

The NMCD understands and appreciates that the growth of community level resources such as those proposed by this legislation will be critical in helping reach its goals of reducing recidivism. However, this proposed legislation mandates a very rapid expansion of these resources on very short time constraints, and does so without the full funding needed to properly pay for this rapid expansion, assuming that there are no barriers besides funding to this rapid expansion. There may be other barriers, as fully discussed below in the Other Substantive Issues Section.

OTHER SUBSTANTIVE ISSUES

NMCD provided the following information:

A non-funding factor likely to substantially hinder the ability of NMCD to operate a house or facility in some regions by the designated time period, or by any date for that matter, is the “not in my back yard” attitude exhibited by some community members and organizations. When NMCD fairly proposed to purchase and use the Plaza Maya building as a reporting office for probationers and parolees in downtown Albuquerque very near to the state and federal court buildings, a few misinformed but zealous local businessmen were able to delay and deter that office’s opening for a substantial period of time.

Plaza Maya is used as a reporting center for probationers who were not sentenced to prison in the first place and for parolees who were released from prison only after the parole board had approved their living arrangements and conditions in a detailed parole plan. It is reasonable to assume that certain groups or citizens will provide even more opposition when the residents of the proposed houses and facilities are individuals (even nonviolent offenders) who might still have incarceration time left on their sentences or who are release-eligible inmates (inmates who cannot yet parole to communities because of the lack of an approved parole plan by the parole board). These individuals or groups will likely work behind the scenes politically and through the news media to make the facilities appear dangerous or to delay if not prevent the proposed existing houses or facilities from being approved under that community’s zoning ordinances. While state law indicates that state property is exempt from or not subject to local zoning ordinances, purchasing real estate and building on it or finding a suitable state building to use as a halfway house or transitional residential facility in a community such as Albuquerque may prove to be a time consuming and onerous process--even assuming that sufficient funding is available.

Additionally, finding privately owned facilities suitable to use as halfway houses or transitional residential facilities which meet the mandatory requirements of (1) an owner wants or agrees to use the property in that fashion, and (2) the building is properly zoned or can obtain proper zoning, may provide difficult. The RFP process already underway will help the NMCD to better determine what if these requirements can be met, and if the answer is no, it may prove impossible for the NMCD to comply with the bill. The “not in my back yard” attitude often present in communities may well result in zoning changes or zoning application denials in order to prevent or block a privately owned facility from ever being utilized as a halfway house or transitional residential facility. The bill fails to take into account these factors which are beyond the control of the NMCD, and would require the NMCD to expand its halfway houses and transitional residential facilities in a particular rate or manner when barriers beyond the NMCD’s control make such detailed expansion unrealistic if not impossible.

A [Legislative Finance Committee program evaluation](#) published in October 2018 shows general fund appropriations to the Probation and Parole Division in FY18 were \$29 million. Compared to an average prison cost per inmate per day of \$111 in FY18, the average cost per supervised individual per day was \$4. Almost half of the offenders (8,458; 43 percent) on supervision are in region II, which consists of Sandoval, Bernalillo, and Valencia counties. Region I serves northern New Mexico and has a supervision caseload of 3,973 (20 percent) offenders. Region III serves the southern part of the state and has a supervision caseload of 3,271 (17 percent). Region IV serves the eastern part of the state with a supervision caseload of 3,402 (17 percent).

The report also showed that NMCD spent \$5.5 million on evidence-based recidivism reduction programs in FY17 but the department was unable to provide participation rates for most of the programs. In the same year, \$1.6 million halfway houses; however, the LFC found evidence-based programming at these facilities lacking. On page 12 the report states:

In New Mexico, only 4 percent of released inmates (203 individuals) utilized halfway houses in FY17 according to NMCD data. NMCD expenditures for five halfway house programs was \$1.6 million in FY17, or an average of \$595 per offender per month. A 2012 LFC program evaluation found that 15 percent of REIs (36 inmates per month) were kept in prison while awaiting affordable housing, costing approximately \$1.5 million in incarceration versus supervision costs. The [Department of Justice] has identified the need for evidence-based services at these facilities. LFC staff observed halfway house facilities during field visits but were often unable to identify any services offered or referred to on-site. NMCD has noted that it is difficult to procure halfway house providers.

The LFC evaluation proposed as a recommendation that the legislature should expand funding for transitional living to adequately house hard-to-place release eligible inmates and to be used as a sanction for parole violations, but should require and expand the use of evidence-based programs at those facilities. Additionally, currently House Bill 2 includes \$2.2 million to expand transitional living beds and funding for evidence-based programming at halfway houses.

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