

## LFC HEARING BRIEF

**AGENCY:** New Mexico  
Corrections Department

**DATE:** June 14, 2005

**PURPOSE OF HEARING:**  
Inmate Growth,  
Population Control  
Strategies, Prison  
Capacity and Possible  
Locations for New  
Prison

**WITNESS:** Joe Williams,  
Secretary, New Mexico  
Corrections Department;  
Erma Sedillo, Deputy  
Secretary Operations,  
New Mexico Corrections  
Department; Jolene  
Gonzales, Deputy  
Secretary  
Administration, New  
Mexico Corrections  
Department

**PREPARED BY:** Renada  
Peery, Fiscal Analyst

**EXPECTED OUTCOME:**  
Inform committee of the  
population growth,  
capacity issues, and  
differences between  
public and private  
prisons in regards to  
expanding prison beds.

### BACKGROUND INFORMATION

New Mexico's incarceration rate has steadily increased for males and females alike. Driving While Intoxicated (DWI) laws, sex offender laws, mandatory minimum sentences for certain crimes, and "truth-in-sentencing" laws that require serious offenders to serve 85 percent of their prison sentences have added to the increasing inmate population.

### CAPACITY AND POPULATION GROWTH

JFA Associates, formerly of George Washington University, projects the average annual inmate growth for the state of New Mexico. The FY06 forecast of inmate growth is down to 2.3 percent. As of May 31, 2005, the inmate population was 6,576. A 2.3 percent increase in FY06 translates into an increase of approximately 151 more inmates.

The New Mexico Corrections Department's (NMCD) monthly statistic report shows as of May 31, 2005, there were 21 general population beds available. At the current growth rate, NMCD will need more capacity in three months or less. The greatest need for additional capacity is for medium security Level 3 beds.

**Corrections Population Control Act.** In 2002, the Corrections Population Control Act was enacted as a tool to relieve overcrowding if the prison population was to go over capacity. Section 33-2A-2 NMSA 1978 states the purpose of the Corrections Population Control Act.

*The purpose of the Corrections Population Control Act [33-2A-1 NMSA 1978] is to establish a corrections population control commission that shall operate as an autonomous, nonpartisan body. The commission shall develop and implement mechanisms to prevent the inmate population from exceeding the rated capacity of correctional facilities and shall take appropriate action when necessary to effect the reduction of the inmate population.*

The governor or the Corrections Population Control Commission may order the commission to convene at any time to consider the release of nonviolent offenders who are within 180 days of their projected release date. The Corrections

Population Control Commission will terminate on June 30, 2007. On July 1, 2007, the Secretary of Corrections will assume the duties and responsibilities of the commission.

**Population Control Strategy.** NMCD has taken a proactive approach to avoid utilizing the Corrections Population Control Act, which would grant early release to nonviolent offender.

***Population Control Strategy Committee.*** The department has internally implemented law abiding strategies to reduce the inmate population. In February 2004, NMCD formed a Population Control Strategy Committee to address ways to stabilize and lower the prison population. The committee has developed the following initiatives to control inmate growth:

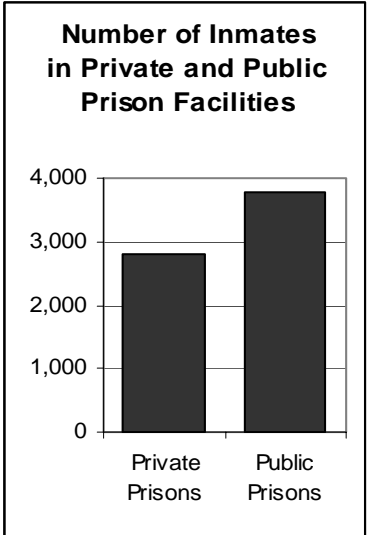
- Assist in-house parolees in finding suitable parole plans;
- Award good time to medical care cases;
- Ensure good time is awarded;
- Increase number of programs that give good time credit;
- Utilize new female inmate classification instrument;
- Assess feasibility of re-entry drug courts;
- Study the return rates of inmates; and
- Create a sanction parole violator program.

The majority of their initiatives deal with more efficient and effective discharge of inmates from correctional facilities. Since the creation of the committee, 624 in-house parolees have been paroled out into the community.

### **STATUS OF PRIVATE PRISONS IN NEW MEXICO**

Nationally, 6.5 percent of inmates are in correctional facilities that are operated by the private sector. Currently, New Mexico has 2,788 out of 6,576 inmates in private prisons. The state has 42 percent of inmates in private prison facilities. The following table shows the number of inmates per private prison facility.

Facility	Number of Inmates
Lea County Correctional Facility	1257
Guadalupe County Correctional Facility	599



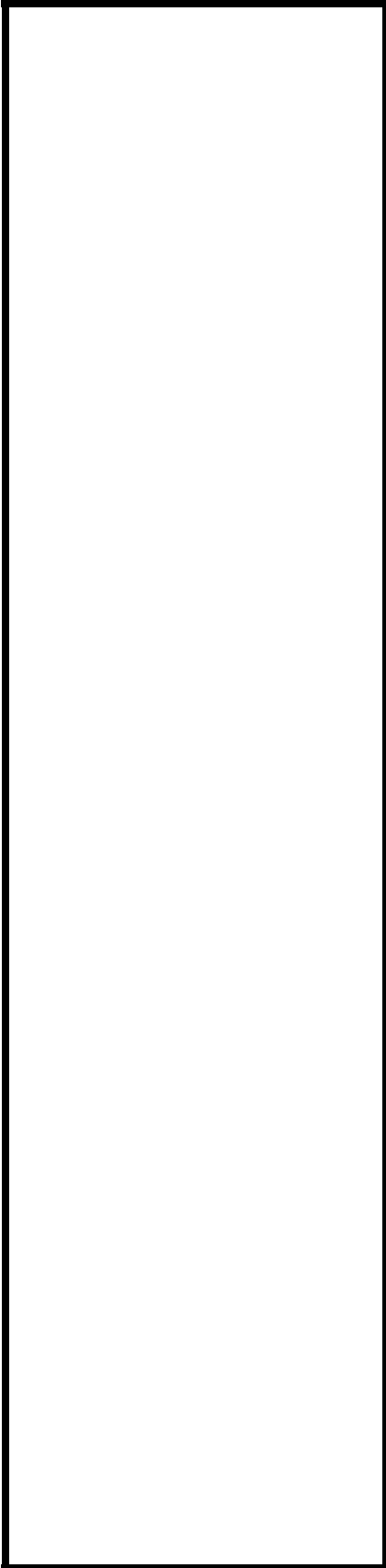
Santa Fe County Detention Center	101
Torrance County Detention Center	210
NM Women's Correctional Facility	621
<b>TOTAL</b>	<b>2788</b>

Source: NMCD

The majority of private prison facilities are for male inmates with the exception of the NM Women's Correctional Facility. The male private prisons house medium security, Level 3 inmates. The women's private prison deals with low to high security, Levels 1 to 6. The Santa Fe County Detention Center houses individuals in the Technical Parole Violator Program. Individuals in the program are reincarcerated for 30, 60 or 90 days.

New Mexico is the highest state in the nation for percentage of inmates housed in private prison facilities. The following table ranks the top ten states for percent of inmates in private prisons and includes the total number of inmates in private facilities.

State	Percentage	Number
New Mexico	44.2%	2,751
Alaska	30.6%	1,386
Montana	29.3%	1,059



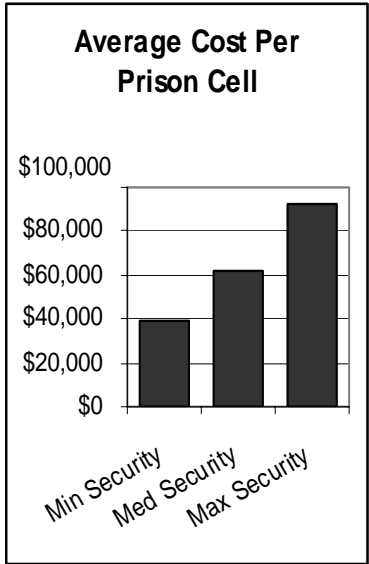
Oklahoma	26.4%	6,022
Wyoming	26.3%	493
Hawaii	25.4%	1,478
Idaho	21.5%	1,267
Tennessee	19.9%	5,049
Colorado	15.3%	3,013
Mississippi	14.9%	3,463

Source: U.S. Bureau of Justice

Statistics

### **CITY OF CLAYTON AND GEO PLANNING NEW PRISON**

On May 16, 2005, Correction Department officials met with representatives from Clayton, Union County, GEO, Economic Development, Union County Community Development Corporation and others to discuss the City of Clayton and Union County's proposal to build a prison to house state prisoners. Prior to the meeting, the City of Clayton and Union County officials approached Santa Rosa officials who recommended GEO based upon their experience. The City of Clayton and Union County plan to sell bonds to fund the construction of the prison facility. *Cost –Savings or Cost-Shifting: The Fiscal Impact of Prison Privatization in Arizona* states private prison companies are increasingly dependent on



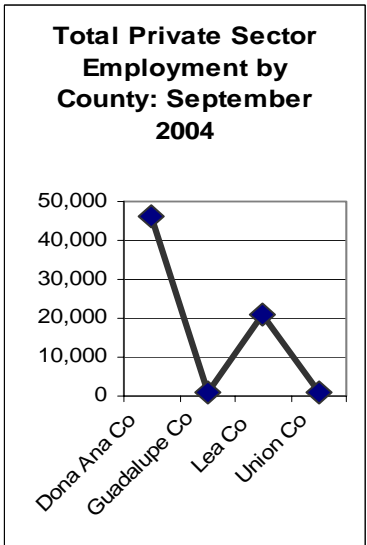
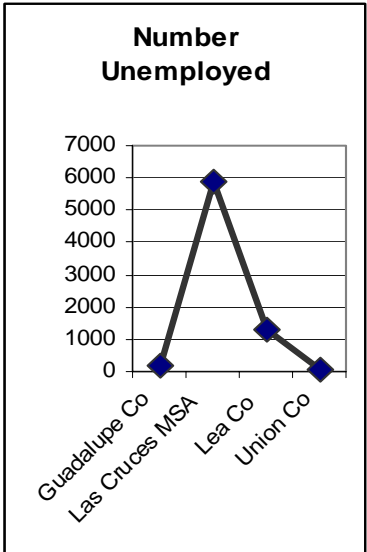
borrowing, and their lenders have actively discouraged them from tying up capital in costly new facilities. This result is, as in the situation with the City of Clayton and Union County, private prison companies seek public financing for private prisons. NMCD intends to contract for the construction and operation of a 600 bed Level 3 prison in Clayton.

**Site Criteria for Construction.** It is unclear what NMCD’s methodology was in making the selection for Clayton as the site for a new prison.

New Mexico Economic Development Partnership reports there are 13 critical site selection factors.

1. Real Estate – size, requirements, cost, raw land;
2. Labor – skill set, training, education, number of projected hires, transfers, wages, benefits, procurement, unemployment, and underemployment;
3. Operating Costs – occupancy, wage rates, insurances, comparison to other areas;
4. Access to Critical Places and Things – data, ease of access is critical, energy;
5. Transportation Network – highways, personal, cargo;
6. Supplier Vendor Network – ability to access goods, supplies, technology;
7. Utility Infrastructure – Electric, water, sewer, specialties, cost/timing of development;
8. Business Appetite – anticipate requirements, zoning, permitting, fees;
9. Educational Climate – quality of education, relation with business community, scores, long-term potential/impacts;
10. Community Characteristics – size, culture, housing, quality of life factors;
11. Tax Environment – state taxes, county, local (property, sales);
12. Financing Infrastructure – availability of financing tools; access to credit, cost of money, terms; and
13. Incentives – tax savings, job training, grants, and loans.

The Corrections Department should prepare and report an evaluation of prison site alternatives addressing the sort of criteria reported above with a particular emphasis on cost differentials. The report might compare Hobbs, Santa Rosa, Las Cruces, Clayton and perhaps Clovis, Tatum and Grants. The following sections present LFC analysis on some major site criteria.

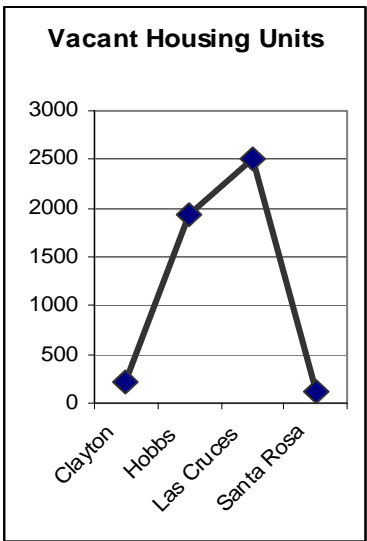


**Comparison of Cost in Building a New Prison.** For the purpose of making a comparison of the cost of building or expanding a prison in New Mexico the following sites have been selected: Clayton, Santa Rosa, Hobbs and Las Cruces.

**Construction Costs of a Prison Facility.** The 2002 Corrections Yearbook reports the average cost per bed as of January 1, 2002 for a maximum-security cell is \$92,560, medium-security cell is \$62,444, and minimum-security cell is \$39,089. Based on this information to construct a 600 bed medium-security prison would cost approximately \$37.5 million. The cost could increase based on the additional cost of construction in a rural area. R.S. Means Facility Construction Cost Data (2004) reported that in New Mexico construction cost was the lowest in Las Cruces with a weighted average of 83.9 and the highest in Carrizozo with a weighted average of 89.9. In addition, a construction manager for a state agency states that construction in a rural area can increase cost by 10 to 15 percent with the lower figure applicable to construction of a large prison. The information indicates construction costs would run high in Clayton, medium range in Santa Rosa and Hobbs, and low in Las Cruces.

**Per Diem estimates.** Cost savings are often passed on to states to the extent that the contracted per diems for the private facilities are less than the states' per diems. The per diem encompasses the private prison's operational cost to house the inmate (correctional officer's salaries, medical, food, clothing, etc.) and the cost associated with owning or leasing a facility. The following table displays the average cost per inmate for FY03 for the Southern NM Correctional Facility; and actual FY06 per diem rates for Lea County Correctional Facility and Guadalupe County Correctional Facility.

	Per Diem/Average Cost
Proposed Clayton Prison	NA
Lea County Correctional Facility	\$55.28
Guadalupe County Correctional Facility	\$58.04



Southern NM Correctional Facility  
\$90.78

Source: NMCD

The higher average cost at the Las Cruces facility is due in part to the housing of minimum, medium and high security Levels 2, 3, 4 and 6.

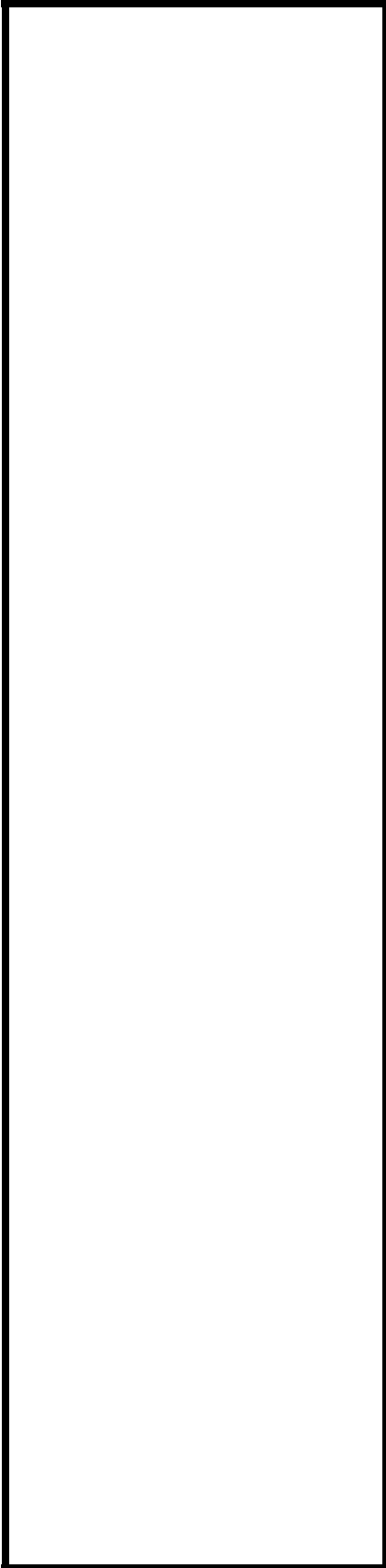
The economies-of-scale creates a lower per diem rate or average daily cost if expansion takes place at an already existing prison facility. Such a facility would have an increase in efficiency from the increase in the number of inmates. The Southern NM Correctional Facility, Lea County Correctional Facility and Guadalupe County Correctional Facility already have established medical, food, education programs, therapeutic communities, and trained staff. Operating costs become more efficient decreasing the cost per inmate housed in an expanded facility.

LFC staff received an indication that per diem cost for Clayton compared to Hobbs would be approximately \$8/day higher which represents \$1.75 million per year more for 600 inmates. Presumably, this reflects significant economies of scale in prison costs (one superintendent, one infirmary, kitchen, etc.).

**Labor Supply for Construction and Operation.** A key factor in selecting a new prison site is the labor supply in the local area. In March 2005, the Department of Labor reported the unemployment rate was 9.8 percent for Guadalupe County, 7.0 percent for Las Cruces Metropolitan Statistical Area (MSA), 4.9 percent for Lea County, and 3.9 percent for Union County. The following tables show the current labor force by county for construction and health care/social assistance.

Number Employed in Construction in Sept. 2004

Dona Ana County	3,904
Guadalupe County	165
Lea County	



	1,781
Union County	39
Number Employed in Health Care & Social Assistance in Sept. 2004	
Dona Ana County	8,245
Guadalupe County	68
Lea County	2,808
Union County	188

Source: Labor Information Quarterly Census of Employment 2004

NMCD estimates that 600 medium-security Level 3 beds would require approximately 200 correctional officers. It is critical that a new or expanded prison is able to recruit and retain correctional officers. An article in *Governing* magazine *Contract Lens* reports the annual turnover rate for state correctional officers nationally is about 15 percent while private facilities have an annual turnover rate of more than 40 percent. Studies on privatization often report private prison savings are realized by offering employees lower salaries and fewer benefits than the state entity.

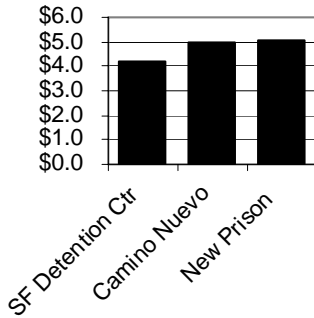
Availability of housing is an issue in recruiting personnel to work and live in the community. The following table displays the availability of housing in Clayton, Hobbs, Las Cruces and Santa Rosa.

Total Housing Units	Vacant Housing Units
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Clayton	
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Some Additional  
Operating Costs in  
FY07 Budget (in  
millions)



	1,289
	210
Hobbs	11,968
	1,928
Las Cruces	31,682
	2,498
Santa Rosa	1,024
	126

Source: US Census Bureau –

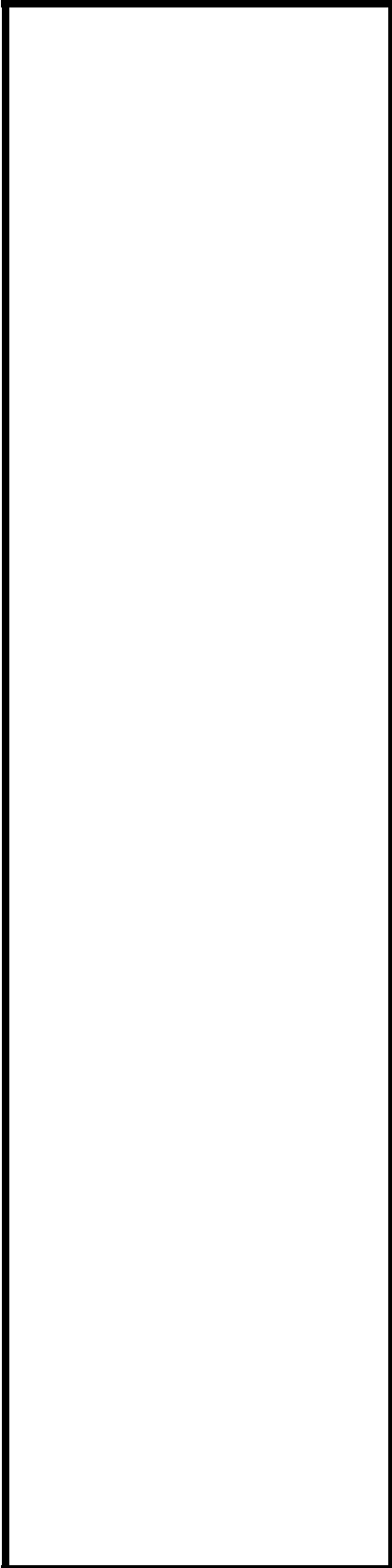
Census 2000

**Other Site Criteria.** The City of Clayton reportedly has insufficient electrical transmission; however, the city has a request in for an additional line. Also, real estate may be favorable in Clayton due to the city owning the large site east of town.

**NMCD's Authority to Contract with Private Sector.** The law seems clear that NMCD does not have the legal authority to pursue sole source procurement. Section 33-1-17 NMSA 1978 addresses private prison contracts. The statute states that the Corrections Department will solicit proposals and award any contract under this section in accordance with the provisions of the Procurement Code [Section 13-1-28 NMSA 1978]. The department is required to develop a contract to include terms and conditions required after consultation with the General Services Department. The statute states any contract awarded pursuant to this section may include terms to provide for the renovation of the facility or for the construction of new buildings.

The statute gives the Corrections Department the authority to contract for the operation or housing of adult female inmates in a private facility. Also, the statute gives the department the authority to contract with a person or entity in the business of providing correctional or jail services to a government entity for:

- A correctional facility in Guadalupe County of not less than 550 and not more than 2,200 beds;
- A correctional facility in Lea, Chaves or Santa Fe County of



not less than 1,200 and not more than 2,200 beds;

- Design and construction of support services building, a laundry and an infirmary at Penitentiary of NM in Santa Fe; or
- Construction of a public facility to house a special incarceration alternative program for adult male or female felony offenders.

The statute has not been updated since 1995 and does not include Torrance County in the language.

***Best Practices of Other States with Private Prison***

***Contracts.*** The *Department of Corrections Privatization Feasibility Study*, conducted by the Legislative Budget Committee of the State of Washington, reports cost savings depend on the care that is taken in estimating the state's costs, and in designing an RFP, choosing a contractor, and executing and monitoring the contract. Many states have passed legislation to ensure cost savings from private prison contracts. *Private Prisons: Quality Corrections at a Lower Cost* states Texas and Mississippi both require contract with private prisons to cost at least 10 percent less than using the state system. Florida requires 7 percent savings, and Tennessee requires payments to private firms to be less than government facility costs.

Internationally, governments are developing private prison contracts that have a performance-based structure of payment. *Private Prisons: Quality Corrections at a Lower Cost* reports the Australian state of Victoria bases its payments on such a structure.

- Accommodation-services fee – pays for housing the prisoners; offsets the private debt incurred in constructing the facility.
- Correction-services fee – covers specific services, such as correctional officers, health care, food, education, and rehabilitation programs.
- Performance-linked fee – fee is tied to a set of performance indicators, including escapes, deaths in custody, assaults on inmates, and assaults on staff. As long as the company meets the standards, based on averages from the government prisons, the full fee is paid.

**Effect on Other Corrections Costs.** The Corrections Department will incur higher cost to transport inmates to Clayton. Higher per diem costs could also stem from

recruitment of medical and educational personnel to Clayton.

## **BUDGET OUTLOOK**

**Supplemental for FY06.** NMCD reports that they will need a supplemental request estimated to be between \$6 and \$8 million in the 2007 legislative session. The need for the supplemental stems from being under-funded for private prison beds, and additional cost of leasing 200 inmate beds from Santa Fe County for population growth. The FY06 appropriation reflects the executive recommendation of \$235,677.2, which a 2 percent increase over the FY05 operating budget. The 200 additional beds available at the Santa Fe County Detention Center will take care of male inmate growth for approximately 18 months.

**Funding for Camino Nuevo.** The department is undecided at this point on whether the supplemental will include the operational cost to run Camino Nuevo as a minimum security Level 1 to 2 facility for female inmates. The operational cost for Camino Nuevo is estimated at \$5 million. The Camino Nuevo facility has the capacity for 192 beds. These additional beds will take care of the female inmate population growth for the next eight years.

**Additional Costs.** NMCD plans to request in their FY07 budget the operational cost of Camino Nuevo at \$5 million, the per diem cost of 200 additional inmates at Santa Fe County Detention Center at \$4.2 million, and the per diem cost of the Clayton facility for 5 months (estimated based on the Santa Rosa and Hobb's facility per diems) at \$5.1 million .

## **QUARTERLY PERFORMANCE REPORT**

The New Mexico Corrections Department (NMCD) has developed well diversified key quarterly measures that address the following agency key goals:

- a balanced system approach,
- population control,
- comprehensive approach for female offenders, and
- enhancement of public relations and education efforts.

The key quarterly measures do not address the department goals of lower cost and reduced exposure to litigation. The quarterly report contains the department's mission statement, vision statement, and summary of key strategic plan initiatives

which contains goals and objectives.

**NMCD Focus And Format.** The department's key measures primarily focus on the Inmate Management and Control program. The key measures are:

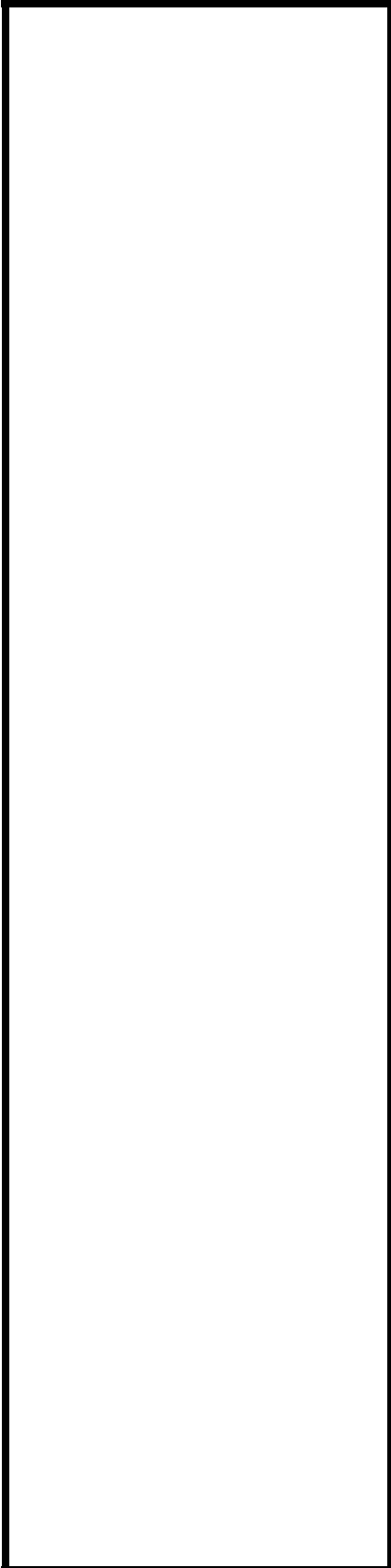
- serious inmate to inmate assaults in private and public facilities,
- serious inmate to staff assaults in private and public facilities,
- inmates placed into the Sanctioned Parole Violator Program,
- inmates testing positive in monthly drug tests,
- turnover of correctional officers,
- inmates returned to facilities within 12 months after release, and
- inmates returned to facilities within 24 months after release.

Key measures also include inmates enrolled in Adult Basic Education, regular caseload of probation and parole officers, and profit/loss margin of the Corrections Industries program.

The action plan states specific strategies to obtaining the target measure. NMCD sources where the data is collected from. An explanation is provided if the department is under or over their target, and a corrective action plan is provided. Historical data is given for the actual FY04 amount; cumulative actual for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> quarters of FY05; and the annual target for FY05.

It is unknown whether the department utilizes the performance data to "manage for results". For example, the department includes with the quarterly report the Adult Facility Daily Inmate Count for the end of the quarter. This report gives a breakdown by facility and security level the design capacity, total inmate population, and general population beds available. This report is imperative in planning for the need of additional inmate beds. As of March 31, 2005, there were 32 general population beds available. NMCD is just now starting the process of leasing additional inmate beds.

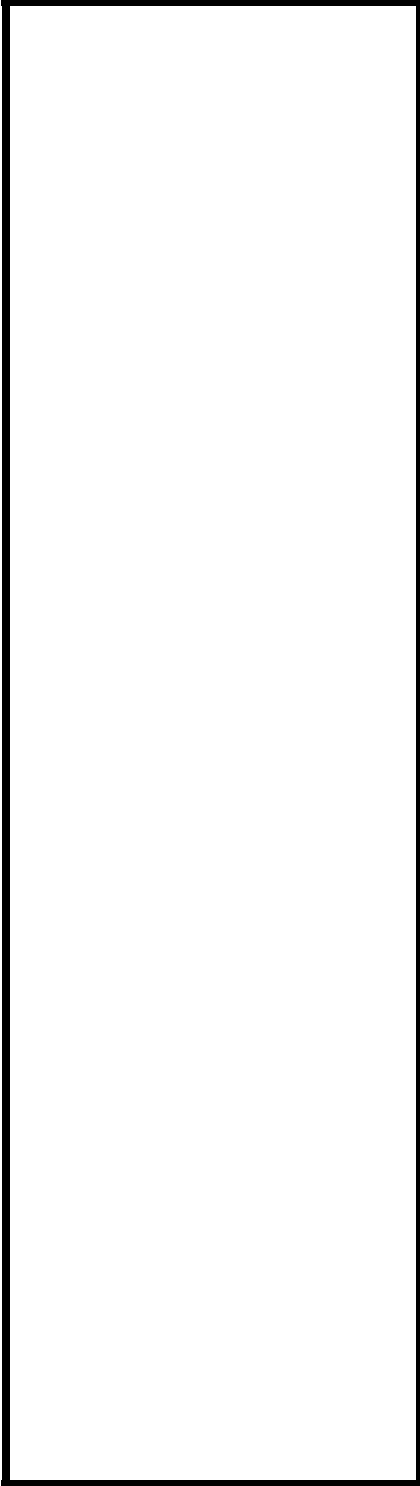
Some of the key measure may need to be reevaluated in regards to how realistic are the targets. For example, the measure for "percent of inmates testing positive in monthly drug tests" has a target of <=5%. The FY05 data is 1.76 percent and the FY04 baseline was 1.34 percent. The target is unrealistically high based on current and baseline data.



**Key Findings From the Quarterly Report.** NMCD has done a great job in developing key performance measures as indicators for the conditions in the prison facilities. The department will exceed its target in FY05 for serious inmate to inmate assaults. Also, the measure on inmates testing positive or refusing drug testing is below target, but is on an upward trend. These measures could be indicating worsening conditions possibly due to overcrowding. Analysis of the upcoming 4<sup>th</sup> quarter key measures may provide insight as to whether there are issues that need to be addressed by the department.

### **QUESTIONS**

- Has the Population Control Strategy Committee exhausted all the law abiding internal options available to reduce the inmate population?
- What is NMCD's legal authority to pursue a sole procurement with the City of Clayton and Union County?
- Has NMCD used site selection criteria, such as the one developed by the NM Economic Development Partnership, to develop a list of possible sites for a new or expanded prison facility?
- Does NMCD have an estimate of how much more it would cost to construct in a rural area?
- Does the City of Clayton have adequate electrical transmission capabilities to sustain a new prison facility?
- Does the City of Clayton have an adequate labor force to construct and operate a new prison facility?
- Has NMCD received any estimates from GEO regarding per diem for 600 medium-security inmate beds in Clayton including comparisons to other locations?
- Has NMCD conducted a cost benefit analysis regarding building versus expanding a prison facility that considers the economies-of-scale?
- Does NMCD plan to include in their FY06 supplemental



request of \$6-8 million operation of Camino Nuevo at \$5 million?

- What is NMCD's long-term plan to address the population growth of male inmates?