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FISCAL IMPACT REPORT

ORIGINAL DATE 1-25-09

SPONSOR Heaton LAST UPDATED _____ HB 112

SHORT TITLE HIV Testing for Certain Sex Offenses SB _____

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Health Policy Commission (HPC)
 Department of Health (DOH)

No Responses Received From

Administrative Office of the District Attorneys (AODA)
 Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

House Bill 112 amends the Human Immunodeficiency Virus (HIV) Test Act, Chapter 24-2B-5.1 and 5.2 of the Health & Safety statutes, relating to informed consent not being required of certain offenders or alleged offenders for HIV testing. The bill would no longer allow the victim, or victim's parent or legal guardian if a minor person, to petition the court, instead requiring the district attorney (DA) or other prosecutorial authority to act upon the request of the victim or a minor victim's parent or legal guardian. In addition, the test would be required to be performed no later than 48 hours from the date of the court order, instead of the 10 days after the petition's filing date as set forth in existing law. The petition and all proceedings in connection with the petition would continue to be sealed pursuant to current law. The bill would require the results of the test to be disclosed as soon as practicable.

HB 112 directs that the test may be performed on alleged offenders regardless of the results of the test performed, according to current law, on the victim of the alleged offense.

Finally, the bill would allow more than one follow-up test for alleged offenders.

SIGNIFICANT ISSUES

Department of Health notes that HB112 does not significantly change the substance of this existing provision of the New Mexico HIV Test Act except to assign the responsibility for petitioning the court to the district attorney. It is probably appropriate that the responsibility for petitioning the court under these circumstances should lie with the district attorney. HB112 also would require that the HIV test be administered within 48 hours of the court order, rather than 10 days as currently in law, which can benefit the victim by allowing Post-Exposure Prophylaxis (PEP) to be discontinued sooner if the test result is negative.

OTHER SUBSTANTIVE ISSUES

New Mexico Health Policy Commission provides data regarding HIV. Specifically, in New Mexico a total of 5,461 persons had been reported with HIV or acquired immunodeficiency syndrome (AIDS) at the end of 2007. Approximately 1,421 were diagnosed with HIV and 4,040 were diagnosed with AIDS.

During 2007, 165 new HIV/AIDS cases were documented, reflecting an incidence rate of 8.2 per 100,000 population. New Mexico continues to be a low morbidity state for HIV/AIDS with fewer than 200 cases reported each year since 1999.

It further offers that crime victim-related HIV laws require the testing of alleged and convicted sex offenders for HIV/AIDS, and the disclosure of the results of the offenders' tests to the victims. Thirty-six states have laws that apply to convicted adult offenders or adjudicated juvenile offenders in sexual assault cases, and eighteen of the states require testing of those arrested or indicted for an offense.

In most states, the victim must request that the offender be tested. In some states the victim petitions the court directly; in others, the prosecutor files a petition at the request of the victim.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Legal responsibility for petitioning the court for HIV testing of individuals charged with or convicted of certain sex offenses upon request of the victim would not be assigned to the district attorney and testing would not be mandated to take place within 48 hours of the court order.

EO/mt