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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/03/09  
 LAST UPDATED 02/17/09    HB 441/aHCPAC

SPONSOR Maestas

SHORT TITLE Substance Abuse & Crime Prevention Act    SB \_\_\_\_\_

ANALYST Sanchez, C.

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>	Indeterminate	Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Public Defender (PD)

### SUMMARY

#### Synopsis of HCPAC Amendment

The House Consumer and Public Affairs Committee original language in the bill specified that upon violation of Subsection A, B, C or D of Section 30-31-23 NMSA 1978 the court “shall refer the person to a substance abuse treatment program upon such reasonable conditions as the court may prescribe.” The amendment changes the word “shall” in that statement to “may.” It also inserts the phrase “consistent with the treatment plan” after the word “conditions” in that same statement. The original bill also contained a Section 5 detailing the reporting requirements this Act placed upon the New Mexico Interagency Behavioral Health Purchasing Collaborative. The amendment deletes Section 5 and those reporting requirements completely.

In Section 3, subsection A, of the original bill, the court “may, with the consent of the” offender, order an assessment by a qualified treatment professional of the offender’s addiction severity and need for treatment. The amendment makes the referral to substance abuse treatment consistent with the rest of the section, removing the language mandating substance abuse treatment and instead leaving such a referral up to the court. The amendment also clarifies that any conditions the court may prescribe related to the substance abuse program must be “consistent” with the treatment plan as developed by the treatment professional who had assessed the offender’s addiction and need for treatment.

According to the AOC, though the amendment makes Section 3, subsection A, more internally consistent, the amendment does nothing to address two significant issues raised in the AOC’s original bill analysis, namely the lack of treatment capacity throughout the state, and the possible conflict between HB441 and the state’s drug court programs.

According to the AODA, HB 441 vests the court with exclusive authority to determine which defendants should be referred for substance abuse assessments with no apparent input from the prosecutor or a procedural mechanism by which the prosecutor might voice opposition to the suspension of criminal proceedings pending the outcome of a substance abuse assessment. The Bill does not specify the standard or what procedure should be used when the court determines that the defendant has violated the terms and conditions imposed by the court. It also does not afford the prosecutor the ability to voice input as to whether the defendant has successfully complied with the court’s conditions and whether the case should be dismissed.

### Synopsis of Original Bill

House Bill 441 enacts the “Substance Abuse and Crime Prevention Act” to provide substance abuse treatment for persons charged with certain substance abuse offenses, and to provide reporting requirements related to the impact of such treatment statewide.

Section 2: Defines “qualified treatment professional” to mean a person with specialized knowledge and training in the area of psychology, psychiatry, or addiction therapy, and who has the expertise to conduct an assessment necessary to recommend an appropriate treatment plan.

It also defines “substance abuse treatment program” to mean a licensed or certified community substance abuse treatment program, including:

- Outpatient treatment programs
- Halfway house treatment programs
- Day treatment programs
- Medication-assisted therapy programs
- Drug education courses
- Drug prevention courses
- Limited inpatient treatment programs
- Residential drug treatment programs or detoxification programs

But excluding:

- Drug treatment programs offered in prison or jail facilities

Section 3: Specifies that (A) a violation of Subsection A, B, C or D of Section 30-31-23 NMSA 1978 shall lead, with consent of the person, including a written statement signed by the person waiving the time limits for commencement of trial pursuant to court rules, to a stay of further criminal proceedings and an assessment by a qualified treatment professional to determine the suitability and need for treatment, and recommendation of an appropriate treatment plan. Based on the assessment, the court shall then refer the person to a substance abuse treatment program. The period of treatment shall not exceed one year and the court shall not order incarceration of the person as a condition of participation in the substance abuse program. (B) Upon violation of the terms and conditions of participation in the substance abuse program, the court may reinstate criminal proceedings against the person. (C) If the person does not violate any of the conditions of participation in the program, upon expiration of the specified treatment period the court shall dismiss the proceedings against the person. (D) Upon dismissal, the person may apply to the court for an order to seal the records related to the person's arrest, providing such order would be consistent with federal law.

Section 4: If a person is charged with a probation or parole violation for the possession or use of controlled substances, the court or parole board may stay the probation or parole revocation hearing and order an assessment and referral in accordance with Section 4 of this act.

Section 5: Specifies annual reporting requirements of the Interagency Behavioral Health Purchasing Collaborative related to the impact of this act on fiscal, health and public safety, along with various measures of drug overdose rates, drug-related incarceration costs and crime rates, drug offender recidivism, and other measures attributable to referring persons to substance abuse treatment programs.

Section 6: Specifies the effective date of the act as July 1, 2009.

## **FISCAL IMPACT**

This bill has no appropriation. However, there could be a minimal administrative cost for statewide update, distribution and documentation of statutory changes.

## **SIGNIFICANT ISSUES**

According to the AOC, the courts in New Mexico and nationwide have found that incarceration on its own does not cure offenders of underlying problems with substance abuse, nor does it keep them from reoffending. National studies have shown that within 3 years of release from prison, approximately 2/3 of all offenders, including drug offenders, are rearrested for a new offense; 1/2 are convicted of a new crime; and 1/2 are re-incarcerated for a new crime or parole violation. Some studies show that 85% of drug-abusing offenders returned to drug abuse within 1 year of release from prison.

There is, however, a significant body of national research supporting the efficacy of treatment for substance abusing offenders. Such studies also indicate that the treatment must be attended regularly by the offender and be for a sufficient length of time to show positive effects. An evaluation of the Drug Abuse and Treatment Outcome Study (which evaluated a nationally representative sample of outpatient and long-term residential drug treatment programs in 2003) showed that 6 to 12 months of regularly attended treatment appeared to be a threshold for observing lasting reductions in drug abuse.

HB 441 mandates treatment for substance abusing offenders but treatment capacity will remain a cause of concern for those affected by this act. New Mexico continues to struggle with an underfunded substance abuse treatment infrastructure, especially in rural parts of the state where counselors, psychiatrists, and treatment programs are in especially short supply. HB 441, in essence, assumes that a qualified substance abuse treatment program will be available to the court for the mandated treatment.

Insofar as many New Mexico drug court programs also accept people who are charged with a violation of Section 30-31-23, there is a possible conflict between the requirements in Section 3 of this act and the ability of the state's drug court programs to work with such offenders. By this act, such people could not be referred to a drug court program (which can last more than one year and can include detention as a sanction). The Judiciary believes strongly in the capabilities and success of the drug court model, and believes its programs should remain available to such offenders as this act describes.

### **TECHNICAL ISSUES**

Semicolon on line 3, page 4, should be a comma.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Substance abuse treatment for persons charged with certain substance abuse offenses will not be expanded.

CS/svb:mt