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FISCAL IMPACT REPORT

ORIGINAL DATE 02/27/13

SPONSOR Maestas/Ivey-Soto LAST UPDATED _____ HB 599

SHORT TITLE Substance Abuse and Crime Prevention Act SB _____

ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Unknown*	Unknown*	Unknown*	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

*See fiscal implications

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Corrections Department (NMCD)
 Public Defender Department (PDD)
 Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Attorney General's Office (AGO)
 New Mexico Sentencing Commission (NMSC)

SUMMARY

Synopsis of Bill

House Bill 599 provides for any one charged with possession of any of the substances listed in Subsection A, B, C, D, or E of Section 30-31-23 NMSA 1978 to have the opportunity to enter a substance abuse treatment program. The state has the right to give their input and the defendant must sign a written waiver of "the time limits for commencement of trial pursuant to court rules". The court may then stay all further legal proceedings in the case and refer the defendant for an addiction assessment including a recommendation for an appropriate treatment plan and the court may then refer the defendant to a treatment program consistent with the recommendation. The period of treatment shall not exceed 18 months and an offender may have access to a treatment program only twice.

The bill sets out that if the defendant violates the conditions of participation in a substance abuse treatment program the prosecution may continue and if the defendant successfully completes the

program the case is dismissed with prejudice. Once the case is dismissed, the defendant may apply to the court for an order to seal the records relating to the case and the court shall issue the order if the case was in fact dismissed pursuant to this act. The defendant shall not be found guilty of perjury or giving a false statement for not revealing the arrest and subsequent actions taken in the case.

District attorney offices may maintain their internal records and may access sealed court records. A defendant charged with a violation of the conditions of probation or parole due to the possession or use of a controlled substance may be referred to treatment pursuant to this act.

FISCAL IMPLICATIONS

The NMCD provided the following:

Some individuals who would otherwise be sent to prison or placed on probation or parole with NMCD for possession crimes covered by this bill would avoid certain consequences reducing NMCD's costs. The NMCD's prison population and probation/parole caseloads would be reduced to some degree. However, NMCD has no way of determining with great certainty how many judges would utilize the bill's treatment mechanisms if it passed, and assumes (but does not know) that there would be enough certified treatment programs available to treat these individuals as required by the bill.

The cost to incarcerate a male inmate ranges from an average of \$38,070 per year in a state-owned and operated prison to \$31,686 per year in a contract/private prison (where primarily only level III or medium custody inmates are housed). The cost to house a female inmate at a privately owned/operated facility is \$29,375 per year. The cost per client in Probation and Parole for a standard supervision program is \$2,227 per year.

The AOC stated that HB 599 would enable treatment intervention for appropriate offenders when the more intensive resources of a drug court program are not necessary, or where they may not be available. HB 599 does not provide funding for this expanded use of the state's treatment services, and it is possible that the state, especially in more rural areas, will not have sufficient "qualified treatment professionals" and/or "substance abuse treatment programs" to fully support the implementation of this act.

Some of these offenders may be covered after January 2014 by Medicaid and may be eligible for drug treatment services.

SIGNIFICANT ISSUES

The AOC stated that research strongly supports diverting non-violent drug offenders from jail and prison to evidence-based treatment. Many such offenders are repeat offenders and will continue to commit crimes in support of their substance abuse/addiction. Successful treatment is more cost-effective than prison in that it helps the affected individual change their substance abusing behavior, thereby avoiding further criminal system costs. The Judiciary's drug court programs recognize the benefits of such successful programs, but drug courts work best with high-risk / high-need offenders whose criminal history and treatment needs require the intensive supervision of such programs along with the extended treatment period necessary to a successful treatment intervention with this more difficult population.

The NMSC stated that since 2000, states are increasing the continuum of options available for suitable offenders, seeking alternatives to the expense of incarceration and to ensure prison space is available for the most dangerous criminals. Substance abuse treatment may address issues that lead people to commit crimes. Increasingly, states are allowing courts and agencies to tailor supervision based on a person's treatment needs and likelihood of committing another crime.

The NMSC stated further that increasingly, state policies call for broadly screening felony defendants for substance abuse, diverting some to community supervision and sending others to secure treatment. Since 2007, rather than spending at least \$2 billion for prison construction, Texas has expanded treatment in prison and community settings. The bottom line of most drug and substance abuse reforms is a need to address the fiscal impact of drug related crime to the states and local jurisdictions.

TECHNICAL ISSUES

The NMCD provided the following:

NMCD does not have the statutory authority to monitor or supervise individuals not on probation/parole or sentenced to prison, so its staff cannot legally monitor or supervise these offenders/defendants.

The bill does not indicate who (NMCD, the courts, etc.) is responsible for supervising or monitoring the offender after the stay is imposed and the offender is out in the community before entering a substance abuse treatment program. While it could be assumed that NMCD probation and parole division (PPD) would be the responsible party, this is not clearly stated in the bill. It would make sense for PPD to monitor the offender, and to then report to the court or Parole Board if the offender does or does not enter a treatment program.

The NMSC stated that the bill applies the same procedure to magistrate, metropolitan, and district courts. Each jurisdiction has different criminal procedures and rules, as well as elected officials with different ideas of justice and treatment. For example, magistrate/metropolitan courts are viewed as "peoples courts" where defendants may represent themselves. Whereas district courts are "attorney courts" where the stakes are higher and a high percentage of defendants have legal representation. Typically, district court jurist prefer counsel to bring options to the court for a decision. Jurists do not usually initiate treatment options as this bill conceives.

POSSIBLE QUESTIONS

Who is going to pay for the treatment services (the offender?), and are there a sufficient amount or number of such treatment programs around the State? Who is going to monitor these offenders?

While there is a section that says that a person is not eligible to participate more than twice in the program, how is anyone to know if the records are sealed?

Internal records at DA's offices are allowed. What about a different DA's office? How will they know?